Australian Government
Productivity Commission

January 2024

Review of the National Agreement on Closing the Gap

Study report: Supporting paper

Volume 2

The Productivity Commission

The Productivity Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. Its role, expressed most simply, is to help governments make better policies, in the long-term interest of the Australian community.

The Commission's independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

Further information on the Productivity Commission can be obtained from the Commission's website (www.pc.gov.au).

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Contents

The Commission's final report is in two parts. The study report – volume 1 – includes an executive summary and the recommendations of the Review. It is available on the Commission's website: **pc.gov.au/closing-the-gap-review**. This supporting paper – volume 2 – provides further detail on each of the main topics covered in the final report.

Supporting paper – volume 2

Acknowledgements

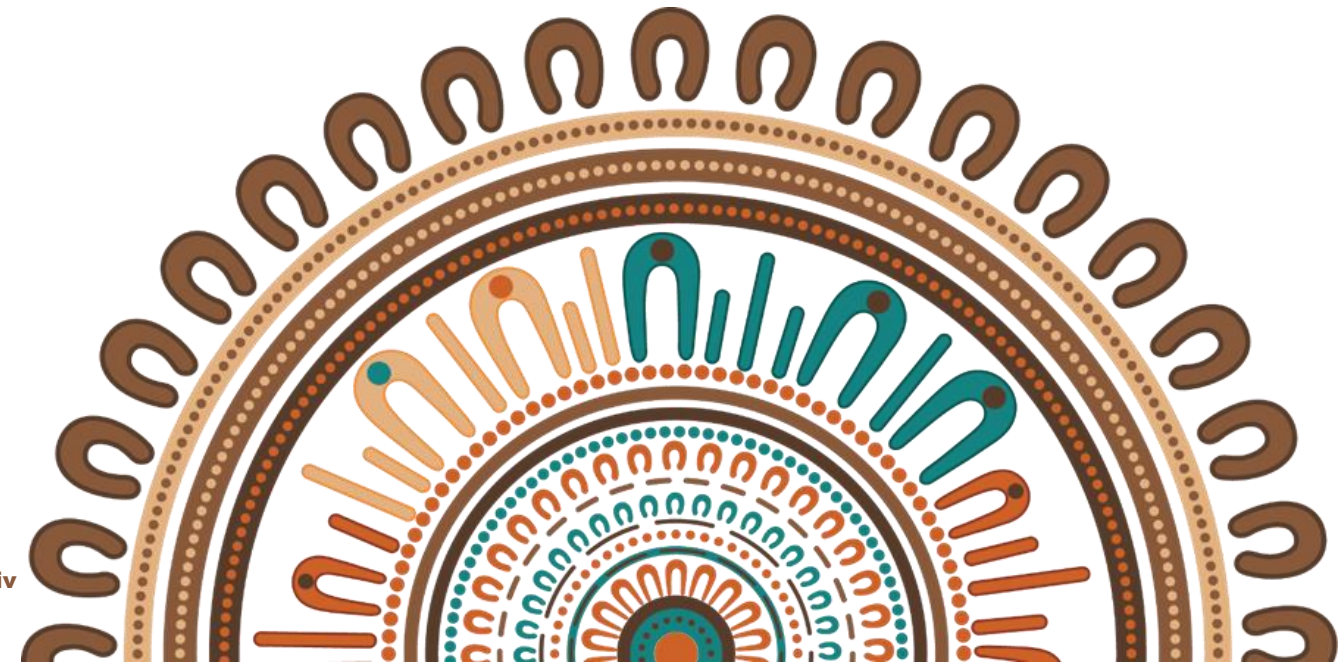
The Productivity Commission acknowledges that Aboriginal and Torres Strait Islander people are the first storytellers of this land and Traditional Owners of Country on which we now live and work. We recognise their continuing connection to lands, waters, communities and cultures. We pay our respects to Aboriginal and Torres Strait Islander cultures, and to Elders past and present.

Aboriginal and Torres Strait Islander people should be aware that this report may contain the names of people who have since passed away.

The Productivity Commission thanks members of the community as well as organisations and government agencies who have provided data and other information for use in this review.

We would particularly like to thank Aboriginal and Torres Strait Islander people and organisations, who generously shared their stories and insights with the Commission.

The Commissioners would like to express their appreciation for Michael Brennan, who was a co-Commissioner on the review while he was Chair of the Productivity Commission, and to the staff who worked on the study, including Ana Markulev and Catherine Andersson, who co-led the study.



About the artwork – Yindyamarra 'Connection'

The artwork titled Yindyamarra 'Connection' was created for the Productivity Commission's visual identity for the first review of progress under the National Agreement on Closing the Gap.

The artwork was created by Aboriginal artist Lani Balzan to represent all Australians and Torres Strait Islander people and the lands together. Building and making decisions together to help Close the Gap between our cultures.

Lani believes; that we can work together to help make changes by allowing all to be included in decision making. One can carry in their normal and usual way without ever making change because it works at the time. Sometimes we need to look at different ways and think outside of the box to make changes and let other voices be heard allowing many different perspectives to be viewed.

> Our Aboriginal culture has always been sacred but never embraced by majority of non-indigenous people. In previous years there was limited public education as there is today to help Close the Gap between our people and Non-Indigenous people.

Throughout the artwork Lani has used specific elements and symbols to tell the story. Information on the elements and symbols can be found on our website.

About the artist

Lani Balzan is an Aboriginal artist and graphic designer specialising in designing Indigenous canvas art, graphic design, logo design, Reconciliation Action Plan design and document design.

Lani is a proud Aboriginal woman from the Wiradjuri people of the three-river tribe. Her family originates from Mudgee but she grew up all over Australia and lived in many different towns starting her business in the Illawarra NSW and recently relocating to Mid-North Queensland.

In 2016 Lani was announced as the 2016 NAIDOC Poster Competition winner with her artwork 'Songlines'. This poster was used as the 2016 NAIDOC theme across the country.

Lani has been creating art Aboriginal art since 2013 and has continued success across the country. One of her biggest goals and inspirations with creating Aboriginal art is to develop a better connection to her culture and to continue to work towards reconciliation; bringing people and communities together to learn about the amazing culture we have here in Australia.

Review of the National Agreement on Closing the Gap

The National Agreement in context and our approach to the review

Chapter 1

Key points

The National Agreement on Closing the Gap was agreed in 2020 but it builds on a long history – of Aboriginal and Torres Strait Islander people's ongoing sovereignty and self-determination and previous government policies, actions and agreements.

The Agreement is unlike other national agreements. It is the first that includes a non-government party as a signatory – the Coalition of Aboriginal and Torres Strait Islander Peak Organisations. It is ambitious in the scale of change required, calling for an unprecedented, structural shift in the way governments work with Aboriginal and Torres Strait Islander people.

The Agreement contains four Priority Reforms. These reforms set the Agreement apart from the previous National Indigenous Reform Agreement, which largely focused on setting targets for socio-economic outcomes. The Priority Reforms are designed to support an accelerated achievement of the Agreement's 17 socio-economic outcomes and 19 targets. The Commission has focused this first review on progress against the Priority Reforms.

The Commission has engaged widely, particularly with Aboriginal and Torres Strait Islander people and organisations from across the country and across a wide range of sectors, including:

- holding 235 meetings, of which 136 were with Aboriginal and Torres Strait Islander organisations
- conducting seven virtual roundtables relating to the Priority Reforms and priority policy areas in the Agreement
- receiving 101 submissions, including 51 from Aboriginal and Torres Strait Islander organisations.

The Commission assessed progress towards the Priority Reforms in two ways. We:

- assessed progress against the specific commitments in the Agreement, and whether proposed actions will lead to change
- assessed the broad range of actions governments are taking, as set out in their implementation plans.

The Commission has also made observations about where progress can be observed and where more work is needed. As well as extensive engagement, the Commission has analysed implementation plans and annual reports in detail to get a sense of what governments are doing against each of the Priority Reforms (and their specific commitments).

The report draws on everything we have heard and our analysis of key documents and includes recommendations and actions to improve outcomes for Aboriginal and Torres Strait Islander people.

1.1 Closing the Gap: the historical context

The National Agreement on Closing the Gap (the Agreement) was signed in 2020 but it builds on a long history – of Aboriginal and Torres Strait Islander people's ongoing sovereignty and drive for self-determination in the face of previous government policies, actions and agreements. The Closing the Gap agenda has been an instrumental part of wider recognition by governments that self-determination is key to changing life outcomes for Aboriginal and Torres Strait Islander people.

For thousands of years, Aboriginal and Torres Strait Islander people lived and prospered on Country across this continent and surrounding islands. Despite the effects of colonisation, Aboriginal and Torres Strait Islander people have continued to maintain their cultures, knowledges and lore, and assert sovereignty and self-determination (box 1.1). In recent times, this has included calls for government to engage in stronger partnerships, Treaty, a Voice to State Parliaments and a proposed Voice to the Australian Parliament and Government.

The denial of the sovereignty of Aboriginal and Torres Strait Islander people since colonisation has impeded self-determination as government policies have continually sought to control the lives of Aboriginal and Torres Strait Islander people. The negative impacts of this have been acknowledged by various governments over time, with commitments to improve. For the most part, these efforts have not led to substantial or enduring improvement to how governments work.

Box 1.1 – Aboriginal and Torres Strait Islander people have continued to assert their self-determination and sovereignty

Aboriginal and Torres Strait Islander people have thrived for tens of thousands of years with strong cultures, knowledges and lore (AIATSIS 2008; VPSC 2023a, pp. 35–41). Aboriginal and Torres Strait Islander people have: complex kinship structures; rules for community interactions; defined roles relating to law, education, spiritual development and resource management; languages, ceremonies, customs and traditions; and extensive knowledge of their environment (AIATSIS 2008, pp. 5–23; VPSC 2023a, pp. 35–41).

After 1788, the colonial legal system denied that Aboriginal and Torres Strait Islander people had sovereignty or property rights over their land. Many Aboriginal and Torres Strait Islander people were dispossessed of their traditional lands, although not without resistance. From the late 1800s, colonial authorities required many Aboriginal and Torres Strait Islander people to live on reserves with limited freedoms. In the 1900s, governments took a more assimilationist approach, which included the forcible removal of many Aboriginal and Torres Strait Islander children from their families and communities between 1910 and 1970 — the Stolen Generations (HREOC 1997, p. 31). The impact of the removals continues for the Stolen Generations and their descendants (AIHW 2018).

Aboriginal and Torres Strait Islander people were not passive in the face of these experiences. Some petitioned governments in the 1930s seeking representation in Parliament, the establishment of a national department of native affairs, and the creation of state advisory councils. In 1963, the Yolŋu people presented the Yirrkala Bark Petitions written in English and Gumatj. Continued activism resulted in the successful 1967 referendum to amend the Australian constitution – to allow the Australian Government to legislate with respect to Aboriginal and Torres Strait Islander people, and to include Aboriginal and Torres Strait Islander people in the Census.

Aboriginal and Torres Strait Islander people continued to campaign for land rights and through the 1970s governments passed various forms of land rights legislation. During the 1970s and 1980s Aboriginal and

Box 1.1 – Aboriginal and Torres Strait Islander people have continued to assert their self-determination and sovereignty

Torres Strait Islander people established many community-controlled organisations (particularly organisations providing primary health care and legal services).

The Aboriginal and Torres Strait Islander Commission (ATSIC) was established in 1990 to advise the Australian Government and to deliver services to Aboriginal and Torres Strait Islander people. It comprised 35 regional councils elected by Aboriginal and Torres Strait Islander people and a national board of commissioners elected by regional councillors. ATSIC was abolished in 2004 and its functions and services transferred to mainstream agencies.

Following the abolition of ATSIC in 2004, there was no national Aboriginal and Torres Strait Islander representative body until the establishment in 2010 of the National Congress of Australia's First Peoples. Made up of Aboriginal and Torres Strait Islander individuals and organisations, it provided independent advocacy on behalf of First Nations people in Australia. It was originally funded by the Australian Government, but funding was withdrawn in the 2014 budget. The National Congress entered voluntary administration in 2019.

Structures such as ATSIC demonstrated strong precedent in what can be achieved at both the national and regional levels, when Aboriginal and Torres Strait Islander bodies and community-controlled organisations are given an equal place at the table. The strength of this precedent was reiterated in the Commission's engagement with Aboriginal and Torres Strait Islander people around the country.

While self-determination means different things to different people, the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS 2019, p. 5) explained the principle of self-determination as requiring that 'Indigenous peoples be involved in decisions that affect them, including the design, delivery and evaluation of government policies and programs'. These principles are also contained within the Priority Reforms in the National Agreement on Closing the Gap.

Self-determination is a central feature of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which was adopted by the United Nations in 2007 and sets out a framework for states to take actions to truly recognise Indigenous peoples' rights to self-determination, participation in decision-making, respect for and promotion of culture, and equality and non-discrimination, including control over cultural traditions, customs and expressions (UN 2007). The Australian Government initially voted against UNDRIP in 2007, but reversed its decision and endorsed UNDRIP in 2009. There has been some criticism about the extent to which its obligations have translated to Australia's domestic policies (for example, ANTAR 2022; LCA 2022).

The beginnings of Closing the Gap

In 2002, the Council of Australian Governments (COAG)[1] – the Prime Minister, each of the State and Territory Government Premiers or Chief Ministers and the President of the Australian Local Government Association (ALGA) – initiated trials of coordinated government approaches to service delivery in eight communities or regions across Australia. The Australian Government and the relevant state or territory government for each

[1] COAG was replaced with National Cabinet in March 2020. National Cabinet comprises the Prime Minister and each of the State and Territory Government Premiers or Chief Ministers. A representative of local government is invited to meet with National Cabinet once each year.

trial nominated lead agencies to coordinate their approaches to community engagement and service delivery. The trials were evaluated, which showed that while there were some successes, such as improved relationships, intergovernmental effort and partnerships with Aboriginal and Torres Strait Islander communities, the extent of improvement varied across sites. However, many things could have been done better in approaches to partnership with Aboriginal and Torres Strait Islander people, improving the capability of government agencies to work with and provide services for Aboriginal and Torres Strait Islander people, and coordination across government agencies (Morgan Disney and Associates 2006, pp. 5–8).

Also in 2002, COAG commissioned the Steering Committee for the Review of Government Service Provision (with the Productivity Commission as the secretariat) to prepare a regular report on indicators of Indigenous disadvantage. COAG agreed on a framework of indicators and a first report was published in 2003. A further seven editions were published, with the most recent in 2020 (SCRGSP 2020). The Steering Committee and the Commission engaged with Aboriginal and Torres Strait Islander people in the development and ongoing evolution of the *Overcoming Indigenous Disadvantage: Key Indicators* reports, however, decision-making rested with the governments who comprised the Steering Committee. The Steering Committee was guided by the Overcoming Indigenous Disadvantage Working Group. For the 2020 report, the working group had three Aboriginal and Torres Strait Islander members representing the Coalition of Peaks and an Aboriginal chair for the first time. As well as reporting against the indicators, the report identified:

> Common characteristics of approaches that appear to be successful in improving outcomes for Aboriginal and Torres Strait Islander people include:
>
> - addressing racism and discrimination in the Australian community, through structural changes, and building knowledge and providing education
> - enabling Aboriginal and Torres Strait Islander people to share in decision-making about things that affect them
> - addressing laws, policies, and practices that operate to the detriment of Aboriginal and Torres Strait Islander people
> - ongoing government investment, collaboration and coordination
> - ensuring access to effective culturally safe services, at the right time and suited to the local context. (SCRGSP 2020, p. xxiii)

In 2007, COAG commissioned a regular report on expenditure on services for Aboriginal and Torres Strait Islander people. Four editions were published between 2010 and 2017 (SCRGSP 2017).

The Close the Gap Campaign was launched in 2007 to close the Aboriginal and Torres Strait Islander health gap by implementing a human rights-based approach to Aboriginal and Torres Strait Islander health. The campaign steering committee comprises Australia's peak Indigenous and non-Indigenous health bodies, non-government organisations (NGOs) and human rights organisations. The campaign has published annual reports since then, including a review in 2018 examining why Australian governments had not succeeded in closing the health gap (AHRC 2022a).

In 2008, COAG agreed the National Indigenous Reform Agreement (NIRA), which included six Closing the Gap targets (a seventh was added later) supported by performance indicators grouped within seven building blocks (COAG 2008c). The NIRA largely focused on setting targets for socio-economic outcomes. The COAG Reform Council assessed progress against the agreement in annual reports until it was abolished in 2014. Some targets showed improvement but progress on others was slow or unclear. A key lesson from the NIRA was that when presented in isolation, socio-economic targets can problematise Aboriginal and Torres Strait Islander people, rather than the structures and systems that are driving these outcomes (chapter 6). It is these structures and systems which need to change to achieve improvements in life outcomes.

The NIRA was accompanied by a series of National Partnership Agreements between governments focusing on specific aspects of improving outcomes for Aboriginal and Torres Strait Islander people. Like the NIRA itself, the National Partnership Agreements were developed by governments with little input from Aboriginal and Torres Strait Islander people outside government or Aboriginal and Torres Strait Islander organisations.

Former prime minister, Scott Morrison, acknowledged that governments had failed to listen to Aboriginal and Torres Strait Islander people in developing the NIRA.

> Despite the best of intentions; investments in new programs; and bi-partisan goodwill, Closing the Gap has never really been a partnership with Indigenous people. We perpetuated an ingrained way of thinking, passed down over two centuries and more, and it was the belief that we knew better than our Indigenous peoples. We don't. (Morrison 2020)

A new approach – the 2020 National Agreement on Closing the Gap

In 2018, COAG agreed to a formal partnership with Aboriginal and Torres Strait Islander people to finalise a refresh of Closing the Gap and provide a forum for ongoing engagement while the new agenda was being implemented (Coalition of Peaks and COAG 2019). The Coalition of Peaks, a representative body of over 80 Aboriginal and Torres Strait Islander community-controlled peak organisations and members, formed in 2019 to partner with Australian governments on Closing the Gap. At the same time, the formal Partnership Agreement on Closing the Gap between the Coalition of Peaks and COAG commenced (Coalition of Peaks 2020b) (box 1.2).

Box 1.2 – Setting the scene for shared decision-making in the National Agreement on Closing the Gap

The Partnership Agreement

The Partnership Agreement on Closing the Gap 2019–2029 (Partnership Agreement) was signed in March 2019. It was a result of advocacy from prominent Aboriginal and Torres Strait people and the Coalition of Peaks, which called for the next phase of Closing the Gap to be done in partnership with Aboriginal and Torres Strait Islander people (COAG 2018; Coalition of Peaks 2018a, 2018b).

The Partnership Agreement is between the Australian, state and territory governments, the Coalition of Peaks and ALGA. It is a 'commitment to fundamentally change the way that governments and Aboriginal and Torres Strait Islander people work together' (p. 2). The objectives are to:

- Enhance outcomes for Aboriginal and Torres Strait Islander people as a result of the Closing the Gap framework by ensuring their full involvement in its development and implementation
- Share ownership of, and responsibility for, a jointly agreed framework and targets and ongoing implementation and monitoring of efforts to close the gap in outcomes between Indigenous and non-Indigenous Australians in line with each Party's responsibilities
- Enhance the credibility and public support of Closing the Gap over the next ten years by ensuring full participation by Aboriginal and Torres Strait Islander representatives in its development and implementation; and
- Advance Aboriginal and Torres Strait Islander involvement, engagement and autonomy through equitable participation, shared authority and decision making in relation to Closing the Gap. (clause 13)

Box 1.2 – Setting the scene for shared decision-making in the National Agreement on Closing the Gap

The Partnership Agreement is seen as a pivotal turning point – for the first time, Australian governments shared decision-making with Aboriginal and Torres Strait Islander peak representatives to develop a new National Agreement on Closing the Gap (Coalition of Peaks and COAG 2019).

The Agreement

The Agreement builds upon the historic Partnership Agreement and acknowledges this changed approach under section 4, titled *A New Approach*.

> This Agreement is a commitment from all Parties to set out a future where policy making that impacts on the lives of Aboriginal and Torres Strait Islander people is done in full and genuine partnership. (clause 18)
>
> The Parties will listen to the voices and aspirations of Aboriginal and Torres Strait Islander people and change the way we work in response. Aboriginal and Torres Strait Islander people have been saying for a long time that:
>
> - they need to have a much greater say in how programs and services are delivered to their people, in their own places and on their own country
> - community-controlled organisations deliver the best services and outcomes for Closing the Gap
> - government agencies and institutions need to address systemic, daily racism, and promote cultural safety and transfer power and resources to communities
> - they need to have access to the same information and data as governments to drive their development. (clause 19)

1.2 The National Agreement on Closing the Gap

In 2020, all Australian governments and the Coalition of Peaks signed the National Agreement on Closing the Gap. The objective of the 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' (clause 15).

The Agreement is unlike other national agreements. It is the first that includes a non-government party as a signatory – the Coalition of Aboriginal and Torres Strait Islander Peak Organisations. It is ambitious in the scale of change required, calling for an unprecedented, structural shift in the way governments work with Aboriginal and Torres Strait Islander people. Unlike the NIRA, it is overseen by the Joint Council on Closing the Gap (established under the Partnership on Closing the Gap, box 1.2) and is now separate from the Council on Federal Financial Relations and the Intergovernmental Agreement on Federal Financial Relations, which form the architecture supporting other national agreements, including in the areas of health and education. Box 1.3 sets out the governance arrangements for the Agreement.

Box 1.3 – Governance structures for the National Agreement on Closing the Gap

The Joint Council on Closing the Gap

The Joint Council on Closing the Gap (Joint Council) oversees the implementation of the Agreement. It comprises one minister from each jurisdiction, a representative of ALGA, the Coalition of Peaks' Chair and 12 representatives nominated by the Coalition of Peaks. The Joint Council meets two to three times a year. It is co-chaired by the Australian Government Minister for Indigenous Australians and an Aboriginal and Torres Strait Islander representative nominated by the Coalition of Peaks.

The Joint Council provides national leadership and coordination on Closing the Gap. It monitors implementation of the Agreement including progress by governments and the Coalition of Peaks against their implementation plans and specific commitments specified in the Agreement (such as policy partnerships and place-based partnerships). It provides advice to governments and cooperates with other intergovernmental ministers' meetings.

Partnership Working Group

The Joint Council is supported by the Partnership Working Group (PWG), which comprises senior officials from each government, ALGA and representatives of the Coalition of Peaks. It is co-chaired by a senior government official and the lead convenor or a representative of the Coalition of Peaks. The PWG meets every six to eight weeks, and supports the Joint Council by:

- developing policy positions, papers and providing advice for Council members
- assisting Joint Council to implement its work plan
- resolving issues and responding to requests from the Joint Council.

The PWG is supported by a drafting group, comprising government officials and representatives of the Coalition of Peaks. The drafting group prepares and agrees to papers for consideration by the PWG. The National Indigenous Australians Agency (NIAA) provides the secretariat for the Joint Council and the PWG.

The Joint Council and the PWG are able to form additional working groups to support their work and for specific tasks. For example, the Data and Reporting Working Group (DRWG) provides advice and technical support to the PWG on data development and reporting, and includes representatives from major Australian Government data custodians (such as the ABS and AIHW). More detail on the role of the DRWG is provided in chapter 6.

Source: Joint Council (2023a); PWG (2023).

In signing the Agreement, governments made a commitment – to Aboriginal and Torres Strait Islander people, to the Coalition of Peaks, to each other and to the nation – to 'a fundamentally new way of developing and implementing policies and programs that impact on the lives of Aboriginal and Torres Strait Islander people' (clause 4) in a way that 'takes full account of, promotes, and does not diminish in any way, the cultures of Aboriginal and Torres Strait Islander people' (clause 21).

The previous iteration of Closing the Gap, the NIRA, had a primarily deficit-based approach. The focus was on assessing whether targets had been achieved, and there was little attention on how government systems and the relationships between governments and Aboriginal and Torres Strait Islander people needed to

change. In contrast, the central pillars of the new Agreement are its four Priority Reforms, which focus on changing the way governments work (figure 1.1).

- **Priority Reform 1 – Formal partnerships and shared decision-making**. 'Aboriginal and Torres Strait Islander people are empowered to share decision-making authority with governments to accelerate policy and place-based progress on Closing the Gap through formal partnership agreements' (clause 17a)
- **Priority Reform 2 – Building the community-controlled sector**. 'There is a strong and sustainable Aboriginal and Torres Strait Islander community-controlled sector delivering high quality services to meet the needs of Aboriginal and Torres Strait Islander people across the country' (clause 17b)
- **Priority Reform 3 – Transforming government organisations**. 'Governments, their organisations and their institutions are accountable for Closing the Gap and are culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people, including through the services they fund' (clause 17c)
- **Priority Reform 4 – Shared access to data and information at a regional level**. 'Aboriginal and Torres Strait Islander people 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, their priorities and drive their own development' (clause 17d).

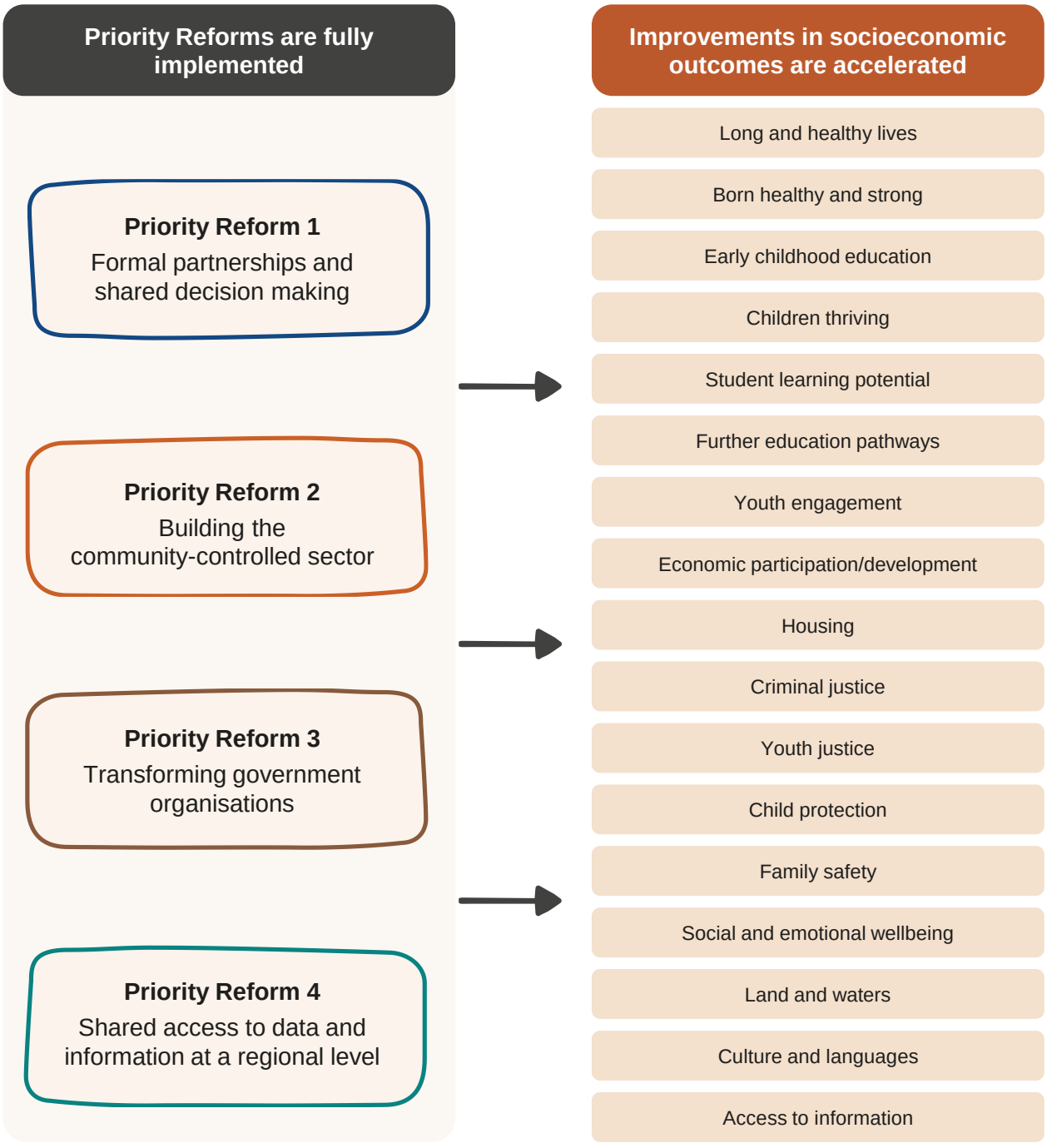
Implementation of these Priority Reforms is intended to accelerate improvements in socio-economic outcomes for Aboriginal and Torres Strait Islander people – the Agreement currently contains 17 socio-economic outcome areas and associated targets (figure 1.1).

Although the Priority Reforms are described as a new approach in the way governments work, they are not new ideas – most of what the parties have committed to reflect what Aboriginal and Torres Strait Islander people have been saying for a long time. Further, some aspects of the reforms have been committed to by governments in the past, but only partially implemented or abandoned following changes in governments and shifts in policy. For example:

- as noted above, the Australian Government established ATSIC in 1990 to allow Aboriginal and Torres Strait Islander people greater opportunities to influence policy and funding of services but abolished ATSIC in 2004
- over recent decades, governments have decided to allocate money specifically for service delivery by Aboriginal and Torres Strait Islander community-controlled organisations, but sometimes later changed policies and funded non-Indigenous organisations to provide these services, or indeed decided to deliver those services directly through their own departments. When governments have provided grants to Aboriginal and Torres Strait Islander community-controlled organisations to provide services they have often specified how services are to be delivered without input from the organisation or community
- in preparing its Indigenous Evaluation Strategy, the Commission found that Aboriginal and Torres Strait Islander people often have limited input into evaluation and governments do not rely heavily on evidence or past experience when formulating policies and programs (PC 2020b, p. 4). Effective programs may be cancelled while ineffective ones may continue to be funded.

Experiences like these have contributed to a level of distrust in government as well as a sense of fatigue and burden on already-stretched resources of Aboriginal and Torres Strait Islander organisations, communities and peak groups. These groups are continually called on by governments to provide advice and perspectives on a broad range of policy issues but are often not given sufficient time or resources to do so meaningfully.

Figure 1.1 – The Priority Reforms and socio-economic outcomes in the Agreement[a]



a. Socio-economic outcome labels are shortened in this figure. The full wording is shown in appendix C.

The Priority Reforms are aimed at accelerating changes in life outcomes for Aboriginal and Torres Strait Islander people

The Agreement aims to improve life outcomes through changes in the relationship between governments and Aboriginal and Torres Strait Islander people that enable greater self-determination. The Priority Reforms describe how the Agreement will bring about these changes. Although the Agreement does not explicitly set out a logic describing how the Priority Reforms will drive changes in outcomes, a partial logic can be derived from its elements.

In short, the Priority Reforms are expected to improve the socio-economic outcomes through the centring of Aboriginal and Torres Strait Islander perspectives and knowledges in policies and programs. The Priority Reforms will promote greater recognition of Aboriginal and Torres Strait Islander cultures. This recognition will reinforce efforts to strengthen Aboriginal and Torres Strait Islander leadership in the design and delivery of policies and programs through shared decision-making, Aboriginal and Torres Strait Islander community control and access to data. This will lead to more culturally safe and responsive policies and programs. As a result, Aboriginal and Torres Strait Islander people will be able to access better quality and more culturally relevant services. This will reduce barriers to participation in social and economic activities and lead to improved socio-economic outcomes. Note that this represents the Commission's understanding of the logic and should be tested and further developed by parties to the Agreement.

While the Agreement outlines the key building blocks of the reforms and their objectives, it has not explicitly linked them in a way that would support a shared understanding of the intended change. This risks contributing to a siloed policy response and insufficient investment in the government transformation necessary to improve outcomes for Aboriginal and Torres Strait Islander people.

1.3 The Agreement sits within an evolving landscape

Much has changed since the Agreement was signed in 2020, and the Agreement is just one part of a broader set of commitments made by governments to improve the lives of Aboriginal and Torres Strait Islander people (box 1.4).

Box 1.4 – Broader government commitments to improve the lives of Aboriginal and Torres Strait Islander people

Since 2018, governments have stepped up their efforts to improve how they work with Aboriginal and Torres Strait Islander people to design policies that affect their lives. In addition to signing the National Agreement on Closing the Gap, several jurisdictions (Victoria, Queensland, the Australian Capital Territory and the Northern Territory) have commenced processes to facilitate Treaty negotiations and the SA Government has passed legislation to establish a First Nations Voice. The Australian Government has also committed to implementing the Uluru Statement from the Heart in full, including holding a referendum on a Voice which was held in October 2023 but did not gain the majority of votes required for it to pass.

These initiatives may establish new decision-making and accountability structures that could provide a further catalyst for changes to the way governments work with Aboriginal and Torres Strait Islander people. But regardless of the outcomes of these processes, governments will still be responsible for adopting a

fundamentally new way of working with Aboriginal and Torres Strait Islander people, as they have committed to do in the Agreement.

In light of these changes, it may be necessary for the Agreement to be amended over time to reflect the evolving landscape and to reinforce governments' commitments to implement the Priority Reforms. These reforms reflect long-standing objectives of Aboriginal and Torres Strait Islander people to shape the actions of governments, and our engagements in this review have shown that there is strong support for the Priority Reforms.

1.4 Three-yearly reviews of the Agreement

The parties to the Agreement have committed to independent oversight and accountability of progress under the Agreement. This includes the Commission undertaking a comprehensive review of progress every three years; this is the first such review. It is an opportunity to highlight where governments are changing the way they operate, where outcomes are improving for Aboriginal and Torres Strait Islander people, and where additional effort is needed.

The Commission's task involves assessing progress against the Agreement's four Priority Reforms and 17 socio-economic outcomes and to examine the factors affecting progress (volume 1 contains the review's terms of reference) and the Commission's report will be followed within 12 months by an Aboriginal and Torres Strait Islander-led review (clause 125).

The Commission also has a separate role in developing and maintaining the Closing the Gap Information Repository, which includes a dashboard of the most up-to-date information on the targets and indicators in the Agreement and an Annual Data Compilation Report (the most recent edition of which was released in July 2023) (PC 2023e).

1.5 The Commission's approach to the review

In reviewing the Agreement, the Commission has engaged widely, particularly with Aboriginal and Torres Strait Islander people and organisations, received written submissions, sought specific information from governments and the Coalition of Peaks and reviewed plans, reports and other documents prepared under the Agreement.

Our approach to engagement

The Commission has actively encouraged public participation in the review and has engaged with Aboriginal and Torres Strait Islander people and organisations, government agencies and non-Indigenous NGOs involved in delivering services to Aboriginal and Torres Strait Islander people. In line with the Commission's Indigenous Evaluation Strategy (PC 2020b, p. 6), centring Aboriginal and Torres Strait Islander people, perspectives, priorities and knowledges has been the overarching principle of our engagement strategy. Centring involves recognising the diversity of Aboriginal and Torres Strait Islander cultures and understanding that Aboriginal and Torres Strait Islander communities have different experiences of government policies and programs. The Commission has engaged widely to hear multiple perspectives, knowledges, and experiences.

On 6 July 2022, the Commission published its planned engagement approach (PC 2022d). The approach outlines four guiding principles for how the Commission planned to undertake engagement in a culturally safe way for Aboriginal and Torres Strait Islander people and their representatives.

- *Fair and inclusive* – a diversity of perspectives is supported and enabled, and all wanting to contribute and be heard have the opportunity to do so.
- *Transparent and open* – information is provided and decisions are made in a transparent and open manner, and it is possible to assess this has occurred.
- *Ongoing* – every stage of the review is informed by engagement.
- *Reciprocal* – at a minimum, Aboriginal and Torres Strait Islander people and their representatives are provided feedback on how their input has been understood and informed decisions.

The Commission received rich and valuable information from its engagement and submissions and wishes to express appreciation to all who gave their time to this review. As the Commission analysed what it heard and arrived at findings for this report, it acknowledged there were significant gaps in information for the review in some areas. The Commission published a draft report in July 2023, which included draft recommendations and requests for further information. Participants made submissions in response to the draft report and the Commission held further meetings and roundtables with Aboriginal and Torres Strait Islander people and organisations, and government agencies.

Meetings and visits

In line with the commitment to be transparent and engage at every stage of the review, the Commission published *Review paper 2: Proposed approach and invitation to engage with the review* on 27 October 2022 (PC 2022e). This paper outlined how the Commission intended to assess progress on the Agreement and invited feedback on the proposed approach, as well as sought views on the progress on each of the Priority Reforms.

Due to the number of people and organisations affected by the Agreement, engagement occurred in phases. The first phase of engagement commenced in 2022 and involved engaging with Aboriginal and Torres Strait Islander organisations and government agencies. On 9 February 2023, the Commission published *Review paper 3: What we have heard to date – first phase of engagement* (PC 2023g).

In the second phase of engagement, the Commission prioritised meeting with people and organisations that we were not able to visit in 2022. We also prioritised hearing from communities, organisations and people who may not ordinarily have a voice in consultation processes, and those with a mix of life experiences.

Meetings with Aboriginal and Torres Strait Islander organisations were part of in-person visits by the Commission across all states and territories. The Commission met with people and organisations across a wide range of sectors and located in a range of metropolitan, regional and remote areas. During the review, the Commission visited:

- New South Wales – Bourke, Brewarrina, Penrith, Redfern, Sydney
- Victoria – Melbourne
- Queensland – Brisbane, Cairns, Stradbroke Island, Thursday Island, Yarrabah
- South Australia – Adelaide, Ceduna, Yalata
- Western Australia – Broome, Geraldton, Kununurra, Perth
- Tasmania – Hobart, Launceston
- Australian Capital Territory – Canberra
- Northern Territory – Alice Springs, Darwin, Groote Eylandt, Nhulunbuy, Yirrkala.

Although the Commission has engaged widely, it has only been possible to meet with a small proportion of the many Aboriginal and Torres Strait Islander communities across Australia. The current review is the first of

a series of three-yearly reviews set out in the Agreement. There will be an ongoing engagement process for subsequent reviews.

Meetings with government agencies, not-for-profit organisations and peak organisations were mostly conducted online. Of all the meetings:

- 136 were with Aboriginal and Torres Strait Islander organisations (including community-controlled organisations, peak bodies, councils, and regional authorities)
- 78 were with government departments and agencies (national, states and territories)
- 10 were with non-Indigenous NGOs involved in the delivery of services to Aboriginal and Torres Strait Islander people
- seven were with local government organisations
- four were with research and consulting organisations.

The third phase of engagement for this review included a mix of follow-up discussions with people and organisations we met during earlier phases, meetings with some people and organisations we were not able to meet earlier, and meetings with governments, in particular, to discuss feedback we received on the draft report.

Roundtables

The Commission convened seven virtual roundtable meetings. Roundtables provided an opportunity to hear the voices and priorities of people from Aboriginal and Torres Strait Islander communities working in sectors that were identified as priority policy areas in the Agreement as well as to hear views, including those of governments, on issues relating to Indigenous Data Sovereignty, accountability and the independent mechanism (chapters 4 and 7).

- 22 November 2022 – The Commission heard from Aboriginal and Torres Strait Islander organisations working in justice, family violence prevention, legal support, youth justice and justice reinvestment programs.
- 10 February 2023 – The Commission heard from Aboriginal and Torres Strait Islander organisations working in the health sector.
- 16 February 2023 – The Commission heard from Aboriginal and Torres Strait Islander organisations working in child health services, family services, education, out-of-home care, disability and early childhood care and development.
- 3 April 2023 – The Commission heard from Aboriginal and Torres Strait Islander organisations working in the housing sector.
- 26 September 2023 – The Commission heard from the Aboriginal and Torres Strait Islander people and organisations to discuss Indigenous Data Sovereignty and Indigenous Data Governance.
- 30 October 2023 – The Commission heard from Aboriginal and Torres Strait Islander organisations to discuss accountability and the independent mechanism.
- 31 October 2023 – The Commission heard from government organisations and statutory office holders to discuss accountability and the independent mechanism.

In line with the engagement principles of transparent and reciprocal information sharing, the Commission made a public commitment to provide feedback to Aboriginal and Torres Strait Islander people on what we heard. The key messages and themes from the discussions were shared by email, and an opportunity was provided for meeting participants to confirm the Commission's understanding of what was discussed or contribute additional insights. This approach provides an important accountability measure to ensure that key messages accurately reflect the voices of people the Commission engaged with.

Submissions and brief comments

The Commission received 32 submissions following the release of Review paper 2: Proposed approach and invitation to engage with the review, and 69 submissions following the release of the draft report The submissions received reflected a diversity of knowledge and experiences across a range of sectors and were a valuable source of information in shaping the review's findings and recommendations. Of the 101 submissions[2]:

- 51 were from Aboriginal and Torres Strait Islander people and organisations
- 23 were from governments or government agencies
- 12 were from peak bodies or people working in or active in the community and education sectors
- nine were from peak bodies or people working in the public health and mental health sectors
- eight were from academics.

The Commission also received six brief comments which were published on the Commission's website along with the submissions received.

Submissions and meetings with participants have formed an important part of the Commission's overall assessment of progress and we thank the people and organisations who have met with us and/or made a submission.

Information requests

In February 2023, the Commission made written information requests to the Australian Government and each state and territory government, the ALGA, the Joint Council on Closing the Gap, the Closing the Gap PWG and the Coalition of Peaks. The information requests sought access to documents and further details relating to measures identified in annual reports and implementation plans.

The Commission acknowledges the considerable breadth and depth of questions that were asked and thanks all of the jurisdictions that provided responses. The Commission received full responses from the:

- Australian Government
- Australian Local Government Association
- Coalition of Peaks
- NSW Government
- Queensland Government
- SA Government
- NT Government
- Joint Council on Closing the Gap
- Partnership Working Group on Closing the Gap.

The Commission received a partial response from the ACT Government. The information provided has assisted the Commission in understanding how governments are responding to the Agreement and has formed an important part of the Commission's overall assessment of progress.

We did not get a response from the Tasmanian Government.

Many governments provided the Commission with information, but did not consent to publication of that information. In keeping with its principles of transparency and openness, the Commission was unable to rely on information that could not be published. This means that there are significant gaps in information for the review.

[2] There was one joint submission from a government and an Aboriginal and Torres Strait Islander organisation, which has been counted in two categories in this list.

Our approach to assessing progress

Focusing on the Priority Reforms

The Commission focused this first review on progress towards the Priority Reforms and the factors affecting progress – an approach generally supported in submissions and meetings during the review. The decision to focus on the Priority Reforms was in large part driven by the fact that the Priority Reforms represent a new way of working for governments and are what set the Agreement apart from its predecessor.

The Commission has assessed progress towards the Priority Reforms in two ways. We have:

- assessed progress against the specific commitments in the Agreement, and whether proposed actions will lead to change
- assessed the broad range of actions governments are taking, as set out in their implementation plans.

In assessing progress on the commitments in the Agreement and the range of actions governments are taking, the Commission has sought to understand whether they will collectively lead to the structural changes envisaged by the Priority Reforms. The Agreement recognises that 'structural change in the way Governments work with Aboriginal and Torres Strait Islander people is needed to close the gap' (clause 6). Such change can be interpreted as deep and enduring changes to systems, processes, people and institutions. It is these sorts of changes that the Commission has paid particular attention to in the review, including through case studies.

How we assessed progress towards each Priority Reform

In essence, the assessment of progress involves answering two questions:

- Have parties to the Agreement done what they have said they will do?
- Have they done this in line with the spirit and intent of the Agreement? (That is, does it meet the objectives of the Agreement and the relevant Priority Reform?)

The first question is relatively straightforward as it relates to the delivery of specific outputs; the second question is much more difficult.

Our starting point was to look at what the Agreement and each Priority Reform involves – in practice this required us to look at a complex mix of jurisdictional actions, partnership actions, transformation elements, partnership elements, strong community-controlled sector elements, data and information sharing elements, Priority Reform targets and socio-economic targets. Some of these involve specific commitments to processes or outputs, that is to produce expenditure stocktakes, develop policy- and place-based partnerships, data projects, sector strengthening plans, annual reports and implementation plans by set dates. Other commitments (the core commitments that go to the heart of the Agreement and its Priority Reforms) are more principles-based, such as 'building and strengthening structures that empower Aboriginal and Torres Strait Islander people to share decision-making authority with governments' (clause 28).

We have assessed whether parties to the Agreement have met or are in the process of meeting all the commitments in the Agreement. Some aspects of this assessment (such as whether governments have produced annual reports or stocktakes) involved a simple yes or no exercise. The harder part of the assessment was determining the 'quality' of these products and actions, and whether they meet the objectives and principles of each Priority Reform. That is, to evaluate whether the actions that governments listed in their implementation plans will lead to the changes they committed to, and improve outcomes for Aboriginal and Torres Strait Islander people. To inform this aspect of the assessment, the Commission has drawn heavily on submissions from participants and the many visits, meetings and roundtables that have

formed part of the review so far. We focused on barriers to progress and things that have enabled improvement and drew on what we heard, as well as our own research, analysis and judgement. We sought to determine whether governments were implementing the principles of the agreement and whether Aboriginal and Torres Strait Islander groups and communities have seen any changes on the ground – hence engagement was a key part of this analysis.

We also analysed implementation plans and annual reports in detail to understand what governments are doing against each of the Priority Reforms (and their specific commitments), and the theory of change or conceptual logic governments had used in formulating their actions.

The Commission's assessment is not a program-by-program assessment of individual policies or initiatives. Rather, the Commission has used its research on individual actions to make broad observations about where progress can be observed across government, and where more work is needed. Examples are highlighted as case studies in the report with more detail in specific chapters.

The choice to make broad observations rather than policy- or program-specific judgements was influenced by several factors.

- This review is not an audit. The large number of individual policies and actions meant it would have been difficult, if not impossible, to conduct sufficient research on each one.
- Information about individual actions, to the level required to make a sound judgement on progress, was generally scarce or not available in the public domain. This meant it was necessary to draw on knowledge from government officials and Aboriginal and Torres Strait Islander people and organisations. The Commission was mindful of its time and resources, as well as the burden on other parties – especially Aboriginal and Torres Strait Islander organisations – to provide this detail. As such, meetings to discuss individual programs or actions were sought only where the Commission judged they would be of high value in informing general observations and conclusions.
- It was unclear how a detailed analysis of individual policies and programs would be useful in providing parties to the Agreement with an overall view of progress against the Agreement. Given the diverse nature of actions, 'deep dives' into individual actions would not necessarily aggregate into useful findings about overall progress against the Priority Reforms.

Using case studies to better understand progress

The Agreement makes it clear that to accelerate progress on closing the gap, there will need to be structural change in the way governments engage and work alongside Aboriginal and Torres Strait Islander people. This cannot be assessed from quantitative analysis alone. In particular, implementation of the Priority Reforms can only be measured by accounts of what is happening in practice. Australian governments have committed to a large number of actions to give effect to the Priority Reforms and to achieve the socio-economic outcomes. Preliminary analysis by the Commission indicates there are over 2,000 individual actions listed in jurisdictions' implementation plans.

As noted above, the large number of actions under the Agreement meant that it was not feasible to assess each of the actions in detail, so the Commission has drawn on case studies as part of the evidence base to understand what governments are doing, whether what they are doing is effective, and the factors contributing to success.

The Commission published its proposed approach to assessing progress, including the use of case studies, in October 2022 (review paper 2), and invited feedback. This included the selection criteria for identifying and shortlisting case studies to use as examples of where progress has or has not been made. In response,

participants urged the Commission to be cautious in the use of case studies, given the potential for subjectivity in their selection and the lack of information and data on impacts (box 1.5).

Box 1.5 – Participants urged caution in the use of case studies

National Health Leadership Forum

> Relying on the case study approach to review the National Agreement provides a snapshot on progress (good or bad) on specific activities but does not necessarily provide an overall assessment of performance particularly of agencies. As with the Close the Gap Campaign submission, we would like 'a more systematic, data informed review that provides more detailed analysis' of what is actually happening within government. (sub. 19, p. 7)

Lowitja Institute

> Case studies are an inadequate mechanism for assessing whether states and territories are meeting their commitments under the Priority Reforms. They do not provide the necessary level of detail, nor are they timely to ensure that whole of government is changing the way they work with Aboriginal and Torres Strait Islander people and communities. (sub. 15, pp. 8−9)

ANTAR

> We think case studies should be used to example and highlight the progress, or otherwise, of the transformation of governments' ways of work across the board. Questions remain such as how will selection bias be avoided in case study selection and narrative building? (sub. 14, p. 7)

Close the Gap Campaign

> The Campaign appreciates that there are strengths and limitations to [a case study] approach. Key strengths are that case studies can provide a richness of context, detailed insights into causality, and for new areas of focus to emerge. However, while very useful for developing and/or showcasing practice, without clear evaluation criteria and supporting data on impacts, the case studies approach does not lend itself well to assessing performance.
>
> In the context of assessing the Closing the Gap Priority Reforms, this poor fit is further pronounced. Under the current proposal, case studies would be used to approximate the general state of play on the transformation of governments' ways of work across the board. Unless case studies are selected using a random sample technique and are assessed using consistent evaluation criteria, selection bias will play a major role in the ultimate narrative that is put forward. (sub. 17, p. 5)

The Commission acknowledges that case studies have limitations as evidence in a review as broad as this one, and that case studies alone are not enough to make an overall assessment of progress against each of the Priority Reforms and socio-economic outcomes.

Case studies have been used to complement and enrich the Commission's analysis while also ensuring the centring of Aboriginal and Torres Strait Islander people, perspectives and knowledges. The benefit of using case studies in this way is that they allow for in-depth exploration of issues in real-life settings. They have helped the Commission to explore beyond just a compliance check of actions and progress against specific

commitments in the Agreement or implementation plans, to understanding the experiences and perspectives of Aboriginal and Torres Strait Islander people with programs and policies more generally.

The case studies the Commission has used reflect the limited information available on many topics, who we were able to speak to, our own desktop research and what we received permission to cite. Many submissions included suggestions of possible case studies. Because we could not be as systematic as we would have liked, we have used case studies as examples and illustrations but they do not form the core of our assessment of progress.

Assessing performance reporting and accountability

The Commission has assessed the Agreement's approach to monitoring progress against the Priority Reforms and socio-economic outcomes. The Commission regularly publishes data on how the socio-economic outcomes are tracking against the targets in the Agreement. The most recent data was published in the Closing the Gap Annual Data Compilation Report in July 2023 (PC 2023d). This is a requirement of the Agreement and is an important accountability mechanism. The review has not replicated that work but has instead gone beyond the data and explored the factors affecting progress, especially how government policies and actions are influencing socio-economic outcomes.

The Commission has considered the mechanisms for accountability within the Agreement including the usefulness of some indicators for the Priority Reforms and socio-economic outcomes, and the availability and collection of data. We have also identified limitations in the implementation plans and annual reports produced under the Agreement and suggested how they could be improved.

More broadly, the Commission has observed that despite the range of accountability mechanisms in the Agreement, they are not sufficient to influence the type of change envisaged. The Commission has recommended additional ways of embedding responsibility for driving action.

A guide to the report

The final study report for the Review includes an executive summary and the recommendations of the Review.

The supporting paper provides further detail on each of the main topics covered in the final report, and includes 9 chapters:

- the context and origins of the Agreement and the approach the Commission has taken to conduct the review, including who we engaged with (this chapter – chapter 1)
- an assessment of progress against each of the four Priority Reforms in the Agreement (chapters 2–5)
- an assessment of the Agreement's performance monitoring approach (chapter 6)
- the Commission's suggestions for embedding and strengthening accountability for implementing the Agreement (chapter 7)
- assessing progress in socio-economic outcome areas (chapter 8)
- a summary of what we heard during meetings, visits and roundtable discussions (chapter 9).

These chapters explore in more detail the key aspects examined in the final report. The Commission has structured its approach in this way so that readers have the option of reading an overall summary, and diving into detail on particular topics of interest or relevance to them. It is not necessary for you to read the supporting paper to understand where the Commission has arrived at in its review or what our recommendations are.

An information pack is available on the Commission's website which includes fact sheets for the main topics covered in the report.

Review of the National Agreement on Closing the Gap

Priority Reform 1: Partnerships and shared decision-making

Chapter 2

Key points

Priority Reform 1 aims to build and strengthen structures that enable shared decision-making but governments are struggling to support this in practice.

- Partnerships are the main vehicle in the Agreement to achieve shared decision-making, but too often governments are viewing partnerships, rather than shared decision-making, as the outcome
- Governments have not demonstrated a clear theory of change (or defined measures of progress) as to how their partnership actions will enable shared decision-making.

Governments are not yet enacting the sharing of power that needs to occur to build trust and for decisions to be made jointly, in genuine partnership.

- Some governments have demonstrated a willingness to partner and share decision-making, especially when they can recognise they have limited expertise, or when it is in their interest to do so, such as during the COVID-19 pandemic, or where Aboriginal and Torres Strait Islander groups have pushed governments to 'come to the table'. But this change is not systemic or sustained.
- For meaningful progress to be made, governments need to relinquish power over decision-making to enable better outcomes for Aboriginal and Torres Strait Islander people. Progress under Priority Reform 3 is needed to support seismic shift in how governments approach partnerships.

The Agreement should be amended to clarify that the ultimate goal of Priority Reform 1 is to support self-determination and to achieve this, power must be shared.

- Governments have already committed to upholding the right of Aboriginal and Torres Strait Islander people to self-determination by endorsing the United Nations Declaration of the Rights of Indigenous Peoples.
- But regardless of whether the Agreement is amended in this way, governments need to share power for decisions to be made jointly, in genuine partnership with Aboriginal and Torres Strait Islander people.

Engagement occurs too late in the decision-making process and is often seen as tokenistic, which can entrench distrust and hinder partnerships.

- Partnerships are still largely based on the predetermined priorities of governments with limited ability for communities to make decisions about what is important to them.

Partnerships need to be resourced as long-term investments.

- Governments often underestimate the time and funding needed to engage in shared decision-making.
- If governments are not willing to invest in the capability of their partners (as required by the Agreement), it is unlikely that partnerships will be sustainable or effective.

Commitments to establish new policy and place-based partnerships under the Agreement are in their early stages, or are progressing slowly, with varied success.

- The Justice Policy Partnership, which has operated the longest appears to function as a forum for discussion, and needs structural and governance reform to achieve its outcomes within the life of the Agreement.
- It is too early to assess the place-based partnerships, but governments appear to have been willing to be guided by Aboriginal and Torres Strait Islander organisations and communities in the selection of locations.

2.1 What is Priority Reform 1 about?

Priority Reform 1 commits governments to 'building and strengthening structures that empower Aboriginal and Torres Strait Islander people to share decision-making authority with governments to accelerate policy and place-based progress against Closing the Gap' (clause 28).

This commitment recognises Aboriginal and Torres Strait Islander people's authority to make decisions that best reflect their communities' priorities, and thus requires governments to relinquish some of the power and control they maintain over the decision-making process. It signals the need for a significant shift in how governments have worked with Aboriginal and Torres Strait Islander people.

Partnerships as a means to achieving shared decision-making

The Agreement acknowledges that 'shared decision-making structures already exist across the country, and that many of these have been developed by Aboriginal and Torres Strait Islander people' (clause 34). The commitments in Priority Reform 1 are not intended to replace these arrangements, but rather build on and strengthen them. Notwithstanding this, the Agreement identifies 'strong partnerships' as the key mechanism for achieving Priority Reform 1 and commits governments to establishing 11 new policy and place-based partnerships (box 2.1).

Partnerships between Aboriginal and Torres Strait Islander people and governments emerged in the decades following the 1970s as governments recognised that previous policies were inhibiting self-determination (Calma 2019; Dudgeon et al. 2014; Hunt 2013; Hunt and Bauman 2022). These arrangements were a way to address the systemic disadvantage faced by many communities – brought about by successive government policies since colonisation that sought to control the lives of Aboriginal and Torres Strait Islander people (chapter 1).

> We lived life on our own terms, managed our own lives, spoke our own language, and practised our culture until Balanda (white man) first arrived … since that time, our health declined, our culture was challenged, our children failed to be educated or were locked up, and decisions were made by outsiders for their own benefit. (Tony Wurramarrba AO in FNP ANU 2023, p. 15)

Early partnerships sought to operationalise a changing approach to how governments engaged and worked with Aboriginal and Torres Strait Islander people. These included the Aboriginal and Torres Strait Islander Commission (ATSIC) (1990–2005), the National Congress of Australia's First Peoples (2010–2019), the Northern Territory Aboriginal Health Forum (established in 1998), and more recently, the Empowered Communities model (established in 2013). These partnership structures provided an opportunity to collaborate and share decision-making with governments on issues which affected Aboriginal and Torres Strait Islander people and were underpinned by various mechanisms that established their authorising environments, including legislation, memorandum of understanding and statutory independence. The COAG (Council of Australian Governments) trials of the early 2000s also set out to (among other things) 'build the capacity of … [Aboriginal and Torres Strait Islander] communities to negotiate as genuine partners with government' and have been referred to as a 'pioneering approach to shared responsibility efforts' (Morgan Disney and Associates 2006, p. 4).

While some of these structures succeeded in building trust and progressing the principle of self-determination, not all succeeded in changing the ways governments make decisions. This is in part due to decisions of governments to withdraw support and funding for established structures (such as ATSIC and the National Congress) as well as to changes in policy directions. But it was also primarily due to a failure by governments to fundamentally transform their own structures, systems, cultures and ways of working to share decision-making power.

The Agreement is an attempt to overcome the challenges of the past, using a new approach that 'sets out a future where policy making that impacts on the lives of Aboriginal and Torres Strait Islander people is done in full and genuine partnership' (clause 18).

Box 2.1 – Two types of partnerships in the Agreement – policy and place-based

The Agreement defines 'Formal Partnerships' as 'agreed arrangements (policy and place-based) between governments and Aboriginal and Torres Strait Islander people that set out who makes decisions, how decisions are made, and what decisions will be about' (section 12).

Priority Reform 1 also introduces two specific types of formal partnerships: policy and place-based. The purpose of both types of partnerships is to:

- drive Aboriginal and Torres Strait Islander community-led outcomes on Closing the Gap
- enable Aboriginal and Torres Strait Islander representatives, communities and organisations to negotiate and implement agreements with governments to implement all Priority Reforms and policy specific and place-based strategies to support Closing the Gap
- support additional community-led development initiatives
- bring together all government parties, together with Aboriginal and Torres Strait Islander people, organisations and communities to the collective task of Closing the Gap (clauses 31a to d).

Policy partnerships

Policy partnerships are created for the purpose of working on discrete policy areas. The Agreement states that by 2022, the Joint Council will establish a joined-up approach to five policy priority areas relating to:

- justice (adult and youth incarceration)
- social and emotional wellbeing (mental health)
- housing
- early childhood care and development
- Aboriginal and Torres Strait Islander languages (clause 38).

As of December 2022, all policy partnerships have been established (although some are more progressed than others). The Justice Policy Partnership (JPP) is the longest standing and most mature, having been established in 2021. An overview of all policy partnerships, with a focus on the Justice Policy Partnership, is found in section 2.2.

Place-based partnerships

Place-based partnerships are between government and Aboriginal and Torres Strait Islander representatives, and others by agreement, from specific geographical regions (clause 30b). The Agreement states that by 2024, six new place-based partnerships will be established under jurisdictional implementation plans. These place-based partnerships will be between the Australian Government, relevant states or territories, local governments and communities (clause 39).

Six locations have been selected: Maningrida (NT), the Western Suburbs of Adelaide (SA), Tamworth (NSW), Doomadgee (Queensland), East Kimberley (WA) and Gippsland (Victoria). Progress on place-based partnerships varies across the locations, however a common theme is that they are in their infancy. Further analysis on place-based partnerships is found in section 2.3.

What is full and genuine partnership?

The Agreement does not define what a 'full' and 'genuine' partnership is (clause 18), but the inclusion of such terms may signal a desire by all parties to move away from business-as-usual approaches to partnerships, which do little to bridge mistrust or shift power imbalances.

There is a growing awareness by governments of the importance of shared decision-making in achieving better outcomes for Aboriginal and Torres Strait Islander people, as demonstrated, for example, through various Voice and Treaty processes underway in a number of jurisdictions.

> The view that genuine partnerships are a characteristic of a more respectful and collaborative approach has been acknowledged by several governments. The Uluru Statement was a gracious invitation to move forward together, just as the National Agreement on Closing the Gap is a respectful commitment to full and genuine partnership. (Australian Government 2023a, p. 5)

> We detail our commitments to a new way of working to shift the dial towards shared decision-making and genuine partnership with Aboriginal communities. (NSW Government 2022c, p. 3)

> A genuine partnership recognises the inequities that exist and the historical impacts and context of the relationship, and focusses on an equitable relationship … It is important there is time and space to properly build rapport and trust … (SA Government, sub. 28, pp. 4–5)

The Coalition of Peaks also highlighted increased resourcing of Aboriginal and Torres Strait Islander peak organisations as a key element of achieving genuine partnership.

> … there have been some welcome changes, including increased funding to the National Coalition of Peaks Policy and Secretariat team. However, the continued uneven resourcing across Peaks Members and the broader sector significantly impacts the ability to be full and genuine partners. (sub. 25, p. 2)

The enablers and barriers to achieving 'full and genuine' partnerships are explored in section 2.5. This discussion highlights that the achievement of a successful partnership relies on the intent of the parties involved and their commitment to building trust, capability and equality between partners. Parties to the Agreement have recognised that strong partnerships must also include critical elements, including that they are accountable and representative, that they are supported by a formal agreement, and that they involve shared decision-making (table 2.1).

The inclusion of shared decision-making as a partnership element creates a unique and somewhat circular dynamic, whereby it is currently the end goal of Priority Reform 1 and a necessary element of a strong partnership. However, at the heart of this dynamic is the need for power to be shared in order for decisions to be made in genuine partnership. This recognises the primacy of Aboriginal and Torres Strait Islander people's knowledges and expertise to devise initiatives that best meet the needs and priorities of their families and communities.

A similar dynamic is also reflected in the Agreement through the interdependence between the Priority Reforms. For instance, for governments to transfer services over to ACCOs (which the Agreement recognises is an act of self-determination) they must trust that the services that are designed and provided by ACCOs better serve and reflect the priorities and needs of communities. This places shared decision-making as an enabler of the implementation of the Priority Reforms and as a step towards the goal for Aboriginal and Torres Strait Islander people to exercise their right to self-determination, as set out under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This dynamic and clear objective is not explicitly reflected in the Agreement.

In Australia, the rights prescribed under the UNDRIP apply to all Aboriginal and Torres Strait Islander people, and therefore all government decisions should be upholding these obligations. Despite the similarities between the goals of the UNDRIP and Priority Reform 1, self-determination is not articulated as an overarching objective, nor is it reflected in the commitments of Priority Reform 1. Rather, it is briefly mentioned as part of the strong partnership elements, 'where self-determination is supported, and Aboriginal and Torres Strait Islander lived experience is understood and respected' (clause 32c (v)).

Priority Reform 1 is instead focused on governments sharing decision-making, which implies that the power to make decisions is held by government institutions, and it is theirs to share with whomever they choose, and in the circumstances they assess are appropriate. The current focus of Priority Reform 1 – on shared decision making and a limited set of policy and place-based partnerships – is not commensurate with the much greater effort that is required to achieve government's obligations to enabling self-determination.

Table 2.1 – Strong partnerships include the following partnership elements

Clause 32a – Partnerships are accountable, representative and between:	Clause 32b – A formal agreement signed by all parties and:	Clause 32c – Decision-making is shared between government and Aboriginal and Torres Strait Islander people. Shared decision-making is:
i. Aboriginal and Torres Strait Islander people, where participation in decision-making is done by Aboriginal and Torres Strait Islander people appointed by Aboriginal and Torres Strait Islander people in a transparent way, based on their own structures and where they are accountable to their own organisations and communities ii. up to three levels of government, where government representatives have negotiating and decision-making authority relevant to the partnership context iii. other parties as agreed by the Aboriginal and Torres Strait Islander representatives and governments.	i. defines who the parties are, what their roles are, what the purpose and objectives of the partnership are, what is in scope of shared decision-making, and what are the reporting arrangements, timeframes, and monitoring, review and dispute mechanisms ii. is structured in a way that allows Aboriginal and Torres Strait Islander parties to agree the agenda for the discussions that lead to any decisions iii. is made public and easily accessible iv. is protected in state, territory and national legislation where appropriate.	i. by consensus, where the voices of Aboriginal and Torres Strait Islander parties hold as much weight as governments' ii. transparent, where matters for decision are in terms that are easily understood by all parties and where there is enough information and time to understand the implications of the decision iii. where Aboriginal and Torres Strait Islander representatives can speak without fear of reprisals or repercussions iv. where a wide variety of groups of Aboriginal and Torres Strait Islander people, including women, young people, Elders, and Aboriginal and Torres Strait Islander people with a disability can have their voice heard v. where self-determination is supported, and Aboriginal and Torres Strait Islander lived experience is understood and respected vi. where relevant funding for programs and services aligns with jointly agreed community priorities, noting governments retain responsibility for funding decisions vii. where partnership parties have access to the same data and information, in an easily accessible format, on which any decisions are made.

Self-determination as the ultimate goal of Priority Reform 1

The commitment of governments across Australia to shared decision-making with Aboriginal and Torres Strait Islander people is not new. It is most notably reflected in the Australian Government's endorsement of the UNDRIP in 2009 (AHRC 2021b) which upholds the right of Indigenous people to self-determination (articles 3 and 4) (UNDRIP is covered in further detail in chapter 1). UNDRIP also makes direct reference to the right of Indigenous people to have agency in the development of policies and programs which impact their lives, for example:

> Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own Indigenous decision-making institutions.
>
> Article 19: States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

The rights of Aboriginal and Torres Strait Islander people to self-determination, as specified under the UNDRIP, should be forefront in all policy considerations, and should be a clear objective of Priority Reform 1, in line with Australia's existing commitments to the UNDRIP.

Governments and many organisations, including Aboriginal and Torres Strait Islander organisations that have participated in this review, have acknowledged the expression of self-determination within the UNDRIP and its alignment with achieving the objectives of the Agreement (box 2.2).

Box 2.2 – Participants' views on the alignment of the UNDRIP and the Agreement

A number of submissions to the Australian Senate Inquiry into the UN Declaration on the Rights of Indigenous People (which subsumed the previous inquiry into the Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia) highlighted the alignment of the objective of self-determination in the UNDRIP with the National Agreement on Closing the Gap. For example, the Lowitja Institute noted:

> If Australian governments are serious in their commitment to the National Agreement on Closing the Gap, as well as full implementation of the Uluru Statement of the Heart, alignment with the UNDRIP and achievement of the many of the goals embedded within it must be a core objective. (Lowitja Institute 2022, p. 5)

This view was supported by a number of government submissions to the Senate inquiry, which noted:

> Ensuring that Aboriginal and Torres Strait Islander peoples have agency and authority over their lives, including the policies and programs that impact them, is critical to the principles of the UNDRIP. It further underpins the overarching principle of self-determination within the National Agreement and the ACT Agreement. Priority Reform Area One: Formal Partnerships and Shared Decision Making under the National Agreement intends to: … [ensure] … that Aboriginal and Torres Strait Islander peoples are involved in decisions on matters which affect them through formal partnerships and shared decision making … [which] … will deliver against Article 18 and Article 19 of the UNDRIP. (ACT Government 2023b, p. 4)

Box 2.2 – Participants' views on the alignment of the UNDRIP and the Agreement

> The NT Government is committed to building and strengthening structures that empower Aboriginal people to share decision-making authority in their communities and over policy priorities. Shared decision-making is key in meeting Articles 18, 19 and 23 of UNDRIP. The Northern Territory is committed to working in partnership through shared decision-making … (NT Government 2023a, p. 4)
>
> While putting in place ambitious targets for the Priority Reforms further supports the principles of UNDRIP, there is still much work required to achieve Closing the Gap targets. (NIAA 2023f, p. 4)

A number of participants to the Commission's review made similar observations:

> The [United Nations] Declaration places the responsibility on Member States to 'provide effective mechanisms for prevention of, and redress for any action which has the aim or effect of depriving First Nations peoples of their integrity as distinct peoples or ethnic identities, or of their cultural values'. The principle of self-determination requires Indigenous participation in decision making, and it is submitted that the Close the Gap strategy should build on and contribute to this goal of Aboriginal and Torres Strait Islander empowerment … Governments of all levels should uphold and protect human rights in the context of Aboriginal and Torres Strait Islander peoples' lives and aspirations, as set out in the UNDRIP. (Law Council of Australia, Attachment, sub. 83, p. 13)
>
> When the Coalition of Peaks negotiated a 10-year agreement with governments, it was with a view to stabilise the Closing the Gap policy framework and ensure our representatives and governments are working towards genuine self-determination and local, shared-decision making. (CoP, sub. 31, p. 1)
>
> Notably, the right to determine and develop priorities and strategies for health, housing and other economic and social programs is clearly stated in the United Nations Declaration on the Rights of Indigenous Peoples. Australia therefore has an obligation to ensure that the elements of shared decision-making articulated in Priority Reform 1 are implemented accordingly. We therefore commend the Commission on its honest assessment of the lack of progress against this reform. (Public Health Association of Australia, sub. 68, p. 5)

The Agreement should be amended to clarify the purpose and broaden the scope of Priority Reform 1. This amendment should recognise that power must be shared with Aboriginal and Torres Strait Islander people in order for decisions to be made jointly and to achieve the ultimate goal of self-determination, as agreed to in the UNDRIP. It should also be made clear that efforts to share power should extend beyond the two forms of partnership specified in the Agreement. Other mechanisms, such as Treaty, Truth and Voice can also play a role in transferring power to Aboriginal and Torres Strait Islander people and communities (these mechanisms are further discussed in section 2.5).

Action 1.1
Amend the Agreement to clarify the purpose and broaden the scope of Priority Reform 1

Parties to the National Agreement on Closing the Gap should amend Priority Reform 1 in the Agreement to:

- recognise the ultimate goal of this Priority Reform is self-determination (which Australia has committed to under the UNDRIP) and that shared decision-making authority is only a step towards achieving this goal
- clarify that efforts to achieve self-determination extend beyond the policy partnerships and place-based partnerships.

Governments must share power to achieve shared decision-making and self-determination

Articulating self-determination as the objective for Priority Reform 1 seeks to elevate the need for governments to examine how they contribute to and uphold power dynamics when making decisions, and confront whether they are holding their own knowledge and way of doing business, as superior. This is a paradigm shift and regardless of whether the Agreement is amended to include self-determination as the objective of Priority Reform 1, governments will still need to share power for decisions to be made jointly, in genuine partnership.

However, this change alone will not overcome the power imbalance which exists within government decision-making systems and processes. Other actions, many of which are articulated as key elements in other Priority Reforms, are also required for governments to share decision-making power with Aboriginal and Torres Strait Islander people.

Participants to this review have highlighted how a failure to address the power imbalance between governments and Aboriginal and Torres Strait Islander people has impacted on outcomes. For example, the National Native Title Council noted:

> At the heart of Aboriginal and Torres Strait Islander health outcomes, the demonstrable failure in achieving the targets set out in the Agreement – is power imbalance. (sub. 35, p. 2)

The Cape York Institute further noted that this power imbalance is a feature of the National Agreement:

> Under the National Agreement the system remains top-down, with most power in the hands of the state and territory jurisdictions to determine what actions … [are] … to be implemented. There continues to be no connection between the high-level policy intent and on the ground Indigenous agency and action. (sub. 93, p. 7)

It is clear from the Commission's engagements on this review that governments have struggled to appropriately address the imbalance of power in their systems and processes to support self-determination and achieve the objectives of the Agreement. Shifting this imbalance will not be achieved by a series of small actions which do little to change the organisational behaviour or incentives of government. Rather, a seismic shift in the way government organisations operate is needed, as articulated by Priority Reform 3.

A number of factors have been identified that contribute to, and are manifestations of, the ongoing imbalance of power between governments and Aboriginal and Torres Strait Islander people. The first is where power imbalance is entrenched within mainstream systems of decision-making that have existed since colonisation. This reflects a history of paternalistic policies where the 'state knows best', and with governments seeking to control the lives and choices of Aboriginal and Torres Strait Islander people since colonisation (Jeffes 2019, p. 1).

> We see an unwillingness from government to relinquish control over policy decisions and an entrenched commitment to continuing their operations according to their existing structures and decision making processes. (AFLS WA, sub. 36, p. 6)

> The enduring gap between First Nations and non-Indigenous Australians is grounded in colonisation. It is ANTAR's position that until governments fully grasp the extent to which their systems, policies and ways of working are still deeply embedded in and informed by the settler colonial paradigm – and until true 'nation to nation' power-sharing with Aboriginal and Torres Strait Islander peoples is built into the architecture of our governance systems – true transformative change will be elusive. (ANTAR, sub. 42, pp. 2 –3)

> Existing structures have arisen reactively, rather than being designed proactively with the goal of addressing 'the Gap' and its many causes, particularly the significant power imbalance that exists between government and First Nations communities and organisations. (Queensland Human Rights Commission, sub. 45, p. 2)

> Despite many years of the National Agreement and predecessor COAG Agreements, government agencies are still resistant to change that promotes Aboriginal self-determination in principle and practice … We remain optimistic that eventually we will see change, however the reality is that we see very little to no desire for an equal balance of power with Aboriginal organisations. (APONT, sub. 10, p. 3)

A second factor inhibiting governments' sharing of power is their failure to transform established cultures within governments, which for example, fail to prioritise Aboriginal and Torres Strait Islander cultures or to address institutionalised racism and unconscious bias. The lack of progress in transforming government approaches to sharing power is acknowledged by the inclusion of Priority Reform 3 in the National Agreement.

> … there is a large body of research which shows that there is a dominant perception in the Australian political setting that sees cultural difference as negative, meaning Western values and norms predominate (Checketts, 2016; Howard-Wagner, 2018). Therefore, cultural difference is more likely than not to be seen as a barrier rather than a resource for successful governance. This leads to a context that considers 'good governance' in ways that place a racialised limit on the range of Indigenous factors that are likely to be recognised as valuable resources when government organisations deal with Indigenous peoples and corporations/organisations. (Assoc Prof Morgan Brigg and Dr Prudence Brown, sub. 41, pp. 1–2)

Limited cultural capacity across government can affect how they assess costs, benefits and risks based on a narrower set of objectives. As highlighted in chapter 3, this can lead governments to not fully value Aboriginal and Torres Strait Islander communities and community-controlled organisations' expertise and knowledges – and limit their willingness or trust to share decision-making power. For example, as NPYWC noted:

> Anangu have always held the solutions for closing the gap. The collective agency of Anangu women and cultural guidance has frequently provided the blueprint for these very solutions NPYWC advocates for … [yet] ACCOs are frequently tasked with needing to advocate for the importance of their knowledge and practice when working with families. ACCOs are not automatically seen as the "go-to" experts nor consulted for how funding and guidelines should look. The onus continues to sit with ACCOs to argue and justify their role in decision making for what is best for the very communities and families they serve. (sub. 55, p. 2)

Governments are already embedding these concepts in key strategic documents, although these statements in themselves are not enough to shift culture and enact change. For example, the Victorian Government, in

its Self-Determination Reform Framework, has identified the transfer of power and resources to communities as one of four key enablers of self-determination (2019, p. 5).

Finally, the Commission heard that governments are often inhibited by their own organisational structures, which causes them to work in more top-down ways even when they may want to support community approaches. This tension arises due to the fundamental ways that governments operate, namely, within short political cycles that often struggle to work within community timeframes or leadership structures. Without transformation, government agencies will continue to be bound by their decision-making constraints. For example, externally-driven timeframes can impact on how meaningfully agencies can engage and partner with affected communities in developing policies. This was highlighted by the Indigenous Education Consultative Meeting:

> We often see the best intent of government to work in partnership, however, external pressures and unrealistic timeframes that do not embed Aboriginal and Torres Strait Islander approaches see governments valuing their own knowledge over our knowledges. (sub. 63, p. 2)

Internal constraints, such as a culture of risk aversion or one that fails to learn from failure, can also mean that perceived 'safer' options of policy development and service delivery are pursued over those that are more effective but require a devolution of decision-making power to communities.

> The reason the Closing the Gap targets are not being met is not because First Nations people don't want positive outcomes for themselves and their communities - it is because services and systems are not working alongside First Nations people to address their priorities in a culturally responsive framework. It is also because a lack of transparency and 'fear of failure' environments are masking adequate accountability to communities and public funds. (Children's Ground, sub. 72, p. 18)

> Self-management and self-determination mean that organisations should be given the freedom to be flexible and learn from their mistakes. (Caroline Cavanagh, sub. 50, p. 2)

Truth-telling can support power sharing within partnerships …

Transformation of organisational cultures, processes, structures and governance systems are needed to remove the barriers to sharing power and repair the mistrust that many Aboriginal and Torres Strait Islander people have in governments. This mistrust is due to the experience of colonisation and many past government policies that have caused harm and sought to exclude and diminish Aboriginal and Torres Strait Islander people's cultures and knowledges.

An important prerequisite for the development of strong partnerships, as defined under Priority Reform 1, is for trust to be repaired. This requires governments to listen to the experiences of Aboriginal and Torres Strait Islander people and to demonstrate an understanding of the role governments have played in these experiences.

Truth-telling, which is covered in chapter 4 (and Priority Reform 3), is one way governments could do this. The process of truth-telling by governments could assist agencies in understanding how their institutions have impacted Aboriginal and Torres Strait Islander communities and identify how these past experiences continue to influence their standing and relationships with Aboriginal and Torres Strait Islander people. Several governments have acknowledged the importance of truth-telling in assisting their transformation.

> … truth-telling is an important component of transforming government organisations. (Tasmanian Government, sub. 90, p. 3)

> Truth telling also supports the transformation of government services. (SA Government, sub. 54, p. 12)

> The Victorian Government's Truth and Treaty processes are mechanisms through which Victoria will deliver structural, self-determined change. These processes will strengthen implementation of the

> National Agreement and are critical to ensuring continued transformation of government organisations and self-determined outcomes for First Peoples. (Victorian Government, sub. 98, p. 9)

These types of honest conversations should acknowledge where governments have failed while recognising the power and knowledges of Aboriginal and Torres Strait Islander people. Through this, trust and credibility could be built, strengthening individual partnerships. The more that trust is developed, the more willing governments should be to relinquish power over decisions, which could progress other Priority Reforms as well. For example, in interviews with 14 senior managers of both ACCOs and Australian Government agencies, researchers heard that:

> … a central requirement for power-sharing to occur is for trust to exist – between communities and governments and vice-versa. As a first step in establishing trust, parties must have the opportunity to get to know each other. (Cowley and Tremblay 2023, p. 56)

Partnerships are 'embedded in a web of power relations' (Carbonnier and Kontinen 2014, p. 15). It is crucial that governments understand how power dynamics affect the success of policies and services, and acknowledge their role in upholding or minimising this imbalance. Without doing so, partnerships will continue to perpetuate past mistakes and fail to enable self-determination.

> … some partnerships have succeeded in building trust and progressing the priorities of communities, however this is not wholescale, many relationships do not embody the Priority Reforms, many government departments and agencies don't value the partnerships of their Aboriginal and Torres Strait Islander counterparts. Many partnerships are not equally balanced, and the power and control still lies within the governments remit, until governments are ready to relinquish control and listen to Aboriginal and Torres Strait Islander counterparts, nothing will change. (Coalition of Peaks, sub. 58, p. 2)

… other actions are also required to enable power to be shared

In addition to amending the Agreement to clarify the purpose and broaden the scope of Priority Reform 1, the Commission is proposing further actions to better enable power to be shared. These are covered in subsequent chapters of this report and include that:

- government Ministers should meet regularly with Aboriginal and Torres Strait Islander peak groups, so that they can hear directly from Aboriginal and Torres Strait Islander people about their priorities and perspectives before making decisions (action 1.3 in chapter 7)
- implementation plans need to be more strategic and written in collaboration with Aboriginal and Torres Strait Islander people. And many governments need to work more closely with Aboriginal and Torres Strait Islander partners. Together, they need to agree on a strategy and a set of associated actions that are the most substantive and critical to achieving the objectives of the Agreement and how they will be implemented (action 1.5 in chapter 6).

Governments also need to treat ACCOs as essential partners in program and service design and delivery, not simply as funding recipients. They can do this by:

- recognising the authority of ACCOs to represent the perspectives and priorities of their communities, and to determine how service systems and models of delivery can best meet these (action 3.2 in chapter 3)
- requiring public sector employees to have cultural capability and to build relationships with ACCOs (action 3.4 in chapter 7)
- adequately resourcing Aboriginal and Torres Strait Islander people and organisations to ensure they are able to apply their knowledge and expertise in the implementation of the Agreement (action 1.4 in chapter 7).

Action 1.2
Governments treating ACCOs as essential partners in program and service design and delivery, not simply as funding recipients

The Australian, state and territory governments should:

- recognise the authority of ACCOs to represent the perspectives and priorities of their communities, and to determine how service systems and models of delivery can best meet these (see action 3.2 for details)
- require public sector employees to have cultural capability and to build relationships with ACCOs (see action 3.5 for details)
- adequately resource Aboriginal and Torres Strait Islander people and organisations to ensure they are able to apply their knowledges and expertise in the implementation of the Agreement (see action 1.4 for details).

2.2 Progress on policy partnerships

The Agreement states that by 2022, the Joint Council will establish a joined-up approach to five policy priority areas (clause 38). These partnerships have been established and are at varying stages of progress (table 2.2). For this review, the Productivity Commission has focused primarily on the Justice Policy Partnership (JPP) as it is the policy partnership that has been operating the longest.

Table 2.2 – Overview of progress towards establishing policy partnerships

	Date established	Funding	Co-chairs	Publicly available documentation
Justice	Apr 2021	$7.6 million over 3 years	National Aboriginal and Torres Strait Islander Legal Services (NATSILS) and the Australian Government Attorney-General's Department	• Agreement to Implement • Work plan • Meeting summaries #1–9 • Annual report
Early Childhood Care and Development	Aug 2022	$10.2 million over 3 years	SNAICC – National Voice for our Children and the Australian Government Department of Education	• Agreement to Implement • Work plan • ECPP Engagement Criteria • Meeting summaries #1–4
Social and Emotional Wellbeing	Aug 2022	$8.6 million over 3 years	Gayaa Dhuwi (Proud Spirit) Australia and the Australian Government Department of Health and Aged Care	• Agreement to Implement • Meeting summaries #1–2
Housing	Dec 2022	$9.2 million over 3 years	The National Aboriginal and Torres Strait Islander Housing Association (NATSIHA) and the Australian Government Department of Social Services	N/A
Languages	Dec 2022	$9.8 million over 3 years	First Languages Australia and the Australian Government Department of Infrastructure, Transport, Regional Development, Communications and the Arts	• Agreement to Implement • Meeting summaries #1–2

Sources: AGD 2023; DoE 2023; DITRDCA 2023; DoHA 2023; NIAA 2023c, 2023d.

Justice (adult and youth incarceration)

The Joint Council agreed to accelerate the establishment of the JPP on 16 April 2021 – ahead of the other policy partnerships – after recognising the urgent need for joint action and leadership to address 'the increasing over representation of Aboriginal and Torres Strait Islander people incarcerated, and in acknowledgment of the enduring crisis of deaths in custody' (JPP Secretariat 2021, p. 1).

The JPP's purpose is 'to establish a mechanism for the Parties to develop a joined-up approach to Aboriginal and Torres Strait Islander justice policy, with a focus on reducing adult and youth incarceration'. Its primary function is to make recommendations to reduce overincarceration (JPP Secretariat 2021, p. 2).

The *Agreement to Implement the Justice Policy Partnership* was formally endorsed by members in September 2021 (box 2.3) (AGD 2021, p. 1). The first work plan was released in January 2022 (AGD 2022c). It outlines 11 targeted actions, including reporting (an annual report, three-year strategic plan, and second work plan), identification and reviews of partnerships across the justice sector, and engaging with data programs (AGD 2022c, pp. 1–2). The annual report, published in February 2023, reported that only 2 of the 11 actions were implemented. These relate to the approval of the JPP's annual report and the inclusion of updates from the Closing the Gap Partnership Working Group as a standing agenda item (AGD 2022a, p. 8).

Box 2.3 – The Agreement to Implement the Justice Policy Partnership

The Agreement to Implement the Justice Policy Partnership (The Agreement to Implement) meets many of the elements of a formal agreement listed in clause 32b (i) of the National Agreement. It outlines:

- who the parties are – there are 10 Aboriginal and Torres Strait Islander members (five representing organisations from the Coalition of Peaks and five independent individuals) and nine members representing each state and territory government and the Australian Government
- what their roles are – all parties are jointly responsible for conducting research and developing recommendations for the Joint Council. The Coalition of Peaks member representatives are additionally responsible for liaising with community and bringing communities' priorities to the JPP. Government representatives are additionally responsible for liaising across agencies, sharing data and seeking ministerial clearance
- the purpose and objective of the partnership – the primary function of the JPP is to make recommendations to reduce over-incarceration. The objective of the JPP is to establish a joined-up approach to address the over-representation of Aboriginal and Torres Strait Islander adults and youth in incarceration
- what the scope for shared decision-making is – the JPP is guided by the elements of shared decision-making (cause 32c) and all recommendations must be agreed to by consensus
- reporting arrangements – the necessary reports are identified and the approval process for those reports is also outlined
- timeframes – the initial term for the JPP is three years with a review due to occur before the end of the third year
- monitoring, review and dispute mechanisms – there is reference to a review of the JPP (above) and a dispute resolution clause which sees unresolved issues referred to the Joint Council (JPP Secretariat 2021).

Box 2.3 – The Agreement to Implement the Justice Policy Partnership

The Agreement to Implement is publicly accessible (as required under the Agreement, clause 32b (iii)).

In setting out these elements, the Agreement to Implement is high level and acts more like a memorandum of understanding, whereby parties are committing to work together towards a future goal. It has in-built flexibility around its scope which can be an advantage, but without specificity, the Agreement to Implement is not legally binding and fails to hold parties to account.

The JPP has highlighted that in-principle endorsement was received for the Strategic Framework in June 2023. The Framework 'sets out an ambitious national reform agenda to transform the way justice systems work for – and not against – Aboriginal and Torres Strait Islander communities' and is underpinned by the JPP's theory of change. They further noted that work is currently focused on 'developing a long-term Implementation Roadmap, comprising a series of reform actions in priority areas aimed to achieve lasting impact'. These include developing anti-racism strategies for departments and justice agencies, a justice sector strengthening plan, and establishing partnerships within justice and across other sectors (sub. 92, pp. 8–9). The Strategic Framework has not been made publicly available.

Feedback has raised concerns on the effectiveness of the JPP so far

The Commission has heard views on the JPP from Aboriginal and Torres Strait Islander organisations, independent JPP members and government representatives through roundtables, visits and submissions. Members expressed support for the partnership as a mechanism to build relationships and demystify the policy making process. However, several concerns were consistently raised on resourcing, representation and governance of the partnership – all of which continue to impact the effectiveness of the JPP.

Time and funding are a significant constraint to better participation

The JPP received funding from the Australian Government of $7.6 million over three years for partnership activities. This has been used to fund:

- NATSILS as co-chairs and secretariat ($2.434 million)
- Aboriginal and Torres Strait Islander Legal Services (ATSILS) to enhance data capability and support the JPP ($2.184 million)
- the Australian Government Attorney-General's Department and the National Indigenous Australians Agency to establish a Joint Secretariat with NATSILS, and to undertake policy work and conduct a review of the JPP in 2023-24 ($2.932 million) (JPP, sub. 92, p. 4).

The funding allocated to NATSILS was delayed by nearly a year which delayed both their recruitment for JPP-specific roles (commencing February 2022) and progress on some of the actions in the work plan. This limited NATSILS' ability to support independent members in their engagement (AGD 2022a, p. 10).

Funding constraints continue to hamper progress on the JPP as its operations shift from setting priorities to implementation. This shift has required more of JPP members and the Joint Secretariat. NATSILS have stated that existing funding is insufficient to co-lead the delivery on the Strategic Framework and Implementation Roadmap. Independent members, who are paid sitting and preparation fees for quarterly meetings, are not compensated for other more informal work which is now taking place in between meetings (JPP, sub. 92, pp. 4–5).

The Dharriwaa Elders Group, which includes an independent member of the JPP, noted that additional resourcing would be useful for community engagement:

> Resourcing of independent representatives … to consult and report back to community stakeholders would be highly useful, especially where we can capacity-build our community stakeholders to participate in such mechanisms in an ongoing way. (sub. 53, p. 3)

Time and capacity constraints have also prevented fulsome participation for some Aboriginal and Torres Strait Islander representatives, especially independent members. These members do not have the teams or organisational capacity of governments – or even larger peaks – and thus face a much higher burden to participate. One independent representative spoke about receiving lengthy documents to review with short turnaround times, and attending long meetings that focused on updates rather than on actions to improve outcomes for Aboriginal and Torres Strait Islander people. This took time away from the day-to-day operations and management of their organisation, and ultimately led them to withdraw from the JPP (Deadly Connections, pers. comm., 2 May 2023). The Coalition of Peaks' members have also noted that they have limited capacity, within existing arrangements, to gather additional cross-sectoral policy advice from community-controlled experts, which impacts the advice they can provided to the JPP in critical areas such as justice health (JPP, sub. 92, p. 14).

Resourcing appears to also impact how decisions are made, and whose voices are prioritised. For example, we heard that the agenda is driven either by better resourced Aboriginal and Torres Strait Islander organisations or by government, whose perspectives do not always reflect those of smaller organisations. Victorian Aboriginal Legal Service (VALS) noted:

> Lack of resourcing for Aboriginal JPP members (particular independent members) means that … [the] … Commonwealth Attorney-General prepares a lot of the papers and materials for the partnership. This creates a clear risk that the JPP agenda is driven by 9 governments and members have limited capacity to be across the papers enough to engage meaningfully. (sub. 76, pp. 8–9)

Government representatives have also acknowledged they face time and resource pressures across all policy partnerships, which along with the acute resourcing pressures faced by non-government parties, suggests resourcing may be a more systemic or structural issue.

> The WA Government's experience to date indicates that further consideration could be given to how national Closing the Gap partnership structures, such as Policy Partnerships and the Partnership Working Group, can accommodate the timeframes required for jurisdictional partners to participate in planning and decision-making at the national level. (WA Government, sub. 43, p. 2)

> … each policy partnership [could] review its meeting protocols to ensure parties have adequate time to review, consult and establish views and responses to meeting papers … The policy partnerships are the right mechanism to drive change across the five sectors, however they need sufficient time to deliver on their objectives as agreed nationally through Joint Council. (SA Government, sub. 54, pp. 3–4)

> There are a number of examples where the local government sector is not involved or considered or has missed an opportunity to be involved and influence outcomes and decisions due to its inability to resource … [sector strengthening plans and policy partnerships for example] … This is impacting on the ability of the local government sector to prioritise CtG and implement actions to deliver meaningful transformation. (LGANT, sub. 59, p. 3)

Representation of Aboriginal and Torres Strait Islander people has been inadequate

Lack of representation on the JPP of certain groups has potential impacts on the scope of its work and governance structure – and on how the JPP is able to reflect the breadth of priorities required to shift outcomes relating to justice policy.

A key element of shared decision-making is understanding and respecting lived experiences of Aboriginal and Torres Strait Islander people (clause 32c (v)). The National Network of Incarcerated and Formerly Incarcerated Women and Girls stressed the importance of involving people with lived experience of the justice system in developing policy:

> We urge [the Productivity Commission] to seek out our voices. We urge you to seek out our expertise. To do otherwise, is to the peril of all services you design and deliver. We are a unique community with specific needs … Until you have seen the inside of a cell and had all of your dignity stripped from you, only then can you testify to what a criminalised person will need in this space. (sub. 47, p. 4)

However, at its establishment, the JPP only had one Aboriginal representative with lived experience of incarceration, and as noted previously, they subsequently left the JPP due to the resourcing burden it placed on them (Deadly Connections, pers. comm., 2 May 2023). Moreover, it is not clear how the JPP formally engages with Aboriginal and Torres Strait Islander people with lived experience – outside of relying on engagements undertaken by its member representatives.

Concerns have also been raised with the Commission about the lack of representation, and engagement with, jurisdictional Aboriginal and Torres Strait Islander Legal Service (ATSILS) organisations, who, together with Aboriginal and Torres Strait Islander people with lived experience of incarceration, should be leading discussions about reducing incarceration. Without the deep understanding and expertise of jurisdictional ATSILS, the implementation of the JPP's actions and strategy may be hindered.

> ATSILS JPP Policy Officers were not authorised to formally engage with the JPP. Because of this, JPP Policy Officers were unable to participate in JPP meetings and were not able to access documents relating to the JPP (including minutes of meetings, agendas etc.) … ATSILS – who have direct experience and expertise in justice issues in each jurisdiction – are not directly represented on the JPP. While some of the Aboriginal members on the JPP work at ATSILS … the current membership composition does not guarantee that the perspectives of each ATSILS are heard within the JPP. (VALS, sub. 76, p. 8)

This exclusion, one of the consequences of which has led to challenges in the flow of information, is notable given ATSILS have been funded to support the JPP and enhance data capability (JPP, sub. 92, p. 4). Members have also noted that without the ATSILS, state and territory governments are not held accountable for their progress, or lack thereof.

> Including each ATSILS would ensure that there is an equivalent jurisdictional perspective from ATSILS and … the partnership would be much more effective and balanced. (VALS, sub. 76, p. 8)

> ATSILS are the jurisdictional experts on legal and justice issues impacting Aboriginal and Torres Strait Islander communities. It is therefore vital that ATSILS meaningfully engage in the JPP to ensure accountability over progress against Closing the Gap outcomes at the jurisdictional level. (JPP, sub. 92, p. 10)

More broadly, while it is acknowledged that national policy partnerships that involve Aboriginal and Torres Strait Islander people in decision-making can help drive systematic policy reforms nationally, there are concerns about their ability to reflect the unique circumstances and priorities at a regional, place-based level (IUIH Network,

sub. 62, p. 11). The IUIH Network further argued that 'regional representation is crucial' to ensure governments reflect the diverse nature of Aboriginal and Torres Strait Islander communities across Australia (sub. 62, p. 11). Concerns on regional representation were also expressed with respect to the voices that are excluded from jurisdictional-level justice partnerships. For example, in Western Australia, AFLS WA has:

> … not been invited to be a member of the Justice Policy Partnership group led by the Department of Justice. This is despite advocacy from a member of the Partnership group, the Aboriginal Legal Service of Western Australia (ALSWA), for our membership and despite our organisation being the largest specialist Family Violence Prevention Legal Service for Aboriginal people experiencing family and domestic violence in the state. (sub. 36, p. 3)

Governance structures fail to enhance accountability and coordination

In addition to the national JPP, states and territories have their own jurisdictional justice partnerships, some of which are longstanding and are avenues for Aboriginal and Torres Strait Islander people to work with state and territory governments to drive reforms in the justice system. It is unclear how the two work together. As noted by the NT Government:

> … concerns about the lack of connection between the national and jurisdictional policy partnerships [were raised previously], partially due to not having jurisdictional representatives from the Aboriginal Community Controlled Organisation (ACCO) sector on the national JPP. There were also concerns about the national body committing jurisdictions to actions without the input of jurisdictional policy partnerships. The NT Government also shared these concerns … (sub. 70, p. 7)

The JPP itself (sub. 92, p. 10) has also recognised 'the need to better connect these jurisdictional partnerships with the JPP.

A lack of coordination of jurisdictional partnerships with the national JPP impacts the effectiveness of the JPP, given key elements of justice policy that relate to the socio-economic policy areas (SEOs) in the Agreement are almost entirely controlled by states and territories.

> … progress to address rates of overincarceration requires genuine partnership and shared decision making with Aboriginal and Torres Strait Islander peaks, organisations and communities at the state/territory, regional and local levels. Levers to address overrepresentation overwhelmingly exist at the state and territory level and require local and jurisdictional-specific action, noting different contexts, systems, structures and approaches exist in different jurisdictions. (JPP, sub. 92, p. 10)

This further misses an opportunity to strengthen accountability in the reforms needed to improve outcomes across SEOs.

> … an issue impacting accountability [is] there is currently no formalised arrangement for the JPP to consult with jurisdictional-level policy partnerships/engagement mechanisms that include state and territory community-controlled organisations, to enable those organisations to provide alternate perspectives on progress at the state or territory level. (JPP, sub. 92, p. 17)

Another shortcoming of existing governance arrangements of the JPP is a lack of decision-making authority held by those representing governments in attendance. This has further weakened accountability and the effectiveness of the JPP as a forum to make decisions.

> Government JPP representatives are Deputy Secretary level senior officials, who are able to engage with a level of authority and influence colleagues across government. However, new policy and budgetary decision-making authority rests with individual governments. (JPP, sub. 92, p. 11)

> Government representatives on the JPP don't have authority to agree to anything under the JPP, which undermines the capacity of the JPP as a decision-making body. (VALS, sub. 76, p. 9)

To this end, the JPP identified that there is a need for 'national-level ministerial fora' to regularly consider JPP priorities (sub. 92, p. 12). Moreover, the JPP argued that ministerial engagement needs to happen across a number of portfolios given 'matters relevant to the JPP generally have multi-minister cross-over' (sub. 92, p. 11). For example, they pointed to evidence that, 'in some jurisdictions, an ongoing lack of meaningful engagement from both Police and Corrections … inhibits progress on reforms in critical parts of the justice system' (sub. 92, p. 11).

Summary notes from JPP meetings show there has been considerable discussion on the need to create more levers to enable the JPP to hold governments accountable for adhering to their commitments and achieving justice-related targets in the Agreement.

> JPP representatives engaged in discussions around the need for more accountability throughout the JPP's work, including the need to hold governments to account for adhering to the National Agreement and taking meaningful action to achieve Targets 10 and 11. All representatives acknowledged the concerns raised, and that the need for accountability is an issue that will be returned to in future, as the work of the JPP continues. (AGD 2022b, p. 2)

As discussed in chapter 7, this is another manifestation of the lack of accountability throughout the development and implementation of the Agreement. There are currently few consequences for governments that make policy decisions that are contrary to their commitments under the Agreement, or Priority Reform 1 more specifically. There are stark examples of this contradiction, including the recent sentencing and bail laws enacted in the Northern Territory and Queensland. Less than one month after the Joint Council agreed to establish the JPP (on 16 April 2021), the Northern Territory Government introduced the Youth Justice Legislation Amendment Bill 2021 (later the *Youth Justice Legislation Amendment Act 2021*) which toughened bail laws, expanded prescribed offences, and gave more powers to police to tackle youth crime through electronic monitoring (NT OCM 2021). Similar changes to bail laws occurred in Queensland in February 2023, with the expansion of offences and the criminalisation of breaches in bail for children (Queensland Government 2023c). Public criticism by Aboriginal and Torres Strait Islander organisations and advocates advised both governments against these changes on the basis they would disproportionately increase the incarceration of Aboriginal and Torres Strait Islander children and were ineffective measures to reduce youth offending (Brennan 2023; Smit 2021). Both the Northern Territory and Queensland have recently seen increases in the number of Aboriginal and Torres Strait Islander young people in detention (PC 2023j).

These examples were repeatedly raised with the Commission as evidence that governments are failing to change the way they work, as they are acting in ways that are inconsistent with what they agreed to under the Agreement.

> The JPP currently doesn't have the power to prevent governments from making decisions that are contrary to Targets 10 & 11 of the Agreement. We have seen this up close in Queensland … When governments make knee-jerk responses to incidents without the input of the JPP, this serves to dilute the impact and effectiveness of the JPP. In addition, it serves to undermine the authority, trust, and faith in the JPP's ability to effect change. This reinforces the current limitations regarding accountability. (Queensland Indigenous Family Violence Legal Service, sub. 87, p. 5)

Lack of shared decision-making relating to justice policy and the inability for Aboriginal and Torres Strait Islander people to effectively hold governments to account has led to perceptions that the JPP is a forum for discussion, rather than an action-oriented partnership where decision-making authority is shared.

The JPP has helped build relationships in a sector characterised by deep mistrust

Despite the structural challenges and resource constraints that limit the effectiveness of the JPP as a decision-making forum, members of the JPP have indicated that the partnership is valuable and provides a foundation to drive change.

> The JPP has provided unique opportunities to place Aboriginal and Torres Strait Islander justice issues on the national agenda. The JPP has also enabled - for the first time in decades - a forum for Aboriginal and Torres Strait Islander organisations and community leaders across a broad spectrum of sectors to meet with all governments to partner on how to transform justice systems. (JPP, sub. 92, p. 18)

The Commission has heard that there is significant, ongoing mistrust from Aboriginal and Torres Strait Islander communities in Australia's justice system and that governments have failed to enact longstanding requests for reform. This history is well documented (HoRSCATSIA 2011, p. 196). Nevertheless, participants have also acknowledged to the Commission that a forum, such as the JPP, which brings Aboriginal and Torres Strait Islander organisations and people together with government can: help foster better relationships, demystify policy making processes, and allow for honest discussions around the historic and ongoing harms caused by the justice system.

For example, one independent member articulated the benefit of the forum as being able to bring together different priorities and perspectives in the policy process which in turn, helps them to advocate for community driven approaches (Dharriwaa Elders Group, sub. 53, p. 3). Queensland Indigenous Family Violence Legal Service also highlighted the value of the JPP in allowing for 'robust and open discussion' and 'an opportunity for relationship building … [which] can enable genuine partnership between government agencies and community-controlled organisations' (QIFVLS, sub. 86, p. 5).

The view that policy partnerships provide a space for collaboration which can influence change is echoed by Aboriginal and Torres Strait Islander organisations about other policy partnerships.

> The co-secretariats, with guidance and approval from co-chairs, jointly manage meeting preparation and delivery including logistical arrangements … This is done in a genuinely collaborative way with both parties being aware of and responsive to the needs and priorities of both government and Aboriginal and Torres Strait Islander members of the … [Early Childhood Care and Development Policy Partnership] … This strong foundation of collaboration and shared decision-making at the secretariat level sets a strong foundation for the operations of the ECCDPP, and has enabled the development of key documents that meet the government's need for governance and record-keeping while also centring key principles of shared decision-making. (SNAICC, sub. 96, p. 10)

> The absence of a [Disability] Policy Partnership also means there is no secretariat or dedicated resource within the Commonwealth to raise awareness, embed disability as cross-cutting and hold other agencies to account. (First Peoples Disability Network, sub. 95, p. 10)

> Policy partnerships are a valuable mechanism for addressing change across the five sectors defined in the National Agreement on Closing the Gap. (Children's Ground, sub. 72, p. 3)

> [First Languages Australia] … feels confident that our partnership with … [the Office of the Arts] … is positive and progressing in the right direction. We look forward to harnessing our collaborative power and partnership with … [the Office of the Arts] … and the parties of the … [Languages Policy Partnership] … moving forward. (First Languages Australia, sub. 79, p. 2)

Overall analysis

The JPP initially struggled to achieve quorum which hindered its ability to make decisions and slowed progress (SA Government, sub. 28, p. 6). Its ongoing challenges with funding, representation and governance means that its ability to make progress on its priorities is not a forgone conclusion. A lack of publicly available information has made it difficult to understand and assess the JPP's progress to date. It has also made it difficult for the community to hold the JPP accountable for outcomes and hindered other organisations' ability to learn from the experiences, or input into, the JPP. These issues were raised by both the NSW Coalition of Aboriginal Peak Organisations (CAPO) and the Law Council of Australia.

> Where CAPO has made enquiries and requested updates [on the JPP] in the past the governance arrangement have seemingly prevented sharing of information and updates outside of the formal processes. (CAPO NSW, sub. 77, p. 3)

> … the Law Council has itself over the past few years found it difficult to acquire information on the aims and work of the Justice Policy Partnership and therefore to monitor its effectiveness. This raises additional concerns of transparency and accountability. A lack of public information can have significant consequences … It removes an important part of a democracy's civic checks and balances, which is the broader involvement of mainstream civil society in support of Aboriginal-led organisations, following consultation with them … On the face of the small amount of information that has been publicly available, the Law Council has been concerned about the seeming lack of specific and concrete actions identified for pursuit … (Law Council of Australia, sub. 83, attachment, p. 20)

As it currently stands, a notable tension remains within the implied program logic of the JPP, whose primary function is to make justice policy recommendations to Joint Council. Yet, justice outcomes are heavily reliant on factors and determinants that sit outside of the control of JPP participants; either in how national justice policy efforts are reflected in the actions of state and territory governments, or how the JPP coordinates with other portfolios not represented in the JPP (but that have a critical role in improving outcomes). It is not clear how necessary reforms in housing, education, child protection, health and disability are influenced by the JPP to enact holistic and long-term changes.

Further, as several organisations have stated, the JPP is not short of the evidence-base needed to develop an effective theory of change to achieve better outcomes for Aboriginal and Torres Strait Islander people in the justice system.

> There is no shortage of recommendations for concrete actions and reforms, given the numerous commissions and inquiries, informed by local knowledge and lived experience, that have been committed to advocating for change within this sector over decades … These are actions endorsed by Aboriginal and Torres Strait Islander peoples that governments can support and implement as a matter of priority. (Law Council of Australia, sub. 83, attachment, p. 17)

> The JPP was established in 2021, and we still have rising rates of Aboriginal people being incarcerated, and worse, Aboriginal people being killed in custody … The JPP is a huge problem and act as agents of the carceral state. In short, we believe that the JPP could have actually achieved its goals of reducing adult and youth incarceration by immediately committing to a decarceration program … Aboriginal people have been fighting the enslaving and incarcerating of their people since colonisation began. The fact that the Closing the Gap program, while appearing well-intentioned, has not achieved its goal in reducing Aboriginal incarceration is unsurprising. (National Network of Incarcerated and Formerly Incarcerated Women and Girls, sub. 47, pp. 3–4)

The Commission has heard from many participants about the value of the JPP as a mechanism to bring governments to the table to engage with Aboriginal and Torres Strait Islander people on policy priorities.

While this is important, particularly given these avenues have historically not been available to Aboriginal and Torres Strait Islander organisations and advocates, this role appears to fall well below the ambition of policy partnerships in the Agreement.

Structural reforms are required if the JPP is to be more than a forum to foster relationships and allow for open dialogue. There are some lessons raised with the Commission on resourcing, representation and governance that should be considered to improve the effectiveness of such partnerships, to ensure power over decision-making is shared by governments with members.

2.3 Progress on place-based partnerships

The Agreement commits parties to establishing six new place-based partnerships by 2024, with the Joint Council required to consider locations within 12 months of the commencement of the Agreement (by July 2021, although this was extended to November 2021) (Joint Council 2021a, p. 2).

Six locations have now been selected: Maningrida (NT), the western suburbs of Adelaide (SA), Tamworth (NSW), Doomadgee (Queensland), East Kimberley (WA) and Gippsland (Victoria).

The place-based partnerships are still in their infancy, with selected locations currently working through the scope, formalisation and resourcing for the partnerships. Establishing the place-based partnerships has taken time. Some of this is due to circumstances outside the parties' control. The COVID-19 pandemic meant that community engagement was harder to facilitate. In South Australia and Western Australia, there were state elections which meant that some decisions were delayed or had to be reconfirmed with a new government. Still, one ACCO involved in the process has noted a lack of urgency in developing the partnership:

> … our experience of developing the place-based partnership is that it has been incredibly slow, with the pace in no way matching the sense of urgency we feel to act now to drive up outcomes for our children and families in the early years, to improve the life course of the current generation and the East Kimberley communities they live in. (Binarri-binyja yarrawoo Aboriginal Corporation, sub. 91, p. 2)

Given that the partnerships are still in their early stage, the Commission's assessment of progress has focused on how decisions were made to select partnership locations (including how Aboriginal and Torres Strait Islander communities and peak organisations have been engaged) and whether the parties have had adequate resourcing (both in terms of financial support to develop the partnership, as well as time to genuinely engage with communities to understand their priorities).

Was there shared decision-making to select the place-based partnerships?

The process for selecting locations has differed by jurisdiction, but overall it appears that governments have been led by Aboriginal and Torres Strait Islander peak groups and communities in the selection of these locations.

Peak Aboriginal and Torres Strait Islander organisations have had an influential role in the selection process for place-based partnerships in some jurisdictions.

- In New South Wales, NSW CAPO nominated Tamworth following consideration of demographic data for several areas across the state and because it considered that Tamworth was already in a state of readiness, and was also advocating for its inclusion. This state of readiness may be supported by the decision of Tamworth Regional Council becoming the first local government to agree to develop their own Closing the Gap Strategy (TRC 2022). Following several discussions between NSW CAPO and the NSW Government, they agreed to nominate Tamworth. (The NSW Government had initially suggested Blacktown, due to the high concentration of Aboriginal and Torres Strait Islander people living in Western Sydney and Blacktown LGA in particular but NSW CAPO argued that most Aboriginal and Torres Strait Islander people living in New South Wales live outside of Western Sydney. Establishing a place-based partnership in a location where there isn't an existing program in place was also a consideration as it would be much easier to quantify the success back to the work of the partnership. Blacktown was instead selected as a location for a community data project under Priority Reform 4) (NSW CAPO, pers. comm., 10 July 2023). In recent months, the partnership in Tamworth has been formalised and is now known as the Tamworth Aboriginal Community Controlled Organisations Coalition (TACCO). An MOU is also finalised and awaiting signing. Preliminary engagement has occurred to hear from community and to raise awareness of the Agreement (NSW CAPO, pers. comm., 18 December 2023).
- In South Australia, the South Australian Aboriginal Community-Controlled Organisation Network (SAACCON) nominated the western suburbs of Adelaide, following their application of selection criteria and guidance from the Coalition of Peaks (box 2.4). SAACCON considered that its existing network of members — it has 12 members delivering services in the area – could help facilitate strong engagement with the community. This location was also the focus of a longitudinal family study conducted by the South Australian Health and Medical Research Institute, which has generated population data that the partnership can build on. The western suburbs of Adelaide is also a location for a community data project under Priority Reform 4 (SAACCON, pers. comm., 22 June 2023).
- In the Northern Territory, the Northern Territory Executive Council on Aboriginal Affairs (NTECAA) comprising of Aboriginal Peak Organisations Northern Territory (APO NT), the Local Government Association Northern Territory (LGANT) and the NT Government endorsed Maningrida for a place-based partnership and community data location (NT Government 2022b, p. 31). Work is ongoing to progress the establishment of the place-based partnership with the NT partnership working group (PWG) to provide support as identified and requested by the community (LGANT et al. 2023, p. 17).
- In Victoria, Gippsland was agreed to at the June 2023 Joint Council meeting for the proposed sixth location, after the Partnership Forum (the Victorian Government's formal partner for decision making on Closing the Gap implementation) endorsed the location in April 2023 (Victorian Government 2023d, p. 16).

In other jurisdictions, locations were selected following requests from community groups.

- In Doomadgee in Queensland, a local decision-making body, Gunawuna Jungai Ltd, approached the Queensland Government and advocated for Doomadgee to be considered for a place-based partnership. The Queensland Government subsequently announced Doomadgee as the location for a partnership. Gunawuna Jungai also has support from local government to be the key representative for the community in Doomadgee (Gunawuna Jungai, pers. comm., 1 December 2023).
- In Western Australia, Binarri-binyja yarrawoo (BBY) Aboriginal Corporation urged the Western Australian Government to consider East Kimberley for a place-based partnership. BBY is the backbone organisation for Empowered Communities (EC) in East Kimberley. Despite the maturity of the EC model, BBY has struggled to achieve the level of broad Australian Government engagement that was expected, and viewed the place-based partnership as a vehicle to get full cross-government participation. BBY made a case for renewed investment in the region by using demographic data that showed limited improvement in social indicators between 2001 and 2016. The WA Government also undertook community engagement to

confirm the community was interested in being part of the partnership (BBY, pers. comm., 3 July 2023). In July 2023, a draft Framework Agreement was circulated by the WA Government, and the partnership members first meeting was scheduled for November (BBY, sub. 91, p. 2).

Box 2.4 – Guidance on the selection of locations for place-based partnerships

The Coalition of Peaks published guidance outlining how locations for place-based partnerships should be identified by states and territories with jurisdictional partners and NIAA regional managers. This guidance includes a template for assessing locations against four criteria and was agreed to by the Partnership Working Group in December 2020.

The four equally weighted criteria are:

- **governance and leadership:** which assesses if the community has governance arrangements and if the community recognises the authority of its representatives
- **capacity:** which assesses if the community is willing and wants to support the partnership and their capacity to do so
- **impact and sustainability:** which assesses the 'social need' of a location, its size and the scale of the impact that may occur if that need is addressed
- **engaged partners:** which assesses the level of support for the partnership among each partner (including government and the community/organisation).

Ratings are numeric for each of the four criteria which are from 'non-existent (0), emerging (1), developing (2) or strong (3)'. Optional comments underneath each criterion are limited to 100 words.

Source: Coalition of Peaks (nd).

How have place-based partnerships been resourced?

The Agreement recognises that adequate funding is needed to support Aboriginal and Torres Strait Islander parties to join governments in formal partnerships. This includes agreed funding for Aboriginal and Torres Strait Islander parties to engage independent policy advice, meet independently of government and to engage with Aboriginal and Torres Strait Islander people.

Funding has been committed for some of the place-based partnerships, however it is too early to assess whether the funds will be sufficient for partnership activities.

- The Queensland Government committed $563,000 in 2022-23 to support the place-based partnership in Doomadgee. This money was initially proposed to be allocated through a service agreement, but Gunawuna Jungai was reluctant to accept this arrangement, which they considered would be inconsistent with a true partnership approach. After an iterative process, Gunawuna Jungai signed a cooperation agreement with the Queensland Government and received their first tranche of funding in May 2023 (Gunawuna Jungai, pers. comm., 4 July 2023). As of November 2023, no recurrent or sustained funding has been committed to the partnership beyond the original allocation. Gunawuna Jungai has expressed concerns that this funding does not reflect the expansive scope of Closing the Gap initiatives, and that a lack of sustained investment poses a significant risk to Gunawuna Jungai's operations, the continuity of the partnership and its momentum within the community (Gunawuna Jungai, pers. comm., 1 December 2023).

- For the Tamworth place-based partnership, funding has been secured via priority reform initiatives under the NSW 2022-23 Budget to support delivery of Closing the Gap. The budget proposal included resourcing for a project manager and a policy officer. While it took longer to secure the funding this way, the partnership now has a dedicated funding stream, and both NSW CAPO and the NSW Government have the financial and human resources devoted to delivering on this commitment under the National Agreement (NSW CAPO, pers. comm., 10 July 2023).
- The NT Government has committed $250,000 for a Closing the Gap Project Coordinator to support the place-based partnership and develop a governance model for the region (LGANT et al. 2023, p. 18).
- Funding to support the development of the partnership in the East Kimberley has been secured for 12 months to August 2024 (BBY, pers. comm., 9 November 2023).
- SAACCON is aiming to establish a dedicated pool of flexible funding which Aboriginal and Torres Strait Islander organisations in the western suburbs can use for advice and capacity development throughout the partnership process (SAACCON, pers. comm., 22 June 2023).
- In Victoria, the Partnership Forum is establishing a working group with the local community. This will inform the funding and scope of the partnership (Victorian Government, pers. comm., 30 November 2023).

2.4 Progress on strengthening existing partnerships

Jurisdictional actions under Priority Reform 1 focus on better understanding the number and strength of existing partnerships.

Partnership stocktakes and reviews do not reveal if shared decision-making is being achieved

There are two commitments in the Agreement for governments to review their existing partnership arrangements.

- By 2022, Government Parties were required to undertake a **stocktake of partnership arrangements** already in place within their own jurisdictions and provide a report to the Joint Council (clause 36a). Stocktakes for all jurisdictions were considered by Joint Council in December 2022, with the exception of Western Australia who submitted their stocktake to the Partnership Working Group in October 2023 (DPMC 2023c). ALGA has not submitted a stocktake, however they stated in their second annual report, '… where applicable for example in NSW, relevant state and territory local government associations and individual councils have had some involvement in the stocktake' (ALGA 2022a, p. 7).
- By 2023, Government Parties will **review and strengthen existing partnerships** (and provide a report to the Joint Council) to meet the strong partnership elements, unless Aboriginal and Torres Strait Islander members of the partnership do not wish to include these elements (clause 36b). Only three jurisdictions (Queensland, Victoria and the Australian Government) have published reviews of their partnerships, although the NT Government has stated that the NT Partnership stocktake review will be made public once approved by partnership structures (sub. 70, p. 12).

Of those jurisdictions that have published their reviews, each has taken a different approach to assessing their partnerships (and do not always use assessment criteria that are consistent with the strong partnership elements). For example, the Queensland Government has assessed its partnerships against various 'underlying values/principles', including but not limited to recognition, self-determination, respect, local

decision-making, truth telling and healing (Queensland Government 2022b). Some of these align with the strong partnership elements in the Agreement, while others do not and/or are not clearly defined.

In contrast, the Australian Government has assessed its 31 partnerships against each of the Agreement's strong partnership elements, with 28 assessed as meeting the elements and all assessed as meeting the principle of shared decision-making (Australian Government 2022, pp. 132–135). However, there is no public explanation as to how each partnership meets each element or how the assessment was derived. The Victorian Government has also included a self-assessment of ten of its Aboriginal Governance Forums against each of the strong partnership elements in the Agreement but goes further to include an explanation of how it considers each meets the element (Victorian Government 2022b, pp. 2–9).

Overall, based on the limited information that is available from these stocktakes and reviews, it is not possible for the Commission to assess the quality of the partnerships and whether the principle of shared decision-making is being achieved.

2.5 Barriers and enablers of stronger partnerships

There are some positive signs of governments sharing decision-making power …

The Commission has heard from some Aboriginal and Torres Strait Islander community-controlled organisations that in 'certain instances governments are taking small steps to change the business-as-usual approach to relationships and engagement', with some now more willing to partner and trial new approaches (chapter 9). A number of partnerships were cited as positive examples of change, including the process to develop the Queensland Government's Gurra Gurra Framework and the ongoing implementation of the Australian Government's Connected Beginnings program (chapters 4 and 3 respectively).

Some Aboriginal and Torres Strait Islander organisations pointed out that shared decision-making occurred where Aboriginal and Torres Strait Islander parties pushed or incentivised governments to 'come to the table'. This was achieved either through established legislative mandates, such as Native Title, or offers made by Aboriginal and Torres Strait Islander parties to convene or co-invest, thereby changing the power dynamic of top-down, government-led initiatives. For instance, in 2017 Wungening Aboriginal Corporation was able to expand their services to women and families facing domestic violence through a joint venture with several Western Australian Government agencies, including the Children Protection and Family Support Department, the Housing Authority, Lotterywest, and the Indigenous Land and Sea Corporation (Western Australia Government 2017). Similarly, the Anindilyakwa Land Council signed a local decision-making agreement with the Northern Territory Government in 2018 (NT Government and ALC 2018). It has used mining royalties in addition to government funds to invest in sectors like housing, education and justice to meet the priorities of traditional owners and communities, though challenges still remain with accessing relevant data (chapter 5).

These and other partnership arrangements, such as Voice, Treaty and Truth processes, are briefly examined in this section, and highlight the need for governments to look beyond policy and place-based partnerships to ensure all partnerships reflect the Priority Reforms under the Agreement (**recommendation 1, action 1.1**).

Jurisdictional partnerships

Governments have highlighted their jurisdictional-level partnerships with Aboriginal and Torres Strait Islander organisations as examples of their commitment to transformation and shared decision-making (box 2.5).

While not a prescribed partnership activity under Priority Reform 1, many jurisdictions have focused on these partnerships as a mechanism to implement the Agreement and to guide governments' actions across the Priority Reforms. Governments have noted that establishing these has taken time and significant effort, and while that time investment has slowed progress in some areas, it represents a change in the business-as-usual approach (ACT Government, sub. 44, p. 2; NSW Government, sub. 32, p. 7; NT Government, sub. 70, p. 5; NSW Government, sub. 32, p. 7; SA Government, sub. 54, pp. 6–7; Tasmanian Government, sub. 90, p. 1; WA Government, sub. 43, p. 3). For example:

> … the SA Government has been working to understand the systemic and structural changes needed to move beyond business-as-usual approaches … Key activities include developing a governance model which will ensure the SA Government is accountable directly to Aboriginal people and communities, and genuine efforts to build a relationship of trust and openness with SAACCON. (SA Government, sub. 54, p. 6)

> These devolved governmental arrangements have taken careful consideration and time to establish to ensure they meet the needs and expectations of our Aboriginal Partners, including the WA member body to the Coalition of Peaks, AHCWA. (WA Government, sub. 43, p. 3)

The NSW Government highlighted remarks by Pat Turner, Lead Convenor of the National Coalition of Peaks, who spoke positively about the partnership between the NSW Government and NSW CAPO:

> … urging governments to get their central agencies more engaged in driving progress for Aboriginal and Torres Strait Islander people. She praised NSW for instituting quarterly ministerial meetings between state cabinet and NSW CAPO, noting the progress made in this area compared to other jurisdictions. (NSW Government, sub. 32, p. 10)

Box 2.5 – Some key characteristics of jurisdictional partnerships

Each state or territory has a jurisdictional partnership with an Aboriginal and Torres Strait Islander organisation in that jurisdiction. These include the:

- NSW Government and NSW Coalition of Aboriginal Peak Organisations (NSW CAPO)
- Victorian Government and Ngaweeyan Maar-oo the Koorie Caucus of the Partnership Forum
- Queensland Government and Queensland Aboriginal and Torres Strait Islander Coalition (QATSIC)
- SA Government and South Australian Aboriginal Community Controlled Organisation Network (SAACCON)
- WA Government and the Aboriginal Advisory Council of Western Australia (AACWA)
- Tasmanian Government and Tasmanian Aboriginal Centre (TAC)
- ACT Government and the Aboriginal and Torres Strait Islander Elected Body
- NT Government and Aboriginal Peak Organisations Northern Territory (APO NT).

Jurisdictional-level partnerships vary in their formality and structure. In the ACT, the Aboriginal and Torres Strait Islander Elected Body is a democratically elected representative body with a range of powers under the *Aboriginal and Torres Strait Islander Elected Body Act 2008 (ACT)* (ACT Government, sub. 44, p. 2). Similarly, Victoria's Partnership Forum is comprised of sector representatives, Aboriginal Governance Forum delegates, and senior departmental executives, and has undertaken a community-based voting process to determine the individual sector representatives (Victorian

Box 2.5 – Some key characteristics of jurisdictional partnerships

Government 2022d, p. 1). Alternatively, in Western Australia the Minister for Aboriginal Affairs is responsible for appointing the members of AACWA (WA Government 2023). The New South Wales, Queensland, South Australia and the Northern Territory Government have chosen to partner with Aboriginal and Torres Strait Islander coalitions of peak organisations (NSW Government and NSW CAPO 2021; NT Government 2022b; Queensland Government 2021c; SA Government 2021). Tasmania has partnered with the Tasmanian Aboriginal Centre (TAC) which is Tasmania's Coalition of Peak's representative (Tasmanian Government, sub. 90, p. 1).

In NSW, the partnership governance structure is formalised through a Joint Council, which has representation from both NSW CAPO and the NSW Government, and is responsible for the implementation and planning of the Agreement (NSW Government, sub. 32, p. 8). In South Australia, SAACCON and the SA Government have entered into a formalised partnership agreement, which:

> … establishes the Closing the Gap Partnership Committee as the central governance mechanism for Closing the Gap in SA. The Partnership Committee includes equal representation from SAACCON and South Australian Government, including co-Chair arrangements, to ensure a fair partnership and shared decision-making by consensus. (South Australian Government, sub. 28, p. 5)

The Northern Territory's Closing the Gap governance system is based on the NT Executive Council on Aboriginal Affairs, which includes the NT Government, APO NT as well as the board of the Local Government Association of the NT (NT Government, sub. 70, p. 4).

Voice, Treaty and Truth

The Uluru Statement from the Heart, released in 2017, calls for the establishment of a 'First Nations Voice' in the Australian Constitution, a Makarrata Commission for the purpose of 'agreement-making between government and First Nations', and truth-telling (Referendum Council 2017). In the Torres Strait, the Masig Statement, released in August 2022, makes a similar call for self-determination for the peoples of the Torres Strait and Northern Peninsula Area (TSC 2022).

Various jurisdictions have convened Aboriginal and Torres Strait Islander bodies, and developed processes and decision-making structures designed to mirror the goals of these Statements. These processes seek to change how governments share power with Aboriginal and Torres Strait Islander people, and create governance structures that operationalise Aboriginal and Torres Strait Islander people's right to exercise self-determination.

Although these processes align with the objectives of the Agreement, and indeed can support their advancement, they do not override the responsibilities of governments to deliver on the commitments they made in the Agreement. Review participants emphasised that the development of other Aboriginal and Torres Strait Islander bodies, processes and decision-making structures should not be at the expense of Closing the Gap.

> Implementation of the four priority areas has been delayed in Victoria. Despite the best efforts, innovation and commitment throughout ACCO sectors, the Victorian government has prioritised Treaty negotiations and the administration of the Yoorrook Justice Commission, which has delayed progress on Closing the Gap initiatives. Treaty must not be the default mechanism for discussions

related to Closing the Gap and action in this area must not be delayed as Treaty and Truth processes are resolved. Closing the Gap must be prioritised equally with these important reforms, to ensure steady progress across the board. (Ngaweeyan Maar-oo Koorie Caucus, sub. 65, p. 1)

Voice

In South Australia, legislation to provide for a First Nations Voice to Parliament was enacted in March 2023. The focus of this was to promote 'greater Aboriginal and Torres Strait Islander representation and self-determination in decision-making and the development of laws, policies, and programs' (SA Government 2023b). The South Australian First Nations Voice will have several legislated functions that it can use to share decision-making power with the South Australian Government (box 2.6).

Box 2.6 – How the South Australian First Nations Voice will be able to hold the South Australian Government to account

The *First Nations Voice Act 2023* (SA) passed the South Australian Parliament on 26 March 2023, with the inaugural First Nations Voice election to be held in March 2024.

Once operational, the First Nations Voice 'will be a connected, direct and independent line of communication for First Nations people to South Australia's Parliament and the government' (SA AGD 2023). It will include six Local First Nations Voices and a State First Nations Voice.

The State First Nations Voice (represented by its joint presiding members) will have several legislated functions that will strengthen accountability for Aboriginal and Torres Strait Islander people in South Australia.

- It will be notified of the introduction of every bill in both houses of parliament, and will be able to address either house of parliament, but not both, in relation to any bill.
- Each year, it must deliver an annual report and address to a joint sitting of parliament.
- It may present a report to parliament on any matters of interest to First Nations people. To ensure that the issues raised in these reports are appropriately considered, the relevant Minister is required to provide a response to the report within six months, including whether any action has been taken or is proposed to be taken.
- It will meet at least twice per year with Cabinet.
- It will meet at least twice per year with chief executives of public sector organisations to be briefed by, and ask questions of, the chief executives present in relation to matters of interest it identifies.
- It will attend engagement hearings to ask questions of ministers and chief executives relating to the operations, expenditure, budget and priorities of public sector organisations.

The exact manner in which many of these functions will operate remains to be determined, and will be set by agreement between the joint presiding members of the State First Nations Voice and the Premier. But the desire for the First Nations Voice to enhance accountability to Aboriginal and Torres Strait Islander people was clearly articulated by the Premier.

> The ability to directly address the South Australian Parliament and to engage with cabinet ministers and chief executives will give First Nations people the opportunity to influence decision-making at the highest levels and have their voices heard where it counts. (Malinauskas 2023)

In several other jurisdictions, Aboriginal and Torres Strait Islander representative bodies are also playing a role in enhancing accountability.

- In the ACT, the *Aboriginal and Torres Strait Islander Elected Body Act 2008* (section 10A) gives the Aboriginal and Torres Strait Islander Elected Body (ATSIEB) the power to request information from the ACT Government and compel executive officers of ACT Government agencies to appear at hearings. It also requires that the ACT Government respond to reports on the ATSIEB's public hearings within four months of receiving those reports.
- In Victoria, the First People's Assembly of Victoria speak outs about issues affecting Aboriginal and Torres Strait Islander people. For example, it called on the Victorian Government to urgently raise the age of criminal responsibility to at least 14 years (First Peoples' Assembly of Victoria 2022).
- The NT Government is undertaking a parliamentary inquiry into a process to review bills for their impact on First Nations Territorians. The inquiry will report in May 2024 (Legislative Assembly of the Northern Territory 2023a), with the report expected to examine the potential for an Aboriginal and Torres Strait Islander Voice to the NT Parliament.

The Australian Government held an unsuccessful referendum in October 2023, to enshrine an Aboriginal and Torres Strait Islander Voice into the Australian Constitution. The Aboriginal and Torres Strait Islander Voice was intended to 'make representations to the Parliament and the Executive Government of the Commonwealth on matters relating to Aboriginal and Torres Strait Islander peoples' (NIAA 2023e). The proposal failed to achieve majority support across Australia, with the ACT being the only jurisdiction to achieve a majority vote (ABC 2023b).

Treaty

States and territories are at various stages of negotiating Treaties with Aboriginal and Torres Strait Islander people. Victoria, Queensland, the ACT and the Northern Territory have commenced processes to facilitate Treaty negotiations. Treaty can represent a new way of working with government, one in which Aboriginal and Torres Strait Islander people can assert their right to self-determination. In Victoria, the Treaty legislation has begun to reshape the relationship between Aboriginal people in Victoria and the Victorian Government, so that funding and policy decisions no longer solely lie within the hands of government and instead rely on negotiation and 'agreement' exemplifying a significant shift of power (box 2.7).

Box 2.7 – What rebalancing of power can look like – Victoria's Treaty process

Treaty is stated by the Victorian Government as being the embodiment of Aboriginal self-determination – by providing a path to negotiate the transfer of power and resources for Aboriginal people to control matters which impact their lives (Victorian Government 2022a).

Victoria's roadmap to Treaty is set out in the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic) (Treaty Act) (Victorian Government 2023a). It commits the Victorian Government to establish processes and enablers to develop and negotiate Treaties. It also outlines the role of the Aboriginal Representative Body, which is, 'to represent the diversity of traditional owners and Aboriginal Victorians in negotiating with the State' (Treaty Act 2018, subsection 10(1)). The First Peoples' Assembly of Victoria is the democratically elected representative body for Traditional Owners and First Peoples living in Victoria, and was declared by the Minister to be the Aboriginal Representative Body.

Box 2.7 – What rebalancing of power can look like – Victoria's Treaty process

Four Treaty elements were successfully negotiated by First Peoples' Assembly of Victoria and the State for future Treaty discussions. These elements are essential to facilitating shared decision-making and supporting equal standing between Aboriginal Victorians, including Traditional Owners, and the State.

- **Dispute Resolution Process** (signed Feb 2021). The interim dispute resolution process sets out the parties to handle any conflicts that may arise during the negotiation of the Treaty elements. It indicates a commitment and focus from both Parties to develop relationships which will endure conflict.
- **Treaty Authority Agreement** (enacted by the Victorian Parliament in August 2022). The Treaty Authority is a novel legal entity created by agreement under the Treaty Authority Agreement to be the independent umpire for future Treaty negotiations. The *Treaty Authority and Other Treaty Elements Act 2022* (Vic) (Treaty Authority Act) facilitates the Treaty Authority's establishment by permitting certain logistics such as hiring independent staff and leasing an office and so on, which ensures it has a similar level of independence as a Royal Commission (First Peoples' Assembly, pers. comm., 4 July 2023). The First Peoples' Assembly were strong in their view that the Treaty Authority should not be confined by western centric structures led by government's priorities, but that 'it should be mob deciding who mob are' (First Peoples' Assembly of Victoria, pers. comm., 4 July 2023). This represents a significant shift of power back to Aboriginal and Torres Strait Islander people.
- **The Treaty Negotiation Framework** (signed October 2022). The Framework sets out the rules and expectations for negotiating and enforcing treaties. Aboriginal lore, law and cultural authority are also recognised, though not codified, in this Framework, which allows for these to be used as key elements in future Treaty-making. Significantly, the Framework does not prescribe a rigid understanding of what individual Treaty experiences and expectations should look like, instead it dictates that those entering into Treaty are able to make decisions that align most with their individual goals.
- **Self-Determination Fund** (signed October 2022). The Self-Determination Fund is a First Peoples' controlled financial resource that supports Aboriginal and Torres Strait Islander people to have equal standing with the State in Treaty negotiations as well as build future wealth and prosperity. This fund is independent from the State and administered by five independent First Nations experts (First Peoples' Assembly of Victoria 2023a). The guidelines for accessing this funding has also been released (First Peoples' Assembly of Victoria 2023b).

The Treaty Act dictates that all of these Treaty elements must be developed and finalised through 'agreement' between the parties, the importance of the wording 'by agreement' should not be understated. First Peoples' Assembly told the Commission that this wording supported equal standing between parties and meant that shared decision-making was embedded at every step, otherwise, the State would not be in line with the Treaty Act. Due to the legislation, the government does not hold the power to make unilateral decisions (First Peoples' Assembly, pers. comm., 4 July 2023).

Although Treaty negotiations have not started, the Treaty elements are noteworthy given how they were negotiated to meet the interests of both parties. It remains to be seen how they will work in practice. Both the First Peoples' Assembly and Victorian Government have acknowledged that although the Treaty Act was central to legislating shared decision-making, there was significant political will which was essential to progressing Treaty in Victoria (First Peoples' Assembly, pers. comm., 4 July 2023 and the Victorian Government, pers. comm., 5 July 2023). The Assembly also told the Commission that 'Treaty exemplifies a shift to a collaborative approach for governments framed by continual open discussions towards the goal of sharing decision-making' (First Peoples' Assembly, pers. comm., 4 July 2023).

Truth

As highlighted earlier, truth-telling processes can be an important way for governments to transform to more meaningfully share decision-making power. Truth-telling, which is identified as an important element in Priority Reform 3 (chapter 4), also supports the objectives under Priority Reform 1. The process of governments acknowledging the ways in which past failed policies and approaches have impacted outcomes and trust with Aboriginal and Torres Strait Islander people can be an important step in addressing historical power imbalances, and start to shift decision-making power within new partnerships.

Some states have undertaken truth-telling processes that relate to jurisdiction-wide relationships between governments and Aboriginal and Torres Strait Islander people.

Victoria established a formal truth-telling process in 2022. The Yoorrook Justice Commission is examining past and ongoing injustices experienced by Traditional Owners and First Peoples in Victoria in all areas of life since colonisation (Yoorrook Justice Commission 2023a). Yoorrook has a clear role in delivering self-determination – one of its objectives is to:

> Identify Systemic Injustice which currently impedes First Peoples achieving self-determination and equality and make recommendations to address them, improve State accountability and prevent continuation or recurrence of Systemic Injustice. (Letters Patent establishing the Yoorrook Justice Commission, clause 2)

Yoorrook has a three year term, and will deliver its final report in June 2025 (Yoorrook Justice Commission 2023a).

Similarly, the Truth-telling and Healing inquiry that is being established in Queensland under the *Path to Treaty Act 2023* (Qld) will operate for a period of three years, and will inquire into the historical and ongoing impacts of colonisation on Aboriginal and Torres Strait Islander Queenslanders. Self-determination a key principle underpinning the Queensland Truth and Treaty process (section 6 of the *Path to Treaty Act 2023*) and the legislation's purpose is framed by recognition that:

> The colonisation of Queensland and the dispossession of the lands, seas, waters and air traditionally occupied and used by Aboriginal peoples and Torres Strait Islander peoples had a devastating, and ongoing, impact on Aboriginal peoples and Torres Strait Islander peoples.
>
> The foundation for a respectful and mutually beneficial relationship between Aboriginal peoples, Torres Strait Islander peoples and the Queensland community generally is to provide for processes and opportunities to hear the voices of Aboriginal peoples and Torres Strait Islander peoples.
>
> The process of truth-telling will help inform the Queensland community generally and help heal the trauma suffered by Aboriginal peoples and Torres Strait Islander peoples as a result of colonisation. The process will inform treaty negotiations between Aboriginal peoples, Torres Strait Islander peoples and the State, highlight the resilience, enduring culture, law and knowledge of Aboriginal peoples and Torres Strait Islander peoples, and demonstrate how these strengths are priceless assets for Queensland. (Preamble para 6–8)

These inquiries will make findings and recommendations that will likely provide guidance on how to transform governance arrangements to better share decision-making power with Aboriginal and Torres Strait Islander people.

… but self-determination is rarely fully operationalised

The establishment of a partnership, while an important step, does not mean that meaningful shared decision-making is guaranteed or sustained. The Commission heard several examples where governments were compelled to work in genuine partnerships with Aboriginal and Torres Strait Islander organisations to meet an essential need, but often this would not result in changes to the ways governments operate more broadly. The clearest example of this was during the COVID-19 pandemic, where governments were compelled to work in partnership with ACCOs in recognition of their expertise and the connections they have with communities that enable them to respond quickly and effectively (box 2.8). The Public Health Association of Australia similarly highlighted this partnership as good practice, noting that it:

> … would like to acknowledge the success of the Aboriginal and Torres Strait Islander Advisory Group on COVID-19, which was co-chaired by NACCHO and the Australian Government Department of Health … PHAA also believes that this partnership was exceptional and that shared decision-making through policy partnerships is rarely achieved in practice. Instead, government agencies continue to 'consult' Aboriginal and Torres Strait Islander peoples not only on pre-determined solutions, but also government-informed priorities. There is little evidence of meaningful collaboration, or enactment of the principles of co-design. (sub. 68, p. 5)

Box 2.8 – Shared decision-making in response to the COVID-19 crisis

Aboriginal and Torres Strait Islander people were identified early on in the COVID-19 pandemic to be a high-risk population due the high burden of disease and inadequate infrastructure and services in Aboriginal and Torres Strait Islander communities (DoH 2020, pp. 8–9). With this risk profile, governments and Aboriginal and Torres Strait Islander people understood the need to act quickly and share decision-making.

The Australian Government response

In March 2020, the Australian Government convened the Aboriginal and Torres Strait Islander Advisory Group on COVID-19 (the taskforce). Co-chaired by the Department of Health and the National Aboriginal Community Controlled Health Organisation (NACCHO), the taskforce worked together to develop and deliver a National Management Plan to protect communities and save lives (The Taskforce 2020, p. 1). Collaboration between Aboriginal community-controlled health organisations (ACCHOs) and the Department of Health was in large part successful due to the decades of work by ACCHOs to deliver results for their communities, which meant the Department of Health trusted them to be strong and reliable partners (Dr. Lucas de Toca, pers. comm., 27 June 2023).

The taskforce comprised of senior government representatives from state and territory public health teams, public health medical officers, the Australian Indigenous Doctors Association, the NIAA and communicable disease experts (The Taskforce 2020, p. 1). The taskforce met twice a week in 2020 with extra meetings taking place where required, demonstrating the willingness and commitment to share knowledge and decision-making. This commitment is emphasised in the *Management Plan for Aboriginal and Torres Strait Islander Populations 2020.*

> Aboriginal and Torres Strait Islander people must be involved in assessing COVID-19 risk and responses in Aboriginal and Torres Strait Islander communities. Responses must be centred on Aboriginal and Torres Strait Islander people's perspectives, ways of living and culture developed

Box 2.8 – Shared decision-making in response to the COVID-19 crisis

> and implemented with culture as a core underlying positive determinant … .These responses should be co-developed, and co-designed with Aboriginal and Torres Strait Islander people, enabling them to contribute and fully participate in shared decision-making. (DoH 2020, p. 6)

This specialised response to Aboriginal and Torres Strait Islander communities stands in contrast to the government's response to the 2009 swine flu outbreak, which was a one-size-fits-all that did not include any recognition of the higher risk level in Aboriginal and Torres Strait Islander communities and because of this, had a disproportionate negative impact on communities (Crooks et al. 2020, p. 151). This collaborative response which recognised Aboriginal and Torres Strait Islander organisations' expertise has been described as a 'reversal of the gap' by which Aboriginal and Torres Strait Islander people had better outcomes than non-Indigenous people and better outcomes than Indigenous people globally (Stanley et al. 2021, p. 1854).

As well as a national response, there were a range of jurisdiction specific partnerships and shared decision-making arrangements. Several ACCHOs the Commission spoke to across the country stated that there was a more genuine commitment to sharing power and collaboration during the COVID-19 pandemic and Aboriginal and Torres Strait Islander health practitioners echoed this.

Winnunga Nimmityjah Aboriginal Health and Community Services

Winnunga Nimmityjah Aboriginal Health and Community Services (Winnunga) is the ACT's sole Aboriginal Community-Controlled Health Service. They have been in operation for over thirty years, throughout this time receiving ACT Health and Australian Government funding. In 2020-21 they serviced around 5000 clients and provided over 60 000 occasions of service (Winnunga Nimmityjah 2021, pp. 18–19). In addition to medical care, they provide wrap around services to Aboriginal and Torres Strait Islander people across the ACT and the surrounding regions.

In late 2019, Winnunga had just begun construction work on a new building, and was dealing with challenges related to the east coast's bushfires when the COVID-19 pandemic reached Australia. During this period, Winnunga described open and quick communication with government in which they were trusted to make decisions for the community. Governments were willing to share decision-making authority and work in partnership with Winnunga due to the risk of COVID-19 entering Aboriginal and Torres Strait Islander communities.

> Government were throwing money at us. They were onto it. They were very good, both ACT Health and the Commonwealth. It was the best relationship we were in. The meetings were great. We were constantly talking about what was needed to help. Every day there were meetings … I really do believe that it [trust] moved during COVID. The amount of work we did, they could see it. Our sector went over and above during covid. It goes to show that we can all work together so why is it so hard on other days? (Julie Tongs – CEO Winnunga, pers. comm., 23 June 2023)

However, these substantial changes to the way government interacted with Winnunga did not continue. As the urgency of the COVID-19 pandemic receded, there was a return to previous funding arrangements and a reduced level of communication. This came with the added expectation of managing the same level and amount of care that was provided during the early stages of COVID-19 (Julie Tongs – CEO Winnunga, pers comm., 23 June 2023).

Despite the successful response, the Commission heard this did not translate into broader change, with governments returning to previous funding levels and habitual ways of working once the urgency of the COVID-19 pandemic subsided.

This example and others explained earlier highlight instances where the power imbalance has shifted but we heard that, more broadly, governments still retain most of the power in partnerships.

> Decision making capacity always rests with the state … As an Aboriginal organisation, we often feel as though our perspective is considered briefly for the purposes of 'ticking the box' regarding consultation with Aboriginal people, and then the government chooses to continue to follow its chosen agenda. (AFLS WA, sub. 7, p. 6)

Shared decision-making seeks to empower Aboriginal and Torres Strait Islander people with the authority to determine the best ways to design and deliver policies and services to achieve better outcomes for Aboriginal and Torres Strait Islander people. It acknowledges that governments lack the capacity to fully understand and deliver on the unique priorities of Aboriginal and Torres Strait Islander people. Full and genuine partnership arrangements should deliver not just an opportunity for Aboriginal and Torres Strait Islander people to share a seat at the table with governments to formulate policy recommendations – but ensure that their authority and expertise is recognised and deferred to, when governments are making decisions affecting Aboriginal and Torres Strait Islander people and communities. In practical terms this often falls through when governments do not engage adequately or in a timely manner, where investment is short-sighted, and where decisions exclude certain groups in the community.

Engagement is still being done too late or not enough

The Commission has heard from many Aboriginal and Torres Strait Islander organisations and non-Indigenous, non-government organisations that governments (and different agencies within government) are making varying efforts to better engage with Aboriginal and Torres Strait Islander people (chapter 9). Governments' ability to engage in a culturally safe and impactful manner is a key transformation element under Priority Reform 3 (chapter 4).

We were told that governments still largely determine which issues they consult on and when. This leads to governments engaging with the public on already decided solutions, rather than reaching joint agreement with the community to better reflect their needs or priorities. An example of this was provided by the Central Australian Aboriginal Congress (CAAC) (sub. 13) with respect to the *Stronger Futures in the Northern Territory Act (2012)* which lapsed on 17 July 2022. The NT Government decided that communities that had been 'dry' for over 10 years would have to 'opt in' for continuing alcohol bans rather than the alternative 'opt out' policies which were advocated by CAAC and other groups (CAAC, sub. 13, p. 12). CAAC described this decision as 'unilateral' and lacking 'a collaborative and planned approach as demanded by many leading Aboriginal organisations' (CAAC, sub. 13, p. 2).

> Given the lack of any substantive consultation with Aboriginal communities, Congress advocated strongly for the Northern Territory Government to pass legislation to extend the provisions for two years. During this time proper consultations could be held which ensure that all voices in the community were heard. During this consultation period communities should be able to 'opt out' of the provisions if they wish with a formal indication that this is what they want to do. Congress, along with many other community organisations predicted that unless this action was taken, there would be a wave of alcohol fuelled violence, much of it directed at Aboriginal women. (CAAC, sub. 13, p. 12)

The Northern Land Council also noted that governments had ample time to better engage and benefit from 'deep, thorough or respectful engagement with Aboriginal communities', and did not do so.

> The sunsetting of the stronger futures legislation in 2022 was known to both the Australian and Northern Territory governments in 2012. Both levels of government had the opportunity to reflect, build evidence, evaluate and plan for new arrangements for a decade. Northern Land Council was first engaged about options just over six months prior to sunsetting. The Northern Territory's replacement measures were not legislated until a few weeks before the sunsetting. Aboriginal people were only belatedly consulted on arrangements on alcohol. There was not deep consultation. There was no time to discuss and build consensus. The initial plan was for areas to decide, often on a single day, whether to continue alcohol restrictions or revert back to pre-intervention conditions. (NLC 2022)

Some Aboriginal and Torres Strait Islander organisations the Commission heard from during this review said that when they wanted to bring in new, culturally appropriate Aboriginal and Torres Strait Islander models for decision-making, but government departments claimed that they did not fit with their processes, rules or risk profiles (chapter 9). This is driving perceptions that Aboriginal and Torres Strait Islander organisations need to fit 'round pegs into square holes' with government, undermining the goal of full and genuine partnership. Many ACCOs highlighted that when it came to funding for programs, money is given with stipulations on how it can be spent, with little flexibility (chapter 9). This reduces the ability for ACCOs to design and deliver services that are responsive and meet the priorities and needs of Aboriginal and Torres Strait Islander communities. As discussed at length in chapter 3, governments often overlook the value that engagement with Aboriginal and Torres Strait Islander people can bring, including learning from their cultural knowledges, skills, expertise, and proven ability to deliver better outcomes for Aboriginal and Torres Strait Islander people. Instead, governments need to treat ACCOs as essential partners who are often better placed than governments to design and deliver high quality, holistic and culturally safe services (**recommendation 1, action 1.2**). This is supported by what the Commission heard during the review.

> The trouble is that any one factor in decision making can be minimised or expanded, and if you think of Indigenous people as a 'consulted stakeholder' their voice can be minimised sheerly because of many factors there are to consider. If we changed the way we look at that … you would get a different decision. (Annika David, sub. 27, pp. 3–4)

Although many governments have committed to co-designing programs, the Commission has heard that opportunities for co-design felt tokenistic or non-existent in practice. Several organisations said that government wanted to engage in co-design but began every conversation by managing expectations around spending (chapter 9).

> While governments now recognise the need to 'consult' with First Nations' peoples on the design and implementation of policies and programs that will impact on them, 'consulting' does not go far enough. Previous governments have lacked decisive action in response to consultation findings and have been reluctant to hand over the ownership of designing and driving solutions to the people with the lived experience. Words like 'co-design' and 'partnership' are frequently used but often turn out to be empty promises with little practical effect. (Community First Development, sub. 9, p. 10)

We also heard that the way governments choose to partner with Aboriginal and Torres Strait Islander people can be one-sided, characterised by engaging too late in the policy or program development cycle, or not enough. In practice, this looks like governments provide unrealistic timeframes for meaningful community engagement on implementation plans and strategies, and do not invest time in relationships (chapter 9).

> You can actually come to mutually beneficial arrangements respecting the rights of Indigenous people and trying to deliver to the client but it is a process that takes time … It is a skill to build the right partnerships and shared decision making arrangements with the right stakeholders. (Annika David, sub. 27, p. 3)

Aboriginal Family Legal Services WA (AFLS WA) said that governments often want to draw on and use Aboriginal and Torres Strait Islander expertise in a transactional manner, which may not be aligned with the organisations' goals.

> It is appropriate to say that partnerships are developed and operationalised in a transactional, rather than relational, way. For example, AFLS was recently involved in the development of the Department of Justice's Legal Assistance Strategy and participated in consultation on the draft Action Plan Framework which will complement the Strategy. AFLS's involvement in the development of the Strategy was sought by the Department of Justice, despite AFLS not being eligible for funding provided from the Department through the National Legal Assistance Partnership, which was the main focus of the Strategy. This participation, which was largely for the benefit of the Department by providing ideas from the sector to inform and shape the development of the Strategy, required significant resourcing and engagement from an understaffed and overwhelmed AFLS, which will receive limited benefit in the short-term from the development and implementation of the Strategy. (AFLS WA, sub. 7, p. 6)

Partnerships should be resourced as long-term investments

Adequate funding and time are required to support Aboriginal and Torres Strait Islander people to participate as essential partners with governments, on an equal footing. The Agreement acknowledges this and notes that funding should allow Aboriginal and Torres Strait Islander parties to:

- engage independent policy advice
- meet independently of governments
- support strengthened governance
- engage with all relevant groups within affected communities (clause 33).

The Commission heard that Aboriginal and Torres Strait Islander people want to set the priorities and provide input into decisions that affect them but a lack of funding and time given by governments, impedes their ability to participate (chapter 9). For many, this was required to supplement for the number and frequency of meetings that take them away from existing core service delivery. In relation to the burden on peak organisations, the Coalition of Peaks noted that:

> The majority of Peaks are not yet receiving appropriate, dedicated and secure funding to ensure they can act as accountable partners and fulfil their roles under the National Agreement. In some cases where funding has been provided, the terms of the funding arrangements have not necessarily met the spirit of the National Agreement and new arrangements are not always working to chart a course to better practice. We have found examples where funding is short-term, been allowed to lapse despite ongoing work or is under-estimating salaries, oncosts and overheads. (sub. 25, attachment, p. 9)

And with respect to the NT Aboriginal Justice Agreement, APO NT said that:

> … partnership and shared-decision making is committed to by the way of the establishment of Law and Justice Groups (LJGs) (equivalent to NAAJAs Community Justice Groups (CJGs)) and the Local Decision-Making Framework. However, there has been no indication of any funding or resources intended for such groups, by the way of sitting fees, travel, consultation, interpretive services and training, to implement the actions aligned to them in the implementation plans, such as developing pre-sentencing reports for the community courts or culturally safe mediation …

> There is significant potential for place-based partnerships, such as the LJGs and CJGs, and more broadly the NT Justice Policy Partnership to influence the decrease in incarceration rates of Aboriginal people in the NT but not without resourcing, authentic consultation and agreed, mutually respected balance of power. (sub. 10, pp. 3–4)

Combined with insufficient timeframes for engagement, the risk is that partnership processes may be viewed as disingenuous by Aboriginal and Torres Strait Islander groups and communities and reduce their capacity and willingness to participate. This will significantly undermine the effectiveness of partnerships in improving outcomes for Aboriginal and Torres Strait Islander people.

> We welcome the acknowledgement … of the 'fatigue and burden' on Aboriginal and Torres Strait Islander resources when continually called on by governments to provide advice, often advice that we have repeatedly provided over the last 40 years. When we are given space to have a say we are often not given sufficient time, acknowledgement, or resources to do so effectively. (Indigenous Education Consultative Meeting, sub. 63, p. 1)

At this stage, the Commission does not have sufficient information on what funding has been provided to Aboriginal and Torres Strait Islander organisations to participate in all partnerships established to implement the Agreement. But it is clear that more funding will be required to improve the effectiveness of partnerships.

The Australian, State and Territory governments need to ensure that the resources they devote to the implementation of the Agreement are commensurate with the ambition of the Agreement. This should include adequate resourcing to Aboriginal and Torres Strait Islander organisations to participate in the policy and place-based partnerships established under the Agreement. This will help to ensure that Aboriginal and Torres Strait Islander knowledges and expertise are central in these processes (**recommendation 1, action 1.4** in chapter 7).

Diverse voices that are rarely sought need to be heard

The Agreement acknowledges that shared decision-making requires a wide variety of groups of Aboriginal and Torres Strait Islander people, including women, young people, Elders, and Aboriginal and Torres Strait Islander people with a disability to have their voice heard (clause 32c (iv)).

The Commission heard from many Aboriginal and Torres Strait Islander organisations that some voices are not being heard and need stronger representation, in particular:

- people in remote regions that are far away from key decision-making (including Homelands, discrete communities and people living in the Torres Strait)
- people with disability
- people in incarceration and youth detention
- children and young people, particularly those in care systems
- women's voices, as often only men have a 'seat at the table'
- Stolen Generations' survivors and descendants
- Aboriginal and Torres Strait Islander LGBTQIASB+ community (chapter 9).

We heard that grassroots organisations who opt for Indigenous forms of governance and unincorporated groups need to be included at the decision-making table. For example, Children's Ground said that in March 2022 they were:

> … advised by executive bureaucrats in the Department of Health that we were not a priority funding recipient by the Department because we are not registered under the CATSI Act. We were also told that we were not deemed to be an Aboriginal Community Controlled Organisation … Aboriginal law does not sit within the Corporations Act, the CATSI Act or any other Western act. It sits with First Nations people and their culture; this is what guides the decision making and governance of Children's Ground. (sub. 72, p. 5)

Submissions provided to the Commission from the Queensland Family and Child Commission and the Queensland Aboriginal and Torres Strait Islander Child Protection Peak highlighted the importance of listening to children and young people. This is especially true for those in the youth justice system.

> The current conversation around the topic of youth crime has largely ignored the voices and perspectives of those most impacted, children and young people, meaning an opportunity has been missed for them to contribute to solutions that can address the causes of offending. (Queensland Family and Child Commissioner, sub. 8, p. 2)

Some Aboriginal and Torres Strait Islander organisations also noted that regional representation is needed to ensure their unique priorities are being heard.

> To date there is limited accountability to regional and remote communities to be respectfully consulted in decisions about funding, service design and delivery. (Queensland Aboriginal and Torres Strait Islander Child Protection Peak, sub. 12, p. 2)

This was particularly evident in the Commission's engagements in the Torres Strait, where organisations noted that government programs are often brought from the mainland and applied without an understanding of the distinct culture which exists in the Torres Strait, causing the programs to fail. The Commission also heard that a lack of appropriate services worsened the further a community was from Thursday Island, with many communities feeling like their voices and priorities were not heard (chapter 9).

Several individuals we met with during this review also highlighted that the organisations that governments choose to work with can sometimes be seen as 'creatures of government' by the community they claim to represent, and that national bodies are sometimes empowered at the expense of regional or state bodies'. The Commission also heard that some Aboriginal and Torres Strait Islander peak bodies risk burning out due to the demands of the Agreement, for which they are underfunded (chapter 9).

Shared decision-making requires governments to transform

Overall, progress towards Priority Reform 1 has been slow and hampered by a lack of change in processes within governments (the scale of the change required for government to enable the sharing of decision-making authority is discussed in chapter 4). Although governments have formally committed to partner and share decision-making, many Aboriginal and Torres Strait Islander organisations and communities have seen little tangible change in when and how decisions are made (chapter 9). This is despite governments listing over 150 existing or newly commenced actions in their first implementation plans. Indeed, partnerships are a familiar and easily quantifiable mechanism for governments, but it appears that they are often viewing partnerships as an output, rather than using them to empower shared decision-making (the outcome Priority Reform 1 is seeking to achieve). In many cases there is no clear link or program logic connecting the partnership actions governments have listed in their implementation plans with the objective of shared decision-making.

As discussed in section 2.1, governments have not shared or transferred decision-making power for a variety of reasons. The ad hoc nature with which shared decision-making power has been actioned across government suggests that agencies may not have grasped the depth of change and how pervasive it needs to be, in order to meet their commitments in the Agreement. This task is significant and time-consuming which means that readiness may also be a factor. As noted by the SA Government (sub. 28, p. 2), the pace at which one party can move is, in part, dependent on the ability of the other party to reform at the speed and scale required. This has been echoed by the NT Government (sub. 70, p. 5), which explained that working in full and genuine partnership takes time.

APO NT (sub. 69, p. 3) also acknowledged that they need time to build the capabilities needed help work with governments on the Closing the Gap Priority Reforms, and because of this, patience is needed from governments.

Another factor could be a general lack of awareness of the Agreement in some areas of government, as well as a lack of understanding in some agencies of their responsibilities to implement the Priority Reforms in their portfolio areas. A number of the government agencies that are responsible for Aboriginal and Torres Strait Islander policy have told the Commission that they have found it difficult to gain traction with other agencies on implementing the Priority Reforms. This is echoed by many Aboriginal and Torres Strait Islander organisations who have said they have needed to educate and guide agencies in this regard.

For meaningful progress to be made on Priority Reform 1, governments need to trust that by relinquishing decision-making power they are enabling better outcomes for Aboriginal and Torres Strait Islander people. This requires deeper understanding and recognition from government of the value that Aboriginal and Torres Strait Islander people and organisations bring to policy development, which better delivers outcomes for communities. Equally, governments need to recognise that there may be a starting point of historical distrust from the perspective of Aboriginal and Torres Strait Islander people, where previous commitments have gone unmet. The onus is on governments to transform their systems and processes through the implementation of Priority Reform 3, thereby changing how they work with Aboriginal and Torres Strait Islander people. However, as noted above, government agencies have made very little progress in this regard.

Review of the National Agreement on Closing the Gap

Priority Reform 2: Strengthening the community-controlled sector

Chapter 3

Key points

Priority Reform 2 is about Aboriginal and Torres Strait Islander people and communities being able to exercise the right to self-determination over the design and delivery of services and programs that impact their lives. This is largely driven by having strong Aboriginal and Torres Strait Islander community-controlled organisations (ACCOs) and peak bodies.

But too often, governments are not recognising the essential role ACCOs and peak bodies have in service design and delivery. ACCOs have distinct knowledges, expertise and connection to community that means they are better placed than governments to design high quality, holistic and culturally safe services (and outcomes measures) that align with their communities' priorities.

- Priority Reform 2 requires more than governments 'lifting and shifting' service delivery to ACCOs. Sector strengthening relies on governments sharing decision-making authority with ACCOs in the process of identifying problems, designing solutions, delivering services and defining measures of success in a way that meets the priorities of the people who use their services. Otherwise, governments are simply shifting the potential risk of failure (and even harm) onto ACCOs.

The way commissioning of programs and services occurs is intrinsically linked to sector strengthening. The Commission is recommending that central agencies change funding and contracting rules so that they explicitly incorporate accountability for funders to abide by the Priority Reforms.

- Commissioning rules should recognise that community control is an act of self-determination, and that ACCOs are essential partners that bring knowledges and expertise to developing service models and solutions. To support these changes, central agencies should issue clear guidance to help overcome inertia and reduce barriers to working in ways that strengthen the ACCO sector.

Key to this is the use of longer-term, collaborative approaches to commissioning ACCOs. This is where governments provide sufficient timeframes, and dedicated and reliable funding that cover the full costs of service provision, and that gives ACCOs the flexibility to design and deliver services in a way that aligns with community priorities.

- Some jurisdictions are developing and trialling programs to provide more flexibility, introduce longer-term contracts, or reduce reporting burdens. While these approaches show promise, they would need to be rolled out more widely before ACCOs and service users see improvements at the ground level.

The Agreement has established specific mechanisms to strengthen the ACCO sector and to prioritise service funding, such that ACCOs receive a meaningful proportion of funding. While these mechanisms are seen as valuable, the current progress on these has been slow and inconsistent.

- While most governments have completed reviews of expenditure, not all have been published, and governments have made little progress in developing methodologies for how to shift the current baseline of ACCO funding.
- Four sector strengthening plans (SSPs) have been developed, albeit behind schedule. However, it is not clear whether SSPs will be effective in driving reform, given that they lack specificity and accountability.
- Many of the actions for governments fail to specify funding, timeframes for completion, responsible agencies for implementation, or how they will collectively lead to change. Reporting on SSP progress in annual reports has been inconsistent and inadequate.

3.1 What is Priority Reform 2 about?

Under Priority Reform 2 of the National Agreement on Closing the Gap (the Agreement), government parties committed to building formal Aboriginal and Torres Strait Islander community-controlled sectors to deliver services to support closing the gap (clause 42). The overall outcome of Priority Reform 2 is summarised in the Agreement as a state where:

> There is a strong and sustainable Aboriginal and Torres Strait Islander community-controlled sector delivering high quality services to meet the needs of Aboriginal and Torres Strait Islander people across the country. (p. 18)

Aboriginal and Torres Strait Islander community control is an act of self-determination

Priority Reform 2 affirms that Aboriginal and Torres Strait Islander community control is an act of self-determination. This can be viewed through a rights framework, as recognised under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which communicates the political aspirations of Aboriginal and Torres Strait Islander people to decide their own futures (Behrendt 2001, p. 856). Beyond a rights framework, self-determination also has extrinsic benefits by bringing about better informed decision-making. Efforts to strengthen Aboriginal and Torres Strait Islander community-controlled organisations (ACCOs), as part of Priority Reform 2, recognise the expertise of ACCOs to reflect community priorities and knowledges, and their capacity to design and deliver culturally safe and effective services (box 3.1).

From an economic perspective, more effectively designed services present more efficient use of private and public resources. This can have broader economic implications, particularly for services that improve social and economic participation.[3]

Achieving Priority Reform 2 outcomes is about more than shifting funding for service delivery across to ACCOs. Making the most of ACCOs' knowledges, expertise and connections to community requires governments to meaningfully consider how policy-making and commissioning approaches enable ACCOs (and their communities) to take the lead in identifying service priorities, and designing and delivering services that meet these needs. For example, 'successful' approaches to local decision making in the Northern Territory have been identified as those when governments recognise networks of kin and governance:

> … as already strong, that existing processes that have always already been present for growing up young people, healing disputes, caring for country, managing resources and connecting with others, are able to flourish and develop alternate solutions to problems than might otherwise be available (e.g. in managing housing in ways that are responsive to local need and family relationships, connecting gaps in night patrol services, generating workforce development options so young people can work on their grandfather's country, managing civil works so old people can access important hunting areas, designing school curricula which take seriously local languages and knowledge). (Spencer et al. 2022, p. 9)

[3] For example, the Commission has previously argued that human services are 'essential for the wellbeing of individuals and their families, and underpin economic and social participation' (PC 2017b, p. 3); health care services are central to wellbeing outcomes and labour market participation, and could be pivotal to overcoming significant health inequality across socio-economic and rural-urban divides (PC 2017d); and forms of disadvantage and poverty can suppress a person's ability to improve their economic situation, reducing their ability to find work or to invest their time and resources into education and training (PC 2018, p. 10).

Governments need to recognise ACCOs as essential partners in commissioning and designing services for the communities they serve, with knowledge of their own communities not paralleled by governments, as opposed to simply passive funding recipients. As highlighted in chapter 2, for decision-making partnerships to work, governments need to relinquish power over decision-making. This sentiment was articulated by Djirra in the context of shifting responsibilities in the child protection system over to ACCOs (chapter 8):

> … Aboriginal self-determination does not mean simply delegating existing powers or responsibilities. The current system fails Aboriginal and Torres Strait Islander children, and this failure is being transferred from government to ACCOs. … The system is not working. Services fail our women, who continue to be harmed by the intersecting effects of racism, intergenerational trauma, and ongoing colonisation. … Self-determination means supporting communities and ACCOs to lead the development and delivery of programs to help keep our women out of prisons, and with their children. (Djirra 2023, p. 20)

Box 3.1 – The value of the community-controlled sector

What are ACCOs?

Under clause 44 of the Agreement, an ACCO is an organisation delivering services, including land and resource management, that builds the strength and empowerment of Aboriginal and Torres Strait Islander communities and people, and is:

- incorporated under relevant legislation and not-for-profit
- controlled and operated by Aboriginal and/or Torres Strait Islander people[a]
- connected to the community, or communities, in which they deliver the services
- governed by a majority Aboriginal and/or Torres Strait Islander governing body.

The scope of services and activities that ACCOs deliver is broad, including health, legal, child and family, housing, and alcohol and drug services – and many provide multiple services to communities. ACCOs can be the main provider of human and social services in some communities, particularly regional and remote communities with large Aboriginal and Torres Strait Islander populations.

Governments fund ACCOs through grants and/or service procurement tenders, as well as sector specific funding streams such as Medicare and the childcare subsidy. Some ACCOs also generate own-source income through business activities (such as membership fees or fees for service) or donations.

ACCOs can improve service delivery and outcomes

The Commission heard many examples where outcomes for communities were improved when service delivery was both designed and controlled by ACCOs. There is growing evidence that ACCOs can improve outcomes for Aboriginal and Torres Strait Islander people. The evidence base is particularly prominent in health services, where health ACCOs are seen to:

> … not only have an essential role in addressing immediate healthcare needs but also invest in driving change in the more entrenched structural determinants of health. These are important actions that likely have an accumulative positive effect in closing the gap towards health equity. (Pearson et al. 2020, p. 2)

Box 3.1 – The value of the community-controlled sector

There is also evidence comparing the health outcomes for Indigenous people in [Aboriginal community-controlled health services] with the outcomes achieved through mainstream services (Panaretto et al. 2014, p. 649). These data show:

- models of comprehensive primary health care consistent with the patient-centred medical home model;
- coverage of the Aboriginal population higher than 60% outside major metropolitan centres;
- consistently improving performance in key performance on best-practice care indicators; and
- superior performance to mainstream general practice. (Panaretto et al. 2014, p. 649)

Numerous studies (for example, Ong et al. 2012; Vos et al. 2010) have shown that ACCO health services offer greater health benefits by improving utilisation rates. Equally, the lifetime health impact of ACCO-delivered interventions has been estimated to be 50% greater than if delivered by mainstream health services, primarily due to improved access by Aboriginal and Torres Strait Islander people (NACCHO 2021, p. 2).

One clear advantage that ACCOs have relates to their connections within the community. Cultural expertise and authority is embodied in how ACCOs design and deliver services, which is underpinned by a holistic model of care and an understanding of Indigenous wellbeing that encompasses social, spiritual, cultural and community elements.

Cultural expertise and local knowledge can be key drivers to increasing access and utilisation rates, as seen in the use of health services (Ware 2013, p. 6). This stems partly from the employment of Aboriginal and Torres Strait Islander people.

> At [the Aboriginal Family Legal Service Western Australia (AFLS WA)], for example, we employ local Aboriginal staff in each of the regional areas we operate … The capacity for local Aboriginal staff to enter their local communities where they are known and trusted, speak to local people who may be at-risk of, experiencing or have previous experiences of family violence and sexual assault, and develop trusting relationships that encourage and enable clients to seek the services of the organisation, is unparalleled. (sub. 7, pp. 6–7)

a. Under the Office of the Registrar of Indigenous Corporations, an organisation can be considered to be Aboriginal and Torres Strait Islander controlled and operated if it has as at least 51% Aboriginal and Torres Strait Islander governance or ownership.

Key commitments to strengthening the ACCO sector

The Agreement commits parties to building the ACCO sector in line with four strong sector elements, where:

- there is sustained capacity building and investment in ACCOs
- there is a dedicated and identified Aboriginal and Torres Strait Islander workforce and people working in community-controlled sectors have wage parity
- ACCOs that deliver common services are supported by a peak body, governed by a majority Aboriginal and Torres Strait Islander board, that has strong governance and capacity
- ACCOs have a dedicated, reliable and consistent funding model designed to suit the types of services required by communities and responsive to the needs of recipients (clause 45).

This is largely to be driven by two key policy mechanisms in the Agreement.

- **Sector strengthening plans (SSPs).** These identify measures to build the capability of community-controlled sectors. By July 2021, parties committed to develop four SSPs (for the early childhood care and development [ECCD], housing, health, and disability sectors) in line with the strong sector elements and across four streams: workforce, capital infrastructure, service provision and governance. Additional sectors for SSPs are to be identified in 2023 (clauses 51-53).
- **Increasing the proportion of services** delivered by Aboriginal and Torres Strait Islander organisations. This is to be achieved by implementing funding prioritisation policies and allocating a meaningful proportion of new funding to Aboriginal and Torres Strait Islander organisations, particularly ACCOs (clause 55). To inform this, governments agreed that by July 2022, they would review and identify opportunities to reprioritise current spending on Aboriginal and Torres Strait Islander programs and services to be delivered by Aboriginal and Torres Strait Islander organisations, particularly ACCOs. Actions arising from these reviews are to be included in jurisdictional implementation plans and annual reports (clause 113).

Progress on Priority Reform 2 also relies on progress across the other Priority Reforms. To share decision-making power with ACCOs on service design and delivery, governments: need to transform to better recognise the value and expertise of ACCOs (Priority Reform 3); strengthen existing partnerships and experience in sharing decision-making (Priority Reform 1); and collect and share regional data to inform decisions on service priorities and outcomes (Priority Reform 4). A strengthened ACCO sector will likewise support progress in the other Priority Reforms.

Our assessment of progress on Priority Reform 2 is focused on whether a stronger and sustainable ACCO sector is empowered to share in decision-making to be able to deliver high quality services that reflect the priorities of the Aboriginal and Torres Strait Islander communities they serve. This means examining the extent to which governments have made changes to the way that services are commissioned to support self-determination and shift the allocation of funding to Aboriginal and Torres Strait Islander organisations. Our assessment will also examine the extent to which the mechanisms in the Agreement are supporting the overarching outcomes of Priority Reform 2.

3.2 Commissioning relationships where governments (and bureaucracies) value ACCO knowledges and expertise

This section focuses on the commissioning relationships between governments and ACCOs and whether these recognise the knowledges and expertise that ACCOs can bring to the lifecycle of a service or program. As noted by the Institute of Urban Indigenous Health (IUIH), good commissioning practice incorporates this full lifecycle – beyond just procuring or contracting a program or service:

> … it includes working with communities to identify community needs and priorities, planning and procuring services, undertaking market development to meet these needs, and evaluating and reporting outcomes. (sub. 62, p. 21)

The way commissioning occurs is intrinsically linked to sector strengthening. A commissioning process that is transactional disempowers ACCOs to fully deliver on outcomes, as it fails to value their knowledges and expertise, and shuts ACCOs out from making critical decisions so that a program or service can meet their community's priorities. As discussed in the Commission's study on Expenditure on Children in the Northern Territory, transactional forms of commissioning may not be appropriate to fund community services (box 3.2). Rather, a more relational approach to contracting, where funding agencies work collaboratively with ACCOs

and communities to define priorities and outcomes, and to ensure ACCOs have a secure funding base, will enable them to:

- develop strategic plans for service delivery over the long-term, building trust with the community
- invest in infrastructure such as buildings, equipment and information technology, ensuring they can operate effectively and efficiently
- attract and retain staff, including professionals, who are critical to delivering high quality services
- provide holistic and culturally safe services, tailored to the needs of the community (for example, reliable and flexible funding enables an ACCO to provide wrap-around services and to support the social and emotional wellbeing of clients and their families).

Box 3.2 – Some features of an effective commissioning relationship

In the study into Expenditure on Children in the Northern Territory, the Commission found that a fundamental shift is required in how governments fund providers of children and family services. The Commission noted that there needs to be a transition away from short-term, transactional and output-based funding, to longer-term relational and outcomes-focused funding, where governments and service providers work collaboratively to improve service delivery outcomes (2020a, p. 223). This involves several key changes, such as:

- Adopting a relational approach to contracting, where government departments and services providers, in consultation with communities, work collaboratively towards shared outcomes. This requires government contract managers to engage with ACCOs in regular, collaborative reviews of service outcomes and continuous improvement. Governments also need to make contracts sufficiently flexible to adapt to changing priorities and needs of services users. It also requires their systems and regional networks to have the skills, capacity and authority to undertake relational contracting.
- Ensuring selection processes of providers account for the characteristics and capabilities that contribute to achieving outcomes for Aboriginal and Torres Strait Islander people (such as cultural safety and connection to communities). Also, where a community wants to transfer control of service delivery from a non-Indigenous provider to an ACCO, the funding agreement with the non-Indigenous service provider should be designed to support the transition process. In these instances, the funding contract should outline the responsibilities of the partners, and a succession plan and clear milestones over a defined timeframe.
- Setting default contract lengths of a minimum of seven years, and improved transparency and forward planning by governments of funding opportunities. This would afford service providers the stability of funding required to plan and invest for the future.
- Funding the full cost of providing services (taking into account the higher costs of service delivery in remote areas, capital investments needed to support effective service delivery, and the costs of monitoring and evaluating service delivery outcomes).

Source: PC (2020a).

ACCOs have knowledges and expertise to lead service design and delivery, yet these are not sufficiently valued in decision-making

The Commission heard during engagements that ACCOs are often perceived by governments as passive recipients of funding – and this is reflected in the way many are commissioned. This is antithetical to aspects of the Agreement that require ACCOs and governments to work as partners in decision-making to deliver programs and services that best meet the priorities of the communities they serve (such as elements under Priority Reform 1). It also devalues the knowledges and expertise ACCOs provide as essential partners in delivering outcomes for governments and the community. This was reflected by Indigenous Education Consultative Meeting:

> The lifting and shifting of non-Indigenous services, or government designed programmatic responses, to ACCOs creates an environment where meeting these KPIs are prioritised over the delivery of genuine outcomes. ACCO's are not passive recipients of funding and hold the capability and cultural knowledge to engage the community and deliver results. (sub. 63, p. 4)

Where power over decision-making is not systematically shared with ACCOs, governments can miss opportunities to learn from ACCOs about how to develop policy and services that more effectively achieve outcomes. An example of where such an opportunity could have potentially been missed is the case of Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council (NPYWC)'s Walytjapiti (Family) Program, where initial government funding included the use of two assessment tools, which were:

> … mainstream designed, punitive and lacked cultural understanding for ways Aṉangu raise their children. The assessment tools did not capture nor recognise how poverty and structural restrictions limit parental capacity. NPYWC were not consulted about the appropriateness of the assessment tools or for how best to work with families to increase child safety. (sub. 55, p. 2)

It was only due to the initiative of NPYWC to self-fund the development of a more appropriate and strengths-based family assessment tool, which meant that it was eventually 'incorporated into funding requirements for intensive family support services across the country and has been recognised for its advancement of utilising family strengths and culture' (sub. 55, p. 2). Although this outcome was positive, NPYWC reflected that this outcome was hard fought and required considerable resources:

> … ACCOs are frequently tasked with needing to advocate for the importance of their knowledge and practice when working with families. ACCOs are not automatically seen as the 'go-to' experts nor consulted for how funding and guidelines should look. The onus continues to sit with ACCOs to argue and justify their role in decision making for what is best for the very communities and families they serve. This takes time, money and resources that could be better supported and placed with direct practice with families. (sub. 55, p. 2)

The lack of resourcing for ACCOs to influence transformation was also highlighted by Western Victoria Primary Health Network, which noted that ACCOs have limited capacity and resources to guide the Primary Health Network to better commissioning of mainstream services or to support them to be more culturally safe and responsive. Annual funding of around $800,000 for Integrated Team Care in western Victoria, for example, is expected to 'cover [eight] ACCOs as well as fund activities to support cultural safety in the mainstream, and training and education at ACCOs' (sub. 56, p. 2). In addition to resourcing constraints, the Aboriginal Peak Organisations Northern Territory (APO NT) (sub. 69, p. 8) also observed that transitioning of services lacked coordination across governments, which meant each service transition 'occurred within a silo, with each new transition needing to "reinvent the wheel"'.

The Commission also heard from a number of participants that in circumstances where ACCOs, or indeed some government agencies, managed to overcome barriers to developing effective service delivery

partnerships, these provided insights into how commissioning systems needed to change within a department or across government. Yet, the lessons were not translated into wider commissioning approaches, or systemic changes to policies or programs that would improve mainstream systems, meaning the mistakes of the past could be repeated.

The early experience of NPYWC speaks to the concerns heard by the Commission that services are at times 'lifted and shifted' from the non-Indigenous service sector into the ACCO sector, without any changes to align with Aboriginal and Torres Strait Islander community priorities, needs and measures of success. This approach was described by some ACCOs as forcing 'square pegs into round holes' (chapter 9). It reveals a lack of understanding from governments of the knowledges and expertise that ACCOs bring, of the harms felt by Aboriginal and Torres Strait Islander people from service systems that do not align with their priorities, and of how to mitigate perceived risks of new models of funding or service delivery. The consequences of 'lifting and shifting' service systems can limit the ability of ACCOs to deliver services effectively. For example, the Victorian Aboriginal Child Care Agency noted that Closing the Gap 'reforms' identified in the Victorian Government's 2023 Budget:

> … 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. (sub. 75, p. 3)

Approaches to contracting often do not fit ACCO models of service delivery

Community ownership over the design and delivery of services is crucial to meet and respond to changing community priorities. As Children's Ground noted:

> Ensuring First Nations people are at the centre of service and system design, delivery and evaluation and in progress reporting … is the only way to generate culturally appropriate and meaningful outcomes and measures for their children, families and community. When people are involved in and have ownership over services, programs and measurement they understand what data is being collected about them and engage in collecting and using the data to inform and drive locally relevant solutions. (sub. 72, p. 18)

Ownership does not necessarily involve communities being 'ultimately responsible for every aspect of the delivery of the services themselves', consistent with the Western concept of the word, but as noted by Allies for Children and the First Nations Non-Government Alliance, with respect to their engagement on Child Protection Safe Houses:

> Ownership has been described by community members as being able to own child protection issues and have meaningful input to the operations of the safe house, including who works there and how things are done … (sub. 81, p. 4)

However, design of services is often driven by top-down approaches, which begins at the problem identification stage, with targets and key performance indicators not inclusive of Aboriginal and Torres Strait Islander approaches to success and wellbeing (box 3.3). As one ACCO providing out of home care services for children stated:

> The funding is impacted by what the government sees as important or what they think you should be doing. … Government has a very narrow view of health and wellbeing, and we have to try and work within that. … ACCOs are in the perfect position to lead the design of programs, if government do it we

> will get some watered down version that we will have to fix or try and work around, we need to be really involved in the design of any programs to support families, [government] put these things together without knowing what is happening on the ground. (SNAICC 2023, p. 30)

Co-design of services from the beginning, to scope community concerns and priorities and to establish key performance indicators, is one of the most important aspects of strengthening the community-controlled sector. The Commission heard many examples where this directly translated into improved outcomes for communities (box 3.4).

Box 3.3 – Imposed (rather than negotiated) key performance indicators can lead to worse long-term outcomes

The Commission heard from numerous ACCOs that the performance targets contained in their funding contracts are typically unsuited to measuring the nature and impact of their work (chapter 9). The nature of performance targets, outputs and outcomes stipulated in government contracts mean that ACCOs' ways of working – that address the long-term and structural issues affecting Aboriginal and Torres Strait Islander communities and families, rather than just treating the immediate and individual needs of clients – are not supported. The challenge for ACCOs is that, often, contracts and key performance indicators (KPIs) do not reflect these broader priorities. Although KPIs can sometimes be negotiated to take into account ACCOs' ways of working, this takes further time and resources for the ACCO.

A First Nations organisation, Community First Development, stated that:

> … Despite providing multiple, written reports over many years detailing our model and numerous community success-stories, the 'value' of the work we do with First Nations' communities seems to be dictated by whether we fit into service delivery categories that are specified by outcome areas framed in Portfolio Budget Statements, and whether we meet several generic [National Indigenous Australians Agency] Key Performance Indicators such as the number of people we employ and subsets of our employment data. (sub. 9, p. 11)

Another review participant, Torres Shire Council, explained that some programs have been judged as 'unsuccessful' where evaluation did not include Indigenous measures of success.

> For too long, policy makers and governments have over-complicated the root cause of policy and program failures affecting First Nations people. They have argued … that a locus of such failure resides in policy and program evaluation. Council submits that the root cause is the absence of Indigenous agency, Indigenous policy design and Indigenous program control. Council asserts that the primacy of focus now should be on the co-design of the programs emanating out of the work of the Joint Council, and consequently and subsequently there must be the co-design of effective and objective evaluation of the programs. (sub. 6, p. 3)

Box 3.4 – Wungening Moort: Families Healing

In 2016, the WA Department of Communities launched the *Building Safe and Strong Families: Earlier Intervention and Family Support Services Strategy*, which included a number of programs that sought to assist families and their differing priorities. One program was the Aboriginal In-Home Support Service (AISS) which aimed 'to provide intensive in-home support to Aboriginal families with complex needs to divert them from the care system.' AISS was established after the department acknowledged that to achieve better outcomes, they 'need[ed] to partner with and build capacity of Aboriginal Community Controlled Organisations …'

Wungening Moort, meaning 'Families Healing' in the Noongar language, is a consortium made up of four ACCOs – Wungening Aboriginal Corporation, Coolabaroo Community Services, Ebenezer Aboriginal Corporation and Moorditj Koort. Wungening Moort delivers the AISS by offering an in-home support service for Aboriginal families who are currently in contact with the child protection system. The service supports families to keep children safely at home and to get children back home (reunification). After long-term advocacy that the usual departmental approach to child protection was not working for Aboriginal people in the region, Wungening Moort drove a different model of early intervention in child protection. A model was adopted that accorded with Aboriginal approaches to family healing; the service works directly with families to build on their strengths, supporting them in addressing parenting issues and putting in place strategies to ensure the safety of children and young people.

The results compared to the departmental approaches to early intervention have been significant. Over the 2021–2022 financial year, Wungening Moort worked with 361 families, providing 15,399 direct occasions of service, and 9,927 occasions of advocacy to other service providers for the families. The result of this work was that only 2% of the children at risk of entering care, and that engaged in the program, progressed into out-of-home care. When they exited the service, 92% of the children referred to Wungening Moort were living with their family 12 months later. In addition, Wungening Moort has facilitated the reunification of 46 children in out-of-home care with their parents or extended families. These results are directly reflective of one of the strengths of Wungening Moort – like many other ACCOs, it works holistically and side by side with the entire family towards positive outcomes for the children involved.

Source: WA Department of Communities (2021b, p. 1, 2021a, 2021d) and Wungening Aboriginal Corporation (2022, p. 20).

Narrow assessments of 'value for money' can mean ACCOs are overlooked in selection processes

Government grant and procurement policies typically aim to achieve value for money by encouraging competition to ensure the most efficient and effective organisations are funded. According to the Commonwealth Grant Rules and Guidelines 2017, competitive processes are required to allocate grants unless otherwise agreed to by a Minister, accountable authority or delegate (DoF 2017, p. 31). However, competition does not always promote the best outcomes, particularly where assessments on 'value for money' are more narrowly defined than what government guidelines suggest (PC 2017b, 2020a) (box 3.5). In particular, current assessment processes do not always seem to value the knowledges and expertise associated with providers' connection to communities and their ability to deliver culturally safe and capable services to the same extent as financial costs of service provision. This can result in contracts being awarded

to providers who can potentially deliver outputs at least cost (lowest price) on paper but are less locally appropriate, responsive and effective at meeting community priorities.

Box 3.5 – Interpreting value for money criteria

Value for money is a core principle in all government funding processes. For example, according to the Commonwealth Grant Rules and Guidelines 2017, value for money is based on a:

> … careful comparison of the costs and benefits of feasible options in all phases of grants administration, particularly when planning and designing grant opportunities and when selecting grantees. (DoF 2017, p. 29)

Government guidelines across jurisdictions emphasise many factors for assessing value for money, and that officials should consider both financial and non-financial aspects of the application, such as the fitness for purpose of the proposal and whole-of-life costs (DoF 2023c, pp. 11–12; NT Government 2022d, p. 15; Victorian Government 2023b).

While Australian Government grant and procurement rules do not mention the Agreement, the Budget Process Operational Rules, effective from December 2022, mandate that entities demonstrate how they will meet obligations under the Agreement (DoF 2022, p. 6). The Budget Process Operational Rules govern the management of the Australian Government Budget, and work alongside other guidance documents to ensure that the government's strategic priorities, such as the Agreement, are implemented across all budget processes. Changes to Budget processes so that they explicitly promote, support and encourage the Priority Reforms are discussed in chapter 7.

In particular, cultural needs and values of Aboriginal and Torres Strait Islander communities can be missed if they are not explicitly included in program design. The National Network of Incarcerated and Formerly Incarcerated Women and Girls noted in their criticism of Closing the Gap that the lack of cultural respect 'can manifest in healthcare services that are not culturally appropriate, educational curricula that does not incorporate Indigenous perspectives, and employment programs that do not consider cultural obligations and responsibilities' (sub. 47, p. 2). The Kimberley Aboriginal Law and Cultural Centre also highlighted the limited pathways available to prioritise funding to address cultural determinants in policy responses. For example:

> … the National Aboriginal and Torres Strait Islander Health Plan 2021–2031 incorporates the cultural and social determinants of health in its design. Despite this, there are still no commissioning pathways for programs that operate in the social and cultural determinants of health domain. $60.8 million will soon be made available under the Aboriginal and Torres Strait Islander Mental Health and Suicide Prevention Program, but cultural healing organisations are ineligible to apply. (sub. 39, p. 8)

The Commission heard that the criteria governments use to ascertain value for money can sometimes be 'skewed' in a way that does not recognise the value that ACCOs bring to designing services that are responsive to the priorities and needs of their communities (rather than priorities prescribed by governments). For example, the Commission heard that in one commissioning process, the remoteness of a service provider automatically meant that it received a higher risk rating, even though connection to a remote community could be a significant advantage to providing an effective service. Better aligning assessment criteria with the priorities of the communities where the funding is being directed would see governments

working with ACCOs to offer more meaningful and effective service systems. This requires integrating partnerships with Aboriginal and Torres Strait Islander people into decision-making processes to determine what and how criteria should be used in commissioning.

The use of competitive funding processes to obtain value for money can be limited in markets where there are few service providers (that is, where markets are 'thin'). Where there are few viable providers, such as in remote and regional settings, competitive funding processes are less likely to drive better outcomes, because funding agencies have less ability to switch between providers.

Competitive funding processes can disadvantage smaller ACCOs, as a larger proportion of their resources are directed to service delivery, leaving fewer resources to find and complete lengthy funding application processes. Smaller providers or those less equipped to respond to grant processes (for example, those in communities where English is not their first language or that may be less experienced dealing with government) can also find shorter time frames[4] challenging. This will be an impediment to growing the community-controlled sector, particularly in regional and remote communities in Australia. Short-term funding arrangements in this context also presents challenges to ACCOs as it creates significant uncertainty. This was highlighted by the Aboriginal Family Legal Service (AFLS) in relation to Family Violence Prevention Legal Services delivered to Aboriginal victims of family violence and/or sexual assault, which were transferred from mainstream organisations to ACCOs:

> This transfer of responsibility demonstrated a positive shift in government thinking about best practice service delivery for Aboriginal people. We have seen the benefits of our Aboriginal controlled service delivery apparent in the outcomes of our clients and the demand for our service. Nevertheless, AFLS and SAC were still required to competitively tender against non-Aboriginal organisations for the service, and the contract for the service is only for 3 years. This creates a lack of assurance around the ongoing sustainability of the metropolitan service as it is currently delivered by two Aboriginal organisations. (sub. 36, p. 5)

In contrast, larger organisations can use economies of scale, such as central human resources, finance and administration supports, to tender for large or multiple projects. In many cases this can lead to consolidation and bias in favour of larger organisations, such as large non-Indigenous NGOs. This was reflected in the observation of one ACCO that large organisations are preferred in the tendering process; and by a government agency noting their grants system automatically classifies certain organisation characteristics (such as remoteness) as higher risk.

In recognition of this, there are some government supports that assist smaller ACCOs. The Australian Government, through the National Indigenous Australians Agency (NIAA), for example funds four Indigenous Business and Employment Hubs (in Perth, Adelaide, Western Sydney and Darwin) that offer a range of supports to Indigenous organisations, including writing tenders and back-office administration. An evaluation of these hubs is underway (NIAA 2023b), although an Australian Parliamentary inquiry in 2021 heard that hubs were 'a highly effective way to build the capacity of new and established Aboriginal and Torres Strait Islander enterprises' and recommended that the Australian Government support more to be established (HoRSCIA 2021, pp. 40, 48).

[4] Many grant rounds only allow four to six weeks for service providers to respond to selection processes (PC 2017b, p. 243).

Transitioning services to ACCOs from non-Indigenous organisations

Part of the process of Aboriginal and Torres Strait Islander communities taking control over the programs and services they receive is for governments to share control in determining what services should be transitioned away from non-Indigenous organisations.

The Commission has heard that some funding is being redirected from non-Indigenous organisations to ACCOs, and that the Agreement has allowed some peak organisations to grow with more funding. For instance, the WA Aboriginal Family Legal Service highlighted the positive outcomes from funding that had been shifted to them, including that some newly-funded services quickly reached capacity, demonstrating a significant demand for culturally safe services (sub. 7, p. 7). Nevertheless, the Commission has heard frustration about the pace of change – both over the course of the Agreement, and in the longer term in transitioning mainstream services to ACCOs. Overall, governments' responses to the Agreement have been described as 'lethargic' (KALACC, sub. 23, p. 10). The CEO of the National Aboriginal Community Controlled Health Organisation (NACCHO) and Lead Convenor of the Coalition of Peaks also reflected that progress on the Agreement was 'too patchy' and 'too slow' and in particular highlighted that governments:

> … are not engaging face to face across the table with Aboriginal leaders who know what is needed in their communities, and they are not taking the programs out of government and giving them to us to run, as fast as they should be. … if they did that we would get much better results. And we have demonstrated that, NACCHO led on Covid, we saved 1000s of lives. (ABC 2023a)

As noted earlier, community control does not mean that every service can, or will need to be delivered by Aboriginal and Torres Strait Islander organisations (Coalition of Peaks 2019, p. 17). Indeed, in some cases, non-Indigenous NGOs can deliver culturally safe services, and some Aboriginal and Torres Strait Islander communities will choose to maintain longstanding relationships with existing NGOs that have demonstrated they can provide culturally safe services. However, where a community has a desire to transfer a service to an ACCO, this should be facilitated to achieve the outcomes of Priority Reform 2.

This could mean that if no suitable ACCO exists, the funding contract with the non-Indigenous NGO needs to be designed to support the transition process. The Commission has previously recommended that funding contracts should specify a clear path to developing the emerging ACCO, and to transfer skills and knowledge, including setting clear timeframes, with defined milestones, and resourcing of, amongst other things:

- employment and training of locally based staff across all service delivery roles (where appropriate)
- governance capacity to ensure the organisation is able to comply with all aspects of the funding agreement, including reporting and evaluation requirements
- a clear exit strategy for the non-Indigenous service provider (PC 2020a, p. 254).

Even if a suitable ACCO exists in a community, the transition of services away from mainstream providers may take time, adequate resources and support from governments through a coordinated approach.

> … we know that care, support and a deliberate approach is needed to ensure ACCOs and the services they deliver are set up for success. A major barrier to progress is the low level of funding provided for both the transition process and then the ongoing operations of the service once the transition has occurred. … This work requires considerable resourcing and expertise, which is not possible for all ACCOs. (APO NT, sub. 69, pp. 7–8)

A number of submissions (National Close the Gap Campaign, sub. 71, pp. 4–5; and Public Health Association of Australia, sub. 68, p. 6), for example highlighted the length of the process of transition by Gurriny Yealamucka Health Service in Yarrabah, Queensland, which took almost 30 years. And ANTAR said that 'the Gurriny case study demonstrates that capacity building is often a decades-long process and that

Aboriginal-led service delivery will at times differ radically from Western notions of accountability and governance' (sub. 42, p. 9).

This timeframe for transitioning highlights the potential level of commitment that is expected from ACCOs who often face unnecessary delays in the transitioning process due to constraints imposed on them by governments. As ANTAR noted:

> Whilst Gurriny gained a great deal from the organisational capacity development process, they identified a significant barrier to their capacity building process and transition of service delivery: frequently stringent requirements and the need to continuously demonstrate organisational and leadership capacity, stemming from an underlying lack of trust from key stakeholders in Government and Queensland Health. (sub. 42, p. 9)

Participants also highlighted the need for flexibility in the transition process to ensure that ACCOs are in control of the pace and the extent to which transition occurs, as well as the importance of community input in the design of service models in transitions (APO NT, sub. 69, pp. 9–10). As noted by Indigenous Education Consultative Meeting (sub. 63, p. 4), '[the] practice of reallocating non-Indigenous services to ACCOs for delivery, without genuine engagement with ACCOs on delivery approach or what is needed in that community, mean these are designed to fail.' Some promising examples of transitioning service delivery to ACCOs are highlighted in box 3.6.

Box 3.6 – Transitioning service delivery

Different approaches have been used to transition service delivery from mainstream organisations to ACCOs.

Partnerships where ACCOs lead the transition of service delivery

The evolution of the Australian Government's Connected Beginnings Program (CB) is one example of government listening to and acting on the knowledges and expertise of an ACCO to better design a program. CB aims to increase Aboriginal and Torres Strait Islander children and families' engagement with health and early childhood education and care services by improving access and providing culturally safe services. It is funded by the Australian Government departments of Health and Aged Care and Education. Candidate organisations go through a restricted non-competitive selection process, where only specific organisations are invited to apply. In 2022, SNAICC was engaged as the program's Community Partner, to support the program in scoping new sites and offering foundational and ongoing support to ensure the approach to project selection and design within sites is community-led and culturally safe (Coalition of Peaks 2022, p. 26).

Aboriginal and Torres Strait Islander leadership is also being driven through:

- a review of funding guidelines by SNAICC and the Department of Education to ensure alignment with the Agreement's commitments to ACCO leadership
- an Aboriginal organisation conducting the mid-term evaluation with input from SNAICC
- the Department of Education working with SNAICC on an ACCO Leadership Framework to increase ACCO leadership across CB in a culturally informed way, with a focus on opportunities to transition funding from non-Indigenous organisations to ACCOs to undertake backbone roles (Coalition of Peaks 2022, p. 26).

Box 3.6 – Transitioning service delivery

Prior to its involvement, SNAICC described the selection process as 'strongly [privileging] non-Indigenous organisations' (SNAICC, sub. 96, p. 17). As a result, very few ACCOs were funded under the program – only two out of 20 sites. SNAICC worked with the department to implement a site selection methodology, which 'centres Aboriginal child and family-values' and has resulted in the 10 new CB sites all having ACCO backbone organisations. There are now over 20 ACCOs funded as backbone providers across the country (SNAICC, sub. 96, p. 17). In 2021, the Australian Government committed $81.8 million to expand the program to 50 sites nationally by 2025, with the aim that all 50 sites will be ACCO controlled (Coalition of Peaks 2022, p. 26).

SNAICC highlighted this type of supported transition as a 'strong emerging example of good practice':

> The process for transitioning is bespoke and community led in every CB community. This ensures that the incoming ACCO and community, inclusive of cultural authority, are fully prepared and have ownership of both the transition and program activities. … It demonstrates that by putting community and cultural leadership at the centre, compelling organisations to plan for transition through contract requirements and investing in transition, services can be quickly and effectively transitioned to ACCOs from non-Indigenous organisations. The ACCO and community led approach to transition that is outlined in the Aboriginal Leadership Transition Framework is critical to the success of this approach. (sub. 96, p. 19)

This underscores that the ACCO sector cannot be strengthened without departments themselves changing their internal perceptions and practices. This cannot be achieved by departments alone. It requires opening up departmental practices to Aboriginal and Torres Strait Islander people to make assessments on actual or unconscious bias within the department. This is discussed more extensively in chapter 4.

Formalised local decision-making agreements with government

APO NT highlighted the Groote Archipelago Local Decision Making (LDM) Agreement between the NT Government and the Anindilyakwa Land Council as another key example of successful transitioning of services to community control:

> [The LDM Agreement] has also allowed greater community decision making and improved relationships and cooperation with the NT Government. The Local Decision Making Agreement identified short, medium and long-term priorities over a 9-year period for transition to regional and local control, and sets out the timeframes and processes to settle detailed implementation plans for each service transition. Implementation plans have so far been agreed in respect of housing, economic development, law, justice and rehabilitation, education, health and wellbeing, and local government. There is real progress in each area contributing to improved outcomes for Anindilyakwa people. (APO NT, sub. 69, p. 19)

Two of the short-term priorities that have been transitioned to the Anindilyakwa people are housing and education. The LDM Agreement states that for housing, the outcome goal is:

> A single, sustainable, diverse and culturally appropriate community housing system across all towns and satellite communities (considered Homelands by the NT Government) in the Groote Archipelago that the Anindilyakwa people control and take responsibility for. (NT Government and ALC 2018, p. 17)

Box 3.6 – Transitioning service delivery

The Anindilyakwa Housing Aboriginal Corporation (AHAC) was established in 2018 and now manages contracts for Homeland Services for 47 properties, providing Remote Housing Maintenance and Tenancy Support services for 300+ houses, and directly owns 39 houses (AHAC 2022, p. 3). Anindilyakwa leaders have spoken positively on the success of AHAC's service provision in the recent LDM progress report:

> We've been seeing a lot of changes [around housing]. Maintenance reporting was pretty flat. But people have started hopping onto social media, now that maintenance requests … [are] … going to us. So many requests, people are saying AHAC is getting things done. Now some people send photo, send to tenancy office, we send someone to help … Everyone is talking about what is happening here with housing. People are trying to do the same in other areas, and they come and visit us. Travel to lots of conferences and share the story. (NT Government and ALC 2022, p. 16)

Similar success has occurred in the transfer of community-control of education. In April 2020, The NT Government, Anindilyakwa Land Council and the Groote Eylandt Bickerton Island Primary College Aboriginal Corporation agreed to an education implementation plan. This plan has enabled the Anindilyakwa people to build a new community-controlled boarding school on Bickerton Island and to develop a bi-lingual curriculum which is grounded in culture and taught throughout the archipelago. Groote Eylandt Bickerton Island Primary College Aboriginal Corporation is recognised by the NT Government as the voice of the community, representing the Anindilyakwa people's priority in education and has led the transition of education services (ALC 2023).

Transferring of service delivery independent of government

The Commission heard a number of cases of Aboriginal Homeland communities that have taken responsibility for service delivery in education, establishing independent, Aboriginal community-controlled education institutions that have bypassed the state and territory education system (and are funded by the Australian Government and other avenues such as philanthropy). As APO NT noted, 'a lack of opportunity for service re-design has forced Aboriginal community-controlled groups and culturally relevant approaches to develop a new model and operate outside of the formal system in order to meet the needs of their communities' (sub. 69, p. 24).

One example of this was the Yothu Yindi Foundation, which '[after] a decade of dealing with the NT Education Department … turned to an independent model and became foundational partners with private school Barker College NSW' (sub. 64, p. 6) and established the T-6 Dhupuma Barker school in Gunyangara, Arnhem Land. The Yothu Yindi Foundation noted the model has:

> … delivered significant results, achieving and maintaining outstanding attendance rates and providing a learning environment that has seen the children thrive. Community control has been a critical part of the success, including in relation to the development of curriculum … But the unfortunate reality is that Dhupuma Barker is an exception, not the rule. It is noteworthy to see a shift taking place where Indigenous schools in remote communities are moving away from the public schooling system to partner with private schools for flexibility and increased ownership in their children's future. (sub. 64, p. 6)

Resourcing the transition process needs to consider the differences in the service model that is offered by an ACCO, and its associated costs, as well as considering whether the ACCO has the capacity to handle the administration and accountability arrangements associated with any funding commitments. As noted earlier, larger non-Indigenous NGOs can manage these costs through having access to centralised back-end operations. The Commission has heard that support to ACCOs is required in the transition process to ensure this imbalance in administrative capacity is addressed. Otherwise, governments could be setting ACCOs up to fail or to appear to be performing poorly as they divert service resources for administration purposes. This is discussed more fully in the following section on ensuring ACCOs are funded for the full cost of service delivery.

As an example, in an evaluation of the process of transitioning health services to community control in the Northern Territory (as part of the Pathways to Community Control program), insufficient funding was seen as a key barrier to success:

> … stakeholders believe that this funding does not cover all the costs of transition. Stakeholders identified many gaps in transition funding including infrastructure, staff housing and information technology (IT) costs. New … [Aboriginal community-controlled health organisations] … require significant additional support to establish organisational structures, systems and processes and stakeholders believe that this has not been fully recognised. (Nous Group 2022, p. 11)

The process of transitioning services may also be preventing progress

Transitioning services can also be complicated by the approach governments use to select who can apply for funding and the process of selection.

Some non-Indigenous NGOs have chosen not to tender for programs in Aboriginal and Torres Strait Islander communities, or are themselves working towards transitioning services to ACCOs, in recognition that ACCOs could better deliver a culturally safe service. For example, SNAICC is working in partnership with Life Without Barriers to transfer all out-of-home care services to Aboriginal and Torres Strait Islander community-control within 10 years. One review participant highlighted this example as best practice in how partnerships can facilitate transition of services that are subject to competitive forces (The National Closing the Gap Campaign, sub. 71, p. 5).

However, the Commission regularly heard concerns about governments contracting non-Indigenous NGOs who had engaged ACCOs 'to tick cultural capability boxes' (Indigenous Education Consultative Meeting, sub. 63, p. 4) rather than governments funding ACCOs themselves. The APO NT stated that:

> Governments need to do better so they themselves aren't contravening commitments under the National Agreement, especially regarding prioritisation of funding to Aboriginal community-controlled organisations and partnerships … APO NT resources end up being directed at providing local intelligence to service providers that governments fly in from interstate, rather than working with APO NT to build capacity of local service providers … (sub. 10, pp. 4, 2)

And while the term 'black cladding' is more often used in commercial sectors, the Commission heard of instances where non-Indigenous NGOs put in place subsidiary arrangements to compete for funds where ACCOs are meant to be prioritised. Indigenous Education Consultative Meeting have argued that governments should flip the power dynamic that is created through these arrangements 'by engaging the ACCO or Indigenous organisation with the demonstrated cultural capability … to partner with a relevant non-Indigenous organisation if further capacity is required' (sub. 63, p. 4).

Some organisations have also expressed concerns about governments leaving them out from selection processes for funding rounds. For example, Children's Ground noted that while it is an ACCO and satisfies the criteria as detailed by the Agreement, it finds itself closed out from funding opportunities:

> In March 2022, Children's Ground was advised by executive bureaucrats in the Department of Health that we were not a priority funding recipient by the Department because we are not registered under the CATSI Act. … we are extremely concerned by the assertions by Government that we aren't … [an Aboriginal Controlled Organisation]. This assertion is firstly wrong and secondly discriminatory given the funding implications as detailed by departmental staff. We are also extremely concerned by the continued government funding focus on the ACCO's and Coalition of the Peaks … (sub. 72, p. 5)

Contracting arrangements also present issues in promoting self-determination in service design and delivery

In previous inquiries, the Commission has discussed a number of additional issues with contracting arrangements that governments have not fully addressed and so continue to constrict the ability of ACCOs to design and deliver services to meet the priorities of the communities they serve.

Governments use overly prescriptive contracts to manage perceived risks

In funding contracts, governments may mitigate perceived risk by using compliance controls like short contract lengths, narrowly defining outputs, and requiring regular and detailed reporting. This can mean that ACCOs that are perceived as riskier to non-Indigenous providers due to certain characteristics (remoteness, offering new service models, relative inexperience in mainstream service provision), may face more cumbersome reporting burdens (chapter 9). Some ACCOs told the Commission that their reporting burden is high for the relatively small funding they receive – and they needed to do more work to justify funding in comparison to non-Indigenous service providers. In a transactional commissioning approach, governments appear to give greater weight to these perceived risks over the benefits and value that ACCOs provide but which governments do not account for in their assessments.

Inflexible contractual terms present challenges for ACCOs. As noted by Kinaway Chamber of Commerce:

> … the types of funding agreements organisations are often locked into are imposed by the Commonwealth and there is limited opportunity to negotiate arrangements that would enable the better administration of programs – a one size fits all approach is taken and our experience with NIAA is that often an overly bureaucratic approach is taken. (sub. 21, p. 6)

In some cases, funding is tied to particular expenditure items or timeframes, which constrains organisations from reallocating resources among its priorities. For instance, annual funding allocations during the period of a contract means that the service provider has limited control of when funding is spent, thereby limiting operational efficiency in cases where costs differ each year, particularly as unspent funds may have to be paid back to the funding agency (Blaxland and Cortis 2021, p. 17). Many grant contracts also tightly allocate staff positions to clients, with no flexibility around the roles of staff and no capacity to innovate, and therefore organisations are less able to allocate resources to effectively meet community needs.

The many conditions or 'hoops' that ACCOs have to jump through can present a barrier to obtaining funding. One Aboriginal and Torres Strait Islander organisation said it was easier to deal with a major bank than seek government funding (chapter 9). Several Aboriginal and Torres Strait Islander organisations said they are now avoiding government programs and funding if they do not fit with their priorities and models of care. This was highlighted by Yothu Yindi Foundation in establishing the T-6 Dhupuma Barker school in Gunyangara, Arnhem Land (box 3.6). Some ACCOs avoid government funding if they can secure other sources, in order to reduce administrative burden and prescriptive contracting; others are more strategic about which grants they select, in order to avoid the cumulative costs of applications for multiple (small) grants (chapter 9).

Where government contracts do not cover the whole cost of service provision, ACCOs are forced to seek alternative funding

Many Aboriginal and Torres Strait Islander organisations have told the Commission that their funding does not cover the full cost of providing services, such as funding for transportation costs to deliver health services and remote service delivery (chapter 9). Government funding often does not cover investment in infrastructure and capital works that are needed to effectively deliver, or improve, services, capacity building to transition services successfully from mainstream providers (including accounting for their limited access to larger centralised administrative operations), and in supporting ACCOs to strengthen their workforce and retain staff (box 3.7).

The Commission heard that funding for services to very remote communities, such as those in the Torres Strait or Homelands, face particular funding pressures to meet service priorities. The Queensland Productivity Commission inquiry on *Service delivery in remote and discrete Aboriginal and Torres Strait Islander communities*, for example noted that 'Indigenous and other councils in remote communities control many billions of dollars of assets' and that there are concerns about their ability 'to generate sufficient revenues to recover capital, maintenance and operating costs over the life cycle for their assets'. For example, the final report notes that 'the Torres Strait Island Regional Council, alone, has over $1.1 billion of assets on its books, including around $500 million of social housing' (QPC 2017a, p. 298).

Tightly prescribed funding contracts often do not cover essential administration, management, and infrastructure costs which allow the ACCO to operate. Small organisations are often disproportionately affected by this, as they often rely on multiple small project grants from a variety of different funders, many of which have restrictive funding rules and poor coverage of overhead costs. Managing multiple small contracts is inefficient, as the need to make frequent funding applications and to juggle different timeframes, rules and reporting requirements detracts from the core work of supporting communities. This issue was highlighted in the Commission's study into Aboriginal and Torres Strait Islander visual arts and crafts in relation to art centres:

> Art centres receive operational funding for activities that directly relate to producing art, but not for their other social, cultural and community roles, or for infrastructure projects and capital improvements. This leaves art centres reliant on a patchwork of government grants, which can be burdensome to identify and apply for, highly competitive and unpredictable — a situation described by a sector participant as a 'vortex of applications'. (PC 2022a, p. 27)

The Commission has previously recommended several reforms to ACCO funding models, including that funding reflects the full costs of service delivery (PC 2020a, p. 37). This means that funding takes into account higher costs of service delivery in regional or remote areas and covers other functions that support service outcomes (such as reporting and evaluation). Where service delivery requires access to infrastructure that is not available (such as staff housing) agencies should look beyond the immediate grant funding decision and consider how best to coordinate their expenditures on capital assets with their grant programs for services (PC 2020a, p. 20). The Commission again heard in this review that a lack of coordination from many funding agencies that support services in very remote communities, such as in the Torres Strait and Northern Territory Homelands, can result in buck passing across different levels of government, and no one taking responsibility for funding of essential long-term community assets or infrastructure.

Box 3.7 – The ACCO workforce: addressing persistent skill gaps and barriers

Aboriginal and Torres Strait Islander organisations noted workforce strengthening and retaining staff as a key challenge for their operations. This is most acutely faced by ACCOs that operate in regional and remote areas given the limited available workforce. For example, we heard that in some cases, workforce shortages in some remote areas have reached a point where medical procedures have been cancelled because of the lack of health care professionals.

Skill needs and workforce challenges vary by sector. The first four SSPs have all identified challenges specific to the health, disability, early childhood care and development (ECCD) and housing sectors. For example:

- In the disability sector, challenges include limited recognition of cultural knowledge, community connection and skills; in regional and remote communities, the need for transportation and accommodation options, and barriers in obtaining qualifications (Joint Council 2022c, p. 26).
- In the housing sector, challenges include the high degree of cultural capability required, which is not recognised in the award wages; broad and ill-defined skill sets; and high turnover caused by burn out (Joint Council 2022a, p. 9).

Several of the workforce-related actions in SSPs aim to achieve longer-term benefits. The health SSP specifically noted that more needs to be done to develop career pathways, including from high school, and expanding registered training organisations. This aligns with research published by the Lowitja Institute (2020), based on case studies in both the Northern Territory (2020) and New South Wales (2020), that concluded:

> Career development and pathways for advancement for Aboriginal and Torres Strait Islander health staff across all professions, roles and locations should be a priority for government, the community-controlled sector, professional associations, other peak bodies and policy makers. (Nathan et al. 2020, p. 49)

Jurisdictional implementation plans also show several reform strategies to promote Aboriginal and Torres Strait Islander participation specifically in the health workforce, which has perhaps the most developed workforce strategies. A key challenge however is the need to align the actions contained in various different workforce plans and strategies. We heard from the National Health Leadership Forum that:

> While the Priority Reforms have value, there can be misalignment between the Agreement and other strategies that have been developed through other processes. There is no coordination between different strategies and jurisdictions have failed to set up governance mechanisms for commitments made at the Health Ministers Roundtable. (pers. comm., 14 June 2023)

Funding is key to strengthening ACCO workforces

It is important that ACCOs can offer stable, longer-term employment to skilled staff, including professionals. ACCOs have often argued that short-term funding has implications for the ACCO workforce, which has flow-on effects regarding the availability of culturally beneficial services for communities (South Australian Government, sub. 28, pp. 7–8).

Some jurisdictions have quarantined funds for the purpose of strengthening the Aboriginal and Torres Strait Islander workforce (either specifically for ACCOs or more generally for both ACCOs and the public

Box 3.7 – The ACCO workforce: addressing persistent skill gaps and barriers

service). For example, the Victorian Aboriginal Workforce Fund has a steering committee of Aboriginal community representatives established to guide the allocation of the funds through the principles of 'promoting cultural safety, minimising reporting burden and supporting Aboriginal-specific measures of success' (Victorian Government 2022c, p. 93). The Victorian Government consider the fund as being a:

> … step towards a more self-determined approach to supporting the sector – in this case, its workforce development needs. Lessons and reflections from the [Aboriginal Workforce Fund] can be built on to progress funding reform, drive the sustainability of Aboriginal organisations, and continue to transfer more power and control to communities. (Victorian Government 2022c, p. 93)

Overall, funding pools that incorporate similar design features as the Victorian Aboriginal Workforce Fund can help to target workforce issues that ACCOs themselves identify as important.

ACCOs compete for talent with non-Indigenous NGOs and the public service

Under the Agreement, one of the elements that defines a strong sector is a 'dedicated and identified Aboriginal and Torres Strait Islander workforce … and where people working in community-controlled sectors have wage parity based on workforce modelling commensurate with need' (clause 45b).

We heard that ACCOs have difficulty retaining Aboriginal and Torres Strait Islander staff when salaries and benefits are better in government agencies, non-Indigenous community service providers, or employment in competing sectors. ACCOs in the Torres Strait, for example, noted that government agencies employed local workers who are then not available for ACCOs to employ. Several ACCOs told us about the wage disparity with government agencies in particular, or where (non-local) workers were being provided with benefits not available to local workers (such as subsidised housing).

The ability to compete with non-Indigenous NGOs or with government agencies in the labour market is in part determined by the quantum of funding that an ACCO receives. As discussed above, it is vital that ACCOs are funded to meet the full cost of services that are designed and delivered in a way that meets the needs of communities.

Funding for many ACCOs is unnecessarily insecure and uncertain

Funding agreements in the community services sector are often short. Previous Commission reports have found that they generally run between one to three years (PC 2017b, p. 245). This is consistent with what we heard from review participants (chapter 9) and from analysis of Australian Government data during this review.[5]

Aboriginal and Torres Strait Islander organisations that participated in this review provided numerous examples of funding uncertainty, where grants are not always renewed, or renewed very late (sometimes after the existing contract has already ended) for the delivery of essential services, such as health services (chapter 9). Participants argued for ongoing funding arrangements and longer-term grants to improve continuity in ACCOs' program and service delivery (chapter 9). Without such changes, it is difficult to see

[5] Commission estimates based on GrantConnect data relating to duration of Australian Government grants published in financial years 2017-18 to 2023-24 categorised under: Indigenous Arts and Culture; Indigenous Communities; Indigenous Education; Indigenous Employment and Business; and Indigenous Health.

how systemic change will be achieved. For example, the National Network of Incarcerated and Formerly Incarcerated Women and Girls have criticised Closing the Gap efforts for often taking:

> … a short-term view, with funding allocated in cycles that do not allow for long-term, sustainable change. A more sustained and holistic approach is needed to address the deeply entrenched disparities. (sub. 47, p. 2)

Short-term contracts and insufficient notice of contract renewals also impede ACCOs from planning and operating their services (Aboriginal Family Legal Service WA, sub. 7, Community First Development, sub. 9). They also present challenges to maintaining the skilled workforce required for service delivery, as it is difficult to attract and retain highly skilled workers when ACCOs can only offer short-term, insecure employment (Aboriginal Family Legal Service WA, sub. 7, p. 7). The Commission also heard that insufficient notice periods can exacerbate the existing power imbalance between governments and ACCOs. This is because it often limits ACCOs' ability to negotiate with governments on how to adapt service models or define government obligations in the contract. ACCOs are then forced to accept the conditions of the contract given to them because they have no time to negotiate alternatives without having to shut their doors (at least for a period).

A lack of certainty in funding entrenches the power imbalance between governments and ACCOs, and the perception that ACCOs are the 'lesser' or 'passive' partner to a service agreement. Certainty in funding is improving for the commissioning of certain health ACCOs. In 2022, the Australian Government announced that from 1 July 2023, the Government would move to rolling four-year agreements, with funding to health ACCOs increasing by 3% year-on-year, including indexation (Hunt and Wyatt 2022). This change should be replicated in other sectors where funding arrangements remain too short.

The Commission has previously recommended a number of measures to improve certainty of funding arrangements, including:

- default contract lengths for children, family and community services that are provided on an ongoing basis should be set at a minimum of seven years. These would include early termination clauses to manage any potential risks of ongoing failure in service delivery
- that government agencies allow sufficient time (a default of three months) for providers to prepare responses to funding opportunities, including the development of integrated bids across related services
- publishing a rolling schedule of upcoming grants and tenders over (at least) the following twelve months
- notifying providers of the outcome of grant and tender processes in a timely manner (PC 2017b, 2020a).

3.3 New approaches to commissioning ACCOs

The Commission heard from Aboriginal and Torres Strait Islander service providers that some jurisdictions are reforming their commissioning approaches to recognise ACCOs' ability to effectively manage and deliver government services (chapter 9).

Several governments have released whole-of-government policies signalling a move towards more relational approaches to the commissioning of human services. For example, in June 2022, the WA Government released the *State Commissioning Strategy for Community Services 2022.* Its guiding principles include a community and person-centred approach focused on outcomes, and for inclusive services with a focus on Aboriginal outcomes and partnerships. Procurement South Australia published a Commissioning Guideline in February 2023 that establishes principles for departments to follow. The guideline draws on the Productivity Commission's four-step commissioning cycle (2017b, p. 22) and incorporates the tasks and decisions that translate government policy into services and systems that are responsive to community needs, and that seek to achieve clear outcomes that reflect community aspirations. It puts people at the

centre of services and recognises the specialist knowledge and value of the service sector (Procurement Services SA 2023, p. 1). One of South Australia's service delivery principles is that commissioning is:

- relationship-based, with open, ongoing communication and information exchange
- understanding of the conditions under which work is happening in the sector and current capabilities
- cognisant of limitations and deficits, which are then addressed together in partnership (Procurement Services SA 2023, p. 3).

Similarly, the ACT Government's *Commissioning Roadmap 2022–2024* states that, by 2030, commissioning will transform the ACT Government's human services system to better respond to community need, both existing and emerging, through increased flexibility and opportunities for innovation (ACT Government 2022f, p. 6).

While progress across these jurisdictions is welcome, review participants have noted that these whole-of-government documents have not fed through to changes at the agency level.

Some states and territories are also taking a whole-of-government approach to improving the way they commission ACCOs specifically:

- In 2023, the NSW Government funded the NSW Coalition of Aboriginal Peak Organisations to lead a project to 'develop a model for sustainable funding and accountability arrangements for ACCOs that recognises the unique value ACCOs deliver in Aboriginal communities and supports improved outcomes for Aboriginal people' (NSW Government, sub. 32, p. 15). The NSW Government has also begun supporting an Aboriginal-led commissioning model with Absec (the NSW Child, Family and Community Peak Aboriginal Corporation).
- The Victorian Government is implementing a suite of reforms to the way funding is provided to ACCOs. Reforms include longer term funding contracts, a pooled outcomes-based funding model and a reduction to onerous reporting and accountability processes, including consolidating multiple funding reports within the one department (for example, with Djirra, box 3.8) (Victorian Government 2021, p. 21). The Victorian Government has also committed to a further Expenditure Review in 2024, which will provide an opportunity to consider 'the extent to which, in transferring service delivery from mainstream organisations to ACCOs, the Victorian Government is reforming the way that services are contracted, funded, delivered, reported and evaluated' (sub. 98, pp. 8–9).
- The SA Government is working on modifications to ACCO funding approaches that increase the duration of funding agreements, provide flexibility to allow for services to respond to changing needs and account for economies of scale including using subsidies or other instruments to control costs in remote and regional areas (SA Government 2021, p. 24). The SA Government is also working in partnership with the South Australian Aboriginal Community Controlled Organisation Network 'on a whole-of-government policy framework and approach for the delivery of Priority Reform 2 … focused on ensuring the transition of services occurs in a manner which builds and sustains the strength of … [ACCOs] … and provides the capacity to increase service delivery load.' This includes developing ' … a whole of government practice guideline to inform working with ACCOs, to increase the proportion of services delivered by ACCOs, and best support ACCO growth' (SA Government, sub. 54, p. 4).
- The WA Government is in the process of developing a whole-of-government ACCO Strategy, which will complement its *State Commissioning Strategy for Community Services* (WA Government 2022a, p. 19).
- The NT Government noted that 'Local Decision Making policy … provides a vehicle for the transition of services to Aboriginal organisations, at the discretion and desired pace of communities' (sub. 70, p. 7). A key insight from an evaluation of this policy was that there were government areas where:

  > … immediate positive shifts have been made to transition services delivery to local management and control. In other areas, notably Education, more significant nurturing of changes in government culture are required if trust in collaboration and sustainable transitions are to be made, and new generations are to grow up strong in ancestral land and law. (Spencer et al. 2022, p. 6)

Box 3.8 – Djirra's single funding agreement model in Victoria

Djirra is an ACCO that provides support to Aboriginal and Torres Strait Islander women and children in Victoria affected by family violence. Djirra previously held 15-20 separate funding streams from the Victorian Department of Justice. These programs are now covered by a single five-year funding agreement with a six-monthly reporting cycle. This model has yet to be replicated by other departments, with whom Djirra holds a further 42 separate funding streams.

The single funding agreement between Djirra and the Department of Justice has significantly **reduced Djirra's administrative burden** and shifted responsibility for coordination onto the department. Djirra previously had to coordinate with more than seven business units within the department, where it now has a single contract manager.

Djirra noted that the approach **relies on, and helps, building trust** with the department. The six-monthly reporting cycle simplifies reporting and reduces ad-hoc requests for information. Djirra also still has access to subject matter experts within the department and can communicate with them at any time.

A strength of this model is the **improved flexibility** it offers. For example, where Djirra had separate contracts with a single government department, it took nine months for sections of that department to approve a request to move inactive funding from one program to another, delaying response to time-critical demands for services. By contrast, a single funding contract provides Djirra with more discretion to reallocate funds between programs to meet changing priorities, and consultation with the department is simplified.

Another key benefit is that **key performance indicators** (KPIs) have been co-designed by both parties. Typically, KPIs are imposed and reflect compliance needs rather than outcomes. In Djirra's funding reform, a KPI matrix was co-designed for use by departmental units. This allowed for a better reflection of the impact of investment, and for multiple programs to affect the same KPI. It also allows Djirra to better design its operations to meet community needs, while providing accountability and integrity.

One major **barrier to implementing** this kind of reform is the complexity of some departments' grant management systems. Changing these systems can require considerable resources up front, while the associated (substantial) gains are likely to materialise in the longer term. As such, making sure departments are ready to establish such funding models requires sustained commitment to change within the relevant authorising environment. Establishing this form of contracting will also require **continuous improvement**, particularly as the agreement grows to encompass more programs.

Source: Djirra (pers. comm., 4 July 2023).

Changes to commissioning processes are also being implemented within individual government agencies. For instance, the Australian Government Department of Social Services (DSS) is leading the *Stronger ACCOs, Stronger Families* initiative which 'aims to increase the number of community-controlled organisations delivering services under the department's Families and Children Activity' (DSS, sub. 74, p. 9).

DSS is also implementing the Improving Multi-disciplinary Responses (IMR) Program, which seeks to address barriers experienced by Aboriginal and Torres Strait Islander organisations that are supporting families and communities experiencing multiple and/or complex needs, when they are applying for Australian Government

grants. Key elements of the IMR include 'co-designing the IMR grant with First Nations people and revising the grants process to improve accessibility for applicants' (DSS, sub. 74, pp. 10–11). According to DSS:

> These changes received positive feedback from First Nations organisations applying for the grant. The IMR program provides an example of transforming the grants process for a single project. It is acknowledged that to achieve systemic change examples like this one need to be examined and replicated wherever possible to successfully transform organisation level processes. This is supported by the portfolio's approach to developing formal strategies to guide portfolio and agency or department-wide transformation in response to Priority Reform 3 … (sub. 74, p. 11)

The WA Department of Communities has also developed its own departmental ACCO Strategy. The Strategy aims to improve the way the department commissions and delivers services to Aboriginal children, families and communities, while supporting the development of ACCOs to increase their capability to deliver place-based and culturally appropriate services across Western Australia (WA DoC 2022) (box 3.9).

Box 3.9 – WA Department of Communities' ACCO Strategy and Commissioning Plan

The WA Department of Communities has released two strategic documents relating to growing ACCOs' share of service delivery in Western Australia – the *Agency Commissioning Plan* (2021c) and the *ACCO Strategy 2022–32* (2022). Some aspects of the wording of both documents are consistent with the Agreement. For example, the Agency Commissioning Plan prioritises 'the leadership of Aboriginal people and organisations in the planning, design and delivery of services' (p. 6) and looks to 'increase market share for Aboriginal Community-controlled Organisations and Aboriginal businesses' (p. 18).

The department's ACCO Strategy states that its key pillars include cultural safety and governance, partnerships, and economic opportunities (WA DoC 2022, p. 10). Two of the stated objectives of the strategy include: that communities' service delivery models are co-designed in partnership with ACCOs, to provide locally informed, place-based and culturally safe services; and that communities will procure ACCOs to deliver frontline services to Aboriginal children, families and communities.

The Commission has heard mixed perspectives from ACCOs on the Strategy and Plan. Several ACCOs stated that the Strategy is a promising start. However, concerns have also been raised around its early implementation. In its submission, the Kimberley Aboriginal Law and Cultural Centre (KALACC) noted some limitations in the co-design processes, as it had unsuccessfully:

> … sought to engage with [WA Department of] Communities around commissioning … It is clear that at this present point in time, [the WA Department of] Communities is not yet ready to have these Co Design and Commissioning discussions with KALACC. (sub. 23, p. 10)

One ACCO expressed concern about the ability of ACCOs to lead the ACCO Strategy, as opposed to just being a partner of a large non-Indigenous NGO.

Another problem raised is that government efforts to build capacity were uncoordinated, limiting ACCOs ability to benefit (chapter 9). For example, the WA Government released one-off funding for capacity building at the same time as it was trying to prioritise ACCOs in tendering for contracts. One service stated that the timing of this assistance meant that smaller ACCOs were disadvantaged in the process, given they would have had to split their time and limited resources between applying for assistance for

Box 3.9 – WA Department of Communities' ACCO Strategy and Commissioning Plan

capacity building and writing tenders to provide services, while larger, more established ACCOs could simply do both (chapter 9).

Another issue discussed was that the reporting burden was the same, regardless of the funding amount. One smaller ACCO stated that where funding amounts are small, reporting requirements should be less burdensome relative to larger funding amounts.

The Australian Government Department of Health and Aged Care is undertaking a four-year program of work to review programs aimed at improving health outcomes for Aboriginal and Torres Strait Islander people, and to transition activities, where appropriate, to 'First Nations-led organisations' (NIAA, sub. 60, attachment C, p. 7). The First Nations Health Funding Transition Program will also examine mainstream programs expected to target Aboriginal and Torres Strait Islander peoples' health outcomes and identify benchmarks and opportunities for improvement. This work is guided by an advisory group co-chaired by the First Assistant Secretary, Financial Management Division, and the Deputy CEO of NACCHO (NIAA, sub. 60, attachment C, p. 7). APO NT advocated this approach should be one 'adopted by other Commonwealth departments as well as by the NT Government' (sub. 69, p. 7).

While these reforms show promise, they are largely in their planning or pilot stages and so it is too early to tell how effective they will be. For example, while the WA Department of Communities appear to be taking a promising step in reconsidering its approach to commissioning services, some early concerns have been raised on its implementation during the course of this review. These types of reforms would need to be rolled out more widely before ACCOs and service users see improvements on the ground. In order for pilots to help inform further policy decisions, and to apply any lessons more broadly, Indigenous-led evaluation will be crucial (chapter 7; PC 2020b).

Grant and procurement guidelines could be improved at the agency and whole-of-government level

Grant programs are a prominent source of ACCO funding and, therefore, will play a key role in any changes under Priority Reform 2. The Australian Government has stated that the current *Commonwealth Grants Rules and Guidelines 2017* provide flexibility in how entities can work with ACCOs to administer grants and achieve government policy outcomes. This means there is 'flexibility now for Commonwealth entities to preference ACCOs in the selection of grants, to achieve their obligations under the Agreement' (Australian Government 2023a, p. 20). In 2021, the Australian Government stated that it will work in partnership with the Coalition of Peaks to develop a suite of materials to guide and support agencies to develop and implement their own prioritisation policies within their existing grant programs and procurement activities (2021, p. 15). Agency guidance was developed for the 2023-24 Budget. This guidance was developed to assist Australian Government agencies work through the best approach to implement clause 55b when they consider new policy proposals. It also aims to support agencies to embed this clause within Federal Funding Arrangements (NIAA, sub. 60, attachment C, pp. 8–9).

At the state and territory level, there has been mixed progress in amending grant and procurement guidelines to prioritise ACCOs. For instance, the WA Government's *State Commissioning Strategy for Community Services* states that ACCOs should be prioritised where service users are expected to be Aboriginal and Torres Strait Islander people (WA DoF 2022, p. 10). By contrast, numerous

whole-of-government funding guidance documents have been released since the start of the Agreement, but these make no mention of prioritising Aboriginal and Torres Strait Islander organisations. Some, such as the NSW Government's *Grants Administration Guide* (2022) and SA Government's *Commissioning Guideline* (2023), contain many of the principles of relational contracting (to be applied across all human services) but do not mention Aboriginal and Torres Strait Islander organisations.

The SA Government has noted that it is in the process of reviewing its 'grant and procurement mechanisms and guidelines in collaboration with the South Australian Aboriginal Community Controlled Organisation Network, ACCOs and the non-government sector, including by considering alternative service/contractual models for shared outcomes and responsibilities' (sub. 54, p. 5).

The WA Government has also introduced new participation requirements to its Aboriginal Procurement Policy where, in contracts valued at $5 million or above, suppliers for certain government contracts must meet Aboriginal employment and Aboriginal business subcontracting targets in several sectors, as well as for any service being delivered predominantly to Aboriginal and Torres Strait Islander people, or that targets the specific needs of Aboriginal and Torres Strait Islander people (WA DoF 2021). According to the 2021–2022 Aboriginal Procurement Policy Performance Report, only a minority of contracts awarded under the WA Government's *Aboriginal Procurement Policy* were for community services (26 of 262 contracts and 38% of contract values) (WA DoF 2023).

The NSW Government changed its procurement rules by giving first preference to, and directly negotiating with, Aboriginal businesses in procurements up to $250 000. It has also changed participation requirements in all contracts valued over $7.5 million to require Aboriginal participation through employment, training or subcontracting arrangements with Aboriginal businesses or members of staff (NSW Government 2022b, p. 67).

Despite some progress, no whole-of-government grant guidelines have been changed. Without clarity at the whole-of-government level, agencies are likely to differ in their approach to implementing changes to ACCO funding. The Commission previously found that funding practices differed between government departments with regard to expenditure for children in the Northern Territory.[6] This likely reflects the difference in objectives of their funding programs – for example, the Indigenous Advancement Strategy funds community-led initiatives and aims to empower Aboriginal and Torres Strait Islander people, whereas the DSS' funding is directed towards providers that are able to deliver predetermined evidence-based programs (PC 2020a, p. 75). In the context of the Agreement, funding prioritisation for ACCOs has seen limited progress.

Success relies on governments sharing power over decisions

For the most part, where governments have devolved decision-making power over the commissioning process to ACCOs, governments are still the ones setting the limits to which self-determination is supported by these arrangements. Whether that be to just allow ACCOs more flexibility to make resource allocation decisions within an established service contract, or to fully lead the commissioning process. In each case, governments have retained primacy over decisions on how commissioning for services are undertaken – including how communities will be represented in the process and when.

From a public finance perspective, it makes sense that decision-making arrangements are controlled by governments, as they are ultimately accountable for how public funds are collected and allocated efficiently, and to effectively achieve public outcomes. Priority Reform 2 in the Agreement, however, implies that governments,

[6] For example, in 2018, the Department of the Prime Minister and Cabinet spent 47% of its funding relating to child and family services in the Northern Territory on Aboriginal and Torres Strait Islander organisations, and 18% on secular organisations (PC 2020a, p. 75). By contrast, most organisations receiving funding from the (Australian Government) Department of Social Services were non-Indigenous, often with a national or international presence.

under existing arrangements, are neither equipped nor able to be held accountable for the decisions they are making for Aboriginal and Torres Strait Islander people. For programs and services aimed at meeting Aboriginal and Torres Strait Islander people's priorities, governments alone do not have capacity to understand the full nature of risks, harms or benefits beyond the traditional frameworks governments have used.

Over time, governments have developed public finance and governance rules that ensure they are equipped and can be held accountable for the decisions they make on program and service funding and design. This includes how to assess the costs and benefits of actions, monitor and evaluate outcomes, and manage risks and distributional impacts. As noted earlier, these grant and procurement guidelines do not preclude the consideration of broader values, expertise and knowledges, but with power in applying these guidelines sitting solely with government, it is not clear how self-determination, as implied by Priority Reform 2 can be promoted. Moreover, when government funders do not have the cultural capability and understanding of the value that ACCOs bring, they are also less likely to trust the approaches they propose. That is, they will fail to fully understand the 'value for money' proposition of an ACCO model of service that is tailored to fulfill the specific priorities and needs of the community. As an example, the Wungening Mort model of child protection was designed to respond to the way Aboriginal communities worked with early intervention systems, to displace the clinical model of intervention that was characteristic of government service delivery (and delivered relatively poor outcomes). Their time spent working with families who had been classified by the department as being on the borderline of having children removed, resulted in 97% of families in that community not coming into contact with Child Protection for 12 months (box 3.4).

The promising practices that some governments are implementing to how they commission services and programs does not appear to be driven by structural changes. The Commission has heard that it is often personality-dependent or driven by the leadership of Aboriginal and Torres Strait Islander organisations. For example, we heard an instance of where shared decision-making occurred only where Aboriginal and Torres Strait Islander parties had pushed governments to 'come to the table' by declining funding grants that did not reflect the priorities of their communities. It was only the decision not to accept the money (and consequent realisation by government that it would be more expensive and less effective for them to deliver the service themselves), that changed the dynamic of top-down, government-led commissioning.

Parts of government agencies have also told us how they have to challenge their own bureaucracies to trial new ways of commissioning that allows flexibility in contract design or to bring communities into the decision-making process on how services are designed and delivered. These problems do not appear to stem from the rules of the game but speak to cultures within governments that have not transformed to share power. Therefore, even where whole-of-government funding and contracting rules do not prevent best practice approaches to funding and contracting with ACCOs, the slow pace of change to practices and habits can impede implementation of the Agreement and its Priority Reforms. And the rules do not actively promote different ways of working with ACCOs in line with the Agreement. It appears that contract managers are often doing what has always been done, even where there is no explicit impediment to doing things differently. This demonstrates the lack of transformation that has occurred as envisaged by Priority Reform 3, and shows how much contracting processes and public service cultures bear on whether governments are able to make progress to achieve Priority Reform 2.

As noted earlier, this can have significant economic, social and environmental consequences, where decisions on cost and benefits are based on the limitations of an agency's cultural capacity or understanding of the priorities across different communities.

A way forward

The Agreement itself highlights the imbalance of power as it relates to funding. It states that shared decision-making is where (among other things) 'relevant funding for programs and services align with jointly agreed community priorities, noting governments retain responsibility for funding decisions' (clause 32c vi).

This clause need not preclude funding decisions from being made by Aboriginal and Torres Strait Islander people or ACCOs. Governments ultimately retain authority for making decisions about the quantum and mix of spending across the range of public goods and services that it provides, such as health, education, and infrastructure. But beyond this, there is significant scope for funding decisions to be made by others. This could involve ACCOs making decisions about how to best direct government funding to meet local or regional priorities, including towards tailored programs designed by and for Aboriginal and Torres Strait Islander people. It could also involve ACCOs making decisions about how to allocate funding across the range of services they provide, through long-term flexible funding contracts with governments. Previous experience has demonstrated that this is possible.

Governments therefore need to address the power imbalance that prevents community control over the services and programs that impact their communities. In practice, this requires governments to better recognise the authority of ACCOs to represent the perspectives and priorities of their communities, and to determine how service systems and models of delivery can best meet these. ACCOs, which have knowledge, expertise and connection to community that governments do not have, should be seen as essential partners in commissioning services, not simply as passive funding recipients. This means governments, and their agencies, need to embark on their own fundamental cultural change (as called for in Priority Reform 3) to ensure ACCOs have an equal and indispensable place at the decision-making table. This is in recognition that without ACCOs, sustainable and long-term change in outcomes is not possible.

To support this, commissioning approaches need to be reformed. Central agencies need to review and update funding and contracting rules so that they explicitly incorporate accountability for funders to abide by the Priority Reforms in commissioning programs and services. ACCOs need to be at the negotiation table from the beginning, so that government funding decisions take full account of ACCOs' expertise and knowledges on how best to meet community priorities. Central agencies also need to provide clearer guidance to contract managers and decision makers, to help overcome inertia and reduce barriers to working in genuine partnership with ACCOs and to adopting a relational approach to commissioning programs and services (**recommendation 3, action 3.2**).

Action 3.2

Review and update funding and contracting rules so that they explicitly incorporate accountability for funders to abide by the Priority Reforms in commissioning processes

The Australian, state and territory governments should task the relevant central agencies with reviewing and, where necessary, updating funding and contracting rules so that they explicitly incorporate accountability for funders to abide by the Priority Reforms. This should include ensuring that commissioning processes:

- recognise that community control is an act of self-determination, and that ACCOs are essential partners that bring knowledges and expertise to developing service models and solutions
- require ways of working by government agencies that further strengthen the ACCO sector, including funding contracts that:
  - support ACCOs to build organisational capacity
  - cover the full costs of service provision
  - minimise government-designed reporting and accountability requirements
  - allow communities to determine what performance indicators would best represent improved outcomes for their communities
  - oblige funding agencies to share data with ACCOs to enable them to do their work effectively
  - require government contract managers to adopt a relational approach to contracting.

To support these changes, central agencies will need to issue clear guidance to funding decision makers and contract managers, to help overcome inertia and reduce barriers to working in ways that strengthen the ACCO sector.

3.4 Mechanisms to prioritise funding to ACCOs

There is no accurate, published information on the quantum of funding that ACCOs receive nationally. The exercise of collecting this data is complicated by not having nationally consistent business rules or mechanisms to identify which grants are provided to Aboriginal and Torres Strait Islander community-controlled organisations (Australian Government 2022, p. 28). Without this data, it is difficult to measure how much funding and service delivery has shifted to ACCOs, and to assess the impacts that existing efforts in Closing the Gap are having on outcomes. This includes assessing the outcomes for services that are either 'lifted and shifted' to ACCOs, fully transferred over to ACCOs, or have been retained fully within a mainstream system. As one participant noted, governments:

> … merely publicise the financial commitments they make, often with little transparency of what the expenditures are achieving. … The problem with this general approach is that there is no way of knowing whether the financial commitments of governments are adequate or not. It is a truism that money is not everything, but in this case, it is an essential component of strategies to reduce inequitable access to services and basic infrastructure (like housing). Adequate funding may not be sufficient, but it certainly essential. (Michael Dillon, sub. 37, p. 13)

Under the Agreement, governments are required to implement funding prioritisation policies for services provided for Aboriginal and Torres Strait Islander people and communities to preference ACCOs and other Aboriginal and Torres Strait Islander organisations (clause 55a). Governments are also required to ensure that a 'meaningful proportion' of new funding for services intended for the broader population is allocated to Aboriginal and Torres

Strait Islander organisations with relevant expertise, particularly ACCOs (clause 55b). Implementation of commitments under clause 55 are required to be completed by 2024. While full implementation of clause 55 is not yet due, there are marked differences between jurisdictions in terms of their progress and approaches to date.

Most governments make reference in their implementation plans to a headline target of Priority Reform 2 to 'increase the amount of government funding for Aboriginal and Torres Strait Islander programs and services going through Aboriginal and Torres Strait Islander community-controlled organisations' (ACT Government 2022d; ALGA 2022b; Australian Government 2023a; LGANT et al. 2023; NSW Government 2022c; SA Government 2021; Tasmanian Government 2022; Victorian Government 2021). In Queensland, the implementation plan only makes reference to 'a strong and sustainable' ACCO sector but the headline target is articulated in the attachment to the plan, while the WA Government is less explicit in its articulation of its commitments under Priority Reform 2, instead focusing on its alignment with its Aboriginal Empowerment Strategy (Queensland Government 2023a; WA DPC 2023b).

Some governments, however, make specific reference to clause 55, particularly reiterating their commitment to reprioritise funding and to ensure a meaningful proportion of new funding is allocated to ACCOs (Australian Government 2023a; NSW Government 2022c; SA Government 2021; Victorian Government 2021). The WA Government does not make reference to its commitment under clause 55, but noted its reporting obligation under this clause in the Agreement and has specific commitments around 'increasing the proportion of ACCOs delivering services to Aboriginal people, families and communities' (WA DPC 2023b, p. 24). While reiteration of a commitment is no guarantee of action, it does demonstrate a clearer intent that the quantum of funding is not the primary measure.

The Agreements establishes a number of mechanisms aimed at shifting service delivery to a strengthened ACCO sector. The following sections make a preliminary assessment of how these are progressing.

Ensuring a 'meaningful proportion' of funding is allocated to ACCOs

Where new funding is announced for all Australians, the Agreement requires governments to ensure that a meaningful proportion is allocated to Aboriginal and Torres Strait Islander organisations. The Agreement notes that a 'meaningful proportion' can be considered to be:

> … an amount which takes into account the number and capacity of Aboriginal and Torres Strait Islander organisations, particularly the existing community-controlled sectors and the service demands of Aboriginal and Torres Strait Islander people, including through the views of Aboriginal and Torres Strait Islander community-controlled peaks organisations in the relevant jurisdiction. (clause 55b)

However, this leaves significant room for interpretation. The Commission is not aware how jurisdictions are defining a 'meaningful proportion' and how this will be applied in practice to new funding. Some jurisdictions (the Australian, NSW, Victorian and SA governments) have stated in their implementation plans that they are working to identify the best way of meaningfully allocating new funding.

The Australian Government and the Coalition of Peaks are working to provide guidance to agencies on how they can determine a 'meaningful proportion' of funding. Using a transparent methodology, agencies' decisions should account for a range of factors, such as an ACCOs capacity and capability to work within a given sector and to undertake the work, as well as community expectations and priorities. As such, the definition of 'meaningful proportion' depends not only on the level of policy ambition, but on the way in which contextual factors are considered and prioritised.

Where governments have not defined 'meaningful proportion' as it relates to their jurisdiction, this should not impede changes that would *increase* ACCOs' proportion of service delivery, including through changes outlined in the previous section to improve commissioning processes (applying to new and ongoing funding). The importance of clause 55b is that it relates to mainstream programs but its focus on new funding proposals potentially restricts its ambition, applying to a smaller proportion of total funding provided to services used by Aboriginal and Torres Strait Islander people.

It is unclear how expenditure review data will be used in most jurisdictions

Clause 113 of the Agreement commits governments to, by July 2022, reviewing current spending on Aboriginal and Torres Strait Islander programs and services and identify opportunities to reprioritise it to Aboriginal and Torres Strait Islander organisations. At the Joint Council meeting in June 2023, it was noted that the Australian, NSW, ACT and NT governments had completed expenditure reviews, with the Victorian government having finalised an interim report (phase one, looking at targeted expenditure on Aboriginal and Torres Strait Islander-specific programs and services). Subsequently, the WA and SA governments have published their completed expenditure reviews. Only four of the seven completed reviews are public.

The scope of these reviews differ. Some only provide details of Indigenous-specific funding, while others provide a breakdown of both Indigenous-specific as well as mainstream expenditure, such as Medicare, which is used by all residents of Australia, including Aboriginal and Torres Strait Islander people (box 3.10).

Box 3.10 – Indigenous-specific expenditure across jurisdictions

Expenditure reviews undertaken by jurisdictions have varied in their scope. At one end of the spectrum, one jurisdiction only reported on Indigenous-specific grants, while at the other end, some jurisdictions detailed all expenditure pertaining to Aboriginal and Torres Strait Islander people, including both Indigenous-specific and mainstream entitlements, such as Medicare.

A lack of data availability meant that the breakdown of service delivery provider – ACCO, NGO, or government – could not be provided by some government departments.

	Review completion	Minimum quantum of Indigenous-specific funding available	Proportion of Indigenous-specific funding delivered by ACCOs (or in partnership with ACCOs)
Australian Government	Completed	Unpublished	Unpublished
NSW	Completed	$1.3 billion (2021–2022)	Not reported
Vic	Completed (phase one)	Unpublished	55%
SA	Completed	$331.4 million (2021–2022)	22.4%
NT	Completed	To be made public, once approved by ‘partnership structures’	
WA	Completed	$583 million (2021–2022)	Between 19.8-49.9%
ACT	Completed	$52.7 million (2020-21)	Not reported
Qld/Tas	No public update		

Sources: ACT Government (2022b, p. 5); NSW Treasury (2022b, p. 33); NT Government (sub. 70, p. 12); Victorian Government (sub. 98, p. 8); and WA Department of Treasury (2023, p. 10).

As a first attempt by most jurisdictions, completed expenditure reviews have only captured a limited range of information. There are still significant information gaps, preventing Aboriginal and Torres Strait Islander organisations, governments, and the community to use this for decision-making on resource allocation. As part of previous work on the Indigenous Expenditure Report (IER), the Commission heard mixed views on the usefulness of its expenditure reporting. Many Aboriginal and Torres Strait Islander people and

organisations noted that they valued expenditure reporting as a way of holding governments to account for their spending decisions. At the same time, others raised concerns that the high-level aggregated expenditure estimates can be misleading and be open to misinterpretation.

The headline IER figure, for example, was used recently in commentary on the Voice to Parliament referendum by some to call for an audit of spending on programs and services for Aboriginal and Torres Strait Islander people (McIlroy 2023). The use of the headline figure often does not acknowledge that only $6 billion of the $33.4 billion estimate of expenditure in 2015-16 was for 'Indigenous specific services', the majority are for mainstream services, such as Medicare, education, and aged care (allocated on service use, $21.4 billion), and other mainstream services, such as defence and foreign aid (allocated on population share, $6 billion). Moreover, as the Acting Chair of the Productivity Commission noted:

> The IER does not assess the adequacy, effectiveness, and efficiency of government expenditure. In addition, the IER expenditure figures do not show which people/organisations received funding to deliver government programs, nor the location of where money was spent (other than the state or territory) … (SCRGSP 2023a)

Empowered Communities considered this figure was 'weaponised against the Indigenous aspiration for a Voice'.

> A lot of Australians clearly believe that the $33 billion dollars said by the Productivity Commission to be allocated to Indigenous people, goes directly into the pockets of Aboriginal and Torres Strait Islander people and organisations, and that the lack of results in closing the gap reflects Indigenous waste, mismanagement, and corruption. This misunderstanding is particularly galling when no one wants effective and efficient use of the money in the system more than Indigenous people themselves. It is our lives and futures that are at stake. (sub. 89, p. 10)

The top-down approach of assessing expenditure, combined with a lack of information on outcomes means it can have limited usefulness for improving the planning and design of government programs. Aboriginal and Torres Strait Islander organisations and government agencies have told the Commission that missing from these expenditure reviews, is information such as:

- expenditure disaggregated below the state/territory to a regional or local level
- expenditure on specific programs and the allocation of grants
- how much expenditure goes to administrative costs and overheads and how much actually hits the ground and reaches people
- the effectiveness of expenditure and the link between expenditure and outcomes.

This is partly recognised through the efforts of the NSW Government to compliment continuing expenditure reporting with a First Nations Outcome Budgeting approach, which aims to:

> … support the government to make investment decisions that are outcome focused, aligned with communities' aspirations and well informed by regular performance updates through outcome and business planning processes. (as cited by AbSec, sub. 88, p. 5)

At present, the Agreement does not specify the types of information jurisdictions are expected to collect as part of the expenditure review process. Participants to this review have noted the importance of expenditure reviews, with a number calling for greater transparency of investment of ACCOs, by region, and by government agency (Empowered Communities, sub. 89, p. 10; IUIH sub. 62 p. 14-15; Jon Altman sub. 51, pp. 9–10; and VALS sub. 76 p. 11). For example, IUIH noted:

> There needs to be greater transparency of the investment through ACCOs, by region, by government agency, and broken down by Indigenous-specific program investment and mainstream program investment. Current reporting tends to provide a global view. However, an

> understanding of investment by agency, by region, and by investment type assists ACCOs, such as IUIH, to identify opportunities for sector investment and growth … (sub. 62, pp. 14–15)

One review participant also saw an opportunity for this data to inform 'Aboriginal-led evaluation, to analyse their impact and outcomes, and inform the design of future initiatives and investments' (VALS, sub. 76 p. 11).

Jurisdictions have fully acknowledged that their expenditure reviews have not included all relevant spending, so their usefulness for funding prioritisation will be limited. This is largely driven by existing reporting arrangements within government agencies and program areas that do not collect or record the types and level of information necessary to undertake these comprehensive expenditure reviews. This was a key constraint in the Commission's study to identify expenditure on children and family services in the Northern Territory (PC 2020a).

Issues in how the data is collected by individual program areas results in jurisdictional review processes being largely manual, resource-intensive, exercises that result in incomplete and inconsistent reporting across governments. One jurisdiction estimated that their review may not have captured between 10 and 50% of relevant expenditure. Similarly, many reviews didn't capture programs that were not identified as Indigenous-specific programs, but that substantially supported Aboriginal and Torres Strait Islander people. Some jurisdictions were not able to tell retrospectively if the service provider was an ACCO, or even Indigenous-controlled. These gaps in expenditure data make it difficult to identify opportunities for not only reprioritisation of existing funding but also to identify how investment can further strengthen ACCOs and the outcomes they achieve.

Implementation of ACCO funding prioritisation has been delayed, in part, by barriers faced in the expenditure review process. One jurisdiction raised the lack of a consistent national standard for collecting expenditure information for Aboriginal and Torres Strait Islander people as exacerbating the barriers they faced in undertaking these reviews. Further, they noted that this exercise should not be undertaken again without an agreement to do so between the parties, as well as a standardised and agreed methodology.

In their current format, most expenditure reviews appear to be too high level to be useful for their intended purpose of reprioritising funding to ACCOs. For example, the SA Government stated that:

> … the data collected provides information about the amount of expenditure made in a set time period (2021-22). The ability to use this data to inform decision making, design programs and services and undertake evaluation is limited. (SA Government 2023a, p. 64)

There is clearly further work to do to ensure that they inform better decision-making and effective accountability over time. The Agreement however only commits governments to conduct one round of expenditure reviews. Nevertheless, the WA and NSW governments have publicly stated that they will continue to monitor Indigenous-specific funding and investigate options for the data to inform government decision-making (New South Wales Treasury 2022b, p. 89; WA Treasury 2023, p. 44).

For this mechanism to work effectively, governments should ensure that it does not become a compliance tool but that it helps inform systemic changes in how expenditure information is collected and used. If expenditure reviews are not useful to inform decision-making for both ACCOs and governments, and if data collection processes are not improved, then the value of these reviews will likely be outweighed by their costs.

Improving the existing approach to expenditure reporting will likely involve a more flexible approach than the existing top-down and highly-aggregated method used. This would require transformational change in how information is collected by program areas, so that reporting can reflect the questions being asked, which could be a mix of looking top down at the breadth of expenditure and relevant programs, exploring flows of expenditure through government agencies to service providers to service users, and looking bottom up in

terms of how and where expenditure reaches service users. In June 2023, the Joint Council 'discussed barriers and lessons learned in relation to reviews of expenditure on Aboriginal and Torres Strait Islander programs and services' and 'agreed to explore more effective approaches to standardise the ongoing collection, storage, access, and reporting of expenditure data across jurisdictions' (Joint Council 2023c, p. 2).

Sector strengthening plans

The Agreement requires governments to develop SSPs in partnership with Aboriginal and Torres Strait Islander organisations, which can focus on sector-specific priorities (clauses 49–53). For example, this could be an important avenue for implementing changes to funding sources other than grants and procurement – for instance, through Medicare funding in the health sector or the National Disability Insurance Scheme (NDIS) in the disability sector (box 3.11).

Government parties have made progress in developing the first four SSPs. The health and ECCD SSPs were agreed by Joint Council in December 2021 and SSPs for housing and disability were agreed in August 2022. Given the timing of these agreements, relatively little time has passed in which to analyse their effect on outcomes. However, all four SSPs can be examined in terms of how they intend to provide structures conducive to reform.

Box 3.11 – Sector-specific funding reforms will play an important role

The SSPs demonstrate the importance of sector-specific funding reforms, as ACCOs, across the four sectors, each face different funding models and distinct challenges.

For instance, Medicare is the main mode of funding in the **health sector**, and a program to optimise the use of Medicare by health ACCOs is being implemented as well as three Australian Government initiatives to increase funding to ACCOs in the early childhood care and development (ECCD) sector. The health SSP notes that a 'needs-based funding model that enables the sector to deliver its full potential is yet to be developed and endorsed by all Parties to the National Agreement' (Joint Council 2021c, p. 9). The SSP also notes the opportunity to improve or develop 'commissioning policies and outcomes-based contracting', as well as to redirect funding from non-Indigenous organisations to Aboriginal community-controlled health organisations (p. 9).

The NDIS is the main vehicle for funding in the **disability sector**. The disability SSP calls for dedicated, reliable and consistent funding to enable services to address the barriers to accessing inclusive disability supports, including thin markets, service quality, transport and geographic location (Joint Council 2022c, p. 29). Key challenges include:

- Aboriginal and Torres Strait Islander people participating in the NDIS, particularly those living in remote and very remote communities, often 'do not have access to all the providers they need to enable them to access their NDIS funded supports' (Joint Council 2022c, p. 29)
- the NDIS funding model impacts client relationships as it 'does not allow for community relationship building and storytelling/information gathering to ensure informed decision making for First Nations people with disability' (Joint Council 2022c, p. 29)
- ACCOs delivering non-NDIS disability services and programs face other challenges. The disability SSP identifies that current funding is 'often short-term and project based' and does not address the long-term needs, 'with little consideration of the "back-end" requirements of organisations, including

Box 3.11 – Sector-specific funding reforms will play an important role

administration, strategic and financial planning and training', while 'access to specialised First Nations and disability funding is often limited for supports such as advocacy and communications' (Joint Council 2022c, p. 30).

In the **housing sector**, there is no consistent funding model across Australia. Housing ACCOs' costs are expected to be met primarily through rent collection, as governments do not provide baseline funding for housing services (Joint Council 2022a, p. 10).

The majority of housing ACCOs only provide social housing for Aboriginal and Torres Strait Islander people on low incomes whose rent does not cover all the costs involved, especially repairs and maintenance. Not all tenants in housing managed by ACCOs may be claiming the income support payments they may be eligible for, including Commonwealth Rent Assistance (Joint Council 2022a, p. 10). The housing SSP notes housing ACCOs have the potential to be financially viable and self-sustaining if supported to offer mixed tenancy options (social, affordable and market rents) and 'multi-service provision including integrated services and aged care accommodation as well as [specialist disability accommodation]' (Joint Council 2022a, p. 10). Some states and territories, such as New South Wales, have been transferring management or freehold title to housing ACCOs.

In the **ECCD sector**, Aboriginal and Torres Strait Islander child and family centres and multifunctional Aboriginal children's services are now incorporated within mainstream early childhood education and care (ECEC) funding streams, particularly the Child Care Subsidy (CCS) and associated CCS safety net measures. At the same time, the shift from a dedicated funding model to CCS has been described as shifting attention:

> … from supporting the most vulnerable children and families within their communities to thrive, to meeting the needs of working families. (Joint Council 2021b, p. 11)

Aboriginal and Torres Strait Islander community-controlled ECEC services are uniquely placed to address barriers to access, and deliver culturally safe, holistic and integrated child development and family supports for Aboriginal and Torres Strait Islander families beyond mainstream childcare and early learning programs (2021b, p. 11). These additional child and family support functions are funded differently depending on which government funds the programs (Joint Council 2021b, p. 11).

The ECCD Policy Partnership has commissioned a research project to develop funding model options for ACCO delivered ECEC, including integrated early years services, with delivery of the research project expected for completion in December 2023 (PC 2023b, p. 46).

Each plan contains a number of actions but accountability for, and logic behind, the actions is lacking

Each sector strengthening plan identifies measures to build the capability of the sector – around 100 actions in total – which relate to six major groupings (workforce, sustainable funding, capital infrastructure, service delivery, governance and peak bodies) (table 3.1). The major groupings of actions align with the strong sector elements, and cover areas of concern that were raised during our engagements, including workforce and funding (chapter 9).

Table 3.1 – Actions in current SSPs and strong sector elements

Strong sector element (clause 45)	Group under current SSPs	Actions under current SSPs
There is sustained capacity building and investment in ACCOs	Capital infrastructure	Actions include funding buildings, renovations and repairs (health) and ensuring new and upgraded infrastructure meets accessibility standards (disability), identifying opportunities for land and building transfers to ACCOs (ECCD, housing), and funding reliable IT capacity (health, disability). Outside of the health sector, which has $280 million in dedicated funding earmarked for new infrastructure, these actions mainly involve collecting data, developing programs and identifying service or infrastructure gaps and future needs.
	Service delivery	Actions include reviewing reporting frameworks and quality standards to reduce burden (health), ensuring standards meet the needs of the community-controlled sector (ECCD) and the Cultural Model of Inclusion (disability). Actions also include mapping service models (disability) and redesigning service models to best fit with delivery needs (ECCD), and supporting research and data strategies (health, disability).
There is a dedicated and identified Aboriginal and Torres Strait Islander workforce and people working in community-controlled sectors have wage parity	Workforce	Actions include understanding workforce data and determining workforce needs (all sectors), developing career pathways (health, ECCD) and building on ACCO and mainstream workforces' capabilities to be culturally safe and inclusive (disability, ECCD and housing).
ACCOs that deliver common services are supported by a peak body, governed by a majority Aboriginal and Torres Strait Islander board, that has strong governance and capacity	Governance	Actions include streamlining reporting and compliance requirements (ECCD, disability) and registration processes for ACCOs (housing) and developing leadership and board skills (disability, housing).
	Peak body	Actions include expanding Aboriginal and Torres Strait Islander representation and voices in decision-making (health, disability), building the capacity and reach of peaks (disability, housing) and developing approaches and seeking funding for peak bodies where they do not exist in all jurisdictions (ECCD)
ACCOs have a dedicated, reliable and consistent funding model designed to suit the types of services required by communities and responsive to the needs of recipients (clause 45).	Funding model	Actions include reviewing and implementing funding arrangements for ACCOs (health, disability, ECCD) – along with supporting activities such as developing a needs-based funding model and strengthening systems to use Medicare more effectively (health), developing funding prioritisation policies to preference ACCO delivery (ECCD), and disseminating support material on funding sources to ACCOs (disability, housing).

Individually, the actions listed in each SSP vary according to their aim and level of ambition. For example, several actions across the SSPs focus on mapping, scoping and planning activities, which are associated with early stages of reform and transformation. These foundational actions aim to contribute to longer-term and incremental improvements in outcomes for Aboriginal and Torres Strait Islander people, rather than

meet immediate priorities. This raises the importance of ongoing monitoring and accountability – to ensure that they eventually lead to more tangible changes.

Many actions are defined only at a high level, often without concrete timeframes, responsibilities, and resourcing. Very few of the actions across the four existing SSPs specify who is accountable for the actions beyond listing 'all jurisdictions'. Similarly, few actions specify either resources or timeframes for completion. Without clarity about what needs to be done by whom and when, it is difficult to track progress and maintain accountability for the implementation of actions. This leaves a heavy reliance on other processes to ensure progress (including further development of details for the agreed actions; policy partnerships that are equally early in their development; and the Joint Council review of annual reports).

Governments have also committed funds to a virtual funding pool[7] for the purposes of sector strengthening (in addition to other funds relevant to Priority Reform 2, such as funding for service delivery). Responsibility for allocating these funds remains with the contributing government, although the funds are committed to sector strengthening activities in accordance with the Joint Council's strategic plan (box 3.12). As such, while the funding pool ensures funds are *available* for actions outlined in SSPs, the SSP is not intended as the mechanism to *allocate* funds.

This indicates an absence of a clear theory of change, where SSPs provide limited logic on how the actions specified will collectively lead to the change they are trying to achieve. This makes it difficult to hold governments accountable for failures in strengthening the sector, because without a clear roadmap showing how the actions will achieve outcomes, progress can only be measured against delivery of *outputs.* Accountability is also limited because the SSPs do not clearly identify who is responsible for actions and by when. A systemic approach is required to make progress in strengthening the sector. This is where each Aboriginal and Torres Strait Islander community-controlled sector works in partnership with governments to not only define priorities but ensure they are achieved consistent with these priorities and towards a clearly defined vision. Without this, there is a risk in the exercise becoming a mechanism of compliance (a 'tick the box' exercise) rather than used for driving change.

The main mechanism for monitoring and reporting on implementation of the SSPs is through jurisdictional annual reporting and subsequent review by the Joint Council. Both the disability and housing SSPs note that these processes are 'the key accountability mechanisms' for monitoring and reporting on implementation of the sector strengthening plan (2022c, p. 11, 2022a, p. 3).

On one hand, the degree of accountability built into SSPs reflects the need for flexibility in implementation, given the need to take account of pre-existing programs, policies, frameworks, as well as the strategies and budget priorities of different governments, national peaks, and the community-controlled sectors (Joint Council 2022c, p. 7). On the other hand, a lack of accountability may reflect that some SSPs were agreed with several aspects of governance yet to be determined. One SSP noted that mechanisms for monitoring and reporting progress were in need of further consideration by the Partnership Working Group (PWG). Some of the governance arrangements in the ECCD SSP had yet to be developed at the time of publication.

[7] Government parties have contributed funding towards the strengthening of the community-controlled sector and the capacity building of ACCOs. Current funding commitments are as follows (over four years from 2020-21): Australian Government $46.5 million; New South Wales $7.4 million; Victoria $3.3 million; Queensland $9.3 million; Western Australia $3.4 million; South Australia $3.301 million; Tasmania $1.2 million; ACT $0.8 million; and Northern Territory $2 million (Joint Council 2021e, p. 2).

Box 3.12 – Strategic plan for sector strengthening funding

Australian governments have established a Virtual Funding Pool for the purposes of sector strengthening. The funds are *committed* more than they are *pooled.* State and territory governments contribute funds and allocate them to programs in their own jurisdiction. The Australian Government also does not allocate funds to states and territories, rather its funding can be used toward recommended areas for development identified in the Joint Council's strategic plan (including national and cross-jurisdictional or multi-jurisdictional priorities) (Joint Council 2021e).

Priority areas

In its *Strategic plan for funding the development of the Aboriginal and Torres Strait Islander community-controlled sector*, the Joint Council identified that initial funding would be allocated to early childhood care and development, housing, health, and disability sectors. Subsequently, the PWG would consider investment priorities in sectors identified as policy priority areas under Priority Reform 1: justice, social and emotional wellbeing, and languages. Further sectors may be identified by the PWG for endorsement by Joint Council.

Funding principles

Under the Joint Council Strategic Plan, funding decisions are to be consistent with the following overarching principles:

- Funding will be directed to Aboriginal and Torres Strait Islander community-controlled organisations or emerging community-controlled organisations.
- Funding allocations should support development and sustainability, and long-term funding is preferred
- Funding agreements should be outcome-focused.
- Accountability should be shared between governments and community-controlled organisations.
- Evaluation should be incorporated into program design and delivery.
- Co-design processes are consistent with Priority Reforms 1 and 3, build understanding of service-user needs in Aboriginal and Torres Strait Islander communities, and inform program and service design and delivery.
- The creation of jobs for Aboriginal and Torres Strait Islander people will be a crucial feature of these principles.

Funds allocated

The Commission has not undertaken an exhaustive audit of the use of the virtual funding pool. The Australian Government has previously allocated funds for a scoping study to develop a First Nations Data Strategy (Australian Government 2021). The WA Government provided funding from the virtual funding pool to the Aboriginal Health Council of WA, to establish a new peak body for ACCOs delivering social services (Joint Council 2022c). The ACT Government has drawn on the virtual funding pool to support Yerrabi Yurwang Child and Family Aboriginal Corporation to become a registered human services provider (ACT Legislative Assembly 2022).

NACCHO has proposed several programs for the health sector strengthening virtual funding pool, including: governance training and support program for the Aboriginal community-controlled health sector ($1.963 million); strengthening the capacity of Aboriginal Community-Controlled Health Registered Training Organisations to develop the Aboriginal and Torres Strait Islander health workforce ($1.17

Box 3.12 – Strategic plan for sector strengthening funding

million); a co-designed National Strategic Roadmap to secure a permanent, highly skilled and nationally credentialed Aboriginal and Torres Strait Islander environmental health workforce to meet community health needs ($1.228 million); and optimal utilisation of the Medicare Benefits Schedule (MBS) Project ($4.226 million) (NACCHO 2022a).

Annual reports provide only a partial picture of progress

Some – but not all – of the jurisdictional 2021-22 Annual Reports reported on the implementation of SSP actions.

- The Australian, WA, Queensland, NT and ACT Governments reported on initiatives against each of the SSP actions, for those SSPs that were published in December 2021 (health and ECCD).
- The NSW, Victorian, SA, and Tasmanian Governments reported on broad directions on strengthening the community-controlled sector but these policy actions do not directly relate to identified SSP actions. Often reporting relates to initiatives organised by strong sector *elements*, but not against individual SSP *actions*.

Where details are available, jurisdictions have reported progress on a range of programs. For instance, the ACT Government noted investments in physical infrastructure, grant funding to promote Indigenous health workforce, and introducing a commissioning model to the health sector, as well as further action plans being developed under Safe and Supported project, and engagement on workforce strategy for the ECCD sector. The WA Government reported progress on actions in the health SSP and the ECCD SSP, including the WA Department of Health endorsement of a new state-wide commissioning strategy.

While clause 47 does not require jurisdictions to report against SSP *actions*, only strong sector *elements*, jurisdictions that report against individual SSP actions provide a stronger basis for monitoring progress. For those jurisdictions that reported against individual SSP actions in their annual reports, it was clearer where progress was underway and where policy actions were lagging. This provides a basis for progress to be assessed. For the remaining jurisdictions, the annual reports provide less opportunity for the Joint Council to monitor progress under the SSPs.

As a result, the Joint Council faces a challenging task each year in determining whether governments' actions against SSPs are heading in the right direction. First, the annual reporting process has been imperfect as a mechanism for transparency and accountability of SSP actions. The inclusion of more detail could allow a clearer understanding of whether progress was being made via new or changed programs, or whether the report was referring to business-as-usual. A requirement for jurisdictions to report on SSP actions would improve the review process.

In addition, where the SSP actions are geared toward longer-term outcomes, it can be challenging to assess their progress on an annual basis unless there is clarity on what would constitute meaningful interim progress. To this end, the SSPs do not articulate a clear program logic of how the listed actions will improve outcomes for Aboriginal and Torres Strait Islander people. A clearer program logic would improve the Joint Council's ability to assess whether the SSPs are leading to genuine progress. It would also help efforts to understand the importance of listed actions and to design their implementation.

How useful have SSPs been in setting up sector reforms?

Some jurisdictions have noted that SSPs have been of limited use to date, as they are not aligned with existing strategies, community priorities, or policy partnerships in the Agreement, as well as the Strategic plan for funding the development of the ACCO sector (box 3.12).

By design, SSPs are intended to work *alongside* other existing initiatives, including the many actions contained in implementation plans (table 3.2). This means that SSPs are intended to build on current initiatives and improve collaboration. However, this also presents risks around misalignment of different programs and their governance structures. For example, responsibilities for policy areas are often shared between multiple government agencies, which requires government agencies to coordinate and co-operate with each other to prevent duplication of efforts or inaction. There are also a range of relationships between SSPs and other policy frameworks that need coordination. For example, the health SSP 'recognises and intersects with a range of existing policies, frameworks and programs at both the jurisdiction level as well as the national level' (Joint Council 2021c, p. 4).

Without coordination and in the absence of a clear theory of change (to help track progress), SSPs (or the Agreement more broadly) will not be able to work in alignment with other programs or frameworks intended to contribute to the same objectives. One SSP states that 'it is envisaged that the policy partnership will provide ongoing oversight and regular review and improvement of the Plan across the life of the National Agreement' (Joint Council 2021b, p. 5). However, the mechanism by which SSPs and Policy Partnerships work together in practice is unclear. Two sectors have both an SSP and a policy partnership (ECCD and housing), but jurisdictions have also told the Commission that it is not clear how these forums work together in practice to guide sector strengthening.

The other issue raised by some jurisdictions, is that often SSPs speak of national level priorities, which may not translate with the issues affecting Aboriginal and Torres Strait Islander peak organisations or ACCOs in their respective jurisdictions. For example, the strength of ACCO sectors in some policy areas will differ significantly across jurisdictions, and may require different priorities.

Table 3.2 – Implementation plans address varied aspects of Priority Reform 2

	Actions relevant to Priority Reform 2
Australian Government (2023)	Includes summary of three areas: strengthening the community-controlled sector; identifying First Nations expenditure; and prioritising funding to Aboriginal and Torres Strait Islander organisations. Also provides a summary of three new actions (agreeing additional sectors for SSPs; SSP evaluation methodology; and guidance for agencies on clause 55b), and identifies delivery timeframe and responsible minister.
New South Wales (2022–24)	Includes three key action areas: a dedicated, reliable and consistent funding model for ACCOs; dedicated and identified workforce in ACCOs which have wage parity; and strong governance and business processes for ACCOs. The plan identifies several commitments under each action area, and for each, provides a summary of consultations and identifies the responsible minister.
Victoria (2021–23)	Includes three current initiatives: Aboriginal Workforce Fund; funding to Aboriginal community-controlled organisations; and COVID-19 Aboriginal Community Response and Recovery Fund. Also includes summary of how SSPs will align with implementation plans and other initiatives.
Queensland (2022)	Includes several actions categorised by (ten) different government departments and agencies. Actions include the 'Making Tracks towards achieving First Nations Health Equity: Interim Investment Strategy 2021-22'; the transition of Queensland Government funded primary health care services to ACCOs;

	Actions relevant to Priority Reform 2
	and the Queensland Police Service First Nations Summit. The plan identifies status, funding, timeframe, responsible ministers, and next steps.
South Australia (2021)	Includes several key actions including: investigate establishment of shared services model for ACCOs; investigate non-government source of funding for ACCOs; establish and support Aboriginal community-controlled peak bodies; complete the first round of SSPs; and support growth in ACCOs Working Group. The plan identifies status, timeframe, and responsible minister.
Western Australia (2023)	Includes how actions within 'strategic elements' and 'key focus areas' pursued under the WA Government's Aboriginal Empowerment Strategy align with Priority Reform 2. Key actions under 'Supporting Aboriginal-led solutions' include operational funding for a new ACCO peak body, and delivering a whole-of-government ACCO Strategy. Key actions include responsible department but unlike the previous implementation plan do not include timeframes.
Tasmania (2021–23)	Includes three key actions: Aboriginal Funding Reform Model; Building Capability, Understanding and Sharing Knowledge Project; and Aboriginal Sector Support Organisations. The plan identifies status, timeframe, and responsible minister, while funding was to be confirmed.
Northern Territory (2023)	Includes several actions including establishing an Aboriginal justice peak body, and developing an Aboriginal grants policy. The plan identifies lead parties, but unlike the previous plan does not identify resourcing or timeframes.
ACT (2022)	Includes one new action, one changed, and two existing actions relating to Priority Reform 2, in addition to three 'jurisdictional actions' focused on supporting the development of ACCOs, and new service models provided by ACCOs. The new action relates to conducting Wellbeing Impact Assessments for new budget, projects, and programs, with input from partners and community. The plan identifies status, funding, and responsible ministers (but unlike the previous implementation plan, it does not include timeframes).
ALGA (2021)	Includes three key actions: participating in the development of SSPs; working with state and territory governments to review procurement policies and guidelines; and the Local Government Skills and Capability Project.

Sources: ACT Government (2021, 2022d), Australian Government (2023a), Australian Local Government Association (2022b), Government of Western Australia (2023b; 2021), NSW Government (2022c), Northern Territory Government (2021, 2023), Queensland Government (2023a), SA Government (2021), Tasmanian Government (2022), Victorian Government (2021).

Significant effort is expended by ACCOs and governments in preparing SSPs. A key question (for both SSPs and implementation plans) is whether they promote transformational change or embed business-as-usual approaches. Progress against agreed actions in SSPs that are reported to have been 'achieved' reference programs or practices that existed prior to the Agreement. This calls into question whether the actions track to a conceptual logic, which demonstrate what change looks like for the sector and how progress will be monitored.

Many substantive actions being undertaken within SSPs appear to have been designed prior to SSPs being published. For example, the ECCD SSP lists an action to 'improve multidisciplinary responses to Aboriginal and Torres Strait Islander families with complex needs' (Joint Council 2021b, p. 30). Under this action item, the Queensland Government refers to a program that has been running since 2016 – the Aboriginal and Torres Strait Islander Family Wellbeing Services (Queensland Government 2022c, p. 37). Similarly, the WA Government lists a program that began in 2020 – the On Country Teacher Education pilot program (WA Government 2022a, p. 87). That is not to say that these programs are not contributing to strengthening the ECCD sector but if these actions are being conceived of, and implemented, through other forums, this could call into question the considerable resources expended by both ACCOs and governments on preparing SSPs.

Complete reports of progress are not yet available – jurisdictions' most recent annual reports were published in late 2022 and only five jurisdictions reported against actions from two SSPs (health and ECCD). However, the Commission heard some feedback that the momentum for reform spurred by SSPs seems to have waned. One ACCO, for example, noted that while the SSP represented a significant amount of work, it brought jurisdictions together and focused efforts in developing their capacity. However, since the release of the SSP, without a policy partnership to drive reform, the ACCO thought that the momentum had waned, with jurisdictions going back to their siloed approach.

The effectiveness of the SSPs will depend in part on the strength of partnerships – not only in their development, but also as part of promoting ongoing accountability and alignment with other efforts, including policy partnerships. As discussed in chapter 2, policy partnerships are in their infancy and, as such, may yet provide a mechanism to drive implementation of SSPs.

The success of future SSPs will depend on whether governments conduct sustained engagement with peak bodies and community-controlled organisations as part of genuine joint decision-making (Priority Reform 1), which may also depend heavily on the transformation of government agencies and their ways of working (Priority Reform 3). As governments transform themselves and enable shared decision-making and true partnerships, they are better able to support ACCOs with reliable and secure funding approaches and funding prioritisation, and investment in workforce and other capacity building.

3.5 Overall progress toward a stronger community-controlled sector

Overall, progress towards Priority Reform 2 has been limited. Governments committed to strengthening the community-controlled sector to deliver high-quality, holistic and culturally safe services to Aboriginal and Torres Strait Islander people. In doing so, governments recognised that community control is an act of self-determination and that services delivered by community-controlled organisations achieve better results and are often preferred over mainstream services.

There are some signs that governments are making changes – for instance, some agencies have put in place contracting arrangements that prioritise ACCOs, and have signalled a move towards more collaborative and relational approaches to commissioning. But overall, governments have taken few tangible steps to strengthen service sectors to increase the proportion of services delivered by ACCOs. There is a general lack of whole-of-government reform – for instance, whole-of-government grant rules and guidelines have remained unchanged and some jurisdictions have announced ad-hoc grant funding for ACCOs. And during engagements, the Commission heard from many ACCOs that little has changed in how governments are working with them – we heard that there is limited shared decision-making and co-design of programs and services. Several longstanding funding concerns also remain, including that contracts are unnecessarily short and uncertain, and that funding does not cover the full cost of well-designed and delivered services. The lack of progress in these areas further entrenches the power imbalance that exists between governments and ACCOs, and inhibits the achievement of a strengthened ACCO sector and its ability to improve outcomes for their communities.

Several factors are likely to be contributing to the prevalence of business-as-usual, including a lack of accountability towards agreed actions. More fundamentally, there does not appear to be a consistent understanding by government agencies of the knowledges and expertise that ACCOs bring to delivering outcomes for their communities. There also appears to be an unwillingness of governments to address the power imbalance that exists in current funding arrangements, and this has implications for whether ACCOs are seen by

governments as ‘equal’ partners in decision-making. In turn, this influences the way decisions are made about service-delivery models, KPIs, and funding. Where governments do transfer service delivery to ACCOs, but fail to support ACCOs to take leadership in designing models of service delivery and associated KPIs, this can risk service outcomes, and adversely impact the lives of Aboriginal and Torres Strait Islander people.

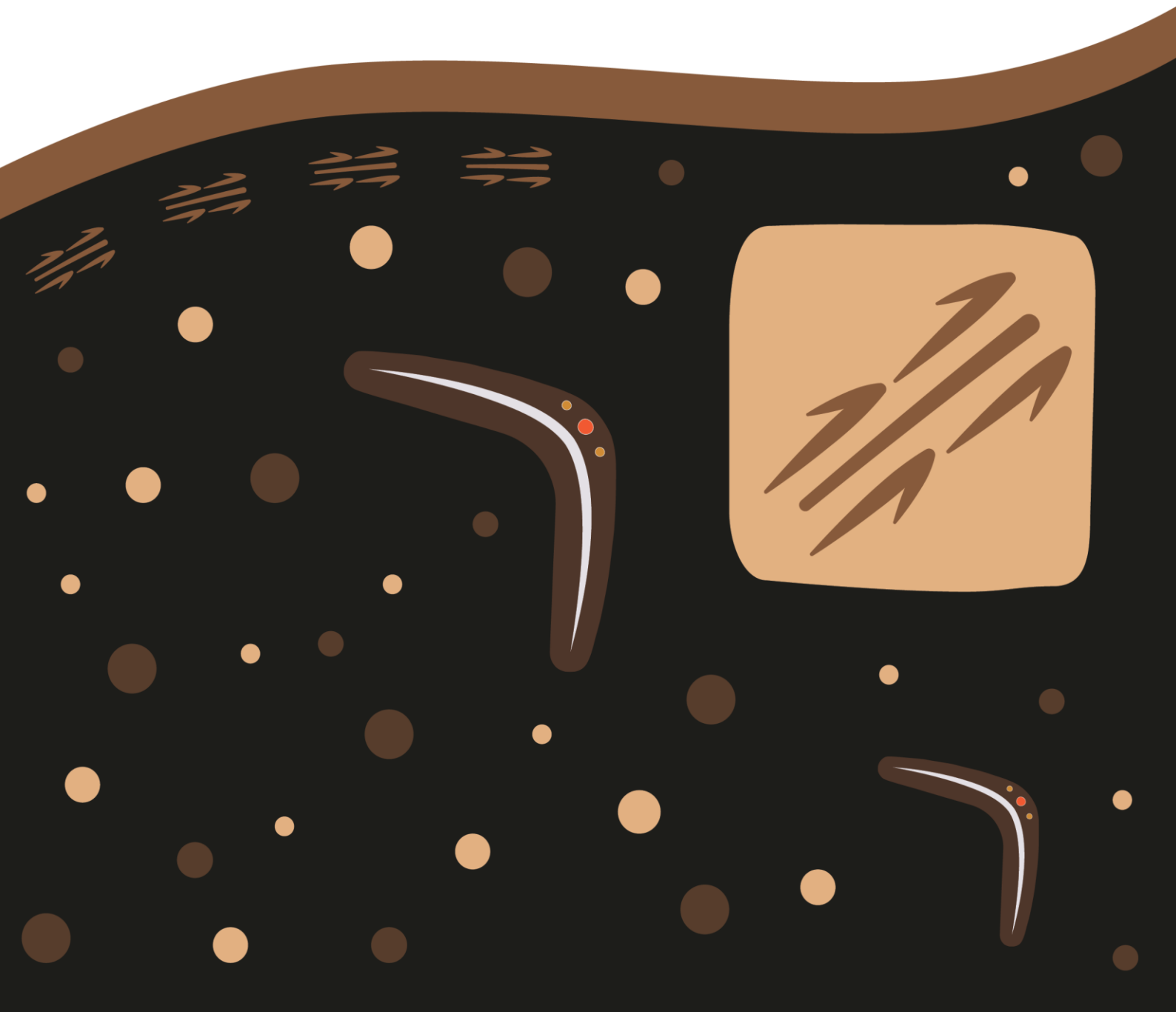
Finally existing mechanisms under Priority Reform 2 that aim to shift service delivery to a strengthened ACCO sector, including expenditure reviews and SSPs, are yet to demonstrate how they will drive needed reforms. This will likely take further time and, sustained efforts to ensure that they are more than compliance tools but used to guide better resourcing decisions.

Governments need to ensure commissioning approaches are adapted so funding and contracting rules explicitly incorporate accountability for funding agencies to abide by the Priority Reforms. ACCOs need to be at the negotiation table from the beginning, as far back as program-design stage, so that government funding decisions take full account of ACCOs’ expertise and knowledges on how best to meet community priorities. Clearer guidance is also required for contract managers and decision makers to help overcome inertia and reduce barriers to working in genuine partnership with ACCOs and to adopting a relational approach to commissioning programs and services.

Review of the National Agreement on Closing the Gap

Priority Reform 3: Transforming government organisations

Chapter 4



Key points

Priority Reform 3 commits all government organisations to systemic and structural transformation to improve accountability and respond to the needs of Aboriginal and Torres Strait Islander people.

- This requires governments to – among other things – identify and eliminate racism, embed and practice meaningful cultural safety and improve engagement with Aboriginal and Torres Strait Islander people.

There is little evidence that governments have grasped the depth and magnitude of the change they have committed to. Without additional effort to implement Priority Reform 3 – which is a critical enabler of the other Priority Reforms – there is a heightened risk that implementation of the Agreement overall will fail.

Government organisations are mostly pursuing piecemeal actions that do not form part of a coherent strategy. Without a strategic approach to transformation, change will be ad hoc and left to chance.

- Many are rolling out cultural safety training and seeking to employ more Aboriginal and Torres Strait Islander people, with little or no action on the other elements that are critical to transformational change, particularly the identification and elimination of racism.
- Without a strategy that has a coherent conceptual logic, which then informs what action will lead to change, it is unclear if, or how, the actions that governments are implementing will make a difference, how they will trigger self-reflection or challenge unconscious bias in the way governments work.

To support government transformation the Commission recommends that every Australian, state and territory government department develop and execute a strategy for their portfolio that sets out a clear theory of change on how they will transform, and develop actions based on this.

- This should be underpinned by an external and Aboriginal and Torres Strait Islander-led assessment of the department's institutional racism and engagement practices, and by truth-telling to enable reconciliation and active, ongoing healing.

To further support the implementation of Priority Reform 3, and the rest of the Agreement, the Commission is recommending a suite of whole-of-government changes relating to employment requirements, leadership structures, Cabinet and Budget processes, annual reporting, Aboriginal and Torres Strait Islander peak bodies meeting with Ministers, and resourcing the implementation of the Agreement. These recommendations are discussed in chapter 7.

The Agreement recognises that government organisations cannot be relied on to transform on their own. It includes a commitment for governments to establish an independent mechanism to 'support, monitor, and report on the transformation of mainstream agencies and institutions.'

- Progress in establishing the independent mechanism is negligible and most jurisdictions will not 'identify, develop or strengthen' a mechanism in 2023, as the Agreement requires.
- The independent mechanism needs to be established without further delay, and its role should be expanded to overseeing implementation of the whole Agreement, not just Priority Reform 3. This expanded role and the features that would support the effectiveness of the independent mechanism are discussed in chapter 7.

4.1 What is Priority Reform 3 about?

Priority Reform 3 commits governments to 'systemic and structural transformation of mainstream government organisations to improve accountability and respond to the needs of Aboriginal and Torres Strait Islander people' (clause 58).

This includes implementing six transformation elements:

- identify and eliminate racism
- embed and practice meaningful cultural safety
- deliver services in partnership with Aboriginal and Torres Strait Islander organisations, communities and people
- increase accountability through transparent funding allocations
- support Aboriginal and Torres Strait Islander cultures
- improve engagement with Aboriginal and Torres Strait Islander people.

Governments have identified hundreds of new or existing actions that align to the transformation elements to varying degrees and are at various stages of implementation (table 4.1). Perhaps most conspicuously, government organisations are rolling out cultural safety training and seeking to employ more Aboriginal and Torres Strait Islander staff. But by and large, these are piecemeal actions and there has been little or no action on the other elements that are critical to the transformational change envisaged by Priority Reform 3, particularly the identification and elimination of racism which is an essential foundation for transformation. The actions that government organisations have taken to implement the transformation elements are considered further in appendix B of this paper.

The Productivity Commission has observed pockets of change within a number of organisations, but pockets of change do not add up to the system-wide transformation envisaged by the Agreement. We are yet to identify a government organisation that has articulated a clear vision for what transformation looks like, adopted a strategy to achieve that vision, and tracked the impact of actions within the organisation (and in the services that it funds) toward that vision. Section 4.2 focuses on what is being done and what needs to be done to deliver the transformation envisaged in the Agreement.

Priority Reform 3 requires deep and enduring changes to the policies and processes of agencies and to the incentives that shape how public sector staff and leaders act. Transformation also requires and produces changes to organisational culture: the norms of behaviour that cannot easily be shaped by formal incentive structures but directly impact how people work and their expectations of one another. As the Queensland Indigenous Family Violence Legal Service (QIFVLS) submitted, 'the level and scale of reform required under Priority Reform 3 is of a nature that requires a complete paradigm shift across government and within society' (sub. 87, p. 8). In the face of this requirement, Dharriwaa Elders Group said that:

> We continue to see traditional government approaches to working with communities, such as creating more positions in government departments to achieve greater engagement with Aboriginal communities as if this alone is the cause of government failure to achieve improved outcomes … However, this does nothing to address the structural and systemic changes that are needed to make or improve government accountability to communities. (sub. 53, p. 5)

Table 4.1 – The transformation elements and how they are being implemented

Identify and eliminate racism Identify and call out institutional racism, discrimination and unconscious bias in order to address these experiences. Undertake system-focused efforts to address disproportionate outcomes and overrepresentation of Aboriginal and Torres Strait Islander people by addressing features of systems that cultivate institutionalised racism. The feedback from the engagements included that more Aboriginal and Torres Strait Islander people should be employed in mainstream institutions and agencies, including through more identified positions, more Aboriginal and Torres Strait Islander people in senior positions, and appointments to boards. (clause 59a) The most common government actions listed against this transformation element are workforce strategies to increase public sector employment of Aboriginal and Torres Strait Islander people, with little attention to the remaining, but critically-linked, elements. Jurisdictions are also developing anti-racism or similar strategies (South Australia's was recently published (OCPSE 2023b)). And there is some survey work under way to investigate the experiences of Aboriginal and Torres Strait Islander staff or users of government services (for example, adding questions to the Survey of Trust in Australian Public Services (Australian Government 2023a, p. 126)). Efforts to identify and eliminate racism to date are insufficient.
Embed and practice meaningful cultural safety Embed high-quality, meaningful approaches to promoting cultural safety, recognising Aboriginal and Torres Strait Islander people's strength in their identity as a critical protective factor. This applies to all levels of staff within government organisations. Feedback from the engagements included making cultural awareness training courses ongoing for all boards and staff. Another strategy could be to strengthen the role of internal Aboriginal and Torres Strait Islander units in promoting and monitoring cultural safety. (clause 59b) The most common action across all implementation plans is the rollout of training in cultural safety, awareness, capability, or competence. The Commission heard mixed views on the value of such training.
Deliver services in partnership with Aboriginal and Torres Strait Islander organisations, communities and people Develop genuine relationships between government organisations and Aboriginal and Torres Strait Islander people, organisations and/or businesses to enhance the quality and cultural safety of mainstream service delivery. Feedback from the engagements included supporting agreements between hospitals and local Aboriginal and Torres Strait Islander community-controlled health organisations to deliver outpatient services. (clause 59c) Actions mainly focus on policy areas where governments have already established partnerships with Aboriginal and Torres Strait Islander organisations, such as in the health and environment sectors. Relationship building in other policy areas appears more limited.
Increase accountability through transparent funding allocations Improve transparency of resource allocation to, and distribution by, mainstream institutions in relation to dedicated Aboriginal and Torres Strait Islander service-delivery. Feedback from the engagements included requiring key performance indicators in funding arrangements. Other suggestions included for Auditors-General to include in their audits of mainstream agencies information about expenditure and the quality of service delivery to Aboriginal and Torres Strait Islander people. (clause 59d) There is little progress on this transformation element. The introduction of 'commissioning' reforms, to focus on outcomes valued by the community when funding service delivery, and increased efforts to evaluate policies and programs are welcome, but are insufficient to demonstrate this element systemically in government practice.

Support Aboriginal and Torres Strait Islander cultures

Ensure government organisations identify their history with Aboriginal and Torres Strait Islander people and facilitate truth-telling to enable reconciliation and active, ongoing healing. Feedback from the engagements included government organisations building relationships with local Aboriginal and Torres Strait Islander community-controlled organisations to enable them to understand and reflect the history and culture of local communities. (clause 59e)

Actions that address this transformation element vary widely in their scale. A number of actions that have been implemented could be considered 'low hanging fruit', including renaming sites or assets to their Aboriginal and Torres Strait Islander names, or the commissioning of artwork. A number of governments and government organisations have Reconciliation Action Plans that are ostensibly well within the scope of this action, but the extent of system-wide change across government organisations, through truth-telling, reconciliation and ongoing healing associated with these is limited.

Improve engagement with Aboriginal and Torres Strait Islander people

Ensure when governments are undertaking significant changes to policy and programs that primarily impact on Aboriginal and Torres Strait Islander people, they engage fully and transparently. Engagements should be done in a way where Aboriginal and Torres Strait Islander people: have a leadership role in the design and conduct of engagements; know the purpose and fully understand what is being proposed; know what feedback is provided and how that is being taken account of by governments in making decisions; and are able to assess whether the engagements have been fair, transparent and open. The engagements on the National Agreement, led by the Coalition of Peaks in partnership with Government parties, demonstrated the benefit of this approach. (clause 59f)

A large number of actions are listed that go towards this transformation element (for example, changes to Cabinet and Budget processes) but there is no coherent strategy outlining what actions are evidenced to improve their engagement and how they will implement these. It is not clear how much engagement has improved. Government approaches to engagement are still often seen as tokenistic and underdone. Engagement is discussed in detail in relation to Priority Reform 1 in chapter 2.

The commitment to transformation applies without exception. That is, Priority Reform 3 requires transformation in the way up to 2.4 million people in federal, state, territory and local government organisations go about their work (ABS 2022). It also applies to the services that governments fund, amounting to billions of dollars' worth of services annually. This is a major commitment that requires a commensurate response (section 4.3).

The Agreement recognises that government organisations cannot be expected to deliver on Priority Reform 3 without independent oversight. This is why governments committed to an independent mechanism or mechanisms that will 'support, monitor, and report on the transformation of mainstream agencies and institutions.' Section 4.4 discusses progress towards the independent mechanism. Chapter 7 discusses accountability for the Agreement as a whole, including a recommendation for expanding the role of the independent mechanism.

Governments have also committed that when they 'change, design or deliver policies and programs that impact on the outcomes of this Agreement, they will do so in line with this Agreement' (clause 62). But there are multiple clear cases of governments acting in contradiction with the 'new approach' they committed to under the Agreement. Changes to the *Bail Act 1980* (Qld) and related regulatory instruments in 2023 are a clear example of this (box 4.1; chapter 2). Other examples are provided in chapter 7.

If government organisations do not transform – if Priority Reform 3 is not implemented – this will hinder the achievement of all the other Priority Reforms, and in turn put at risk the objective of the Agreement: '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' (clause 15). This was clearly articulated in submissions

(including those from the Coalition of Peaks, sub. 25, p. 3, and sub. 31, p. 1; DSS, sub. 74, p. 12; FVTOC, sub. 24, p. 4; headspace, sub. 18, p. 13; NNTC, sub. 35, p. 1; NHLF, p. 19, p. 4; QIFVLS, sub. 87, p. 5; QNMU, sub. 4, p. 11). The essential nature of Priority Reform 3 was articulated by APO NT, which submitted that Priority Reform 3 'must be achieved to enable realisation of the other Priority Reforms' (sub. 10, p. 4).

Box 4.1 – Recent changes affecting the incarceration of children in Queensland were not made in line with the Agreement

The *Strengthening Community Safety Act 2023* (Qld) reintroduced breach of bail as an offence for children (people under the age of 17).

- The Bill for this Act was introduced to the Queensland Parliament on 21 February 2023, and a call for submissions to a committee examination of the Bill asked for submissions to be made within three days. The committee reported on 10 March 2023, and the Bill was passed on 16 March 2023, less than 4 weeks after its introduction.
- The Government acknowledged that reintroducing breach of bail as an offence for children is incompatible with 'the right of children to protection in their best interests' and that certain provisions of the Bill 'may mean that more Aboriginal and Torres Strait Islander offenders are incarcerated for longer periods of time' (Ryan 2023b, pp. 2–3). The Joint Departmental Response to Submissions noted 15 different submissions making the point that the proposed changes to youth bail laws would 'disproportionately affect Aboriginal peoples and Torres Strait Islander peoples and contribute to overrepresentation' (QPS et al. 2023, p. 64).

The brief, three-day, call for submissions was inconsistent with the Agreement's commitment to 'a future where policy making that impacts on Aboriginal and Torres Strait Islander people is done in full and genuine partnership' (clause 18) and the predictable disproportionate impacts of the Bill will work against achieving socio-economic outcome 11 of the Agreement – 'Aboriginal and Torres Strait Islander people are not overrepresented in the criminal justice system.' Many of the submissions received by the committee were made by Aboriginal and Torres Strait Islander people themselves. But there was no explicit attempt to engage with Aboriginal and Torres Strait Islander people on a Bill that would have disproportionate impacts, nor an indicated willingness to listen to the views expressed in the submissions, indicating a lack of genuine engagement.

In August 2023, additional changes were made affecting the incarceration of children in Queensland. The reintroduction of breach of bail as an offence for children earlier in the year contributed to record numbers of children in youth detention (AHRC 2023; Gillespie and Messenger 2023), and the Government had received advice that the longstanding practice of keeping children in watch-houses when space was not available in detention centres was illegal. The August changes made it legal to hold children in watch-houses indefinitely until beds become available in youth detention centres (Ryan 2023a, p. 21).

As with the changes to bail laws earlier in the year, these changes have been criticised for how quickly they were made – the National Children's Commissioner commented that the laws were 'rushed through without any consultation' (AHRC 2023). They were also inconsistent with Queensland's *Human Rights Act 2019* (Qld) (Ryan 2023b, p. 1, 2023a, p. 1). Reflecting on both sets of changes, the Commissioner said that 'On any level – surely this is a sign of something seriously wrong. This is a system in crisis. And the community is not safer' (AHRC 2023).

4.2 The transformation of government organisations

The actions that government organisations are taking to implement the individual transformation elements – detailed in appendix B of this paper – may, if they are designed and delivered well, help governments to more effectively respond to the needs of Aboriginal and Torres Strait Islander people. But as noted earlier, the transformation that is called for under Priority Reform 3 requires much more than individual or one-off actions, it requires structural and systematic change across every government system. The Queensland Nurses and Midwives' Union (QNMU), for example, noted that one of the actions from Queensland's first implementation plan:

> … calls on all government departments to implement and update their Cultural Capability Plans, a highly achievable action. While this action is designed to impact on the incidence of racism within agencies, achieving this underlying outcome will require significant change at all levels across all agencies as well as mechanisms for measuring the effectiveness of these changes. (sub. 4, p. 5)

The transformation committed to under the Agreement requires governments to fundamentally rethink their systems and culture. This involves an honest system-wide appraisal to identify the prevalence of institutional racism and unconscious bias in government organisations, and then to determine the extent of change required including (but not limited to) how internal government policy-making processes operate. To deliver on this fundamental rethink, government departments need to develop and execute a transformation strategy for their portfolio underpinned by a transparent theory of change that demonstrates *how* the listed actions will actually achieve the change to which governments have committed. The transformation strategy should also be underpinned by an Aboriginal and Torres Strait Islander-led assessment of the department's historic and current institutional racism, unconscious bias and engagement practices, and by truth-telling to enable reconciliation and active, ongoing healing. The reasons why this approach is needed is discussed in the following sections.

Transformation of government organisations has barely begun

Most government organisations are in the early stages of transformation, and what change is occurring is not part of a coherent strategy. Such a piecemeal approach puts at risk the holistic transformation committed to under the Agreement.

There is progress in some government organisations, and the Coalition of Peaks said that there are examples 'where the way programs have been designed and delivered have been re-orientated to embed the priority reforms' (sub. 58, p. 1). In other cases, jurisdictions have prioritised relationship building and other initiatives including Treaty or truth-telling (Victoria, Queensland,) or a Voice to Parliament (South Australia). But with respect to governments' commitment to transformation in line with Priority Reform 3, progress has been minimal in most government organisations.

Implementation of the transformation elements has been ad hoc, and some of the transformation elements have received little or no attention. In particular, governments have given little attention to their commitment to identify and address institutional racism and unconscious bias, and specifically, to 'address features of systems that cultivate institutional racism' (clause 59).

Most governments and most government organisations have not taken a strategic approach to the transformation called for under Priority Reform 3. Doing so would entail thinking deeply about what their end goal is and considering what steps need to be taken to reach that goal and what sequence those steps should be done in. This is not happening for the most part. For example, efforts to employ more Aboriginal and Torres Strait Islander people and the rollout of cultural safety training are the most-cited actions in governments' implementation plans. Both of these can have merit, but they do not constitute, nor can they drive, transformation on their own. Initiatives to increase the employment of Aboriginal and Torres Strait

Islander people will not succeed if racism is not identified and eliminated, as the failure will perpetuate culturally unsafe workplaces and contribute to high attrition of Aboriginal and Torres Strait Islander staff from the public service (discussed further in appendix B of this paper). And Aboriginal and Torres Strait Islander people in leadership positions will find it hard to drive change if the rest of their organisation does not understand the Agreement or does not view it as core business.

Some departments are seeking to drive transformation by establishing dedicated leadership and coordination through Closing the Gap taskforces and executive steering committees, including the Australian Government Department of Health and Aged Care (box 4.2). Leadership at the most senior levels is needed, because without support from senior management, implementation units may lack the influence to build internal support and the authority to address roadblocks and make systemic changes.

Box 4.2 – Dedicated leadership to drive change at the Australian Government Department of Health and Aged Care

In November 2022, the Australian Government Department of Health and Aged Care established a Closing the Gap Steering Committee to drive action to embed the Priority Reforms in the structures, processes and business-as-usual activities across the department. Establishing a Steering Committee was straightforward, but it required buy-in and organisational leadership to champion it (Department of Health and Aged Care, pers. comm, 18 October 2023).

The Committee is chaired by the Chief Operating Officer and its members include senior executives and chairs of the department's Aboriginal and Torres Strait Islander staff network. All Committee members are expected to have a sound understanding of the Agreement and Priority Reforms and can be nominated based on possessing relevant expertise and their ability to drive change across the department (Department of Health and Aged Care, pers. comm., 18 October 2023).

To focus its efforts, the Committee has agreed on a Closing the Gap Framework for Action. The Framework identifies priority action areas and indicators of success. Some initial projects that are being coordinated by the steering committee include:

- development of a First Nations Partnership and Engagement Framework, to guide staff on how to work collaboratively and in genuine partnership with First Nations People
- First Nations Health Funding Transition Program, to review departmental programs that aim to improve health outcomes for Aboriginal and Torres Strait Islander people and transition activities, where appropriate, to First Nations led organisations
- implementation monitoring and reporting, to build actions to support the Closing the Gap Action Plan into the department's formal project management processes (DoHAC 2023, p. 9).

Another ongoing initiative to come out of the Committee is annual roundtables with First Nations health sector CEOs to inform decision-making on new policies and sector priorities (Department of Health and Aged Care, pers. comm., 18 October 2023).

A strategic approach to a suite of government-wide initiatives are needed to support transformation

While every government organisation is unique – and will need to pursue transformation in line with its own internal culture, readiness for change and its external operating environment – the literature on change management and the findings of this review suggest that a strategic approach to the design of a full suite of initiatives will be required to achieve transformation.

A necessary first step is that government departments establish a shared vision, developed in partnership with Aboriginal and Torres Strait Islander people, for what transformation looks like in each portfolio and a clear strategy that set outs what changes will be implemented to achieve that vision (a theory of change). The transformation strategy should be underpinned by an Aboriginal and Torres Strait Islander-led assessment of the department's historic and current institutional racism, unconscious bias and engagement practices, and by truth-telling to enable reconciliation and active, ongoing healing.

Numerous other changes to whole-of-government systems and processes are also required to support transformation in the ways of working of government organisations, including:

- changes to Cabinet and Budget processes to explicitly promote, support and encourage the Priority Reforms
- Ministers meeting regularly with relevant Aboriginal and Torres Strait Islander peak bodies to discuss the implementation of the Agreement
- designating a senior leader or leadership group to drive change across the public sector in each jurisdiction
- changing core employment requirements for public sector CEOs, executives and employees
- adequately resourcing the implementation of the Agreement
- embed the commitments of the Agreement in other intergovernmental agreements
- changes to government organisations' annual reporting requirements.

The first of these changes is discussed below – the rest are discussed in detail in chapter 7. They are discussed elsewhere because while they are important for the transformation of individual government organisations in line with Priority Reform 3, they are also important for implementation of all of the Priority Reforms and seek to address 'high leverage' points in the public sector that determine how individual government organisations (and individual public sector employees) go about their work.

Government departments need a transformation strategy that is underpinned by a theory of change

Transformation and adapting to change are not new for governments, and many have existing guidelines for change management (box 4.3). Guidance on change management typically highlights the importance of establishing a shared vision, developing a strategy, identifying leadership, empowering organisation-wide participation, and reinforcing and institutionalising the change (Tondem By 2005). But these elements are often lacking, and it is estimated that up to 80% of government transformation initiatives fail to meet their objectives (Allas et al. 2018, p. 2).

Box 4.3 – A snapshot of governments' guidance on change management

The WA Public Service Commission provides guidance on structural change management that notes six principles for effective change management. They are:

1. a clearly defined rationale and vision of the change is understood
2. stakeholders are identified, appropriately consulted and informed
3. the system and processes developed to achieve the change are transparent
4. collective and collaborative leadership is empowered
5. there is a dedicated focus on people
6. the change is systematically reviewed and adapted (WA PSC 2017, p. 2).

The SA Office of the Commission for Public Sector Employment's *Change Management Toolkit* provides guidance on matters relating to change management including: impact assessment; readiness assessment; articulating a vision, and developing the case for change; change principles (to provide a framework within which to make decisions); change management plans; stakeholder engagement; embedding, evaluating and monitoring change (SA OPSE 2022).

Tasmania's Department of Premier and Cabinet notes four steps to consider when managing change:

1. identify what the change is and who will be affected
2. communicate and consult with employees and stakeholders
3. monitor and deal with resistance
4. evaluate (TDPC 2023c).

Having a shared vision and strategy for change is essential for transformation success. Without an overarching vision, there is a risk that individual transformation actions will not add up to meaningful change. Further, unless government agencies devise and implement transformation strategies, all of the Priority Reforms are at risk.

A vision provides the overall direction and desired outcome of transformation. It is a clear and concise statement that helps employees understand the reason for transformation and serves as the foundation for a course of actions and goals and a plan for achieving the vision (Fernandez and Rainey 2006, p. 169).

An overall vision can guide organisation-wide theories of change. A 'theory of change' describes the process of thinking through and documenting the steps that need to be taken to reach a long term goal, why those steps will work, who will benefit from the change, and what conditions are required to facilitate change (Goldsworthy 2021; Reinholz and Andrews 2020). A theory of change is usually developed during the design phase of a program or in a critical evaluation of an existing program. As an explanatory tool, a documented theory of change can help organisations develop more realistic goals, clarify accountabilities and establish a common understanding of the strategies to be used to achieve the goals (Rogers 2014).

The Cape York Institute emphasised the importance of having a theory of change.

> While it is one thing to establish goals and targets to Close the Gap, what is most pressing is to work out what needs to be done to get there: a theory of change is essential … In Cape York we have a theory of change. Adopting Sen's capability approach, we assert that building capabilities answers the 'how' question of Closing the Gap. It will be through iterative building of capabilities that the gap on disparity will be closed. (sub. 93, p. 9)

The Australian Government Department of Social Services has an established practice of using theories of change for program design. It recently completed a stocktake of all departmental activities that are contributing to Priority Reform 3, which is being used in the development of a whole-of-portfolio strategy (box 4.4).

Box 4.4 – Theories of change at the Department of Social Services

In early 2023 the Department of Social Services (DSS) established a Closing the Gap Taskforce and created a dedicated Director role for implementing the Priority Reforms. The Taskforce started with a stocktake of activities within the social services portfolio to understand what work was already contributing to Priority Reform 3. The stocktake is intended to provide a foundation for the portfolio to develop a formally documented strategy to guide implementation (DSS, sub. 74, pp. 13–14).

DSS identified 97 activities at different stages of implementation, with each activity classified as being in one of three phases – emerge, establish or embed.

- 'Emerge' is the phase where solutions to problems/challenges/opportunities are explored and developed. It is where partnerships with Aboriginal and Torres Strait Islander people, communities and organisations are formed and processes to enable shared decision making consistent with the Agreement are established.
- 'Establish' is the phase where solutions are tested and implemented. Governance arrangements that promote the equal participation and representation of Aboriginal and Torres Strait Islander people are enacted supporting self-determination, and review, research and evaluation processes are factored in.
- 'Embed' is the phase where lessons learnt transition from projects, trials and initiatives into sustainable, structural, systems and process changes that support genuine organisational transformation (sub. 74, attachment C, p. 3).

Each of the 97 activities will have a documented theory of change (43 theories of change have already been developed) (DSS, sub. 74, attachment B). These theories of change identify the problem to be addressed, the actions being taken to realise change (including risks and enablers to realising the change) and what success looks like and how it will be measured (DSS, sub. 74, p. 14). There is also a focus on what engagement will be undertaken to ensure First Nations voices are included.

The Improving Multidisciplinary Responses (IMR) program is an example of how a theory of change has been developed and guided progress. The IMR program 'is aimed at strengthening service models to effectively and proactively support First Nations children and families with multiple and/or complex needs to reduce drivers of child abuse and neglect' (DSS, sub. 74, attachment A).

In the IMR theory of change, the problem to be addressed is that 'at-risk families need greater access to early intervention and prevention services that are culturally safe, easier to access and designed for families with multiple and complex needs' (DSS, pers. comm., 27 November 2023). Actions taken to realise change include (but are not limited to) partnering with First Nations people and organisations to co-design the program including drafting the Grant Opportunity Guidelines, and establishing a Selection Advisory Panel with 50% representation from independent First Nations Members working in the child and family sector to co-select grant recipients. The program is in the 'establish' phase and ACCOs are currently being funded to implement the IMR program. Reducing the number of First Nations children in out-of-home care

Box 4.4 – Theories of change at the Department of Social Services

would constitute success for the program, and this will be measured through a range of data sources including wellbeing data and service centre access rates (DSS, pers. comm., 27 November 2023).

The department has established a Closing the Gap library with details on Closing the Gap actions, theories of change, and stages of implementation for any employee within the social services portfolio to access, and members of the department have been actively sharing lessons learned through its IMR grant program with other government organisations (DSS, pers. comm., 21 November 2023).

Governments need external, Aboriginal and Torres Strait Islander assessment to determine what transformation is required

A critical starting point for transformation is understanding the size and scope of change required. To do this, government organisations need to reflect on issues including the prevalence of institutional racism, the level of cultural safety within the department, and whether engagement with Aboriginal and Torres Strait Islander people is meaningful and appropriately accounted for in decision-making. The Coalition of Peaks pointed out that while this process is necessary, it will not be simple.

> It is not always easy or comfortable for governments to hold a mirror up and look critically at whether their workplaces, policies, procedures, programs and services are fair, culturally safe and free from racism. However, this is necessary and requires openness and honesty. (sub. 58, p. 2)

Government organisations cannot rely on self-assessment alone to understand the size and scope of change that is required. Doing so would leave them exposed to their own blind spots relating to institutional racism, cultural safety and other aspects of Priority Reform 3. It is not possible to achieve the 'systemic and structural transformation of mainstream government organisations to improve accountability and respond to the needs of Aboriginal and Torres Strait Islander people' (clause 58), without the identification of the type and scale of change required by Aboriginal and Torres Strait Islander people. Drawing on the perspectives of Aboriginal and Torres Strait Islander people to shape the transformation of government organisations also aligns with governments' own guidance on change management and engaging with impacted parties (box 4.3). This reflection process is a necessary step in developing a transformation strategy (action 3.1).

Some government organisations have started working more closely with Aboriginal and Torres Strait Islander people to understand how they need to transform. For example:

- the Australian Government Department of Social Services stated that it is taking a person-centred, First Nations perspective to understand the experiences of people interacting with the department. To do this, the department is being informed by feedback from First Nations people through a range of mechanisms, including reviewing submissions made to relevant Royal Commissions, and customer insights (DSS, sub. 74, p. 14). These perspectives will be used to identify institutional barriers to accessing services and inform the department's transformation priorities
- in Queensland, it is a requirement for the perspectives of Aboriginal and Torres Strait Islander people to be included in the identification of institutional barriers to First Nations health equity as well as the design and implementation of solutions (box 4.5). The state's Department of Environment and Science has developed the Gurra Gurra Framework (box 4.6), a strategy developed through mob-centred design to

underpin the department's vision 'to walk forward together, from two paths to one, in a partnership founded on respect, trust and First Nation's people's vision for country and people' (QDES 2020, p. 11).

However, the Commission heard mixed views on how well and how widely these initiatives are being implemented, and concerns about whether they indeed go far enough.

Transactional or superficial interactions between governments and Aboriginal and Torres Strait Islander people will not support organisational transformation. To transform in line with the Agreement, government organisations will need to adopt a reflexive learning mindset. Transformation in one service area should lead to the absorbing and transferring of the knowledge gained into other areas of government organisations. It is only through iterative learning from engagements with ACCOs and Aboriginal a Torres Strait Islander communities that governments can move from implementing piecemeal changes to making sustained progress in their transformation. Sharing theories of change – as is being done at the Australian Government Department of Social Services (box 4.4) – is one way organisations can share learnings from engagement and how it has driven transformation. Other sections within the department should then reflect on whether their own policies and practices align with what has been learned and then adapt accordingly.

Box 4.5 – Mixed views on Queensland's First Nations Health Equity reforms

In response to a report that found all Queensland Hospital and Health Services (HHSs) rated 'very high' to 'extremely high' on a measure of institutional racism against Aboriginal and Torres Strait Islander people (Marrie 2017, p. 17), the Queensland Government is implementing a health equity reform agenda. These reforms include amendments to the *Hospital and Health Boards Act 2011* (Qld) and its associated regulation, which aim at driving health equity, eliminating institutional racism across the public health system and achieving life expectancy parity for Aboriginal and Torres Strait Islander people by 2031 (Queensland Health 2021a, p. 1). The Queensland Aboriginal and Islander Health Council (QAIHC) noted that:

> For the first time in Queensland's history, a legislative document acknowledges, verbalises and addresses institutional racism and the inequity of health experienced by Aboriginal and Torres Strait Islander peoples since colonisation. (2022, p. 2)

The new legislation requires each HHS to deliver a Health Equity Strategy in partnership with Aboriginal and Torres Strait Islander people and community-controlled health organisations (Queensland Health 2021b). Each strategy must outline the activities and key performance indicators to improve health and wellbeing outcomes of Aboriginal and Torres Strait Islander people (Queensland Government 2021b, p. 3). The new legislation also requires HHSs to have at least one member of their governance board identify as Aboriginal and/or Torres Strait Islander (section 23(4)).

The Commission has heard mixed views about the implementation of the First Nations Health Equity (FNHE) reforms. For some HHSs, the FNHE legislation has been a key enabler for igniting activity and executive support for addressing institutional racism and health equity more broadly. Some ACCHOs have seen a departure from business-as-usual practices and through FNHE reforms have been able to strengthen relationships with HHSs. For example, the Institute for Urban Indigenous Health (IUIH) said that the FNHE strategy:

> … is supporting system-level reform, including opportunities to direct mainstream Activity Based Funding to sub-acute healthcare delivered in the community-controlled setting, and has seen additional investment flow to the IUIH Network to provide culturally responsive and coordinated health care that may have otherwise been directed to mainstream services. (sub. 62, p. 12)

Box 4.5 – Mixed views on Queensland's First Nations Health Equity reforms

However, the Commission also heard that the FNHE reforms are yet to lead to consistent changes across all HHS regions or to a significant change in how Aboriginal and Torres Strait Islander people access their care (QAIHC, sub. 97, p. 4). QAIHC submitted that opportunity exists for stronger and shared oversight of FNHE strategies, but this will require investment and a sharing of information with ACCHOs so that they have the time and resources to partner with HHSs (sub. 97, p. 4). To address systemic racism in health services – which 'continues to be viewed as the largest barrier to achieving health equity and better health outcomes for Aboriginal and Torres Strait Islander peoples and therefore to Closing the Gap' (QAIHC 2022, p. 2) – opportunities also exist to extend the coverage of FNHE reforms to all health-related services such as ambulances. In its engagement, the Commission also heard that it is problematic to aspire to the system-wide change that the FNHE reforms aspire to, when they do not apply to the central office and policy-making arms of Queensland Health.

Box 4.6 – Reframing relationships and respecting cultural expertise at the Queensland Department of Environment and Science

The Gurra Gurra Framework was developed to reframe the Queensland Department of Environment and Science's (DES) relationships with Aboriginal and Torres Strait Islander people 'by holding Country and its people at the centre' of its work (QDES 2020, p. 9). 'Gurra Gurra' means 'everything' in the language of the Kooma people, whose Country lies in southern inland Queensland (QDES 2020, p. 2).

The framework was developed through 'mob-centred design' and is underpinned by First Nations terms of reference, meaning that it 'seeks to understand and respect the diversity of First Nations cultures across [Queensland], the collectivist nature of decision-making, the importance of Elders and other knowledge keepers, and the primacy of relationships and connection to Country above all things' (QDES 2020, p. 6). The framework's commits the organisation 'to progressing self-determination by working with First Nations peoples to incorporate their priorities and perspectives in decision-making and operations' and 'internal and structural changes needed to reframe [its] relationships' (QDES 2020, pp. 5, 9).

There are indications that the framework has coincided with a cultural shift within the department. The department has made changes to its procurement strategies and the valuing of cultural expertise. The Commission heard that cultural expertise is considered to be a paid service, with First Nations cultural advisors being remunerated for the provision of expertise and services (Qld DES 2021).

Annika David (sub. 27, p. 2) noted the framework as an example 'of governments doing better than they have in the past' and that it 'put traditional owner groups and communities and ranger groups at the heart of decision making. That involved leadership inside the Department.' And the General Manager of the Wuthathi Aboriginal Corporation noted the framework is:

> … an opportunity to reframe the Government's relationship with Indigenous First Nations through new place-based relational contracting and funding arrangements. … We appreciate the commitment from the Director General … [of DES] … for his Department to work with us in what we hope will be a more holistic and integrated way, to reflect the intent of the Gurra Gurra framework. (Turnour 2022, p. 2)

Strong relationships between government organisations and the Aboriginal and Torres Strait Islander people, communities and organisations that governments serve or work with will be necessary for transformation. A former senior official at the Australian Government Department of Health and Aged care (box 4.2) told the Commission that transformation within the department and its collaboration with ACCOs during COVID-19 were only possible because of decades of history working together and building trust (Dr Lucas de Toca, pers. comm., 27 June 2023) (chapter 2). But few government organisations have a long and constructive history working with Aboriginal and Torres Strait Islander people, organisations or communities, and in some instances, there is a significant trust deficit to overcome. This lack of trust may mean governments are reluctant to try new approaches, thereby halting any internal change or learning process. As a result, transformation will take longer in some government organisations than others, and governments will need to invest in relationships through actions like truth-telling, as committed to under clause 59e of the Agreement (box 4.7).

Box 4.7 – Truth-telling is needed for transformation

Aboriginal and Torres Strait Islander people have long advocated for 'a comprehensive account of Australia's history and emphasised the significance of truth-telling for political transformation and reconciliation' (Barolsky and Berger 2023, p. 3).

Truth-telling is a process that seeks to ensure the stories and histories of Aboriginal and Torres Strait Islander people are preserved, understood and acknowledged. While it is crucial that Aboriginal and Torres Strait Islander people lead and guide truth-telling, including identifying the specific harms that need to be addressed and how redress will occur, it is equally important governments actively engage in the process (Barolsky and Berger 2023, p. 7). Listening to Aboriginal and Torres Strait Islander people will assist governments in recognising how their institutions have impacted, and continue to impact, on Aboriginal and Torres Strait Islander communities.

> … what happened in the past continues to shape the experiences of both Aboriginal and Torres Strait Islander and non-Indigenous Australians. Truth telling is an important exercise, not only in improving relationships, but also, more practically, shaping better policies, programs and ways of working. (Reconciliation Australia and The Healing Foundation 2018, p. 24)

For governments, truth-telling can inform an understanding of how the impacts of colonisation manifest through institutional racism and this knowledge should be drawn on to drive transformation strategies (discussed in further detail in appendix B of this paper). It can also help governments to establish new and more genuine relationships with Aboriginal and Torres Strait Islander people,' … in recognition that these relationships have often never existed, or are in need of fundamental repair' (Barolsky and Berger 2023, p. 5) (the role of truth-telling in individual partnerships can be found in chapter 2).

The importance of truth-telling for the transformation of government organisations is clearly acknowledged by some governments (SA Government, sub. 54, p. 12; Tasmanian Government, sub. 90, p. 3). The Victorian and Queensland governments are, respectively, undertaking and pursing formal truth-telling processes.

- In Victoria, the Yoorrook Justice Commission has been established as a formal truth-telling process. Yoorrook is independent of government and is currently in the process of hearing and collecting information from First Peoples in Victoria about experiences of injustices as well as how cultures and knowledges have survived (Yoorrook Justice Commission 2023a). The experiences of First Peoples will be drawn on to develop a shared understanding about the impacts of colonisation in Victoria and to make recommendations 'for healing, system reform and practical changes to laws, policy and education, as well as matters to be included in future treaties' (Yoorrook Justice Commission 2023a).

Box 4.7 – Truth-telling is needed for transformation

- In Queensland, the *Path to Treaty Act 2023* creates the legislative framework for negotiating a treaty between Aboriginal and Torres Strait Islander people and the Queensland Government. The first step in preparing for Treaty will be a three year Truth-telling and Healing Inquiry so that there is a shared understanding of the impacts of colonisation in Queensland prior to treaty negotiations commencing (Palaszczuk and Crawford 2023). The process of recruiting members and a chairperson for the inquiry commenced in November 2023 (Enoch 2023b).

As the government organisations most directly under Ministerial control, departments should be at the forefront of implementing the Agreement. But few government departments are pursuing the transformation required under the Agreement.

Government departments need to develop and execute a transformation strategy for the portfolio that contains actions that articulate a clear theory of change (**recommendation 3, action 3.1**). This strategy needs to be underpinned by the perspectives of Aboriginal and Torres Strait Islander people. Aboriginal and Torres Strait Islander-led assessments are best placed to uncover the extent of historical and current institutional racism, unconscious bias, and the appropriateness of engagement with Aboriginal and Torres Strait Islander people. Assessments should not be a one-off activity; they should be iterative across the life of the strategy, as Aboriginal and Torres Strait Islander people are also best placed to determine whether there has been progress on transformation and where departments need to refocus their transformation strategies and associated actions.

Action 3.1

Government departments develop and execute a transformation strategy for the portfolio

The Australian, state and territory governments should ensure that every government department has a clear, documented strategy for its portfolio to undertake the transformation required under the Agreement.

Each department's portfolio-wide transformation strategy should:

- have a clear theory of change
- contain the evidence base as to how actions (both individually and collectively) will give effect to the committed change
- be underpinned by an Aboriginal and Torres Strait Islander-led assessment of its history with Aboriginal and Torres Strait Islander people, and truth-telling to enable reconciliation and active, ongoing healing.

The Aboriginal- and Torres Strait Islander-led assessment should also include an assessment of progress on other transformation elements, including:

- institutional racism in the department
- unconscious bias in the department
- the department's current approach to engagement with Aboriginal and Torres Strait Islander people.

Once this assessment has been undertaken, each department should develop and execute a transformation strategy to address identified issues, and to implement the transformation elements in a coordinated, coherent and comprehensive manner.

Government departments with responsibility for local governments – such as the WA Department of Local Government, Sport and Cultural Industries and the SA Department for Infrastructure and Transport – will also have a particular role to play in supporting the transition of local governments (box 4.8). The Commission's ability to evaluate progress across Australia's local governments – of which there are over 500 – is limited, but it does appear that many are not taking much action to implement the Agreement.

Box 4.8 – Supporting the transformation of local governments

In addition to the Australian, State and Territory governments, there is a clear intention that local governments participate in the Agreement. This intention is reflected by the Australian Local Government Association (ALGA) being a signatory to the Agreement. However, ALGA is a representative association and has limited influence over the actions of its members. So while some local governments have taken steps to implement the Priority Reforms, many have not.

The Local Government Association of the Northern Territory (LGANT) pointed to several factors that might be impeding local governments' participation in Closing the Gap.

> LGANT, and the local government sector more broadly, has the potential to be a much stronger partner in implementation of the National Agreement … but [it] is currently restricted due to competing demands, resourcing constraints, and a lack of a genuine partnership approach from the other two spheres of government. (sub. 59, p. 2)

LGANT emphasised the importance of leadership from other levels of government in helping to drive change in local government, recommending that:

> … Australian and jurisdictional local government policy makers and regulators be added to the [Closing the Gap] governance structure. For example, the NT Government Local Government Unit (LGU) should be on the NT [Partnership Working Group] and develop actions for [implementation plans] just as other teams and agencies do. (sub. 59, p. 5)

In addition to clear leadership and direction – which can and should be done within existing resources – local governments are likely to require a range of other supports from state and territory governments in order to fulfill their intended role as partners in the Agreement. Most notably, they may require both human and financial resources. The Commission has previously found that:

> … while the role of local Governments has expanded, they do not always have the financial capacity or required level of skills to efficiently undertake these roles … state governments have increased the responsibilities of local governments without increases in resources or sufficient guidance on how roles should be undertaken so as to ensure consistency with, and the efficient meeting of, state goals. (PC 2017c, p. 6)

While these concerns were raised in respect of planning and land use regulations, they appear equally applicable to the implementation of the Agreement.

4.3 Transforming the services governments fund

Just as Priority Reform 3 applies to all government organisations, it also applies to all of the services that are funded by governments but delivered by others on their behalf.

> Governments, their organisations and their institutions are accountable for Closing the Gap and are culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people, *including through the services they fund*. (clause 17c, emphasis added)

When the Commission discussed this aspect of the Agreement with review participants – both within and outside government – the discussion often veered towards the commitments and principles of Priority Reform 2 and prioritising the delivery of services to Aboriginal and Torres Strait Islander people by Aboriginal and Torres Strait Islander organisations. Sometimes this included explicitly advocating that the best way for governments to deliver on this aspect of Priority Reform 3 is to fund ACCOs to deliver services. For example, the Aboriginal Family Legal Service WA submitted that:

> Regarding how governments can deliver on the commitment within Priority Reform Three to transform the services that they fund, this requires a shift in commissioning and procurement processes to prioritise service delivery for Aboriginal people by Aboriginal organisations. Funding to deliver services to Aboriginal communities must be quarantined for ACCOs, including where possible through non-competitive tender processes. (sub. 7, p. 8)

But the Agreement's commitment to building the community-controlled sector and its commitment to delivering on Priority Reform 3 through the services that governments fund are distinct. There are good reasons for this. First, not all Aboriginal and Torres Strait Islander people choose to, or have access to, services through the community-controlled sector. Second, not all of the services provided by non-Indigenous organisations can be delivered by ACCOs, as the Coalition of Peaks pointed out.

> Although building the community-controlled services sector to provide Closing the Gap services is a priority, not all the services can be delivered by a community-controlled organisation. This includes services such as university education, hospitals, courts, prisons and policing, and the provision of income support and Medicare. (2019, p. 17)

The Agreement obliges governments to deliver on transformation regardless of whether Aboriginal and Torres Strait Islander people are served by Indigenous or non-Indigenous government-funded service providers.

Governments need to take responsibility for driving transformation in the services they fund

Very little work has been done through contracting or other mechanisms, to induce the transformation required of government-funded services under the Agreement, and specifically Priority Reform 3. A research project on minimum standards for cultural safety, including considerations around unconscious bias, was scoped through the Partnership Working Group, with the intention that this would inform government responses to implementing Priority Reform 3 through the services it funds (NIAA, pers. comm., 1 May 2023). The Commission understands that this work was completed in 2023, but its publication is delayed until it is endorsed by the Partnership Working Group in 2024 (NIAA, pers. comm., 15 December 2023).

Some non-government organisations appear to be trying to change to better respond to the priorities and needs of Aboriginal and Torres Strait Islander people, even in the absence of leadership from government. Before the Agreement, in 2019, Relationships Australia's Indigenous Network produced its *Action Plan on a Page*, which specified the organisation's spirit of intent, what it wanted to achieve, how it would be achieved,

how the organisation would behave and how it would know it made a difference (RAIN 2019). These are the basic ingredients of any theory of change or plan for transformation, which most government organisations are yet to produce. And a number of non-government organisations working in the child, youth and family sector have formed the Allies for Children partnership, reflecting their shared belief that 'seismic change is required to advance improved outcomes for vulnerable children and families is best achieved through a partnership approach' (Allies for Children and the First Nations Non-Government Alliance, sub. 81, p. 2). The Allies for Children's statement of intent indicates that their 'immediate responsibility is to respond to the overrepresentation of Aboriginal and Torres Strait Islander children and young people in out-of-home-care', and that they will pursue this through partnering with Aboriginal and Torres Strait Islander leaders, ACCOs, peaks and government (Allies for Children 2023). headspace relayed an example where a new model of care was proposed by a Primary Health Network (PHN) but headspace slowed its commitment and progress on the establishment of the proposed model, as the PHN was not yet aligned with the Agreement.

> Before progressing this project and approving key activities, headspace has asked the PHN and the current Lead Agency to provide further advice on their current and future approach, including how it will align with the National Agreement; specifically, how they are partnering with [Aboriginal community-controlled health organisations] and how First Nations leadership and the National Agreement partnership principles will underpin planning and delivery of this project. (sub. 18, p. 11)[8]

Voluntary efforts by some service providers seeking to align their work with the Agreement are of course positive, but these efforts will remain few and far between without leadership and direction from government, including specific requirements for non-government service providers to ensure their services are culturally safe and delivered in a way that meets the needs of Aboriginal and Torres Strait Islander people.

One government official told the Commission that strengthening the community-controlled sector has been the focus to date, and changes to mainstream services will be made later. This speaks to the reality of the task of implementing the Agreement – it requires many changes to be made concurrently, and prioritising some changes over others leads to important reforms being neglected. This neglect needs to stop – additional effort is needed to ensure transformation of non-Indigenous government-funded services.

The content of service delivery contracts and what goes into 'value for money' considerations are the levers that governments hold to ensure transformation through the services they fund. The Commission heard of instances where tender processes incorporate aspects of the Agreement, but these practices are not widespread. This needs to change because service providers cannot be expected to deliver services of a type or quality that they are not contracted to deliver (box 4.9).

[8] The Commission heard about rigidities in the headspace model preventing services being tailored to local needs. This was highlighted in the 2022 evaluation of headspace, which found that 'the headspace model enables localised services'. however this is inconsistent across services, and the link between local needs analysis work undertaken by PHNs and implementation of headspace services could be strengthened' (KPMG 2022a, p. 254). In particular, 'States that had larger Indigenous populations felt the model was not culturally adaptive' (KPMG 2022a, p. 200).

Box 4.9 – You get what you pay for

Annika David, GHD's Indigenous relations lead across federal government, pointed to the need for government conceptions of value for money to take into account the investments that are needed to ensure that services meet the priorities and needs of Aboriginal and Torres Strait Islander people.

> In the past, and still, it is up to the service provider to offer black knowledge as a value add. The private sector can do that — and investing in that knowledge is the right thing to do — but if governments' concept of 'value for money' does not change and it is only an optional add on that we have to work to convince governments to pay for that is a risk.
>
> If Closing the Gap Priority Reforms were taken into consideration by governments when writing Requests for Quotes, and the private sector had to demonstrate how they would deliver against those Priority Reforms — in alignment with what Australia has already signed up to under the [United Nations Declaration on the Rights of Indigenous Peoples] — the gap would close. The gap would close because it would involve working with Indigenous communities as partners. In some areas, like land management, working with them as partners on things they have done for thousands of years.
>
> The problem firms will face is pricing themselves out of the market. Doing the right thing, aligning to the [United Nations Declaration on the Rights of Indigenous Peoples] and other things we have signed up for, can mean a more expensive solution that may take longer to deliver' (Annika David, sub. 27, p. 4).

There are multiple approaches that governments can take to tendering and contracting to assure themselves and the community that the services they fund align with Priority Reform 3 and the Agreement more broadly.

- The SA Government submitted that 'requirements could be imposed in contracts and grant agreements for funded providers to report on how they are achieving the transformational elements at clause 59 of the National Agreement' (sub. 28, p. 9).
- Ngaweeyan Maar-oo submitted that mandating cultural safety training for staff involved in service delivery could be one way of supporting the unique needs of Aboriginal and Torres Strait Islander people (sub. 65, p. 3). In this vein, the Tasmanian Department of Health now has a requirement that organisations funded to deliver alcohol and other drugs and mental health services demonstrate their workforce is qualified and trained in culturally sensitive and inclusive practices (Tasmanian Government 2023a, p. 41).
- Victorian Aboriginal Community Controlled Health Organisation (VACCHO) is developing a 'Blak Tick Approval' scheme to ensure cultural safety is embedded across all Victorian health services (sub. 67, p. 6).

The task facing government organisations is to base funding decisions on information that is strongly predictive of the quality of service delivery ('quality' being any aspect of service delivery that matters to recipients, including the need for services to be culturally safe and free from racism). And the use of backward-looking requirements when making funding decisions, like staff having attended cultural safety training, needs to be complemented by evaluation of the quality of service delivery. This could be challenging where government organisations are several steps removed from service delivery. Taking an example from the health sector, departmental assessments of whether drug and alcohol services commissioned by PHNs are culturally appropriate for Aboriginal and Torres Strait Islander people are made using qualitative

information provided by PHNs (DoH 2018, p. 33). This is an opaque arrangement and provides little confidence that the department's assessment is directly informed by the experience of service users.

Aboriginal and Torres Strait Islander expertise and perspectives are needed to ensure that government-funded services meet Aboriginal and Torres Strait Islander people's priorities. In the health sector, a range of Aboriginal and Torres Strait Islander organisations fulfil this role, but their expertise and perspective is not fully valued or reflected in funding decisions. Western Victoria PHN submitted that:

> ACCOs are not currently resourced to support and provide guidance for the PHN in its commissioning of services outside of ACCOs, nor do they have the capacity within existing resources to support non-First Nations services to be culturally safer and responsive. We would welcome resourcing for ACCOs to work with PHNs and others to provide this support, in order that First Nations people can access culturally safer services anywhere - in primary care, allied health, medical specialty and beyond. (sub. 56, p. 2)

ACCOs and other Aboriginal and Torres Strait Islander people and organisations require additional resources to enable the application of their knowledges and expertise to the implementation of the Agreement (whether as providers or funders). This is discussed in more detail in chapter 7 (action 1.4).

4.4 The independent mechanism

The Agreement commits governments to, by the end of 2023:

> [identifying, developing or strengthening] an independent mechanism, or mechanisms, that will support, monitor, and report on the transformation of mainstream agencies and institutions. The mechanism, or mechanisms, will:
>
> a. support mainstream agencies and institutions to embed transformation elements, as outlined in Clause 59, and monitoring their progress
>
> b. be recognisable for Aboriginal and Torres Strait Islander people and be culturally safe
>
> c. engage with Aboriginal and Torres Strait Islander people to listen and to respond to concerns about mainstream institutions and agencies
>
> d. report publicly on the transformation of mainstream agencies and institutions, including progress, barriers and solutions. (clause 67)

There has been very little progress on the independent mechanism in most jurisdictions (table 4.2). No government will have an independent mechanism in place by the end of 2023 (notwithstanding the ACT's intention to use the existing ACT Aboriginal and Torres Strait Islander Elected Body as its independent mechanism). New South Wales appears to be most advanced in its efforts to develop the independent mechanism.

There is very little transparency about how most governments are progressing their work on the independent mechanism, with publicly available information limited to what is contained in implementation plans and annual reports. A research project on the independent mechanism, scoped through the Partnership Working Group, was completed in 2023, but this work will not be released publicly until 2024 (NIAA, pers. comm. 15 December 2023).

Table 4.2 – In most jurisdictions, there is negligible progress on the independent mechanism

Australian Government

Expected date operational: Unknown

The Australian Government's first implementation plan and annual report noted that it was looking into how existing mechanisms could be used to fulfil the role of the independent mechanism (Australian Government 2021, p. 17, 2022, p. 34). The Australian Government said that it is prioritising work to develop a mechanism. The Department of Prime Minister and Cabinet and the NIAA are working with the Coalition of Peaks to analyse options for an appropriate mechanism for consideration by government in 2024 (sub. 60, attachment C, p. 42)

New South Wales

Expected date operational: Unknown

The NSW Government's first implementation plan noted that Aboriginal Affairs NSW had 'commissioned the Centre for Aboriginal Economic Policy Research, Australian National University to develop an instrument to measure change in the relationship between NSW Government and Aboriginal and Torres Strait Islander people in NSW. Under the NSW partnership, NSW CAPO will be closely involved in this work' (NSW Government and NSW CAPO 2021, p. 27). And New South Wales's annual report describes a project to develop an Aboriginal-led government accountability mechanism, funded as part of the 2022-23 New South Wales Budget, which will run until June 2024 . NSW CAPO submitted that by 2024, NSW (in partnership with NSW CAPO) will develop a pilot design for an Aboriginal-led accountability mechanism. The mechanism will include two core aspects: establishment of the criteria to monitor, improve, and evaluate the alignment of government policies with commitments in the Agreement to transform governments; establishment of an independent accountability authority (sub. 77, attachment A, p. 4).

Victoria

Expected date operational: Unknown

The *Victorian Government Aboriginal Affairs Report 2022* – released in June 2023 – indicates that the independent mechanism 'will be progressed through Victoria's Treaty process, under which there is an opportunity for a body comprising representatives elected by Aboriginal Victorians to lead or oversee engagement with Aboriginal Victorians in relation to any concerns about mainstream institutions and report publicly on the transformation of mainstream agencies' **(Victorian Government 2023d, p. 22)**. The Victorian Government also submitted to this review that 'Victoria's independent mechanism will be progressed through Victoria's Treaty process' (sub. 98, p. 12).

Queensland

Expected date operational: Unknown

The independent mechanism is not mentioned in the Queensland Government's first implementation plan, second implementation plan or annual report.

Western Australia

Expected date operational: Unknown

The WA Government's implementation plan noted that it is 'committed to working in partnership with the Joint Council' on the independent mechanism **(WA Government 2021, p. 28)** and its annual report noted that it is 'in the preliminary stages of scoping a whole-of-government Aboriginal affairs accountability framework, which will draw on existing advisory and independent review mechanisms in the first phase' **(WA Government 2022a, p. 24)**.

South Australia

Expected date operational: Unknown

South Australia's implementation plan and annual report do not mention the independent mechanism. In their submission, South Australia indicated that they are committed to exploring the essential features of an independent mechanism in partnership with the South Australian Aboriginal Community Controlled Organisation (SAACCON), but the outcomes of these conversations cannot be pre-empted until after the SA First Nations Voice is elected in 2024 (sub. 54, p. 22).

Tasmania

Expected date operational: Unknown

Tasmania's implementation plan and annual report do not mention the independent mechanism.

Australian Capital Territory

Expected date operational: Currently operational

The ACT's implementation plan and annual report do not mention the independent mechanism. The ACT Government told the Commission that 'The [Aboriginal and Torres Strait Islander Elected Body] currently has the ability to hold government to account. The ACT may consider enhancing its role in the future subject to the outcome of the Voice referendum through an independent review process' (pers. comm., 6 July 2023).

Northern Territory

Expected date operational: Unknown

The NT Government's annual report notes that 'An options paper for a proposed independent mechanism has been developed and shared through the NT [Partnership Working Group]. A proposal will be developed based on feedback to the paper for further consideration, for the establishment of an independent mechanism by 2023' (NT Government 2022a, p. 53).

Australian Local Government Association (ALGA)

Expected date operational: Never

ALGA does not intend to identify, develop or establish an independent mechanism (ALGA, pers. comm., 11 July 2023). Because local governments are under the jurisdiction of their respective state and territory governments, it will be necessary for the independent mechanisms established by state and territory governments to scrutinise the implementation of Priority Reform 3 at the local government level.

Meanwhile, despite the lack of progress on the independent mechanism, some progress is being made on accountability mechanisms that are internal to government – 'non-independent' mechanisms. For example, the Australian Government is developing a government-led Monitoring and Accountability Framework that 'will measure and drive cultural, systemic and structural transformation' (Australian Government 2023a, p. 24). A draft framework was due to be developed in 2023 and then trialled in several departments before 'a fuller rollout to APS agencies' (sub. 60, attachment C, p. 22). The Department of Social Services is one of the departments in which the framework will be trialled, but the portfolio is also developing its own internal accountability mechanism. This will take the form of a 'Priority Reform 3 Report Card' that will 'hold portfolio agencies accountable for ensuring progress is being made' against documented changes already under way in the portfolio (DSS, sub. 74, p. 14).

While internal accountability mechanisms have a place, they are not a substitute for the independent mechanism as committed to in the Agreement. Review participants were clear that internal monitoring frameworks do not meet the need for independence demanded by the Agreement for objective accountability.

The value placed on independent accountability can also be seen in the work of the Yoorrook Justice Commission in Victoria, which has recommended that the Victorian Government negotiate with the state's First People's Assembly to establish 'independent and authoritative oversight and accountability commission

for the monitoring and evaluation of First Peoples related policies and programs', and that the commission have 'the necessary resources and authority to hold responsible government ministers, departments and entities to account for the success or failure of the programs they develop and deliver' (Yoorrook Justice Commission 2023d, p. 100).

Aboriginal and Torres Strait Islander people want a legislated, independent mechanism that has the power to hold Cabinet ministers and government organisations accountable for the decisions they make in the implementation (or lack of implementation) of reforms in the Agreement. While the Agreement allows the use of an existing mechanism to fulfil the commitment in clause 67, and managing duplication between accountability mechanisms matters, so does avoiding gaps. ANTAR submitted that:

> Whilst new and emerging Aboriginal and Torres Strait Islander representative bodies – such as the proposed Voice to Parliament, as well as the already-established First Peoples Assembly in Victoria and the legislated First Nations Voice to Parliament in South Australia, among others – have an important role to play in holding governments accountable to the commitments they have made under the Closing the Gap Agreement, ANTAR is of the view that a stand-alone independent mechanism is still required. (sub. 42, p. 14)

Chapter 7 discusses the independent mechanism in more detail, including why independence is an essential feature, and consideration of whether its remit should be expanded to cover the other Priority Reforms, as well as other features it should have.

4.5 Progress on Priority Reform 3 has been limited – additional effort is required

Insufficient progress has been made on Priority Reform 3, which puts at risk the achievement of the other Priority Reforms and the realisation of the fundamental objectives of the Agreement – 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.

The lack of progress observed by the Commission is consistent with a paper that was considered a year ago by the Joint Council on Closing the Gap (16 December 2022). It is of substantial concern that there has been very little observable change since then. The Joint Council paper from December 2022, analysed the nine jurisdictional annual reports and found that:

> Priority Reform Three was the most disappointing Priority Reform area reported by each jurisdiction. Progress reported largely focused on Business as Usual Functions (for example Reconciliation Action Plans and cultural training for staff members) as opposed to transformative and systems change actions and levers (for example workforces, policies, programs, services, legislation, partnerships, and frameworks). Reportable actions are often not able to be measured with an inability to track genuine progress. More broadly they do not improve accountability in transforming government and the services it funds, nor ensure that the actions are responsive to the needs of Aboriginal and Torres Strait Islander people. Further, there is limited information reported on the delivery of independent mechanisms to support transformation of mainstream / government organisations and only described jurisdictions' intentions to develop or research these independent mechanisms in the future (per Clause 67). (Joint Council 2022d, pp. 1–2)

While there are pockets of progress, and some examples of potential transformation, most government organisations have not undertaken the groundwork to understand the size and scope of the transformation required. This will vary from organisation to organisation based on what the organisation does and the extent

to which it already operates in line with Priority Reform 3. But every government organisation needs to engage with the Aboriginal and Torres Strait Islander people, organisations and communities they serve and work with to understand what transformation is required in their context – where existing deficiencies are, what the vision for the future looks like and how that vision can be achieved.

Priority Reform 3 is a critical enabler for the other Priority Reforms and improving the life outcomes of Aboriginal and Torres Strait Islander people. The Coalition of Peaks submitted that:

> It was our hope that three years into the National Agreement, there would be more achievements and progress made. However, the life outcomes of Aboriginal and Torres Strait Islander people, and the success of the National Agreement, *depends on governments changing the way they work*. (sub. 31, p. 1, emphasis added)

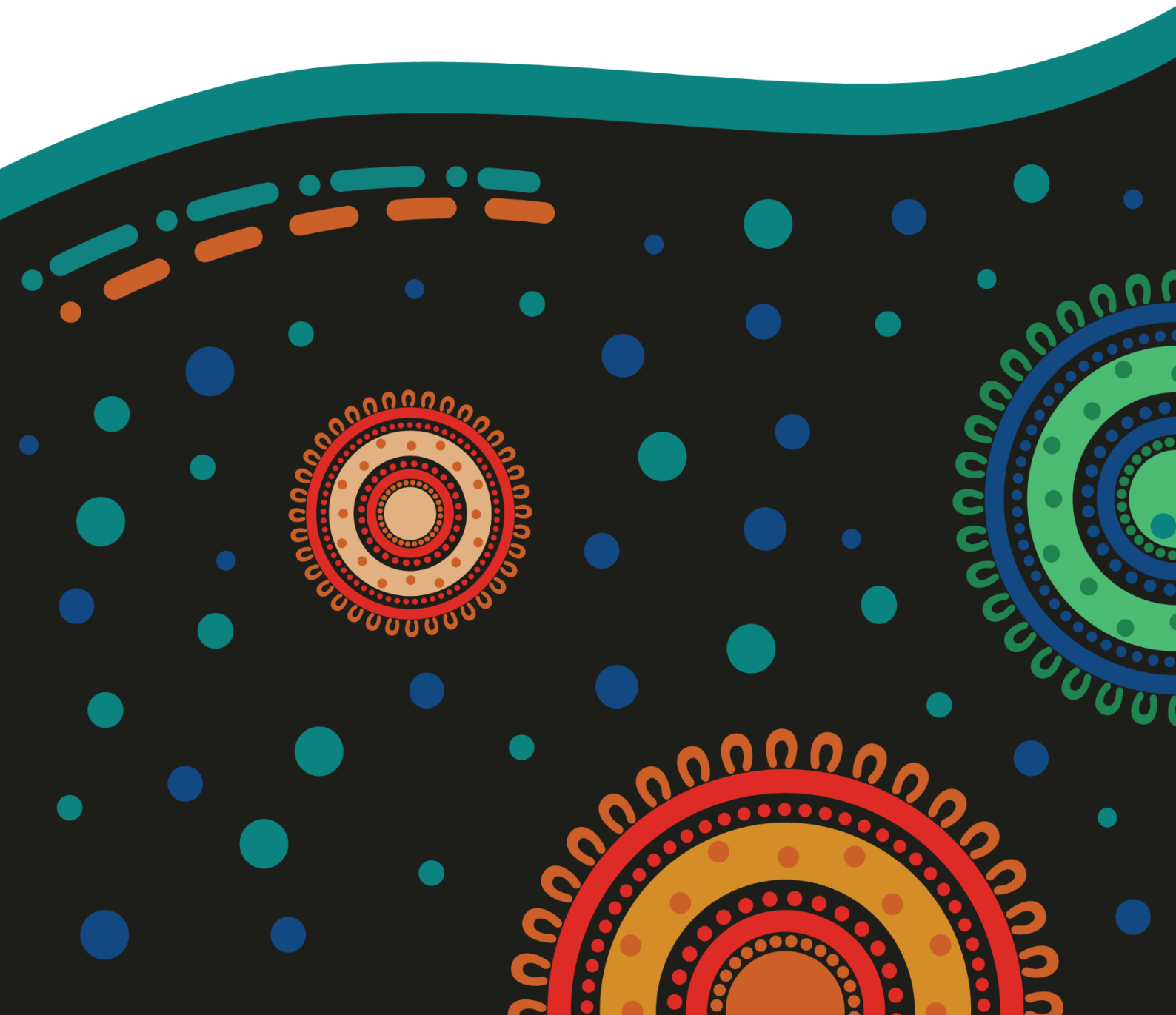
The Commission agrees. The Agreement does not place the Priority Reforms in a hierarchy – or include an explicit conceptual logic overall (chapter 6) – but systemic and structural transformation within government organisations is arguably the key enabler for implementing the Agreement and improving outcomes for Aboriginal and Torres Strait Islander people. The observed lack of progress on Priority Reform 3 puts the Agreement as a whole at risk.

To address this lack of progress, the Commission is recommending that every government department develop a clear, documented strategy for transformation of its portfolio, underpinned by an Aboriginal and Torres Strait Islander-led assessment of its history with Aboriginal and Torres Strait Islander people, and truth-telling to enable reconciliation and active, ongoing healing (p. 20). This work will be complemented by the suite of whole-of-government changes that the Commission is recommending (chapter 7).

Review of the National Agreement on Closing the Gap

Priority Reform 4: Shared access to data and information at a regional level

Chapter 5



Key points

The Commission heard overwhelmingly that Aboriginal and Torres Strait Islander people see Priority Reform 4 as about Indigenous Data Sovereignty (IDS). But the Agreement makes no mention of IDS and nor does it commit governments to embedding Indigenous Data Governance (IDG), which is the practical realisation of IDS. Explicit commitments to IDG are needed to ensure that Aboriginal and Torres Strait Islander people are able to determine what data they need and how data about them is collected and used, to better inform policy decisions.

The Agreement should be amended to reflect IDS. This would accord with Australia's obligations as a signatory to the United Nations Declaration on the Rights of Indigenous People. The Commission's assessment is that the potential benefits of amending the Agreement to reflect IDS would likely outweigh the potential costs of doing so.

- Embedding IDG would give Aboriginal and Torres Strait Islander people greater control over Indigenous data – what is collected, how it is collected, how it is used – and as such would further self-determination.
- This could in turn lead to: better and more informed partnerships; higher quality data; and better policy development, informed by data on what matters and what works that resonates with Aboriginal and Torres Strait Islander people.
- There will be resourcing costs associated with embedding IDG, and rules may be needed to ensure that access to some Indigenous data does not contribute to deficit narratives or problematise Aboriginal and Torres Strait Islander people.

The Commission recommends that the Agreement be amended to explicitly include IDS as part of the outcome statement for Priority Reform 4. This should be accompanied by other changes, including:

- adopting the definitions of IDS and IDG as set out by the Maiam nayri Wingara Indigenous Data Sovereignty Collective; recognising that IDS is a multifaceted, long-term objective to be achieved by Aboriginal and Torres Islander people; recognising that IDS is necessary for Aboriginal and Torres Islander people to determine and make decisions about their priorities and development; committing governments to partnering with Aboriginal and Torres Strait Islander organisations and communities to embed IDG.

Regardless of whether the Agreement is modified to reflect IDS, considerable additional work is required to implement Priority Reform 4 as currently agreed.

- Accessing government-held data is still difficult for many Aboriginal and Torres Strait Islander communities and organisations. There have been some marginal improvements in data sharing but no wholesale or structural changes.
- The meagre progress on data sharing dwarfs what needs to be done to change how governments undertake other data activities (deciding what to collect, how it is collected, how it is used, and so on). Again, there have been some marginal improvements but no wholesale or structural changes.
- Governments' investment in Priority Reform 4 is an order of magnitude lower than for the other Priority Reforms, but the Priority Reforms are mutually reinforcing and all need to be pursued.
- The data projects are behind schedule.

5.1 Priority Reform 4 is not just about sharing data

Priority Reform 4 is titled 'shared access to data and information at a regional level'. Through the National Agreement on Closing the Gap (the Agreement), governments have agreed to:

- share available, disaggregated regional data and information with Aboriginal and Torres Strait Islander organisations and communities on Closing the Gap, subject to meeting privacy requirements
- establish partnerships between Aboriginal and Torres Strait Islander people and government agencies to improve the collection, access, management and use of data, including by identifying improvements to existing data collection and management
- be more transparent with Aboriginal and Torres Strait Islander people about what data they have and how it can be accessed
- build the capacity of Aboriginal and Torres Strait Islander organisations and communities to collect and use data (clause 72).

These commitments are the 'jurisdictional actions' under Priority Reform 4. The Agreement also sets out 'data and information sharing elements' that governments and the Coalition of Peaks have agreed should characterise data and information sharing practices between government and Aboriginal and Torres Strait Islander people (box 5.1). These largely repeat the jurisdictional actions. Governments and the Coalition of Peaks have also agreed to one partnership action – the establishment of up to six community data projects across Australia. The progress of community data projects is discussed in section 5.5.

Box 5.1 – The data and information sharing elements

- There are partnerships in place between Aboriginal and Torres Strait Islander representatives and government organisations to guide the improved collection, access, management and use of data to inform shared decision-making for the benefit of Aboriginal and Torres Strait Islander people.
- Governments agree to provide Aboriginal and Torres Strait Islander communities and organisations access to the same data and information on which any decisions are made, subject to meeting privacy requirements, and ensuring data security and integrity.
- Governments collect, handle and report data at sufficient levels of disaggregation, and in an accessible and timely way, to empower local Aboriginal and Torres Strait Islander communities to access, use and interpret data for local decision-making.
- Aboriginal and Torres Strait Islander communities and organisations are supported by governments to build capability and expertise in collecting, using and interpreting data in a meaningful way.

Source: clause 71.

The data and information sharing elements and jurisdictional actions refer to 'partnerships … to guide the improved collection, access, management and use of data' (clause 71a), 'including [to identify] improvements to existing data collection and management' (clause 72b). Another data and information sharing element is that governments 'collect, handle and report data at sufficient levels of disaggregation, and in an accessible and timely way'. These are not simply about governments sharing the data they already have, but about changing the way that governments undertake data-related activities. In the case of partnerships, it is also about changing the balance of power between governments and Aboriginal and Torres Strait Islander people when determining what,

how and why data-related activities are undertaken to inform policy, to give more voice to Aboriginal and Torres Strait Islander people on how to undertake these activities.

Many parts of the Agreement also speak of Aboriginal and Torres Strait Islander people using, or being able to use, data for their own purposes. For example, both the data and information sharing elements and jurisdictional actions refer to building the capability, expertise or capacity of Aboriginal and Torres Strait Islander communities and organisations to collect, use and interpret data (clauses 71(d) and 72(d)). The community data projects also aim to 'enable Aboriginal and Torres Strait Islander communities and organisations to access and use location-specific data …' (clause 74). And the outcome for Priority Reform 4 is that 'Aboriginal and Torres Strait Islander people 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, their priorities, and drive their own development'.

This is all to say that, while Priority Reform 4 is titled 'shared access to data and information at a regional level', it includes much more than sharing data. Reflecting this, governments have committed to a range of actions, which can mostly be characterised as:

- **the development of data sharing legislation and frameworks**, such as the WA Government's Privacy and Responsible Information Sharing Legislation, which aims to reform personal privacy protections and the accountability of information sharing within government (box 5.9), and the Australian Government's forthcoming Framework for Governance of Indigenous Data (box 5.8)
- **the development of data dashboards and portals**, which aim to collate and present data in an accessible way. Examples include interactive dashboards on housing data in New South Wales, and the Queensland Health Planning Portal
- **the co-development of data reporting and evaluation frameworks,** such as the Dhelk Dja monitoring, evaluation and implementation plan (Victorian DFFH 2020) and the Local Thriving Communities monitoring and evaluation framework in Queensland (planned for completion by the end of 2024 (JCC 2022, p. 9)
- **place-based data projects,** such as the community data projects under the Agreement (discussed in section 5.5) and the community data projects being conducted by the Indigenous Data Network
- **initiatives to build data capability,** such as the initiative in South Australia to embed the Five Safes framework (a multi-dimensional approach to managing data disclosure risks) into Aboriginal community-controlled organisations' operations, and support in Victoria for Aboriginal maternal and child health services to access the Child Development Information System.

Some of these actions will take the implementation of Priority Reform 4 beyond data sharing, although Aboriginal and Torres Strait Islander people overwhelmingly emphasised that their aspirations for Priority Reform 4 go even further, towards the achievement of Indigenous Data Sovereignty.

5.2 Priority Reform 4 and Indigenous Data Sovereignty

For Aboriginal and Torres Strait Islander people to be able to use data to achieve their priorities they require more than just 'access' to existing data held by governments. Aboriginal and Torres Strait Islander people also need to be able to determine what data they need, and how data about them is collected, accessed and used. In particular, they need leadership over the narrative used to frame this data. This is the basic intent of Indigenous Data Sovereignty (IDS, box 5.2).

IDS and the practice of Indigenous Data Governance (IDG) was pioneered by First Nations communities in Canada in the mid-1990s (Lovett et al. 2019, p. 29). Their work led to the establishment of the OCAP ® principles (Ownership, Control, Access and Possession, box 5.5) for governing First Nations' data and information and the development of a First Nations governed national health survey led by the First Nations Information Governance Centre (FNIGC 2023b). Since then, several international and national networks have been established to advance IDG including the Global Indigenous Data Alliance, the United States Indigenous Data Sovereignty Network (USIDSN) and Te Mana Raraunga (the Māori Data Sovereignty Network) in New Zealand.

Box 5.2 – What is Indigenous Data Sovereignty?

In Australia, **Indigenous Data Sovereignty** (IDS) refers to 'the right of Indigenous people to exercise ownership over Indigenous data. Ownership can be expressed through creation, collection, access, analysis, interpretation, management, dissemination and reuse of Indigenous data' (Maiam nayri Wingara 2023a).

IDS 'derives from the inherent right of indigenous peoples to govern [their] peoples, countries (including lands, waters and sky) and resources, as set out in the United Nations Declaration on the Rights of Indigenous Peoples' (USIDSN 2019, p. 1). IDS is a response to the historical exclusion of indigenous peoples from the processes that determine what data governments collect about them, and why and how. The IDS movement is a global movement borne out of the desire to protect against the misuse of data about indigenous peoples, and to ensure that indigenous peoples are the primary beneficiaries of their data (Walter and Carroll 2020, p. 11).

Indigenous data is an expansive concept and refers to 'information or knowledge, in any format or medium, which is about and may affect Indigenous peoples both collectively and individually' (Maiam nayri Wingara 2023a). Rose et al. (2023, p. 6) explain that Indigenous data 'is generated either by or about Indigenous individuals and communities, and so is owned by them either in whole or in part and is transmissible via an intergenerational hereditary mechanism'.

The definition and principles of IDS have been advanced in Australia by the Maiam nayri Wingara Indigenous Data Sovereignty Collective which includes representatives from peak bodies, academics and community leaders from across Australia. At a summit in 2018, delegates asserted that in Australia the principles of IDS are that Aboriginal and Torres Strait Islander people have the right to:

- exercise control of the data ecosystem, including creation, development, stewardship, analysis, dissemination and infrastructure
- data that are contextual and disaggregated (available and accessible at individual, community and First Nations levels)
- data that are relevant and empowers sustainable self-determination and effective self-governance

Box 5.2 – What is Indigenous Data Sovereignty?

- data structures that are accountable to Indigenous peoples and First Nations
- data that are protective and respects [their] individual and collective interests (Maiam nayri Wingara 2023b).

IDS is given practical effect via the practice of **Indigenous Data Governance** (IDG) which embeds Indigenous decision-making across the data lifecycle (Walter and Carroll 2020, p. 10, citing; Smith 2016; Walter and Suina 2019). This includes the right to decide which datasets require active governance and to abstain from participating in data processes inconsistent with the principles of IDS. Specifically, IDG refers to 'the right of Indigenous peoples to autonomously decide what, how and why Indigenous data are collected and used. It ensures that data on or about Indigenous peoples reflects [their] priorities, values, cultures, worldviews and diversity' (Maiam nayri Wingara 2023).

The leading group on IDS in Australia is the Maiam nayri Wingara Indigenous Data Sovereignty Collective. It was formed in early 2017 to develop Aboriginal and Torres Strait Islander IDS principles and to identify Aboriginal and Torres Strait Islander strategic data assets. Over the last decade, Maiam nayri Wingara and others such as the Indigenous Data Network have produced a significant body of research examining the meaning and purpose of IDS and how it might be operationalised. However, calls for IDG and proposals to advance it date back as early as the 1991 Royal Commission into Aboriginal Deaths in Custody (Smith 2016, p. 121). While the Royal Commission did not reference IDG, it recommended:

> That when social indicators are to be used to monitor and/or evaluate policies and programs concerning Aboriginal people, the informed views of Aboriginal people should be incorporated into the development, interpretation and use of the indicators, to ensure that they adequately reflect Aboriginal perceptions and aspirations. In particular, it is recommended that authorities considering information gathering activities concerning Aboriginal people should consult with ATSIC and other Aboriginal organizations, such as NAIHO or NAILSS[9], as to the project. (RCIADIC 1991c, p. 53)

> That research funding bodies reviewing proposals for further research on programs and policies affecting Aboriginal people adopt as principal criteria for the funding of those programs: a. The extent to which the problem or process being investigated has been defined by Aboriginal people of the relevant community or group; b. The extent to which Aboriginal people from the relevant community or group have substantial control over the conduct of the research. … (RCIADIC 1991c, p. 63)

The practice of IDG is still in a relatively early stage in Australia but there are a growing number of examples of IDG being embedded in research and community projects (box 5.3).

[9] ATSIC was the Aboriginal and Torres Strait Islander Commission, NAIHO was the National Aboriginal and Islander Health Organisation, and NAILSS was the National Aboriginal and Islander Legal Services Secretariat.

Box 5.3 – What does Indigenous Data Sovereignty look like in practice?

Data governance under the Maranguka Justice Reinvestment project

Maranguka means 'caring for others' in Ngemba language (JR NSW 2023). The Maranguka Justice Reinvestment project is an Aboriginal-led justice reinvestment project in Bourke, New South Wales, aimed at addressing persistent high crime and incarceration rates. It takes a collective impact approach, which recognises that a single service is ineffective at addressing complex social issues, and that service providers across different sectors must work collaboratively (PC 2020a, p. 201). A local governance group, the Bourke Tribal Council, works with government and enables local decision-making about the coordination and delivery of services (KPMG 2016).

The collection and use of detailed local data underpins decision-making within the project. The project has established an IDG structure, which aims to ensure IDS and leadership engagement. It centralises data requests and collection to ensure accountability can be upheld. The structure includes the Palimaa Data Platform, which automates data access and sharing from 15 contributors, including NSW Government departments and services operating in Bourke (Maranguka Community Hub et al. nd).

Mayi Kuwayu, the National Study of Aboriginal and Torres Strait Islander Wellbeing

Mayi Kuwayu, the National Study of Aboriginal and Torres Strait Islander Wellbeing is a longitudinal study of the links between culture and wellbeing (Bourke et al. 2022). The survey was developed to ensure that measures to assess social determinants of health capture the breadth of shared cultural attributes that are important to understanding Aboriginal and Torres Strait Islander people's health and wellbeing.

The study is led, developed, conducted, and governed by Aboriginal and Torres Strait Islander people. Mayi Kuwayu's governance group includes peak Aboriginal and Torres Strait Islander health and research groups. Its data governance processes are overseen by an all-Indigenous data governance committee, which applies Maiam nayri Wingara IDS principles to assess data use requests, along with continued engagement with communities in the implementation of the questionnaire, and the analysis, interpretation, and dissemination of data collected.

The Agreement does not include an explicit commitment to IDS

IDS is not named in the existing commitments under Priority Reform 4, nor is it referred to elsewhere in the Agreement. The only mention of IDS is in the Agreement's data development plan, which includes 'ethical use of data, in particular acknowledging Aboriginal and Torres Strait Islander-led work about Indigenous Data Sovereignty and Indigenous Data Governance' as a guiding principle for data development prioritisation over the life of the Agreement (Joint Council 2022b, p. 6).

The Agreement frames Priority Reform 4 as about supporting Aboriginal and Torres Strait Islander people to: participate as equals with government, drive their own development at the local level, and hold governments to account for closing the gap (clause 69). The Agreement's performance framework (table A) establishes the outcome for Priority Reform 4 as:

> Aboriginal and Torres Strait Islander people 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, their priorities and drive their own development.

There are substantive differences between IDS and Priority Reform 4

The commitments under Priority Reform 4, if successfully implemented, could go some way towards enabling Aboriginal and Torres Strait Islander people to exercise IDS. Specifically, the agreed actions are consistent with the IDS principle of data being *contextual and disaggregated* at the community level. In addition, the Commission heard that the Agreement's commitment to establish partnerships with Aboriginal and Torres Strait Islander people *to improve the collection, access, management and use of data* and to *build the capacity* of organisations and communities to collect and use data is consistent with supporting the practice of IDG (Maggie Walter pers. comm., 25 September 2023).

However, we have also heard that the existing commitments to Priority Reform 4 do not reflect all of the key principles of IDS. Professor Maggie Walter (pers comms, 25 September 2023) submitted that 'while the elements relate to Indigenous Data Sovereignty – they do not in total add up to Indigenous Data Sovereignty as per agreed definitions.' This was also reflected in a number of submissions from government, including the Northern Territory Government (sub. 70, p. 9) and the Australian Government Department of Social Services (sub. 74, pp. 19–20).

There are at least three substantive IDS elements that are not explicitly within Priority Reform 4.

Decision-making power across the data ecosystem

Priority Reform 4 envisages partnerships between Aboriginal and Torres Strait Islander people and governments that will help 'guide' improved collection, access and management of data (clause 71a). In contrast, IDG asserts a requirement for 'Indigenous leadership and control over Indigenous Data Governance processes' and 'data structures that are accountable to Indigenous peoples' (AIGI 2023). In practice, this means moving beyond consultation and participation through advisory bodies towards Aboriginal and Torres Strait Islander people having decision-making authority in relation to Indigenous data.

Data that supports the values and priorities of Aboriginal and Torres Strait Islander people

IDS asserts the right to data that are 'protective and respect individual and collective interests' (Maiam nayri Wingara 2023b). This requires governance mechanisms that ensure that data production is ethical, representative, and beneficial. As noted above, while the Agreement's data development plan includes a reference to the ethical use of data, this element is otherwise absent from the Agreement. This is a significant gap given the current data landscape that has been characterised as dominated by metrics that focus on Indigenous 'difference, disparity, disadvantage, dysfunction and deprivation' which, as commonly presented in aggregate forms implies deficit as a population trait (Walter and Carroll 2020, p. 9). This is an issue as it can shape and distort how governments, media and the wider public 'see' Aboriginal and Torres Strait Islander peoples and has contributed to a long history of failed policy responses. For this reason, IDG is not limited to what and how data is produced but also how data is deployed and whose purposes and narratives it serves.

A broader conceptualisation of data

While the Agreement does not provide a definition of 'data and information' or limit the scope of actions, it largely alludes to program and policy administrative data and performance metrics. This interpretation is consistent with the Commission's assessment of the Priority Reform 4 actions that jurisdictions have committed to in their implementation plans.

In contrast, IDS defines Indigenous data as information or knowledge, in any format or medium which is about and may affect Indigenous peoples, both collectively and individually (Maiam nayri Wingara 2023a). Accordingly, Indigenous data is not limited to 'Indigenous-identifying data' but includes information (identified or not) about Indigenous interests, such as environments, cultures, languages and resources. The definition also brings into

scope a range of domains that are not within the purview of the commitments under Priority Reform 4. This includes (but is not limited to): academic research about or involving Aboriginal and Torres Strait Islander people, the management of cultural heritage collections and records in the GLAM sector (galleries, libraries, archives, and museums), and intellectual property rights over traditional knowledge, art and stories.

Most governments have not made substantive commitments to enable IDS

Several governments have acknowledged that IDS requires action that goes beyond their existing commitments under Priority Reform 4 (NT Government, sub. 70, p. 9; NIAA, sub. 60, attachment C, pp. 27–28; Victorian Government, sub. 98, p. 9). For example, the Victorian Government submitted that:

> While the 'Data and information sharing elements' outlined at clause 71 of the National Agreement outline how governments collect, handle, provide and report data to First Peoples communities and organisations, Victoria notes decision making powers over the lifecycle of the data currently remains firmly in the remit of government parties. (sub. 98, p. 9)

Nonetheless, to date only the Australian, NSW and Victorian Governments have made explicit commitments regarding IDS (box 5.4), although other jurisdiction have noted that they are undertaking some action relating to IDS. The SA and NT Governments both submitted that the absence of a specific commitment to IDS in the Agreement does not preclude the Government Parties from progressing actions that will support it (SA Government, sub. 54, p. 12; NT Government, sub. 70, p. 9). Both governments, as well as the ACT Government, have indicated that they have initiated processes to consider what IDS and IDG would involve in their jurisdictions.

Box 5.4 – What commitments have governments made in relation to IDS

The Victorian Government has previously acknowledged 'the critical importance of Indigenous Data Sovereignty and has committed to this as a potential subject for negotiation in Statewide and Traditional Owner treaties under the Treaty Negotiation Framework' (Victorian Government 2023d, p. 9) and has submitted to this review that:

> Victoria considers that to substantively progress Indigenous Data Sovereignty under the National Agreement, the National Agreement would benefit from inclusion of an explicit statement about Indigenous Data Sovereignty as an outcome or objective of Priority Reform Four. This clear objective would support self-determined priorities and further align Priority Reform Four with broad Indigenous Data Sovereignty principles developed by the Australian Indigenous Governance Institute. (sub. 98, p. 10)

The Australian and NSW Governments have made commitments regarding IDS.

- The Australian Government has committed to 'providing meaningful change in relation to Indigenous Data Sovereignty and Indigenous Data Governance, and working with other levels of government, and other sectors and entities, to make practical changes' (Australian Government 2023a, p. 30). The forthcoming Framework for Governance of Indigenous Data will provide 'guidance to Australian Public Service agencies on how to practically implement and embed those areas of data governance where the objectives of the Indigenous Data Sovereignty movement and the Australian Government align' (NIAA, pers. comm., 19 December 2023).

Box 5.4 – What commitments have governments made in relation to IDS

- The NSW Government has said that 'achievement of Priority Reform Four rests upon a shared sound understanding of the crucial role that Aboriginal and Torres Strait Islander data sovereignty plays, and adoption of robust data governance protocols and principles' (NSW Government and NSW CAPO 2021, p. 32). The NSW Government has committed to developing a roadmap that sets out a shared understanding of what IDS and IDG mean in New South Wales, and developing a model to implement the principles of IDS and IDG in practice (NSW Government 2022c, pp. 51–52). The NSW Government Data Strategy commits to working with the Aboriginal community on all aspects of the Data Strategy and whole of government data policy to embed the principles of IDS and IDG (NSW Data Analytics Centre 2021, p. 45)

Other governments have indicated actions relating to IDS. For example:

- the Queensland Government has noted that the First Nations Health Equity monitoring and evaluation framework 'will be underpinned by the principles of Aboriginal and Torres Strait Islander data sovereignty' (Queensland Government 2023a, p. 11)
- the South Australian Government has previously indicated that is developing an Indigenous data sovereignty and governance framework, and incorporating IDS principles and actions in its Data Strategy for SA (Government of South Australia 2022, p. 37). Delivering the western suburbs of Adelaide data project will involve 'identifying the data priorities of the Aboriginal community-controlled sector and the application of principles of Indigenous Data Sovereignty and Indigenous Data Governance' (SA Government, sub. 54, p. 5)
- the next phase of work for Western Australia's Kimberley data project will include developing and executing data governance frameworks and agreements to operationalise IDS (WA DPC 2023b, p. 23). The WA Government submitted that the WA Office of Digital Government 'is currently working with ACCOs and other key Aboriginal stakeholders to embed Aboriginal Data Sovereignty principles in the access and use of PeopleWA', a new whole-of-government linked dataset (sub. 43, p. 5)
- Tasmania's Department of Health is 'investigating ways to improve Aboriginal data sovereignty and access to Aboriginal health data and information by Tasmanian Aboriginal people at a regional level, and is seeking to improve the quality of data it collects' (Tasmanian Government 2023a, p. 45)
- the NT Government submitted that it is 'supporting an APO NT-led process to develop data sovereignty principles for the Northern Territory' (sub. 70, p. 9).
- ACT Health has engaged the Maiam nayri Wingara Indigenous Data Sovereignty Collective to undertake work to build knowledge and awareness of IDS and IDG and then progress to implementation of IDS (ACT Government 2023a, pp. 22–23).

Aboriginal and Torres Strait Islander people see IDS as central to the purpose of Priority Reform 4

Throughout the Productivity Commission's engagements, Aboriginal and Torres Strait Islander people overwhelmingly emphasised that IDS was the underlying aspiration of Priority Reform 4. At the 2023 First

Nations Public Administration Conference, Sharif Deen, Head of the NSW Coalition of Aboriginal Peak Organisations' Secretariat stated:

> We were very clear from the start that Indigenous data sovereignty and Indigenous data governance is a key part of Priority Reform 4, so … the fact that [the Agreement] doesn't say … Indigenous data sovereignty and Indigenous data governance explicitly … [public servants have] just got to get over that, and accept that that's where it came from, from community. (Mikaere et al. 2023)

This view was reiterated by the participants who attended a roundtable on IDS held by the Commission in September 2023. Specifically, the Commission heard that IDS 'fell out' of the Agreement during its negotiation with governments. Nonetheless, one participant who was involved in the Agreement's negotiation noted that the intention of Priority Reform 4 to be about IDS is encapsulated in a community member's quote that was included in the Agreement (p. 13) – 'Collect, analyse, use our own data to meet our own needs. It's our information and we should use it for our own purposes as decided by us.'

There was strong support for IDS to be explicitly included in the Agreement in the submissions and feedback that the Commission received on its draft report (for example: DEG, sub. 53, p. 5; IUIH Network, sub 62, p. 22; VALS, sub. 76, p. 6; Kowa Collaboration, sub. 80, p. 4; Lowitja Institute, sub. 85, p.,8). The DEG recommended that IDS 'should be made explicit in Priority Reform 4 to shift the power imbalance and hold government responsible for making data accessible, meaningful and useful to the communities to whom it belongs' (sub. 53, p. 5). Representatives from Aboriginal and Torres Strait Islander community-controlled organisations (ACCOs) and peak organisations highlighted that IDS is an expression of self-determination – it is about 'Aboriginal and Torres Strait Islander people being able to tell their stories, on their terms, and using their data' (IDS roundtable participant).

Aboriginal and Torres Strait Islander participants at the Commission's IDS roundtable observed that governments' awareness and understanding of IDS has increased since the Agreement was signed. Nonetheless, they argued that without an explicit commitment to IDS, governments are unlikely to share or transfer control and decision-making power over data. The Commission heard that government language around IDS and IDG can be shallow and focused on 'quick fixes' like adding Indigenous flags to data sets. For example, the DEG submitted that:

> … IDS is often used to describe long-used methods of consultation with Aboriginal Communities on matters of research or data collection by government agencies, as opposed to the framework of principles to shift practices away from 'insights' based in deficit narratives of Aboriginal communities, and towards Indigenous-led solutions based in self-determination. (sub. 53, p. 7)

What does IDS require governments to do differently?

Given the material differences between Priority Reform 4 and IDS, the Commission's draft report sought feedback on what governments would need to do differently, or beyond their existing obligations, if the Agreement explicitly included a commitment to IDS.

It is not the role of government to 'achieve' IDS. Rather, by definition it is the prerogative of Aboriginal and Torres Strait Islander people and communities to determine how they will exercise ownership of data that is about or affects them. Underscoring this, the executive members of the Maiam nayri Wingara Indigenous Data Sovereignty Collective submitted that:

> It is crucial to recognise that government and non-Indigenous organisations, while they may play a role in data management and as data holders, are not the solution to achieving ID-Sov. ID-Sov emphasises the inherent right of Indigenous peoples to govern, control, and make decisions about

> their own data. This acknowledges that Aboriginal and Torres Strait Islander communities are best positioned to understand and address their own needs, aspirations, and challenges. (sub. 73, p. 2)

However, government policy can, and in many areas is necessary to, enable and embed IDG practices that empower Aboriginal and Torres Strait Islander people to realise IDS.

Practicing IDG

As described above, Indigenous data exists in many forms and settings. It can also be *produced* (that is, created and/or collected) in a variety of ways. These can be illustratively classified into three broad domains.

- **Indigenous produced data** – This is data that is exclusively created and collected by Aboriginal and Torres Strait Islander people. Examples include community and service delivery data independently collected by ACCOs, Land Councils or research/studies that are Aboriginal and Torres Strait Islander designed and led, such as Mayi Kuwayu, the National Study of Aboriginal and Torres Strait Islander Wellbeing (box 5.3).
- **Co-produced data** – This is data that is produced through the activity of both Aboriginal and Torres Strait Islander people and governments or non-Indigenous organisations. This includes data collected by ACCOs as part of, or for, the delivery of government-funded services; academic research that involves or relates to Aboriginal and Torres Strait Islander people, heritage collections and records that are curated by non-Indigenous GLAM organisations.
- **Government/non-Indigenous produced data** – This is Indigenous data that is created or collected by governments or other non-Indigenous organisations without Aboriginal and Torres Strait Islander people being directly involved or having decision making control. This includes administrative and population-level data sets and government service delivery data (for example, hospitals and employment services).

IDG spans across all forms of Indigenous data and involves two interrelated modes (Smith 2016, pp. 119–124):

- **Indigenous governance of data** requires that Aboriginal and Torres Islander people have the power and authority to make rules and decisions about how Indigenous data is governed and managed
- **Indigenous data for governance** requires that Aboriginal and Torres Islander people have the data they need for nation rebuilding, which includes determining and making decisions about their own policy and program needs.

Several frameworks have been developed and applied by researchers and practitioners to operationalise IDG (box 5.5). The frameworks each provide a set of core principles and guidance to embed Indigenous authority and decision making across the data lifecycle which includes data creation, collection, access, analysis, interpretation, dissemination and review/disposal.

As the practice of IDG is still maturing, consensus on a standardised set of principles and best practice is yet to emerge (Rose et al. 2023, p. 14; Trudgett et al. 2022, p. 20). However, Trudgett et al. (2022, p. 21) highlight that this reflects that operationalising IDG is complex and needs to be applied at different levels (including the international, national, place-based, and individual levels) and tailored to the specific circumstances of diverse communities. As Lovett et al. (2019, p. 27) explain, data sovereignty requires managing information in a way that 'aligns with the laws, practices and customs of a nation-state in which it is located', which may manifest at the community or mob level.

The fact that *the* set of principles or best practices does not exist is not a barrier to taking steps to recognise IDS and embed IDG. Outside government, there are efforts being made to do this. For example, the Australian Traumatic Brain Injury National Data Project has an Indigenous Data Governance Group, which shapes clinical and quality indicators for traumatic brain injury among Aboriginal and Torres Strait Islander people. The Project:

> … aims to set a precedent for other registry projects, both national and international, to aspire to work safely and respectfully with Indigenous data and establish data partnerships through Indigenous Data Sovereignty and Governance with First Nations peoples and communities. (Ryder et al. 2022, p. 889)

Box 5.5 – Frameworks for operationalising IDG

Several frameworks have emerged globally to address IDS, with three prominent models being the OCAP (Ownership, Control, Access, and Possession) framework, the CARE (Collective Benefit, Authority to Control, Responsibility, and Ethics) principles, and the Te Mana Raraunga principles. The frameworks vary in terms of the types of data and aspects of IDS that they focus on.

The **OCAP** ® principles, developed by the First Nations Information Governance Centre in Canada, are intended to provide direction on how information can be used to benefit First Nations communities in a manner that mitigates harm and ensures that First Nations organisations are accountable to their membership for the use and management of community information (FNIGC 2019, p. 63). The principles relate to ownership, control, access and possession:

- **Ownership** refers to the relationship of First Nations to their cultural knowledge, data, and information. This principle states that a community or group owns information collectively in the same way that an individual owns his or her personal information.
- **Control** affirms that First Nations, their communities, and representative bodies are within their rights to seek control over all aspects of research and information management processes that impact them. First Nations control of research can include all stages of a particular research project-from start to finish. The principle extends to the control of resources and review processes, the planning process, management of the information and so on.
- **Access** refers to the fact that First Nations must have access to information and data about themselves and their communities regardless of where it is held. The principle of access also refers to the right of First Nations' communities and organizations to manage and make decisions regarding access to their collective information. This may be achieved, in practice, through standardized, formal protocols.z
- **Possession.** While ownership identifies the relationship between a people and their information in principle, possession or stewardship is more concrete: it refers to the physical control of data. Possession is the mechanism by which ownership can be asserted and protected. (FNIGC 2023b)

The CARE principles, developed by the Global Indigenous Data Alliance, are a response to the FAIR data principles – Findable, Accessible, Interoperable, Reusable (Rose et al. 2023, p. 20). The Global Indigenous Data Alliance argues that the principles of the open data movement, which includes the FAIR principles, mainly focus on facilitating increased data sharing but ignore power differentials and historical context, and that this focus is in tension with Indigenous Peoples who are 'asserting greater control over the application and use of Indigenous data and Indigenous knowledge for collective benefit' (GIDA 2019, p. 1). The CARE principles are intended to complement the FAIR principles by encouraging considerations of Indigenous Peoples' rights and interests. The principles cover:

- **Collective benefit**: Data ecosystems shall be designed and function in ways that enable Indigenous Peoples to derive benefit from the data.
- **Authority to control**: Indigenous Peoples' rights and interests in Indigenous data must be recognised and their authority to control such data be empowered. Indigenous data governance enables Indigenous Peoples and governing bodies to determine how Indigenous Peoples, as well as Indigenous lands, territories, resources, knowledges and geographical indicators, are represented and identified within data.
- **Responsibility**: Those working with Indigenous data have a responsibility to share how those data are used to support Indigenous Peoples' self-determination and collective benefit. Accountability requires meaningful and openly available evidence of these efforts and the benefits accruing to Indigenous Peoples.

Box 5.5 – Frameworks for operationalising IDG

- **Ethics**: Indigenous Peoples' rights and wellbeing should be the primary concern at all stages of the data life cycle and across the data ecosystem. (GIDA 2019, pp. 2–5)

Te Mana Raraunga, the Māori Data Sovereignty Network has developed eight Māori Data Sovereignty principles: Rangatiratanga (Authority), Whakapapa (Relationships), Whanaungatanga (Obligations), Kotahitanga (Collective benefit), Manaakitanga (Reciprocity), Kaitiakitanga (Guardianship) (Te Mana Raraunga 2018, p. 2). The principles are intended to prioritise Māori self-determination and cultural values and encourage innovative data management approaches while respecting Māori protocols.

Governments have a role in embedding Indigenous Data Governance

IDS is a paradigm shift from the status-quo. But in many respects IDG is simply the practical application of Priority Reform 1 across the data lifecycle. Nonetheless, commenting on the scale of change required, Maiam nayri Wingara highlighted that given the present lack of 'resources, Indigenous data infrastructure, and Indigenous data literacy and skills within Aboriginal and Torres Strait Islander communities and organisations' the establishment of IDS across the current Indigenous data landscape at present is unrealistic (sub. 73, p. 1). Capability within government will also be a barrier to embedding IDS.

Given the expansive and diverse nature of the Indigenous data landscape, the types of policy changes and actions that will be required by governments to enable IDG will vary in scope and difficulty. To illustrate, with reference to 'Indigenous produced' data, a commitment to IDS would entail governments supporting Aboriginal and Torres Strait Islander people to exercise full control over their data and recognising its value and legitimacy to inform policy and service delivery decisions. In the domains of 'co-produced' and 'non-Indigenous' produced data it requires governments to establish governance structures that share (or transfer) decision-making authority with Aboriginal and Torres Strait Islander people.

The specific types of actions that governments would need to take to implement these changes broadly fall into three categories (table 5.1):

- incorporating IDG into existing data systems
- building Indigenous data capability (of both government agencies and Aboriginal and Torres Strait Islander organisations and communities)
- investing in Indigenous data infrastructure.

All of these changes will need to be complemented by changes to the culture around data within government. There is a culture of risk aversion and avoidance in relation to data sharing in general, and governments have not reformed the way they exercise power over data about Aboriginal and Torres Strait Islander people (section 5.4). Amending public sector employment requirements (**recommendation 3, action 3.5**) (chapter 7) and ensuring that public servants' performance agreements and key performance indicators (KPIs) reflect new expectations in relation to data sharing is a concrete way of creating accountability for and incentivising cultural change.

Table 5.1 – Transforming how government 'does' data

Examples of what a commitment to IDG could look like in practice

	Indigenous produced	Co produced	Government produced
Incorporating IDG into existing data systems	• Funding agreements that allow ACCOs to retain control of their data and intellectual property.	• Grant guidelines that require KPIs to be co-designed. • Data use agreements that outline how service data is shared and used. • Adoption of best practice Indigenous research ethics and consent protocols	• Establishment of Aboriginal and Torres Strait Islander data governance structures for existing collections • Creation of a national catalogue of Aboriginal and Torres Strait Islander data sets
Building Indigenous data capability	• Establishment of community-data units • Funding for data specialist roles as part of service agreements	• Creation of two-way secondments between government agencies and ACCOs • Establishment of interagency communities of practice to facilitate knowledge sharing and the exploration of opportunities to embed IDG principles	• Delivery of training programs to build an understanding of Indigenous data concepts and strengths-based reporting • Audits/reviews of existing Indigenous data practices • Creation of Indigenous data champion roles
Investing in Indigenous data infrastructure	• Creation of data warehouses or portals to collate and support management of community-controlled data	• Adoption of Indigenous data classification and quality standards • Commission new local/regional-level collections that are community-controlled	• Transfer of Indigenous surveys or collections to Aboriginal and Torres Strait Islander control

Incorporating IDG into existing data systems

With respect to *Indigenous governance of data,* reforming existing data systems requires instituting governance structures that create visibility of government-held Indigenous data and establish roles, rules, processes, and responsibilities that provide Aboriginal and Torres Strait Islander people with authority in determining how their data is collected, stored, accessed, shared and disposed. This would also include ensuring that IDG is reflected in relevant intergovernmental agreements, particularly the Intergovernmental Agreement on data sharing between Commonwealth and State and Territory governments. (**Recommendation 4, action 4.2** in chapter 7 is about embedding the commitments of the National Agreement on Closing the Gap into other intergovernmental agreements.)

Reforms to advance *Indigenous Data for governance* would entail providing Aboriginal and Torres Strait Islander people with authority over what Indigenous data is collected. This might include reworking grant agreement processes to give Aboriginal and Torres Strait Islander organisations and communities a genuine say in setting service delivery KPIs that address their priorities and needs (rather than governments) and authority in determining the indicators and information that is used to design, implement, and evaluate policies that affect Aboriginal and Torres Strait Islander people.

Building Indigenous data capability

A commitment to IDS and its practical realisation through IDG requires a concomitant investment in capability building, both within governments and Aboriginal and Torres Strait Islander communities and organisations.

Governments have already committed to building the data capability of ACCOs under Priority Reform 4 but investment has been lacking to date (box 5.6). The First Nations Digital Inclusion Advisory Group submitted that 'there has been inadequate focus on training and development and infrastructure at a community level and this undermines the potential for leveraging data for nation building at local community levels and creating secure and well-functioning data systems' (sub. 61, p. 3).

Box 5.6 – Support to build capability has been insufficient to date

A crucial complement to government-held data in informing policy affecting Aboriginal and Torres Strait Islander people is data that is collected by Aboriginal and Torres Strait Islander people and organisations. Such data is more likely to align with Aboriginal and Torres Strait Islander people's values, priorities and realities. However, support for Aboriginal and Torres Strait Islander people and organisations to build and strengthen the capability to collect and use this data has been insufficient.

The Commission heard several examples of Aboriginal and Torres Strait Islander organisations not being supported to build data capability. For example, one Aboriginal organisation said that it wanted to collect its own data but did not have the resources to employ someone to do so. Another commented that Aboriginal peak organisations were in a unique position to lead data linkage projects, but did not have the funds to do so. And one Aboriginal community-controlled health organisation said that it was not able to find support for a project to model demand for its clinics.

The Commission heard that building the data capability of Aboriginal and Torres Strait Islander organisations was often a lower priority for governments than service delivery, even though communities had identified data capability as a priority, and the data activities communities wanted to undertake were essential in designing and delivering services that improve outcomes.

Some capability is being built through program partnerships

One small-scale way in which governments are supporting the capability of Aboriginal and Torres Strait Islander people is through existing program partnerships. Several government agencies reflected to the Commission that, sometimes, Aboriginal and Torres Strait Islander people and organisations 'did not know what they did not know' when it came to data, and that the presence of a partnership served as a point of contact through which people were able to navigate what data they needed and how this could be used to answer questions of interest.

The Australian Government Department of Education noted that its experience with the *Connected Beginnings* program demonstrated that relationships were a crucial component in any system-wide change to support capability and make government-held data more available to Aboriginal and Torres Strait Islander organisations (Department of Education, pers. comm., 14 June 2023). It was not a matter of having either relationships or systemic change – both were needed to improve the ability of Aboriginal and Torres Strait Islander people to obtain the data they needed and effect change through its use. The department submitted that 'as a tangible measure of promoting self-determination within communities, the

Box 5.6 – Support to build capability has been insufficient to date

process of collecting, collating and visualising data allows communities to choose the indicators that matter to them and their children' (NIAA, sub. 60, attachment C, p. 26).

More support to build capability could take a number of forms

The collection, access, analysis and dissemination of data requires a specific set of skills. Governments must dedicate funding and resourcing if these skills are to be built or strengthened within Aboriginal and Torres Strait Islander organisations and communities.

Support for developing data capability could take a number of forms. For example:

- as noted above, one way in which capability can be built is through partnerships that facilitate communication and collaboration on data-related issues between government agencies and Aboriginal and Torres Strait Islander organisations. However, this will not be appropriate or possible in all circumstances, as it requires a partnership to exist or be developed
- staff secondments from government agencies to Aboriginal and Torres Strait Islander organisations, and vice-versa, could also facilitate skills and knowledge transfer
- the provision of funding specifically dedicated to data activities and capability building could be required to bring Aboriginal and Torres Strait Islander-led data projects and ways of using data to fruition. As demonstrated in box 5.3, where Aboriginal and Torres Strait Islander data governance is recognised and resourced, organisations can have significant latent capacity to articulate and manage complex data projects. This can include the collection of data for monitoring and evaluation of government-funded services and programs delivered by ACCOs.

The most appropriate way to support Aboriginal and Torres Strait Islander organisations to develop and strengthen data capability will vary by context. What is important is that supports are designed in partnership with Aboriginal and Torres Strait Islander people in line with their needs and priorities, and that existing capability is recognised.

If governments commit to changing the Agreement in line with **action 2.1**, to support Aboriginal and Torres Strait Islander people having greater control over Indigenous data, this will require investing in the skills and technology required to conduct surveys, undertake analysis and manage databases. The Dharriwaa Elders Group (DEG) submitted that:

> Giving control of data to communities will require communities being resourced over the long term to develop their own data governance and protocols and practical data management processes. ACCOs will need resourcing for staff, ongoing training and professional development. (sub. 53, p. 6)

The DEG also emphasised that government agencies will need to be resourced to interact with ACCOs and undertake 'serious collaboration to achieve agreed outcomes' (sub. 53, p. 6). The Lowitja Institute submitted that while there is a need to develop the capability of Aboriginal and Torres Strait Islander communities and organisations, there is also a need to develop governments' capability to adhere to the principles of IDS and IDG (sub. 85, p. 8).

Investing in Indigenous data infrastructure

Ultimately, IDS requires the establishment of data infrastructure that is controlled by Aboriginal and Torres Strait Islander people. Data infrastructure includes technology, the organisations that operate and maintain it,

and the processes and protocols that are followed to manage the collection, storage, processing, and dissemination of data. It includes hardware, software, networks, services, data standards and so forth.

Lovett et al. (2020c, p. 5) propose that this infrastructure should enable Aboriginal and Torres Strait Islander communities to develop new data items, manage their own data collections and receive and repatriate their data and develop and realise their own data capability. Investing in Indigenous data infrastructure will ensure that communities and organisations can create the datasets and collect information on what matters to them.

The Māori data governance model, which is designed for use across the New Zealand public service, advises that Indigenous data infrastructure needs to be affordable for communities and enable their autonomy, be built upon decentralised and distributed models (to improve user autonomy), and be 'customisable, scalable and interoperable' at local, regional and national levels (Kukutai et al. 2023, p. 28). Similarly, the First Nations Digital Inclusion Advisory Group (sub. 61, p. 3) submitted that Priority Reform 4 requires governments to move to a more decentralised data management approach:

> The current approach of the Australian Government has been to centralise data collection and systems, without a clear process for enabling data sharing with First Nations people and communities. This approach prevents First Nations communities leveraging data for their own advocacy and goes against the intent of Priority Reform 4: Shared Access to Data and Information at a Regional Level.

Examples in both Canada and New Zealand have illustrated that the establishment of Indigenous data infrastructure can improve the availability, quality and usefulness of Indigenous data and lead to better policy and population-wide outcomes (box 5.7). However, some participants highlighted that addressing Aboriginal and Torres Strait Islander people's digital inclusion (socio-economic outcome 17) will be essential for advancing IDS in practice (Digital Media Research Centre, sub. 38, p. 5; Law Council, sub. 83, attachment, p. 25). This includes improving both connectivity and digital literacy, particularly in regional and remote communities.

Box 5.7 – Benefits from investing in Indigenous data infrastructure

Te Whata

Te Whata is a web-based data platform, created to provide access to datasets for over 100 iwi and iwi-related groups (Kukutai et al. 2023, p. 27). A 'whata' is a storehouse of sustenance and can refer to a platform to display the hakari following a long deliberation by a group about the future. Te Whata is a digital analogue that represents 'the importance of data as a tool for deliberation, sustenance and wellbeing' (Te Kāhui Raraunga 2023). The public dashboard includes data on social, economic, cultural and environmental indicators, and functionality for iwi information managers to login and customise data 'to align with their strategies and goals, and to write reports and narratives that reflect their specific identifies, priorities and circumstances' (Kukutai et al. 2023, p. 27).

Te Whata was designed and is operated by Te Kāhui Raraunga, an independent organisation created to lead actions needed to realise the advocacy of the Data Iwi Leaders Group (Data ILG). In 2018, New Zealand's Census missed over 30% of the Māori population and Data ILG technicians worked with Stats NZ to address this problem, with estimated iwi counts now available through Te Whata.

Box 5.7 – Benefits from investing in Indigenous data infrastructure

First Nations Information Governance Centre

In Canada the First Nations Information Governance Centre has been involved in national surveys since 1996. That year, the *Report of the Royal Commission on Aboriginal Peoples* recommended that:

> First Nations, Inuit and Métis leaders establish a working group, funded by the federal government, with a two-year mandate to plan a statistical clearinghouse controlled by Aboriginal people to: a) work in collaboration with Aboriginal governments and organizations to establish and update statistical data bases; and b) promote common strategies across nations and communities for collecting and analyzing data relevant to Aboriginal development goals. (Royal Commission on Aboriginal Peoples, Canada 1996, p. 218)

The First Nations Information Governance Centre partners with communities to deliver national surveys that reflect the information needs of each nation and can be used by each nation for their own purposes or aggregated to provide a national picture. Since the original health survey, data collection has expanded to include surveys on early childhood, education, labour and employment, oral health and community (FNIGC 2023a).

The action areas and specific examples described above entail different timescales, levels of investment and dependencies. Thus, a commitment to IDG will require governments to develop a strategic and coordinated response, that clearly demonstrates the logic that underpins the development of action against the vision. As noted earlier, collectively governments are yet to embark on such an effort, although the Australian Government's forthcoming Framework for Governance of Indigenous Data could potentially be useful for other governments seeking to implement IDG (box 5.8). However, Aboriginal and Torres Strait Islander leadership is essential in determining what constitutes IDG and how it is enacted. As Maiam nayri Wingara submitted:

> Aboriginal and Torres Strait Islander peoples should be at the forefront of designing and implementing data governance frameworks and technical infrastructure that align with place-based cultural values, protocols, and worldviews. This recognises and respects culturally sensitive data practices and the diverse Indigenous knowledge systems across the continent. (sub. 73, p. 2)

Box 5.8 – The Australian Government's forthcoming Framework for Governance of Indigenous Data

The Australian Government's Framework for the Governance of Indigenous Data will provide 'guidance to APS agencies on how to practically implement and embed those areas of data governance where the objectives of the Indigenous Data Sovereignty movement and the Australian Government align' (NIAA, pers. comm., 19 December 2023).

The framework was developed:

> … in partnership between the APS and First Nations representatives, with the intention of providing First Nations people meaningful access to, and greater agency over the governance of, relevant government-held data. The Framework also calls for data-related capability building for First Nations people, which is essential for developing Indigenous self-determination and shared decision-making. (NIAA, pers. comm., 19 December 2023).

It was endorsed by the Secretaries' Digital and Data Committee in late 2023 and the Commission has been told that in 2024 agencies will begin developing plans for its implementation (NIAA, pers. comm., 19 December 2023). In addition:

> A taskforce will be established to support agencies in developing implementation plans. Implementation of the Framework will be guided by a Sub-Committee of the Deputy Secretaries Data Group which includes First Nations members, with oversight provided by the Secretaries' Digital and Data Committee. (NIAA, pers. comm., 19 December 2023)

Should the Agreement be amended to include IDS?

The Agreement is a living document which will be updated to reflect shared priorities, progress and feedback from Aboriginal and Torres Strait Islander people (clause 14). Accordingly, the Commission's terms of reference for the Review, specify that it should, where relevant, provide recommendations to the Joint Council on potential changes to the Agreement.

As discussed above, there is strong support for including IDS in the Agreement from Aboriginal and Torres Strait Islander people. Support for the concept of IDS or its inclusion in the Agreement is also evident in a number of submissions from non-Indigenous organisations and participants (for example, Digital Media Research Centre, sub. 38, p. 2; Queensland Nurses and Midwives' Union, sub. 46, p. 5; Law Council of Australia, sub. 83, attachment, p. 25; Universities Australia, sub. 86, p. 2). The Public Health Association of Australia submitted that:

> Aboriginal and Torres Strait Islander communities must retain ownership, access, and control over their data, with a focus on building local capacity and facilitating self-determination to empower and support communities to utilize data to effectively address community priorities and make informed decisions on programs and policies that address local need. … PHAA therefore supports the Commission recommending that Indigenous data sovereignty should be the explicit objective of Priority Reform 4. (sub. 68, p. 6)

Similarly, Universities Australia submitted that:

> Indigenous data can be a cultural and economic asset that produces invaluable information and enables Indigenous communities to define their own outcomes, formulate strategic choices, advocate to industry and government, and evaluate successes and outcomes. By explicitly making Indigenous Data Sovereignty a part of the National Agreement on Closing the Gap, governments set a standard for not only the stewardship and application of data, but also managing Indigenous cultural and intellectual property respectfully and ethically in ways that support Indigenous interests and collective well-being. (sub. 86, pp. 4–5)

While the Australian and NSW Governments have made commitments regarding IDS, and all governments are undertaking actions relating to IDS (box 5.4), the Victorian Government is the only one to openly call for the Agreement to be amended to make IDS an outcome or objective of Priority Reform 4:

> Victoria considers that to substantively progress Indigenous Data Sovereignty under the National Agreement, the National Agreement would benefit from inclusion of an explicit statement about Indigenous Data Sovereignty as an outcome or objective of Priority Reform Four. This clear objective would support self-determined priorities and further align Priority Reform Four with broad Indigenous Data Sovereignty principles developed by the Australian Indigenous Governance Institute. (sub. 98, p. 10)

The Australian Government Department of Social Services submitted that 'there are potential benefits to including IDS as an explicit objective under Priority Reform 4', including creating a common authorising environment, but noted that there are 'a number of practical and legal considerations around implementing IDS in the portfolio. For example, there may need to be changes to how the department and other agencies would need to conduct and manage mainstream research (beyond data collection and sharing) where it involves any interactions with or implications for First Nations people' (sub. 74, p. 20).

The formal recognition of IDS in the Agreement would give practical effect to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Rose et al. (2023, p. 9) note that 'data is not mentioned in the Declaration itself' and that rights to IDG are 'inferred, rather than explicitly described'. For example, the UNDRIP provides that Indigenous people have the right 'to participate in decision-making in matters which would affect their rights' (Article 18), and such participation needs to be informed by Indigenous data that matters to Aboriginal and Torres Strait Islander people. The UNDRIP also provides that Indigenous peoples have the right 'to maintain, control, protect and develop' their intellectual property over cultural heritage, traditional knowledge and traditional cultural expressions, and that States will 'take effective measures to recognize and protect the exercise of these rights' in conjunction with Indigenous peoples (Article 31). Kukutai and Taylor (2016a, p. 14) commented that:

> An overarching conclusion of the collected papers [in *Indigenous data sovereignty: towards an agenda* (Kukutai and Taylor 2016b)] is to reaffirm the assertion of UNDRIP that indigenous peoples have a right to self-determination that emanates from their inalienable relationships to lands, waters and the natural world, and that to give practical effect to this right requires a relocation of authority over relevant information from nation-states back to indigenous peoples.

To this end, amending the Agreement to include IDS accords with Australia's obligations as a signatory to the UNDRIP and would serve to affirm and advance its commitments to it. More directly though, IDS is both an apparent pre-condition to achieve the Agreement's principal aims and through IDG, a realisation of them. Namely these aims include that Aboriginal and Torres Strait Islander people are empowered to share decision-making authority with governments and have access to, and the capability to use, locally relevant data and information (clause 17).

Walter and Carrol (2020, p. 11) propose that there are critical interdependencies between IDS, IDG and Indigenous policy: 'Indigenous led and controlled decision-making ensures that Indigenous values, priorities, cultures and ways of knowing cohere in Indigenous data, making such data relevant, contextualized and aligned with the aspirations of Indigenous Peoples'. Notably, a failure to take account of these interdependencies has been identified as contributing to the failure of the National Indigenous Reform Agreement (Lovett et al. 2020b, p. 47).

The scope of an IDS amendment

The Commission is of the view that IDS should be explicitly included in the Agreement by revising the outcome statement for Priority Reform 4 and inserting a new subsection on IDS under Priority Reform 4. For it to lead to effective action, an amendment to the Agreement must be clear, feasible, and substantive. To this effect, an IDS amendment should contain three elements.

1. Accept the concepts of Indigenous data, Indigenous Data Sovereignty, and Indigenous Data Governance

Participants at the Commission's IDS roundtable reported that governments tend to retrofit IDS to align with their priorities and objectives and narrowly interpret it as an opportunity to 'get more data about Indigenous people'. A key concern is that given existing power imbalances there is a risk that IDS will be 'co-opted and selectively appropriated into policy', which may have unintended consequences (Walter and Carroll 2020, p. 11).

Without a formally adopted definition, there is a risk that governments will delay substantiative action while debating which definitions to use. A number of Australian governments are currently undertaking work to understand these concepts or develop frameworks for their application (box 5.4), and the NT Government submitted that because the Agreement does not effectively capture data sovereignty principles there has been 'some delay in action as parties intend to incorporate data sovereignty principles into the development of any actions to address Priority Reform 4, as there may not always be uniform or adequate understanding of what this constitutes' (sub. 70, p. 10).

To ensure a shared understanding of the concepts, the Agreement should adopt the definitions of *Indigenous data*, *Indigenous Data Sovereignty* and *Indigenous Data Governance* as formulated by the Maiam nayri Wingara Indigenous Data Sovereignty Collective (box 5.2). The definitions are widely accepted in the existing literature and were strongly endorsed in the submissions and feedback the Commission received on Priority Reform 4. And these definitions are already reflected in a number of government publications, including the NSW Government's Data Strategy (NSW Data Analytics Centre 2021, p. 26).

2. Recognise that IDS is a multi-faceted, long-term objective to be achieved by Aboriginal and Torres Islander people

An amendment should acknowledge that while governments have a role to play in enabling IDG, IDS can only be exercised and realised by Aboriginal and Torres Strait Islander people. Accordingly, it should specify that Aboriginal and Torres Strait Islander people must be empowered to determine how IDS will be achieved. It should also acknowledge that IDS requires a long-term commitment and transformation process that will necessitate and enable the first 3 Priority Reforms: shared decision-making, strengthening ACCOs and transforming government organisations.

To better encapsulate the aims and principles of IDS, the outcome statement for Priority Reform 4 could be expanded beyond 'Aboriginal and Torres Strait Islander people 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, their priorities and drive their own development' (clause 17d). A revised statement could read, for example, that 'Aboriginal and Torres Strait Islander people have the ability to define, develop, access, use and govern data

and information that is locally-relevant and reflects their priorities, values, cultures and diversity'. Other preamble and supporting clauses should recognise the value and importance of IDS to Aboriginal and Torres Strait Islander people. Specifically, following clause 70, where the Parties agree that 'disaggregated data and information is most useful' a new clause could affirm that communities and organisations require data that 'protects and respects their individual and collective interests and governance structures that empower them to make decisions about how their data is managed and used'. Similarly, clause 19d could be revised to acknowledge that beyond needing 'access to the same information and data as governments', Aboriginal and Torres Strait Islander communities need to be able to 'self-determine and control the data they need to make decisions about their priorities and development'.

3. Commit governments to partnering with Aboriginal and Torres Strait Islander communities to embed IDG into existing data systems, build capability and invest in Indigenous data infrastructure

To ensure it has effect, the amendment must establish the actions that governments will undertake to advance IDG in partnership with Aboriginal and Torres Strait Islander people. These could be set out in a separate subsection under Priority Reform 4 and include commitments to: a) incorporate IDG into existing data systems; b) build the Indigenous data capability of ACCOs and government and c) develop Indigenous data infrastructure.

The Agreement should distinguish between actions to improve the functioning of existing data systems (for example, their ability to capture and report disaggregated data and enable data sharing) from efforts to operationalise IDG which will entail reconfiguring and establishing new data governance structures and infrastructure. As the Institute for Urban Indigenous Health (IUIH) Network submitted, accelerated effort by governments to ensure that existing service data can be reported by Indigenous status and for consistent geographical regions is still required as part of a transition to IDS (sub. 62, p. 6).

Recognising that progressing and embedding IDG will be a staged process, governments should commit to preparing action plans that identify the key barriers and priorities in their jurisdiction and set out how they will sequence their efforts. The development of these plans should be led by the Aboriginal and Torres Strait Islander partners and subject matter experts. The action plans should consider the full spectrum of the Indigenous data landscape and identify practical but material foundational actions to build the capability needed to pursue more extensive changes.

An essential action as part of governments commitment to advance and embed IDG should be the establishment of a Bureau of Indigenous Data (BoID) (**recommendation 2, action 2.2** in chapter 6). The BoID would be governed and led by Aboriginal and Torres Strait Islander people. In addition to overseeing data development to monitor progress against the agreement, it would support governments to build their Indigenous data capability, incorporate IDG into their data systems and invest in enhancing the data capability of Aboriginal and Torres Strait Islander organisations and communities. The BoID would have responsibility for stewarding the development of the jurisdictional IDG action plans and ensuring there is an there is an appropriate level of intergovernmental coordination.

The potential benefits of adding IDS to the Agreement outweigh the likely costs

The case for incorporating IDS in the Agreement should be assessed based on the material benefits and costs that are likely to result for Aboriginal and Torres Strait Islander people and the wider community. While they cannot be readily quantified, it is reasonable and appropriate to consider the magnitude, timescale and distribution of the foreseeable positive and negative consequences of amendment.

The remainder of this section examines the main benefits, costs and risks that could result from governments enacting the proposed IDS amendment outlined above and their potential net impact.

The combined benefits of IDS could aid in the implementation of the Agreement

IDS could enable shared decision-making and more effective partnerships

Control of data is an act of self-determination – it transfers power to Aboriginal and Torres Strait Islander people to define and address their priority needs and aspirations. Taking actions to recognise and give effect to IDS would align with Priority Reform 1 and the Agreement's recognition that Aboriginal and Torres Strait Islander people have been saying for a long time that 'they need to have a greater say in how programs and services are delivered to their people, in their own places and on their own country' (clause 19a).

IDS has the potential to facilitate more genuine partnerships and better partnership outcomes by reducing information imbalances between governments and Aboriginal and Torres Strait Islander organisations and communities. As Aboriginal Peak Organisations Northern Territory (APO NT) submitted, 'asymmetrical access and control of data continues to prevent our organisations from being able to meaningfully engage in discussions about our own people' (sub. 69 p. 11). And the NSW Joint Coalition of Aboriginal Peak Organisations (CAPO) & Government Priority Reform 4 and Indigenous Data Sovereignty & Governance program submitted that 'Respect for cultural protocols, and the valuing of Aboriginal perspectives, knowledges and knowledge systems as part of everyday data practices will enable a richer two-way dialogue on any topic that matters to communities, whether health, education, justice, employment, history, environment or the arts' (sub. 99, p. 7).

Several of the 'strong partnership elements' under Priority Reform 1 necessitate IDG practices that ensure Aboriginal and Torres Strait Islander partners can determine what information is relevant to them and how it is interpreted and applied in their deliberations with government agencies. This includes that partners have access to the same data and information, and that Aboriginal and Torres Strait Islander people's lived experience is understood and respected and their voices hold as much weight as governments' (clause 32c).

IDS could help to disrupt the existing dominance of deficit data and narratives

As discussed earlier, the current Indigenous data landscape is characterised by an oversupply of Indigenous data that is aggregated, decontextualised, reductive and problematises Aboriginal and Torres Strait Islander people. In turn, there is an undersupply of Indigenous data that captures the cultural diversity, social and structural contexts, values and self-conceptions of First Nations communities (Walter et al. 2021, p. 145). Walter (2016, p. 87) argues that the societal impacts of this imbalance and lack of knowledge has contributed to non-Indigenous to Indigenous relations being built around pejorative stereotypes as evident in the 'thoughtless denigration and casual disrespect of Aboriginal and Torres Strait Islander people, culture and society that pervades our society's conversations'. As many commentators observed, this was highly visible in the public discussion around the national referendum for a Voice (Editorial 2023; Tan 2023).

IDS involves prioritising data that is representative of, and beneficial to Aboriginal and Torres Strait Islander people and communities. This requires analysis and reporting that take account of Aboriginal and Torres Strait Islander people's perspectives and priorities. Practically, this is achieved through IDG practices that provide Aboriginal and Torres Strait Islander people with the power to refute deficit narratives, to tell their own stories and determine how they want to be 'known' by governments (Walter and Carroll 2020, p. 15). Aboriginal and Torres Strait Islander participants told the Commission that IDG will improve the quality of Indigenous data and provide a shield against misuse. The IUIH Network (sub. 62, p. 23) argued that IDS 'ensures that information on the health and wellbeing of our communities is treated with the utmost respect, in line with our cultural values.' Similarly, the National Close the Gap Campaign submitted that:

> To ensure respectful, culturally informed policy and practice that reflects community priorities, Aboriginal and Torres Strait Islander leadership and decision-making must be embedded into all aspects of data collection, analysis, use and interpretation. (sub. 71, p. 7)

The Mayi Kuwayu national longitudinal study of Aboriginal and Torres Strait Islander wellbeing demonstrates what this can look like in practice. It aims to help fill the paucity of research on cultural practice and expression and serve as an exemplar of Aboriginal and Torres Strait Islander research governance (Jones et al. 2018).

IDS could support building trust and the integrity of Indigenous data, helping governments maintain their social license to collect, share and use data

The importance of maintaining a social licence to collect, share and use data for public interest research and analysis was a theme of the Productivity Commission's *Data Availability and Use* inquiry. The Commission emphasised that governments rely on the willingness of the community to provide their personal data based on a confidence that it will be appropriately handled and used. Inadequate data governance can lead to an erosion of this trust and result in the undermining and underutilisation of valuable data assets (PC 2017a, p. 128). While the *Data Availability and Transparency Act* 2022 (Cth) aimed to 'streamline and modernise' data sharing across the Australian Government (HoR 2020b), it also contained 'a range of measures to support good data governance and encourage public trust through transparency' (HoR 2020a, p. 9).

Trust is especially important in the domain of Indigenous data. Rainie et al. (2019, p. 304) note there is a long-standing mistrust of data and data systems by Indigenous peoples. The NSW Joint CAPO & NSW Government Priority Reform 4 and Indigenous Data Sovereignty & Governance program told the Commission that 'historical misuse of Aboriginal data by governments and non-Aboriginal researchers has made communities cautious about sharing data' (sub. 99, p. 2). In the context of evaluation, the Productivity Commission's Indigenous Evaluation Strategy study found that poor engagement practices and a failure to consider assumptions and biases can undercut the legitimacy that evaluations hold in communities (PC 2020c, p. 170).

Both the challenge and importance of maintaining trust is increasing in the context of growing efforts to open up and link administrative data sets and the adoption of decision-making algorithms trained on datasets that can be inherently biased. Walter and Carroll (2020, p. 16) assert that without the adoption of specific Indigenous data protocols such initiatives risk exacerbating deficit narratives and biases. Left unaddressed this could lead to a vicious cycle whereby Aboriginal and Torres Strait Islander people and organisations increasingly opt out of providing their data and the quality and representativeness of datasets and the tools that rely upon them further deteriorate.

The adoption of IDG practices has the potential to help sustain and strengthen the social licence for the collection and use of Indigenous data by ensuring that Aboriginal and Torres Strait Islander people and communities feel they can make decisions about how their data is used. Building a trusted and safe data system is one of the primary goals of the Māori data governance model. It establishes that this requires ensuring that there are levers to ensure that Māori authority over Māori data can be effectively exercised to minimise the risk of data-related harm and provide for redress when it does occur (Kukutai et al. 2023, pp. 4, 18).

IDS could provide more complete and accurate information to inform policy solutions

In practice, IDS means having the right data, in the right context and at the right level to make well-informed policy and program decisions. This in turn can result in the more efficient and effective allocation of government funding, resulting in more effective service delivery and community outcomes. Various participants saw IDS as critical for communities to be able to develop and oversee local-level solutions and asserted that this is a key rationale for it to be included under Priority Reform 4. For example, the Dharriwaa Elders Group said:

> Access to government data enables ACCOs to ask questions of the data that are meaningful to the community (within the limits of the data and informed by community knowledge). The data can be used to build evidence, develop deeper understanding and insights at the community

> level, inform locally-led responses to issues that are a priority to the community, and in doing so achieve better outcomes for the community (and as a consequence cost savings to government). (DEG, sub. 53, p. 6)

And the Kowa Collaboration said:

> First Nations peoples possess invaluable Cultural knowledge, historical context, and a profound understanding of our communities' unique needs and priorities. By entrusting control over data management and governance to First Nations peoples and Communities (through sovereign digital systems), we can aspire to create data systems and infrastructure that both uphold ID-Sov and genuinely support place-based solutions. (sub. 80, p. 3)

These and other submissions highlight that sharing existing data is a necessary but insufficient mechanism. IDG is about ensuring that Indigenous data is relevant, high-quality and can be interpreted and applied through a cultural lens and understanding of the community context. As the Queensland Nurses and Midwives Union submitted, to deliver better health outcomes ACCHOs 'need to have the highest quality data available, and a part of that quality will be not only access to already collected data but leadership into also deciding what to collect and how such data is used in understanding, prioritising and delivering quality health care' (sub. 46, p. 5). The Anindilyakwa Land Council's (ALC) development of a community profile to inform local decision making demonstrates what IDG can look like in practice.

> As far as can be ascertained, the ALC's experience of establishing a binding agreement on local decision-making, of securing commitments on the sharing of government-held data to support this, of negotiating formal processes to access such data, and of constructing internal capacity to receive, manage and utilise data, represents a rare case study example of comprehensive Indigenous data governance in practice. To that extent, the findings from this process have national significance. (FNP ANU 2023, p. 133)

The experience of the ALC developing its community profile will be a valuable source of information for governments seeking to implement the Commission's recommendation to support IDS, realised through IDG.

IDS could enable more effective performance monitoring

IDS could facilitate the development of better performance indicators and data sources to track progress against the Agreement and whether it is 'making a difference'. This in turn, will enhance the effectiveness of the Agreement's performance monitoring and reporting arrangements as a mechanism to support accountability.

As detailed in chapter 6, the current measurement approach for the Agreement's performance framework is failing to effectively monitor and assess progress. Its major flaws include targets that inadequately measure the scope and intent of the socio-economic outcomes and a lack of indicators that prioritise and provide visibility of the cultural determinants and dimensions of progress. Another key issue with the performance framework is that it is not designed to monitor progress at a level that is useful for communities. John Altman (sub. 51, p. 9), highlighted the tension in the Agreement between a commitment to demonstrating progress against national level targets and enabling regions and communities to determine and progress their specific needs and priorities (as required by Priority Reform 4) and noted that:

> Even if these targets are met, most represent measures of emerging sameness, not of difference where it is desired or sought or indeed inevitable in places like Maningrida and Doomadgee where people continue to live in remote discrete communities. (sub. 51, p. 13)

The adoption of IDG practices by governments would also lead to communities and ACCOs having greater authority to determine the KPIs that are used to evaluate local models of service delivery. The Commission heard from many ACCOs that poorly defined KPIs in funding agreements continue to misdirect effort and fail

to prioritise service delivery elements that are most valued by the community. The Institute of Urban Indigenous Health described the negative consequences of this:

> Indigenous Key Performance Indicators (KPIs) in government-funded programs are often limited to specific areas of service delivery, thereby failing to capture the holistic view of health and wellbeing held by IUIH and our First Nations communities. This means that the benefits of ACCOs' best practices, such as IUIH's integrated, wrap-around model of care, are often not showcased to governments, which can be detrimental to policy and program evaluation, transfer of services to ACCOs and the renewal of funding agreements. (sub. 62, p. 24)

Implementing IDS will require a substantive investment by governments and entail transition costs

As outlined above, implementing a commitment to IDS would involve a significant investment to incorporate IDG into existing data systems, build the Indigenous data capability of ACCOs and government and develop Indigenous-controlled data infrastructure. This would require additional dedicated funding and resourcing by all governments. It would also require a paradigm shift in public servants' attitudes and default ways of working in relation to data, which already stand in the way of the data sharing committed to under Priority Reform 4 (section 5.3).

The costs of incorporating IDG into existing data systems will entail upfront fixed costs, for example for agencies to assess and modify their existing data collection processes and establish data sharing agreements, as well as ongoing costs to train and upskill staff to enact these changes. Investment in building the Indigenous data capability of public servants will be critical to ensure the cost of doing so is not transferred to ACCOs. As the IUIH Network submitted (sub. 62, p. 6):

> … changes would need to be communicated clearly and repeatedly within government agencies. The onus must not be on communities and ACCOs to educate public servants and to advocate and agitate where data is not forthcoming.

Reconfiguring data systems to enhance their capacity to capture and report on locally disaggregated data by Indigenous status is likely to be particularly costly. Importantly, governments will need to partner with and fund ACCOs and communities to design and build the data infrastructure required. Coordinating and overseeing this work would be a key part of the BoID's role.

By their own accounts, government expenditure to date on actions to progress Priority Reform 4 has been modest (section 5.4). The additional government expenditure required to fulfil a commitment to IDS would necessarily be spread out over the medium-term (5 to 10 years). As discussed above it has the potential to yield cost savings and efficiency gains over the longer term.

The implementation of IDG will necessarily involve disruption to existing data processes. At different stages, this may entail teething issues as new governance protocols and procedures are worked out, adopted, and refined. While there are areas where common protocols will be important (for example, Indigenous data quality standards and metadata schemes), IDG will not be reducible to simply enacting a new set of standard data practices. IDG can take many forms; this, in turn, means that the way governments' data systems and practices need to change can be equally varied. As the Kowa Collaboration submitted (sub. 80, p. 5) it will require governments to tailor their data management practices in accordance with the diverse cultural protocols and data needs of different communities. This will be a valuable but difficult capability for government agencies to develop.

Embedding IDG may also require governments to review and amend relevant legislation and regulatory frameworks, for instance in relation to issues such as protection of collective privacy and traditional cultural knowledge (section 5.3). Such issues are likely to involve trade-offs and will require time and engagement to

resolve. Given the practice of IDG is continuing to mature these will also not be one-off changes. Specifically, the actions required by governments will change over time as the understanding of best practice evolves with respect to emerging areas such as the use of artificial intelligence.

This highlights that a commitment to partnering with Aboriginal and Torres Strait Islander communities to embed IDG will require a sustained effort by governments. Importantly, governments will need to be willing to be led by communities and ACCOs to trial new practices and be prepared to adapt and refine them as their own IDG capability matures.

Implementing IDG is more likely to support increased data openness than it is to erode it

High-quality data can support better policy decisions and more effective service delivery. More generally, it can enable the more efficient allocation of resources and facilitate innovation and the emergence of new service and business models. Because data is not 'used up', but rather can be used simultaneously by many people and for different purposes over time, increasing the accessibility of data can have large social and economic benefits. These potential benefits are a key reason why government policy often seeks to ensure open access to data.

There are two ways that IDG could potentially reduce data openness: by unintentionally slowing or disincentivising data sharing; and, by deliberately imposing greater access restrictions on certain datasets. These are discussed below.

Complex and lengthy approval processes to access data, including duplicative ethics application requirements, can be a major barrier to data openness (PC 2017a, pp. 142–144). If IDG is haphazardly layered over these existing processes, with an array of localised IDG standards, this could be challenging and costly to navigate, reduce data interoperability and unintentionally inhibit potentially valuable research. However, the Commission has heard that opaque, complex, and inconsistent data sharing processes are already a key barrier to ACCOs accessing government-held Indigenous data and that advancing IDG would help to address these issues. Best practices that establish coherent protocols and Indigenous data standards while providing communities with control over their data will need time to develop. But on balance, IDG has the potential to both better enable communities and ACCOs to share their data with governments and researchers and also access the data they need.

The Commission also heard some concerns about the implications of IDS for government-held collections that contain information relating to Aboriginal and Torres Strait Islander people. For instance, the Australian Institute of Health and Welfare (AIHW) raised the question of how IDS 'could work with data sets that cover the entire Australian population (e.g. administrative data sets)' (sub. 57, p. 1). IDS asserts the right of Indigenous people to exercise ownership over Indigenous data through control of how it is created, shared, and used. This is a strong claim, noting that in Australia no one legally 'owns' their data (although in limited circumstances copyright law can permit copyright holders to assign licence the right to use certain databases) (PC 2017a, p. 65). However, IDS does not inherently preclude government custodianship nor the concept of joint control of Indigenous data. The Organisation for Economic Co-operation and Development's *Good Practice Principles for Data Ethics in the Public Sector* specifically state that individuals and communities should be given decision-making power to exercise autonomy, control, and agency over their data (OECD 2021, p. 10). In Australia, the Consumer Data Right was enacted in 2019 under a new section of the *Competition and Consumer Act 2010* (Part IVD) with the explicit purpose of giving consumers greater control over their data (OAIC 2023).

Embedding IDG could result in greater restrictions on accessing and using some Indigenous data – namely, where it is reductive and problematises Aboriginal and Torres Strait Islander people. However as discussed above, continuing with the status quo arguably poses a greater risk to the openness and integrity of

government-held datasets if Aboriginal and Torres Strait Islander people increasingly lose trust in how these collections are managed and opt out. Rather than limiting access to Indigenous data, IDG aims to ensure that it reflects the priorities of Aboriginal and Torres Strait Islander people and protects their interests. To this end, enabling Aboriginal and Torres Strait Islander people and communities to control their data could generate more data sharing. As Universities Australia submitted (sub. 86, p. 4):

> In consideration of the growing volume and opportunities for secondary use of data, it is imperative that governments collaborate with Indigenous communities to co-design protocols for the governance and stewardship of Indigenous data. These protocols should be formally applicable and enforceable for anyone who wishes to analyse Indigenous peoples' data. This would help address the tension that Indigenous communities feel between '(1) protecting Indigenous rights and interests in Indigenous data (including traditional knowledges and intellectual property) and (2) supporting open data, machine learning, broad data sharing, and big data initiatives.

Moreover, the risk that IDG might hinder access to Indigenous data will arguably be most effectively mitigated by governments making a concerted effort to work with Aboriginal and Torres Strait people to develop and adopt standards for sharing, reporting on and using Indigenous data. For instance, this could involve extending or adapting existing best practice approaches to balancing the risks and utility of data disclosure, such as the Five Safes framework, which is already widely used by both government and institutional data custodians. While there will necessarily be variation across communities and regions to reflect different priorities and cultural protocols, a primary function of the proposed BoID would be to support the development of common guidelines and protocols that serve to both safeguard and advance the use of Indigenous data.

Summing up

The Commission is of the view that there is a significant potential net benefit from amending the Agreement to include IDS. Moreover, it is necessary to provide governments with a clear mandate to take coordinated action to advance IDG. The benefits, costs and risks identified above are by the nature of the proposed amendment, high-level. The specific actions that governments will need to take to fulfil a commitment to embedding IDG will need to be further developed and assessed on their own right. However, many of the initial steps that could be taken by governments would make an important contribution to realising the identified benefits at little cost or risk.

Action 2.1
Amend the Agreement to include Indigenous Data Sovereignty under Priority Reform 4

The Agreement should be amended to explicitly include IDS as part of the outcome statement for Priority Reform 4. This should be accompanied by other changes, including:

- adopting the definitions of Indigenous Data Sovereignty and Indigenous Data Governance, as set out by the Maiam nayri Wingara Indigenous Data Sovereignty Collective
- recognising that IDS is a multi-faceted, long-term objective to be achieved by Aboriginal and Torres Strait Islander people
- recognising that IDS is necessary for Aboriginal and Torres Strait Islander people to determine and make decisions about their priorities and development
- committing governments to partnering with Aboriginal and Torres Strait Islander organisations and communities to embed IDG. This should include specific commitments to:
  - incorporate IDG into existing data systems to empower Aboriginal and Torres Strait Islander people to decide what, how and why Indigenous data are collected and managed across the data lifecycle
  - strengthen the technical and administrative data capability of ACCOs and build the Indigenous data capability of government and non-Indigenous organisations
  - invest in developing Indigenous data infrastructure that enables communities to develop, manage and use their own data collections.

5.3 How are governments sharing the data they hold with Aboriginal and Torres Strait Islander people?

Aboriginal and Torres Strait Islander communities and organisations can require access to data held by governments for a range of reasons, including to understand what is happening in their region, and to plan or coordinate service delivery. In the context of the National Agreement on Closing the Gap, government-held data is one source of data that can support Aboriginal and Torres Strait Islander people to participate as equals in partnerships and shared decision-making, build the Aboriginal community-controlled sector, and hold governments to account for their transformation (clause 69). Other sources of data, such as community-collected data, can also be (and often are) important but this section discusses governments' efforts to enhance the availability of data they hold to Aboriginal and Torres Strait Islander people.

In recent years, governments have pursued a range of initiatives that aim to increase the availability and use of public sector data. This includes changes to legislation (box 5.9) and non-legislative initiatives, like the Intergovernmental Agreement on data sharing between Commonwealth and State and Territory governments. These changes are a recognition of the benefits that can be created through wider sharing and use of public sector data.

However, with the exception of South Australia – where the *Public Sector (Data Sharing) Act 2016* (SA) allows the Minister to make data sharing agreements with certain nongovernment entities – many of these initiatives to increase the availability and use of public data have been focused on data sharing within the public and research sectors. For example:

- while the discussion paper that contributed to the development of the Data Availability and Transparency Act 2022 (Cth) (DAT Act) noted that 'A considered approach to Indigenous data is important' (DPMC 2019b, p. 7), the DAT Act does not mention Indigenous data. The discussion paper noted that the department 'heard concerns relating to Indigenous access to Indigenous data and Indigenous data

sovereignty' (DPMC 2019b, p. 7). Some Aboriginal and Torres Strait Islander entities, including some Land Councils, have been identified as government entities for the purposes of the DAT Act, but ACCOs and Registered Native Title Bodies Corporate (RNTBCs) cannot participate directly in the data sharing scheme established by the Act (ONDC, sub. 78, pp. 1–2).
- Western Australia's planned Privacy and Responsible Information Sharing legislation will include 'a mechanism that supports Aboriginal data sovereignty and governance in WA, by requiring that Aboriginal people and communities are involved or consulted when data about Aboriginal people is shared' (WA Government, sub. 43, p. 5), but the legislation remains focused on data sharing within government.

Access to data is still difficult for many Aboriginal and Torres Strait Islander communities and organisations, though there have been improvements to transparency around governments' data holdings and visual tools. Making more substantive changes to implement Priority Reform 4 will require changes to the network of factors that jointly determines what public sector data can be shared and is shared.

There is a very real culture of risk aversion and avoidance in the public sector in relation to data sharing, but public servants' attitudes around data sharing are 'downstream' of the legislation that they operate within. As they implement Priority Reform 4, governments need to assess precisely how privacy and related legislation can stymy greater sharing of data with Aboriginal and Torres Strait Islander communities and organisations. If legislative change is considered, this should include consideration of the particular circumstances of Aboriginal and Torres Strait Islander people and communities, including in relation to collective privacy.

Public servants' attitudes and knowledge around data sharing needs to change, and they need to be supported to make that change. Governments also need to support Aboriginal and Torres Strait Islander people and organisations to build data capability.

Box 5.9 – Legislation to increase the sharing of public sector data

The *Data Availability and Transparency Act 2022* (Cth)

The *Data Availability and Transparency Act 2022* (DAT Act) came into effect on 1 April 2022. The Act establishes the DATA Scheme, under which Australian Government bodies are authorised to share public sector data that they control with accredited users. Accredited users are Australian, state and territory government bodies and Australian universities who are accredited to obtain and use Australian Government data (ONDC 2023a). Data obtained by accredited users must only be used for three purposes: to deliver government services, to inform government policies and programs, and for research and development (DAT Act, section 15(1)). The scheme also establishes accredited data service providers (ADSPs), which are Australian, state and territory government bodies and Australian universities that can provide data integration, de-identification and secure data access services to support data sharing (ONDC 2023a).

The DATA Scheme does not oblige data custodians to share data requested by accredited users, but data custodians are required to consider and respond to all data requests within a reasonable period, and provide reasons for any refusal within 28 days. Any sharing under the scheme must also take place under a data sharing agreement that sets out how the parties will give effect to the data sharing principles outlined in the DAT Act, and how the project serves the public interest (ONDC 2023b).

Box 5.9 – Legislation to increase the sharing of public sector data

The DAT Act also establishes the:

- National Data Commissioner, who provides advice and guidance about the scheme, provides education and support for best practice data handling and sharing, and performs regulatory functions in relation to the scheme (sections 41 to 45A)
- National Data Advisory Council, an advisory body to the National Data Commissioner in relation to sharing and use of public sector data (section 61).

The *Data Sharing (Government Sector) Act 2015* (NSW)

The *Data Sharing (Government Sector) Act 2015* was introduced in recognition of the need to improve data sharing between NSW Government agencies (NSW Department of Customer Service 2021, p. 7). It operates by overriding other laws that would otherwise prohibit the disclosure of data by government agencies (section 5(1)). However, agencies must continue to comply with privacy legislation (section 5(2)).

The Act authorises government agencies to share data with the Data Analytics Centre (DAC) or another government agency to enable data analytics work to be carried out relating to government policy making, program management, service planning and delivery, and to enable government agencies to better make policies, manage programs, and plan and deliver services (section 6(1)).

The Act also allows the Minister to direct government agencies to provide data to the DAC (section 7), or to provide information to the DAC about what data the agency holds (section 8). The DAC may share the results of data analytics work with the agency that provided it with the data, but not with any other agency, person or organisation (section 9). The Act also establishes a set of data safeguards, including in relation to privacy and commercial-in-confidence information (part 3).

The *Data Sharing Act 2017* (Vic)

The *Data Sharing Act 2017* creates a framework for the sharing and use of data held by Victorian Government bodies. It establishes the Chief Data Officer (CDO), whose role is, among other things, to conduct data integration and analytics to inform Victorian Government policy making, service planning and design; build capability in data analytics across the Victorian public sector; and lead and co-ordinate cross-jurisdictional data sharing and integration on behalf of the Victorian Government (section 7).

The Act allows the CDO to request any data or information held by Victorian Government agencies, unless it would prejudice national security, disclose the identity of a confidential source or someone in a witness protection program, or disclose investigative measures and procedures. Some agencies, known as ‘data sharing bodies’ (including departments, administrative offices and statutory agencies) must respond to requests from the CDO, either by providing the data or providing reasons for refusing the request. Other agencies, known as ‘designated bodies’ (judicial bodies such as courts and tribunals, for example), do not have to respond to a request from the CDO.

The Act aims to promote greater sharing and use of Victorian Government data by giving agencies clear permission to share identifiable data with the CDO and departments, or share data that would otherwise be subject to secrecy provisions. Data shared with the CDO is only to be used for informing policy making, service planning and design. The Victorian Government submitted that ACCOs and Traditional Owners are not data sharing bodies or designated bodies under the Act (sub. 98, p. 10).

Box 5.9 – Legislation to increase the sharing of public sector data

The *Public Sector (Data Sharing) Act 2016* (SA)

The *Public Sector (Data Sharing) Act 2016* authorises South Australian public sector agencies to provide data they control to other public sector agencies to enable data analytics work to be conducted which relates to government policy making, program management and service planning and delivery (section 8(1)(a)). It also allows data sharing between agencies to facilitate, develop, improve and undertake policy making, program management and service planning and delivery (section 8(1)(b)). The Public Sector (Data Sharing) Regulations 2017 further allow data sharing for the purposes of assisting in law enforcement and emergency planning and response, and for including photographs in licences, identity documents and other similar documents (section 7).

The Act also allows the Minister to enter into data sharing agreements with certain entities (section 13), including those that have been engaged by the South Australian Government to provide services on behalf of the government, or entered into an agreement with government to provide a community service (section 8A of the regulations).

Both the authority to share data and the ability to share data under a data sharing agreement with the Minister under the Act override any other law that would otherwise prohibit government agencies from sharing data (sections 5(1) and 13(5)).

The Act also:

- sets out the trusted access principles for sharing and using public sector data under the Act (section 7)
- establishes data sharing safeguards (for example, in relation to confidential or commercially sensitive information) (sections 10 to 12)
- restricts the further use of data provided under the Act (section 14), except under particular circumstances, such as where the Minister, after consultation with the data provider, approves the use or disclosure (section 14(1)(a)).

Privacy and Responsible Information Sharing Legislation (WA)

The WA Government has announced its intention to develop Privacy and Responsible Information Sharing Legislation. In December 2022, it released a factsheet stating that the aim of the legislation was to reform personal privacy protections and the accountability of information sharing within government. Among other things, the legislation intends to introduce:

- a statutory mechanism for WA public sector agencies to share information
- responsible information sharing principles to ensure a consistent framework for the assessment of risks and benefits associated with a data sharing arrangement
- a Chief Data Officer to promote and support a culture of responsible information sharing and use
- a mechanism that supports Aboriginal data sovereignty and governance, which will require that Aboriginal people and communities are involved or consulted when data about them is shared (Government of Western Australia 2022b).

Access to data is still difficult for many Aboriginal and Torres Strait Islander communities and organisations

Access to government-held data continues to be difficult for Aboriginal and Torres Strait Islander organisations, in a way that significantly impedes progress against the socio-economic targets, and at worst creates negative consequences for the people at the heart of the program or policy. The Commission heard numerous instances of this.

- An Aboriginal foster care agency said that the government agency in its jurisdiction would not share child protection files with it so that it could effectively undertake its work in kin and foster care. This is despite the organisation receiving government funding to deliver these services.
- An Aboriginal community-controlled health organisation said that government legislation and policy, as well as IT infrastructure rules, means that it cannot have access to certain data,
- An ACCO that provides alcohol and drug support and family and justice services said that governments don't share the data they hold in relation to justice. As a result, this organisation is unable to ascertain whether its justice reinvestment programs are working.
- AbSec submitted that 'long lags in data being made publicly available limits our capacity to engage in both systemic and individual advocacy at a time when the care system is under enormous strain and growing numbers of our most vulnerable children are being placed in inappropriate emergency care settings including hotels, motels and caravan parks' (sub. 88, p. 7).
- The Victorian Aboriginal Legal Service (VALS) submitted that in seeking access to data they 'are required to waste valuable resources to prepare freedom of information (FOI) applications, and then wait for months to receive a response' (sub. 76, p. 15).
- While there do appear to be real tensions between greater data sharing and existing privacy laws (box 5.12), the DEG submitted that there are established mechanisms available to ensure that privacy is maintained but 'different governance and application processes between data custodians renders this process extremely inefficient' (sub. 53, p. 6) and the IUIH Network submitted that in its experience 'barriers to data sharing tend to be academic and technical rather than genuine legislative barriers' (sub. 62, p. 6).

Where Aboriginal and Torres Strait Islander communities and organisations have succeeded in accessing and using public sector data, it often appears to happen in spite of rather than because of how government organisations are operating.

More is not necessarily better – Aboriginal and Torres Strait Islander people need to be involved in decisions about their data

Making more data open by default would be a major step towards better data sharing but has been described as a 'double-edged sword' in the context of Indigenous peoples (Smith 2016, p. 132). Movements towards open data 'could be used to inform development, allocate resources and set a future vision' but can also raise issues around 'protecting Indigenous cultural information, rights and intellectual property' (Smith 2016, p. 132). The CARE principles for IDG complement the FAIR principles for open data (box 5.5), in recognition that 'emphasis on greater data sharing alone creates a tension for Indigenous Peoples who are also asserting greater control over the application and use of Indigenous data and Indigenous Knowledge for collective benefit' (GIDA 2019, p. 1)

Moreover, there is an overabundance of data that problematises Aboriginal and Torres Strait people: making such data open by default could easily perpetuate deficit narratives rather than solve any complex Indigenous policy issues (Walter et al. 2021, p. 148). Walter and Carroll (2020, p. 16) caution that creating new datasets through linking existing '5d' datasets – datasets that highlight disparity, deprivation,

disadvantage, dysfunction and difference (Walter 2016, p. 80) – 'will provide a bigger ball of data, but not necessarily a more informative one'.

These matters have not been front-of-mind in governments' initial steps towards open data (Rainie et al. 2019, p. 301; Walter et al. 2021, p. 147) but IDS 'can mediate some of the embedded risks in Open Data while also providing pathways to, as yet, unrealised Indigenous collective benefit' (Walter et al. 2021, p. 144).

There have been improvements to transparency around governments' data holdings and visual tools

Sharing data with Aboriginal and Torres Strait Islander communities and organisations requires that they understand the data that governments hold, which includes:

- administrative data – data collected as part of administering policies and programs, including details about people receiving services and their interactions with service systems
- performance data – data that reports against the performance indicators of policies and programs, such as the National Key Performance Indicators for Aboriginal and Torres Strait Islander primary health care
- survey data – data from responses to surveys designed by statistical agencies such as the Australian Bureau of Statistics. Examples include the Census of Population and Housing, and the General Social Survey.

The first step in gaining access to this data is knowing that it exists, and governments are seeking to be more transparent about what data they hold in several ways.

- **Through open data websites and other publicly-available avenues.** For example, all jurisdictions except Tasmania have whole-of-government open data portals, in which users can search for datasets held by government agencies, by agency, topic and file format, among other things.
- **By establishing services that allow users to request data or that direct users to data of interest.** For example, in its second implementation plan, the NSW Government (2022c, p. 49) signalled its intention to establish a data connector service, which would take data requests and co-ordinate responses across government to enable access to data.
- **By engaging with Aboriginal and Torres Strait Islander people and organisations through specific initiatives**. For example, as part of the community data projects (section 5.5), the Australian Government Department of Social Services is undertaking foundational work to establish a data inventory, which will identify what data the department holds about Aboriginal and Torres Strait Islander people, and assist communities to conceptualise, articulate and frame their data requests, among other things (Department of Social Services, pers. comm., 26 June 2023).

The best way for governments to provide information about what data they hold depends on context. Where data users' technical capability is high, or research questions are not yet well defined, publicly available or broad overviews of the types of data held by government may be better suited to Aboriginal and Torres Strait Islander people's needs than tailored communication. However, there may also be a role for governments to 'triage' information about what data it holds. The Australian Government Department of Education, for example, said that when engaging with organisations participating in the Connected Beginnings program (chapter 3, box 3.6), it used a series of community-led indicators to provide a curated list of government-held data, which removed the need for communities to sift through large amounts of data unlikely to be of interest (Department of Education, pers. comm., 14 June 2023). In determining how to provide communities with information about what data governments hold, the capacity and capabilities of the relevant people and organisations to undertake data work should be a key consideration. Governments must also ensure they have the cultural capability required to identify data of interest and communicate this information to Aboriginal and Torres Strait Islander people.

Another way in which data is being made more accessible is through the development of better visual tools, such as dashboards. A number of dashboards have been developed in relation to specific initiatives, including the Connected Beginnings program (NIAA, sub. 60, attachment C, p. 26) and the Maranguka Justice Reinvestment project (box 5.3). The IUIH Network submitted that the Indigenous Health Checks and Follow-ups Dashboard 'is useful for both service planning and advocacy to government' (sub. 62, p. 24).

Dashboards do not necessarily increase the total amount of data available to users – the data on which dashboards are based may already be publicly available – but presenting data visually and developing interactive interfaces can make using and understanding data more intuitive. As William Arthur submitted, 'interactive functions have the potential to increase the analytical power of maps' (sub. 26, p. 3).

Often, publicly available tools (such as the RIFIC website, box 5.10) contain high-level statistics that are unlikely to meet the specific data needs of all users, and should not be expected to do so. Instead, they should be understood as a means of gaining a general understanding of a topic, with more specific data requests needing to be pursued through other means, such as through direct requests to government agencies.

Visual tools are most useful when they contain data of interest to users. Where tools are designed for, and accessible only to, a specific audience (such as participants in a place-based initiative), they can and should be tailored to the needs of these groups. This appears to have been the case with dashboards for fines-related data in New South Wales (box 5.11).

Box 5.10 – The Regional Insights for Indigenous Communities website

The Regional Insights for Indigenous Communities (RIFIC) website is a publicly available data visualisation tool developed by the AIHW. It brings together a range of data about the health and wellbeing of Aboriginal and Torres Strait Islander people and communities, including data on population size and distribution, culture and language, education and work, health risk factors, health conditions, disability, life expectancy and mortality, housing circumstances, and health and health services.

The RIFIC website aims to allow local communities, services and policymakers to access accurate and locally relevant health and wellbeing data to make informed decisions. It brings together data from multiple government websites and reports, making it easier for users to find this data.

The website allows users to customise their search, and use maps or a list of locations to find regional statistics relevant to their communities or other locations of interest. These statistics can then be compared with those of other regions or states and territories, or with national statistics. Data is presented as user-friendly maps, dashboards and interactive visualisations.

Since its public release in December 2021, the RIFIC website had been accessed by more than 6,000 unique users. Feedback from users and those who participated in user testing had also highlighted the benefit of having data from disparate sources in one place. The AIHW stated its intention to expand the RIFIC website to include other sources of data, including the 2021 Census.

Source: AIHW (2022a, 2022b).

Box 5.11 – The NSW Fines dashboards have been useful

The NSW Government submitted that Revenue NSW and NSW CAPO 'collaborated to design a coordinated approach to reducing and tackling fines debt in community. Revenue NSW launched clear and transparent fines-related data via online dashboards to support shared community accountability and action' (sub. 32, p. 21).

The DEG has made use of the dashboards as part of its Dealing with Fines program of work (sub. 53, pp. 7–8). The Research and Evaluation team of Yuwaya Ngarra-li – DEG's partnership with the University of New South Wales – analysed postcode-level data available through the dashboard, which revealed that the total value of fines issued in 2021-22 was more than double that in 2020-21. Research conducted by a Yuwaya Ngarri-li team indicated that the increase was 'substantially due to COVID-related policing' and that Walgett had 'the highest rate of public health order fines in New South Wales, disproportionately affecting Aboriginal community members' (MacGillivray et al. 2023, p. 3).

The Dealing with Fines program, and the sharing of this data with DEG, has supported people with outstanding fines in a range of ways, including helping them organising payment plans, challenging fines and having them written off partially or in full where appropriate, or organising participation in a Work and Development Order (WDO) (MacGillivray et al. 2023, pp. 11–12).

The WDO scheme, a NSW Government scheme that can be operated by approved sponsor organisations, allows eligible people to reduce their fine debt through participation in unpaid work, courses, treatment, programs and other activities (MacGillivray et al. 2023, pp. 8–10). In the Dealing with Fines program, WDOs initially focused on activities that were 'culturally appropriate and address priority social needs', including supporting Elders and maintaining local parks, but going forward there will also be a focus on activities that can address factors that cause people to incur fines, like licensing and vehicle registration.

The NSW Government submitted that funding is now available for an 'expanded outreach model' to support the development of plans to address fine debt, including an Aboriginal senior coordinator and 10 Aboriginal outreach officers (sub. 32, p. 21).

There are tensions between protecting privacy and sharing data

The way public servants exercise discretion when making data sharing decisions is a barrier to the implementation of Priority Reform 4. But there are also tensions between protecting privacy and the Agreement's commitment to greater data sharing, particularly in small communities. For example, in developing a community profile with information on the demographic, social and economic indicators of Anindilyakwa people, the Anindlyakwa Land Council found that 'the small (statistical) size of the population can result in substantial rounding of output numbers with limits on disaggregation by age, sex, population characteristics and location' (FNP ANU 2023, p. 134). Tensions between protecting privacy and the Agreement's commitment to greater data sharing were identified in government and non-government submissions (box 5.12).

Privacy considerations are important but their dominance in the legislative and policy framework around data has engendered a conceptualisation of data and data sharing as a risk, rather than as an asset which can further self-determination and improve outcomes for Aboriginal and Torres Strait Islander people. Proactive changes to ensure that public servants more appropriately weigh these countervailing factors may be needed to implement Priority Reform 4.

Box 5.12 – Privacy protections appear to be a barrier to greater data sharing

[Children's Ground recommends conducting] a comprehensive review of privacy regulations to tailor them for culturally sensitive and consent-driven data sharing with First Nations communities. This could include creating exemptions or modifying consent frameworks to allow for appropriate data sharing. (Children's Ground, sub. 72, p. 8)

The main issues the Coalition of Peaks are finding around Priority Reform four is Government data custodians have never shared data in this way, and simply do not know how it could be done, privacy laws and legislation prevents the sharing of data, and Government data custodians not understanding their commitments to Priority Reform four. (Coalition of Peaks, sub. 58, p. 3)

A large amount of protected information managed by the [Social Services] portfolio is also personal information and may be sensitive information (noting sensitive information includes information or an option about an individual's racial or ethnic origin) and requires particular treatment to ensure compliance with the *Privacy Act 1988* (Privacy Act). As such, the portfolio's ability to lawfully collect and share data with First Nations Peoples, communities and organisations can be constrained. In addition, data not collected under specific Social Services portfolio legislation, but which is still deemed to be personal information, will remain subject to the information handling obligations prescribed for under the Privacy Act. …

Amendments to existing legislation would be needed to enable greater flexibility in how data relating to, or that is about, First Nations peoples, communities and organisations, can be handled and shared. A consideration of the impact of such legislative changes would also be required. (DSS, sub. 74, p. 20)

Challenges related to progressing Priority Reform Four include accounting for privacy protection, and difficulty sourcing up-to-date data from relevant sources. (NIAA, sub. 30, p. 4)

Australian Bureau of Statistics (ABS) disclosure rules prevent release of detailed information on small communities. Inability to access detailed data impacts ability to plan and deliver services to the most disadvantaged First Nation peoples. Adjustments to ABS disclosure rules would support access to detailed data on Indigenous communities, particularly in the Northern Territory. (Department of Education, cited by NIAA, sub. 60, attachment C, p. 29)

One of the key barriers to providing data about First Nations people to First Nations organisations is privacy concerns, where sample survey response numbers are small and provision of data would enable individual identification. The impact of the nature and extent of familial relationships in the Indigenous communities subjected to sampling would also need to be considered in both the design of the sampling process and in sharing/disclosing results to other parties, particularly where the sample size & response is only just over the level whereby data can be successfully de-identified. (Department of Employment and Workplace Relations, cited by NIAA, sub. 60, attachment C, p. 30)

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 through the lens of embedding Indigenous Data Sovereignty. There is also a clear need to

Box 5.12 – Privacy protections appear to be a barrier to greater data sharing

navigate the considerations required for accommodating Privacy legislation requirements along with other considerations. (NSW CAPO, sub. 77, p. 8)

There are a number of barriers which currently exist to open shared data, including: • Classification level of data being shared • Quality and integrity of data • Privacy considerations of individuals in the data • Restrictions in legislation (SA Government, sub. 28, p. 11)

Most governments do not appear to be taking active steps to consider whether regulatory changes are needed to address tensions between Priority Reform 4 and protecting privacy. For example, the recent review of the *Privacy Act 1988* (Cth), conducted after the Agreement was signed, did not consider Priority Reform 4 (AGD 2022d).

The NSW Government may be an exception, having already indicated an intention to work with the state's Privacy Commissioner to find legislative or other solutions to improve data sharing 'largely due to tension between current privacy legislation and the principles of Indigenous Data Sovereignty' (NSW Government, sub. 32, p. 20). And the NSW Joint CAPO & Government Priority Reform 4 and Indigenous Data Sovereignty & Governance program submitted that:

> Where possible, we have sought to explore both the law and policy as they are formally articulated, and how they are actually practised on the ground by agencies and experienced by communities – albeit noting that more work is needed especially on the latter. We also hope to explore over time whether differences between formal articulation and practice might stem from 'folklore' about what is formally articulated in legislation, that while incorrect comes to shape the practical decisions made. Taking such an approach enables us to unpack the deeper drivers behind what often manifests, on the surface, as a culture of hesitancy; and in turn, helps us better focus efforts on driving change in areas that matter most. (sub. 99, p. 8)

Collective privacy

While the real or perceived privacy risks contemplated by current regulatory frameworks and public servants generally relate to the identification of individuals, privacy concerns can also arise in relation to information that belongs to or is about groups of people. The Office of the Victorian Information Commissioner notes that 'some cultures – including Aboriginal and Torres Strait Islander cultures – may consider certain types of information as belonging to the group rather than to individuals, and as such may place a greater emphasis on collective, versus individual rights' (2021, p. 6).

Privacy legislation in Australia is focused on protecting the privacy of individuals, and the Australian Law Reform Commission (ALRC) has previously argued for the development of protocols to 'adequately respond to the particular privacy needs of those groups' rather than modifying legislation to provide protection to Indigenous or other ethnic groups (ALRC 2007, pp. 131–136). There is some common law precedent for privacy protection of Aboriginal and Torres Strait Islander groups and limited protection for privacy regarding information about Aboriginal sacred sites or traditions in the *Information Act 2002* (NT) (ALRC 2008, pp. 339–340).

However, there have been steps towards recognising collective privacy internationally and domestically. The UNDRIP, to which Australia is a signatory, recognises Indigenous peoples' right 'to the full enjoyment, *as a collective or as individuals*, of all human rights' (article 1, emphasis added), which includes that 'no one shall be subjected to arbitrary interference with his *privacy*, family, home or correspondence, nor to attacks upon his honour and reputation' (Universal Declaration of Human Rights, article 12, emphasis added). New

Zealand's Māori data governance model notes that 'an approach that respects collective privacy is one that recognises and upholds collective rights over information much in the same way that an individual owns and has authority over their personal information' (Kukutai et al. 2023, p. 35).

On its face, protecting collective privacy, as with protecting individual privacy, is potentially in conflict with data openness. In some circumstances, safeguarding collective privacy could create more barriers to data sharing. But it is not necessarily useful to focus on there being more or less data sharing – what is of importance, in the context of this review, is that Aboriginal and Torres Strait Islander people have access to locally-relevant data and information to meet their priorities and drive their own development. It seems unlikely that recognising collective privacy would conflict with this objective in practice, though doing so could impact decisions about broader sharing or publication of data. Any recognition of collective privacy would need to consider a range of factors, including the potential for the protection of collective privacy of communities and other groups to be at odds with the interests of their individual members.

Public servants need to be motivated to share data in line with Priority Reform 4

Even on the most basic aspect of Priority Reform 4 – sharing data with Aboriginal and Torres Strait Islander communities and organisations – government organisations are not meeting expectations. Addressing this shortcoming will require a fundamental shift in how public servants approach data sharing, which will mean changes to culture and capability among public services. The Coalition of Peaks submitted that one of the main obstructions to the achievement of Priority Reform 4 is that government data custodians 'have never shared data in this way, and simply do not know how it could be done' (sub. 58, p. 3).

Making headway in culture and capability to improve data sharing would also have spillover benefits for the implementation of the more substantive parts of Priority Reform 4 – collection, storage, management and use of data – and will be essential if governments amend the Agreement to reflect IDS in line with **recommendation 2, action 2.1**.

Attitudes and default ways of working need to change

The Commission heard numerous instances where Aboriginal and Torres Strait Islander organisations or communities seeking access to government-held data experienced 'a presumption against sharing'. That is, the initial response was that requests for data would be refused unless the requestor could prove why it should be provided, and that government organisations rarely try to find ways to meet requests. Not all requests to access data can or should be approved, but implementation of Priority Reform 4 would at least entail governments taking a constructive approach to responding to Aboriginal and Torres Strait Islander priorities and needs regarding data. This does not appear to be happening now. For example, Aboriginal Family Legal Service (AFLS) were advised that they could not publish or share any data extracted from the Legal Assistance Sector Dashboard that has been developed by the WA Department of Justice because 'access to sector data must be limited to agencies with an understanding of the collection processes and any data limitations, to avoid incorrect understanding of the data' (sub. 36, p. 7). AFLS argue that philanthropic and non-government organisations 'could be added to the list of authorised funding bodies and receive the same briefing on data collection processes and how the data can be interpreted as government agencies (sub. 36, p. 7).

Public servants typically operate a long way inside the boundary between what is and is not permitted in terms of data sharing – there is a very real culture of risk aversion and avoidance. This can be in part explained by the incentives public servants face in their job, where they personally face significant downside risk from oversharing and little upside benefit to appropriate sharing. But it is the job of senior leaders to recognise and communicate that the Agreement has shifted the boundary between what is and is not

permitted, by committing to and identifying the benefits to the community of greater data sharing. The IUIH Network submitted that it supports legislative or policy changes to enable greater sharing of data with Aboriginal and Torres Strait Islander communities and organisations but noted that such changes 'would need to be communicated clearly and repeatedly within government agencies' (sub. 62, p. 6).

Cultural change needs to occur at all levels of the public service. It is not enough for senior officials to agree in principle to the need to share data and declare this openness. Officials further down the hierarchy, who often hold the technical skills and knowledge on data and are charged with operationalising data sharing arrangements, also need to reorient the way they conceive of and perform their roles. This requires government and senior officials to create an appropriate authorising environment, and to support the capability of staff. This is one way in which the implementation of Priority Reform 3 will manifest in organisations and parts of organisations with responsibility for data. And implementing **action 3.5** (chapter 7), ensuring that public servants' performance agreements and KPIs reflect new expectations in relation to data sharing, is a concrete way of creating accountability for and incentivising cultural change.

In many cases, government officials still do not recognise the political dimensions of data – the role of data in influencing power dynamics in the development of policies that affect outcomes for Aboriginal and Torres Strait Islander people – and the commitment in the Agreement to rebalance these dynamics, including through the use of data. Data is often seen as 'just data', with no acknowledgement that its creation and use arises out of assumptions about what is relevant, and that the data used to inform policy is chosen within a political context that determines who gets to define relevance.

Government officials need to recognise and demonstrate that they recognise that Aboriginal and Torres Strait Islander people can have different ways of knowing that can result in different and impactful ideas about how (and what) data should be used to inform policy, such as what needs to be measured to determine if a program is meeting its objectives. Engaging with data in this way is likely to be novel to many officials, who are used to mainly thinking about the technical aspects of data. But understanding that data arises out of ways of knowing that dictate how data should be collected, shaped and used, and that Aboriginal and Torres Strait Islander people can have different ways of knowing, is the first step in understanding why it is necessary for governments to change the way they use data when making policies affecting Aboriginal and Torres Strait Islander people. It is also a step towards understanding the scale of the change required to governments' data systems and practices, and the need to develop ambitious, cohesive strategies that clearly set out how actions will lead to the desired change. Governments' implementation plans largely do not demonstrate how their currently proposed set of actions work together to produce the change committed to under Priority Reform 4.

Resourcing

Relative to many established data requesters (for example, academic researchers and public servants), Aboriginal and Torres Strait Islander communities and organisations tend to seek data for small populations, and also exhibit considerably more variation in terms of the purposes for which they are seeking data, and the expertise they bring to the data sought (NSW Joint CAPO & Government Priority Reform 4 and Indigenous Data Sovereignty & Governance program, sub. 99). As such, there are a range of ways to support public servants' ability and willingness to share public sector data with Aboriginal and Torres Strait Islander communities and organisations. For example:

- better guidance on what data can be shared when, and with who
- independent government entities like the Office of the Australian Information Commissioner could review formal statutory guidelines and other regulatory instruments with the purpose of reforming them to avoid unnecessary barriers to data sharing

- there may be technical solutions available to deal with issues relating to data quality or identification when data is disaggregated (IUIH Network, sub. 62, pp. 24–25; DEG, sub. 53, p. 6)
- increased staffing, alongside sector-wide and agency-level improvements to legal and policy frameworks, data sharing tools and governance practices around data could reduce processing times for data requests from Aboriginal and Torres Strait Islander communities and organisations (NSW Joint CAPO & Government Priority Reform 4 and Indigenous Data Sovereignty & Governance program, sub. 99). In the context of the Anindilyakwa Land Council's development of a community profile, it was noted that requests for data from government 'have time and resource implications for those holding data, and this can present constraints on access' (FNP ANU 2023, p. 134)

Every one of these initiatives will have a role to play in implementing Priority Reform 4, and every one entails some cost.

The need to resource the change envisaged under Priority Reform 4 was clearly appreciated in submissions. The DEG submitted that to streamline application processes to improve data access, 'government agencies will need to be resourced to interact with ACCOs and implement innovation and recommendations received from ACCOs to colleagues in government departments. This interaction must not be the normal 'engagement' practiced currently, but serious collaboration to achieve agreed outcomes (sub. 53, p. 6). And the IUIH Network submitted that while configuring or reconfiguring systems to enable useful reporting to Aboriginal and Torres Strait Islander populations comes at a cost, 'the benefit for Aboriginal and Torres Strait Islander Australians and closing the gap would be significant' (sub. 62, p. 25).

Governments may be underinvesting in Priority Reform 4. Western Australia's *Aboriginal Expenditure Review* identified $0.2 million allocated to Priority Reform 4 (WA Treasury 2023, p. 33). It is difficult to imagine the ambition of Priority Reform 4 will be achieved without greater investment. The need for governments to adequately resource the implementation of the Agreement as a whole is discussed in chapter 7.

5.4 How are governments changing the way they collect, hold, manage and use data?

As noted in section 5.1, Priority Reform 4 requires more than data sharing. It requires governments to change the way they undertake a range of data-related activities to ensure that Aboriginal and Torres Strait Islander communities have access to the data they need to support their priorities and needs.

This requires, for example, engaging with Aboriginal and Torres Strait Islander people on data-related issues including what data is of most value to them. It also requires seeking Aboriginal and Torres Strait Islander people's perspectives on how data should be governed and incorporating these views into the way data is used to inform policy. This applies regardless of whether the Agreement is modified to reflect IDS (**recommendation 2, action 2.1**).

Governments have not reformed the way they exercise power over data about Aboriginal and Torres Strait Islander people

The Commission heard that, by and large, governments have not given sufficient weight to Aboriginal and Torres Strait Islander people's ways of understanding and using data when designing and evaluating policy. In many cases, the data that Aboriginal and Torres Strait Islander people considered important has not been prioritised historically. One example given by an Aboriginal legal service was the lack of data on trauma for Aboriginal and Torres Strait Islander boys and men.

The Commission also heard that key performance indicators for programs and services sometimes failed to reflect what Aboriginal and Torres Strait Islander people considered relevant in measuring success. For example, multiple ACCOs said that they would prefer to measure the number of hours spent with clients, including to build trusting relationships, as a more meaningful indicator of the effort required to service clients. Instead, they are required to count the number of clients served (which will likely be lower if service providers instead focus on building relationships and trust, the critical foundation for successful service delivery). The IUIH Network submitted that performance monitoring obligations set by government 'often lack measures suitable for ACCOs' (sub. 62, p. 24).

The way outcomes are measured for performance monitoring under the Agreement can also be inconsistent with Aboriginal and Torres Strait Islander people's views of wellbeing. For example, culture is central to Aboriginal and Torres Strait Islander people's life outcomes, but the Commission heard that this is not reflected in the indicators across the Agreement's socio-economic outcomes. And the National Aboriginal Community Controlled Health Organisation (NACCHO) has said that the singular focus of the Aboriginal and Torres Strait Islander Action Plan (part of the National Plan to End Violence against Women and Children 2022–2032) on the target for socio-economic outcome 13 does not 'reflect the complexity and multiplicity of factors that influence family, domestic and sexual violence, both of Aboriginal and Torres Strait Islander victim/survivors and perpetrators' (NACCHO 2023, p. 3). This concern notwithstanding, the absence of new data on family violence is also a major concern (chapter 8 discusses socio-economic outcome 13, including data issues, in more detail).

The Commission has heard multiple instances of governments not accepting data collected by Aboriginal and Torres Strait Islander organisations as accurate or of sufficient quality to inform policy decisions. One Aboriginal community-controlled health organisation recounted an instance in which governments' first response upon receiving data from the organisation was to question its accuracy. An Aboriginal organisation that advocates for Traditional Owners said that government did not accept the data it presented as the type of evidence needed to substantiate change.

A failure of governments to share decision making power over data (in particular, over what data is collected and how, and over what data is valued most) with Aboriginal and Torres Strait Islander people can mean that the data that is used to inform government policies and programs can be inaccurate, or conceptualised in a way that is not meaningful to Aboriginal and Torres Strait Islander people. For example, the Commission heard that the geographical classifications used for data sometimes did not align with what communities considered meaningful – data on distinct communities were sometimes amalgamated, or data was not sufficiently disaggregated to see what was happening at a local level. The South Australian Government submitted that many government organisations do not collect any data on specific Aboriginal Nations, which limits their ability to share data with communities to reflect what is happening for specific Aboriginal Nations (SA Government, sub. 54, p. 15).

What governments should be doing

Priority Reform 4 does not prescribe what actions governments need to take to change the way they collect, hold, manage and use data. Rather, the guiding principle is one of partnership – the jurisdictional actions require governments to 'establish partnerships between Aboriginal and Torres Strait Islander people and government agencies to improve collection, access, management and use of data' (clause 72b). Partnerships to guide what change is needed should embed the strong partnership elements outlined in Priority Reform 1, which includes inclusive and open dialogue where governments listen to the priorities of communities and give weight to the perspectives and lived experiences of Aboriginal and Torres Strait Islander people.

Some of the changes required of governments will relate to the technical qualities of data, such as its accuracy and the extent to which variables are clearly defined and specified. However, Priority Reform 4 also requires governments to grapple with the political dimensions of data – whether data is specified and used according to the values and world views of users. Paraphrasing Walter and Carroll: statistics are human artifacts and their reality emerges via the social, racial and cultural standpoint of their creators (2020, p. 2).

Standpoints between Aboriginal and Torres Strait Islander people and non-Indigenous people can differ, which can lead to differing ideas about what data is best suited to measure policy outcomes and how this data should be interpreted. The commitment under Priority Reform 4 to change data systems and practices requires governments to understand these differing perspectives, and the imbalances of power that have led to decisions about data (and decisions made using data) that are ill-suited to Aboriginal and Torres Strait Islander people's needs.

Some governments have taken steps to change systems and practices in response to Aboriginal and Torres Strait Islander people's ways of using data, although many of these are relatively nascent. Examples include the development of the Framework for Governance of Indigenous Data (box 5.8) and the Ngaramanala: Aboriginal Knowledge Program (box 5.13). This sort of work is not widespread though.

Box 5.13 – The Ngaramanala: Aboriginal Knowledge Program

Ngaramanala means 'let's see, hear, think and gather Indigenous knowledge' in Gadigal language (NSW DCJ 2022, p. 6). The Ngaramanala: Aboriginal Knowledge Program (*Ngaramanala*) is an initiative within the NSW Department of Communities and Justice (DCJ) that aims to:

- understand the concepts of IDS and IDG
- recognise the historical and sometimes current misuse of data about Aboriginal peoples and understand the historical, political, social and cultural context of data
- identify ways that the principles of IDS & IDG can be incorporated into DCJ policies and programs to best enable IDS & IDG into the future
- collaborate across DCJ to improve how evidence and data that is about and impacts upon Aboriginal Peoples is collected, used and governed in the DCJ
- develop frameworks, tools and research that allows DCJ to see the strengths, challenges and resilience of Aboriginal peoples. (NSW DCJ 2022, p. 8)

The origins of *Ngaramanala* lie in a working group established in 2019 by the Transforming Aboriginal Outcomes unit and Families and Communities Services Insights, Analysis and Research unit within DCJ (NSW DCJ 2022, pp. 6–7). This working group, then known as the Aboriginal Knowledge Program, sought to investigate the concept of IDS and work in a new way that demonstrated courage, collaboration and respect. The program was renamed *Ngaramanala* in late 2019.

Ngaramanala has successfully advocated for the inclusion of IDS and IDG in a range of NSW Government and DCJ strategies, including DCJ's *Research Strategy 2020–25*, DCJ's *Information Management Strategy 2021–24* and the *NSW Data Strategy 2021* (NSW DCJ 2022, pp. 21–22). For example, one of the research priorities in DCJ's research strategy is to 'support Aboriginal-led research and the principles of Indigenous data sovereignty' (NSW DCJ 2020, p. 21), which includes providing Aboriginal researchers with access to

Box 5.13 – The Ngaramanala: Aboriginal Knowledge Program

administrative data held by DCJ, ensuring research is conducted according to the principles of IDS, and building an evidence base that embeds Aboriginal knowledges and voice.

Ngaramanala is also assisting the *Pathways of Care Longitudinal Study* (POCLS) to embed IDS and IDG into the design, collection, analysis, dissemination and management of data relating to Aboriginal people. In 2020, this included:

- consultation with the Aboriginal Health and Medical Research Council to discuss how POCLS can update its processes, to understand what is considered current best practice and gather examples of best practice in other research projects
- understanding and developing priority out-of-home care policy questions to inform POCLS analysis projects
- facilitating the collaboration of contracted analysts and policy and practice colleagues, including Aboriginal colleagues, during the data analysis planning, analysis phase and interpretation of results
- consultation with Aboriginal stakeholders about the most appropriate way to develop culturally appropriate processes to draw the insights from the complete reports and translate findings into policy and practice. (NSW Government 2021)

AbSec have also been involved in POCLS, having worked with the NSW Department of Justice (which funds and leads POCLS) to establish an Aboriginal Governance Panel (AGP) (sub. 88, p. 8). Ahead of what would become the first wave of POCLS' Extended Care Study, the AGP met with researchers, examined potential research questions, and recommended having more open questions, gave input on the phrasing and ordering of questions, and piloted the questions with young people. The response to this input was 'deeply respectful of the insights AGP members offered', and the AGP is now responsible for 'providing oversight and decision-making across all stages of DCJ Research with respect to Aboriginal participation and data' (sub. 88, p. 8).

5.5 The community data projects are behind schedule

Under Priority Reform 4, parties to the Agreement agreed to establish community data projects in up to 6 locations across Australia by 2023. The locations for all 6 community data projects have been decided and are at various stages of progress. With the exception of Blacktown Local Government Area (LGA), the location of the community data projects were chosen through nomination by Aboriginal and Torres Strait Islander peak organisations, or by the community itself (box 5.14).

The community data projects have been delayed for a range of largely unrelated (between projects) reasons. For example, the reason given for the delay in the South Australian project was that work to develop the partnership agreement between the SA Government and SAACCON had been 'all consuming' (SAACCON, pers. comm., 22 June 2023). In New South Wales, COVID-related events (including economic recovery) caused the project to stall in 2021 and 2022 (NSW CAPO, pers. comm, 10 July 2023).

Box 5.14 – Status of the community data projects

Blacktown LGA, New South Wales

Blacktown LGA was selected as the location of the community data project in New South Wales as a result of a negotiation process between the NSW Government and the NSW Coalition of Aboriginal Peak Organisations (NSW CAPO).

The NSW Government advocated for Blacktown LGA to be the site of the community data project because of the concentration of Aboriginal and Torres Strait Islander people living in the area – Aboriginal and Torres Strait Islander people make up 3% of the population of Blacktown LGA (Blacktown City Council 2023). NSW CAPO considered a number of other regions, and ultimately agreed to hold the community data project in Blacktown LGA because of the unique demography of the area (in contrast to the locations of community data projects in other jurisdictions) and the concentration of services in the area (NSW CAPO, pers. comm., 10 July 2023).

In March 2023, the Blacktown LGA project engaged with community organisations to discuss data sharing opportunities and priorities. Community-led discussions about data priorities and governance are ongoing, and aim to define longer-term data sharing agreements and systems (NSW Government, pers. comm., 27 June 2023).

The data priorities, needs and capability of the Blacktown LGA Aboriginal community have been discussed between the Western Sydney Aboriginal community, government and the Maiam nayri Wingara Indigenous Data Sovereignty collective (DSS, sub. 74, attachment A, p. 8). DSS submitted that:

> … 5 emerging priorities were identified by the Blacktown LGA Aboriginal community and processes to support data matching with these priorities has taken place.
>
> Work is now shifting towards the safe release and storage of this data in a secure portal for the community to access. This work is being led by the Australian Institute of Health and Welfare. First Nations user capability training is being planned to ensure that community members can analyse and interpret what the data means about their community circumstances on the ground. (sub. 74, attachment C, p. 8)

NSW CAPO have told the Commission about recent and planned activities relating to the Blacktown community data project, including:

- developing and implementing a communications strategy and resources to inform and engage community and government about the project and IDS and IDG
- establishing and maintaining social media platforms to share resources, workshops and information about IDS and IDG.
- conducting community workshops to re-introduce Priority Reform 4 and the Blacktown community data project, build relationships and networks with community members and organisations, explore data priorities and needs, and increase interest and motivation for the project's ongoing development
- undertaking engagement activities, such as attending NAIDOC celebrations, supporting Link-Up and other CTG Project Teams, and connecting with First Nations community members and service providers through the Western Sydney Koori Interagency
- embedding community data governance principles in the project, and engaging existing organisations, groups and community members who could be part of the governance structure. Government stakeholders have also been consulted and involved

Box 5.14 – Status of the community data projects

- planning further workshops to progress the project, such as establishing an Aboriginal Data Governance group, providing feedback on the first round of workshops, and conducting a second round of workshops (pers. comm., 18 December 2023).

The Kimberley, Western Australia

The Kimberley was nominated as the site of the community data project in Western Australia by the Aboriginal Health Council of Western Australia, based on a desire to do work related to the Western Australian Coroner's 2019 inquest into the deaths of 13 children and young persons in the Kimberley region (WA DPC, pers. comm., 5 July 2023), which found that the cause of death for 12 of these people was suicide (Coroner's Court of Western Australia 2019, p. 8). The nomination was supported by the Aboriginal Advisory Council Western Australia (WA DPC, pers. comm., 5 July 2023). Given this context, the proposed focus of the Kimberley data project was to improve the collection of and access to data on suicide and self-harm.

The Western Australian Government has indicated that the Kimberley data project has been 'guided and developed by a Project Reference Group comprising representatives from the Aboriginal Health Council of Western Australia, local ACCOs and relevant WA Government agencies' (WA DPC 2023b, p. 23). Scoping for the project continues, and the next phases of work will include: developing data governance frameworks and agreements to operationalise Aboriginal data sovereignty and support deployment of government and non-government data sets to the RIFIC portal, data validation on target data sets and further engagement with peak bodies and the Remote Communities CEO Forum (WA DPC 2023b, p. 23).

Doomadgee, Queensland

The selection of Doomadgee as the site of Queensland's community data project resulted from Doomadgee being chosen as the location for the place-based partnership. As discussed in chapter 2, Gunawuna Jungai, a community-controlled organisation representing the voice of the Doomadgee community (Act for Kids 2022), advocated for Doomadgee to host Queensland's place-based partnership, as there had already been significant community-driven activity in the town to transition the delivery of family services to community control. Gunawuna Jungai subsequently advocated to host the community data project, as it felt that it did not have the data to inform decision making on these services (Gunawuna Jungai, pers. comm., 4 July 2023).

The western suburbs of Adelaide

The western suburbs of Adelaide was chosen as the site for the data project in South Australia based on nomination by the South Australian Community Controlled Organisation Network (SAACCON). SAACCON nominated this site because it considered that it had an adequate 'footprint' in the area – it has twelve members delivering services in this area. SAACCON considered that, in the absence of existing investment and involvement in a location, it would be very difficult to get ACCOs' buy-in to the project (SAACCON, pers. comm., 22 June 2023).

SAACON told the Commission (pers. comm., 29 November 2023) that a SAACCON Data Working Group has been established in 2023, as well as a Community Data Project Steering Committee in partnership with the SA Government. A workplan is currently in the drafting phase. Meetings with ACCOs located in or delivering services to the western suburbs have been held to gain an understanding of their perspectives, data situations and aspirations. Community engagement is being carried out in November

Box 5.14 – Status of the community data projects

and December 2023, to identify data priorities of community. Additionally, a data secondee is planned to start at SAACCON in January 2024 for ten days across five weeks.

The South Australian Government submitted that its work with SAACCON to deliver the community data project includes:

> … identifying the data priorities of the Aboriginal community-controlled sector and the application of principles of Indigenous Data Sovereignty and Indigenous Data Governance. To support this new way of working, data sharing agreements will be established. These agreements will enable Aboriginal Community Controlled Organisations to seek data from the SA Government to support them to design and deliver services that best meet the community's priorities and needs. (sub. 54, p. 5)

Maningrida, Northern Territory

Maningrida was endorsed as the location of the Northern Territory's community data project (and place-based partnership) by the Northern Territory Executive Council of Aboriginal Affairs in November 2021. It was subsequently endorsed by the Joint Council on Closing the Gap in December 2021 (NT Government 2022b). In selecting the location of the community data project (and place-based partnership – a decision had been made to pursue these in the same location), the Northern Territory Partnership Working Group explored several options, including Galiwin'ku and Yuendumu. Engagement was undertaken with Executive Regional Directors within the NT Office of Aboriginal Affairs to understand if these communities had the capacity to support a place-based partnership and community data project. Maningrida was subsequently chosen because of its size and the presence of strong community-controlled organisations, and was supported by community leaders (NT Government, pers. comm., 13 June 2023).

The NT Government told the Commission that:

> The site of the Community Data Project for the NT, Maningrida, is also the site of the NT's Place-based Partnership. The NT is developing the Community Data Portal according to the community's priorities and at the pace of the community. This means that the Community Data Portal will be developed following the Place Based Partnership governance project being completed. The Governance project includes setting up a community governance structure in Maningrida to provide the primary body for government engagement with the community and to set the communities priorities. Once the group has commenced the NT government will work with them, based on their timelines in order to develop the data they want to see as a decision makers and that should be shared with the community. (pers. comm., 18 December 2023)

Gippsland, Victoria

The Victorian Partnership Forum endorsed Gippsland as the location of both the community data project and place-based partnership in April 2023, and Victoria nominated Gippsland as the location of the data project and place-based partnership at the Joint Council meeting in June 2023. The Victorian Government's 2023 annual report, released in June 2023, states that, over the next 12 months, the Victorian Partnership Forum will scope and endorse a detailed project proposal, which will form the basis of a 2024-25 State Budget submission (Victorian Government 2023d, p. 16).

Another reason that projects have not yet been fully established is that communities have needed time to articulate the specific purposes and goals of the projects. Governments have, rightly, sought to look to communities for leadership on the strategic direction of projects – what issues the data project should aim to address, what data communities require, and which organisations should participate, for example. Allowing sufficient time for communities to make decisions on these matters is a crucial precondition for success.

All projects will be supported by a community data portal, developed by the AIHW, which will aim to provide organisations participating in the data projects with access to location-specific data on the progress of Priority Reforms and Closing the Gap outcome areas to inform local decision-making, and to allow organisations to upload, see and analyse their own data in a protected way (Coalition of Peaks, pers. comm., 12 July 2023). The Commission heard that some Aboriginal and Torres Strait Islander people and organisations have expressed concern about whether community-controlled organisations will be able to retain control over their data once it has been uploaded to the portal. In their submission the AIHW stated that communities will continue to decide who can access the portals and have control over the data within them (sub. 57, p. 1).

Although the projects are behind schedule, they appear to be broadly progressing in a way that aligns with the Agreement. For example, governments have generally looked to Aboriginal and Torres Strait Islander partners or communities to lead and set the direction of projects. Governments are also allowing time for communities to come together to define the topic and scope of the projects, which is crucial for their success – projects must be 'owned' by the community, for the benefit of the community. And a number of governments have noted that they were looking to their community data projects to glean lessons for what the implementation of Priority Reform 4 might look like more broadly.

However, the Agreement includes very little detail on how the community data projects are expected to advance wider progress against Priority Reform 4. According to Agreement's performance monitoring framework, the target that government parties are publicly accountable for is to 'increase the number of regional data projects to support Aboriginal and Torres Strait Islander communities to make decisions about Closing the Gap and their development'. But on their own, even if the six community data projects are delivered successfully, they will only constitute a small contribution to the intended outcome of Priority Reform 4.

Although the community data projects are essentially small discrete pilots, they still amount to a material investment of time and resources. To be most effective, their collective objective should be to develop and test new approaches that demonstrate how Aboriginal and Torres Strait Islander communities can be empowered to develop and access data that serves their interests and to use and govern it in a way that reflects their cultural protocols and aspirations. For example, this could include experimenting with different data infrastructure models for facilitating the collection, processing, and sharing of data within and across communities. They could also provide an opportunity to experiment with different IDG structures and processes that provide communities with visibility of relevant government-held data and authority in determining how it is managed.

It is therefore critical that the Parities develop and resource a robust evaluation plan to distil, share and apply the insights from the community data projects to their broader efforts to advance Priority Reform 4. While the individual projects must be community-led, their collective evaluation plan should be explicit about the similarities and differences in their designs and any key elements they are testing. The evaluation plan should include both an ongoing developmental component to provide 'real-time' feedback and support adaptation, as well as a process and outcomes components to provide an understanding of how local context affects the feasibility and effectiveness of different approaches. The Coalition of Peaks has indicated that the NIAA is developing a monitoring and evaluation framework for the community data projects (Coalition of Peaks 2023), but there is no other information available on how this is being advanced.

5.6 Summing up on progress

The Agreement is a living document which can be updated to reflect shared priorities, progress and feedback from Aboriginal and Torres Strait Islander people (clause 14).

The Commission has heard through engagements with Aboriginal and Torres Strait Islander people and organisations that Priority Reform 4 needs to reflect IDS and IDG, and that this was the ambition when the Agreement was being negotiated. The Commission has also identified that IDS and IDG are fundamental to ensuring that Aboriginal and Torres Strait Islander people are able to determine what data they need and how data about them is collected and used. This would also support better data quality and better informed policy decisions. The Victorian Government has indicated support for amending the Agreement to have an explicit statement about IDS as an outcome or objective for Priority Reform 4 (sub. 98, p. 9) and the Australian and NSW Governments are taking steps to embed IDS and IDG. Other governments and government organisations are taking various steps to better understand or embed IDS or IDG as part of their data activities.

Amending the Agreement to recognise IDS would accord with Australia's obligations as a signatory to the UNDRIP, and there are potentially net benefits from amending the Agreement to include IDS.

Based on all of this, the Commission is recommending that the Agreement be amended to include IDS, including by adopting the definitions of IDS and IDG set out by the Maiam nayri Wingara Indigenous Data Sovereignty Collective and committing governments to partnering with Aboriginal and Torres Strait Islander organisations and communities to embed IDG (**recommendation 2, action 2.1**).

Even if governments do not amend the Agreement to reflect IDS and IDG, much more remains to be done to progress Priority Reform 4.

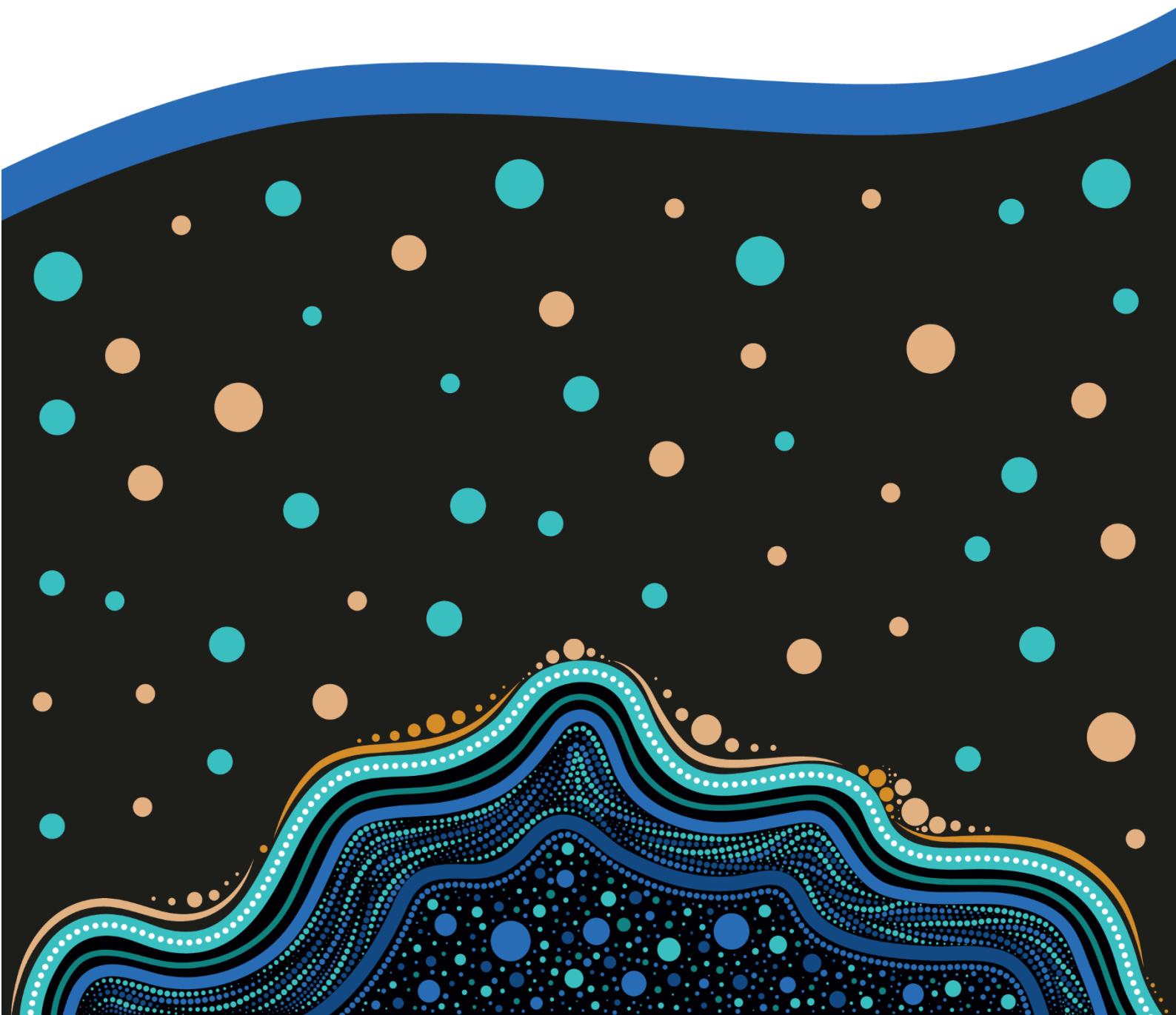
- Data sharing is arguably the simplest aspect of Priority Reform 4 and, while this is the area in which most activity to implement Priority Reform 4 can be observed, it is clear that progress is far from adequate. Governments generally remain reluctant to share the data they hold, and, as a result, Aboriginal and Torres Strait Islander people are unable to access the data they need.
- Governments' reluctance to share data is driven by a culture of risk aversion and avoidance, which also creates major challenges for progressing the transformative change required in governments' data systems and practices, and the partnerships between governments and Aboriginal and Torres Strait Islander people with respect to data. Governments first need to understand what is required of them – that they need to fundamentally change how they undertake a range of data activities – deciding what to collect, collecting it, using it, telling stories about it – to reflect Aboriginal and Torres Strait Islander priorities and needs. This requires engaging with Aboriginal and Torres Strait Islander people about what IDS means in practice, and developing strategies that coherently articulate how governments' ways of governing data will change and the actions needed to bring about this change.
- Finally, the data capability of Aboriginal and Torres Strait Islander people is crucial. Without it, Aboriginal and Torres Strait Islander people cannot engage with governments about how to successfully transform government data systems and practices, nor exercise data governance in line with what is needed to improve outcomes for Aboriginal and Torres Strait Islander people.

The community data projects are lighthouse initiatives for governments to learn what needs to be done to successfully implement Priority Reform 4. While these projects will not meet the timeline set out in the Agreement, they offer promise and could deliver dividends in informing implementation of Priority Reform 4 as a whole. It is important that governments appropriately invest in evaluation of these projects, so they can yield lessons for implementing Priority Reform 4 more broadly, and for undertaking any future data projects.

Review of the National Agreement on Closing the Gap

Tracking progress

Chapter 6



Key points

The performance monitoring approach of the National Agreement on Closing the Gap (the Agreement) is intended to drive government effort and provide public accountability for progress, but the design of its targets does not enable this.

- The Agreement's targets are intended to be met at the national level, but jurisdictions have not agreed to how much they will each contribute to achieving them. This weakens their purpose as an accountability mechanism.
- Without regional disaggregation of target data, communities cannot hold states and territories to account for the equitable distribution of progress across diverse regions.

There is no explicit logic in the Agreement that describes how the Priority Reforms will improve socio-economic outcomes for Aboriginal and Torres Strait Islander people. This has implications for the performance monitoring approach and governments' implementation plans. Without an explicit logic:

- it is difficult to assess whether and how proposed actions will contribute to material change
- governments will continue to direct their efforts to improving outcomes without recognising the transformative changes that are required in their ways of working to advance culturally appropriate policies and services.

The performance monitoring framework identifies hundreds of indicators without a clear rationale for their inclusion. Without a conceptual logic to guide indicator selection, there is a risk that performance data will fail to track changes that are critical to progress under the Agreement.

- Most indicators are yet to be reported. There is no data reported on the Priority Reforms and limited data reported on the cultural determinants of life outcomes.
- This means reporting remains focused on the socio-economic targets rather than the key factors influencing change. This risks reinforcing business-as-usual and narratives that attribute problems to Aboriginal and Torres Strait Islander people, rather than to the government policies and systems that have led to negative outcomes.

Responsibility for new data development is split across multiple working groups and organisations without clear accountabilities.

- To address this, parties to the Agreement should commit to establishing a Bureau of Indigenous Data (BoID) to consolidate and oversee data development work for the Agreement. But the main focus of the BoID would be to support governments to embed Indigenous Data Governance into their data systems and practices and to invest in strengthening the data capability of Aboriginal and Torres Strait Islander organisations and communities. This would support the achievement of Indigenous Data Sovereignty (discussed in chapter 5).

Governments' annual reports and implementation plans do not set out a strategic approach or theory of change that explains how governments' initiatives are linked to Closing the Gap objectives and Priority Reforms. This makes it difficult for them to be used by the community to understand what actions governments are taking and whether these actions will improve outcomes.

- Governments need to write implementation plans more strategically, in collaboration with Aboriginal and Torres Strait Islander people.

6.1 Knowing if the Agreement is making a difference

The National Agreement on Closing the Gap (the Agreement) includes a performance monitoring approach that is intended to drive government effort and provide public accountability on whether actions are making a difference to the lives of Aboriginal and Torres Strait Islander people.

Performance monitoring has been a key pillar of national agreements since the introduction of the Intergovernmental Agreement on Federal Financial Relations in 2008. The fundamental assumption behind the introduction of outcomes-based performance monitoring was that it would enable innovation and improvements in service delivery by making jurisdictions accountable for outcomes while reducing prescriptions for state and territory service delivery (COAG 2008b, p. 1). While difficult to test empirically, performance monitoring is promoted for its potential to:

- clarify objectives and priorities through the definition of outcomes and targets
- support transparency and public accountability by routinely providing performance information to the community
- galvanise effort by focusing attention on key reforms and outcomes
- support learning, improvement and innovation through routine data collection and analysis and the flexibility to adapt service delivery to achieve outcomes.

However, if not done well, performance monitoring also risks distorting policy efforts by incentivising risk-aversion, diluting accountability, narrowing focus, and siloing effort (Garlatti et al. 2018, pp. 47–48). Investment in data collection and reporting processes and systems can also entail significant costs. To be most useful, performance monitoring must be embedded in decision-making and performance management practices that promote timely, critical reflection and learning (Goh 2012, p. 36). It should also be supplemented by rigorous evaluation that integrates other forms of evidence to identify the effects of policy efforts and the factors that enable or constrain progress.

Ultimately, while performance monitoring can facilitate transparency and learning about progress, it cannot substitute for a shared understanding and commitment to reform.

The approach to performance monitoring in the Agreement

The Agreement's performance monitoring and reporting approach is set out across chapters 7, 8 and 9 of the Agreement. Chapter 7 – 'Knowing we are making a difference' – establishes the outcomes the Agreement is seeking to achieve and how progress against them will be tracked.

The framework is divided into separate target frameworks for the Priority Reforms and socio-economic outcomes (tables A and B, respectively). The Priority Reforms focus on measuring the changes governments are making in the way they are working, while the socio-economic outcomes measure the changes experienced by Aboriginal and Torres Strait Islander people (clause 79). The framework includes five elements (figure 6.1).

- **Outcome statements** describe the four Priority Reforms and 17 socio-economic outcomes that the parties have committed to achieving.
- **Targets** define the specific and measurable goals for each of the outcomes. The targets are the key measures that government parties are publicly accountable for achieving. They typically specify the amount or rate an indicator must change within a defined period. There are **23** targets in total, with each Priority Reform and socio-economic outcome having at least one target (appendix C).
- **Supporting indicators** provide more information on how governments are performing against the outcomes. They are described in general terms and require the specification of **measures** to define how they will be quantified and what data is needed. The framework identifies **164** supporting indicators in total.

- **Disaggregations** specify how each of the targets will be broken down to understand where progress is being made and where greater effort is needed (for example, by different geographic areas and population groups).
- **Data development items** are concepts that would provide a better understanding of the outcome areas but require work to develop the approach and data so that they can be measured.

Chapter 7 of the Agreement also commits the parties to establishing a plan to advance the data development items identified in the performance frameworks. Specifically, the parties were required to prepare a **data development plan (DDP)** that prioritises development actions, assigns responsibilities and sets clear delivery timelines.

As section 6.4 discusses, **most of the measures specified in the frameworks are yet to be reported on** – as of July 2023, there is no progress data reported for any of the Priority Reforms, four of the socio-economic targets and the majority of the supporting indicators.

Figure 6.1 – Key elements of the Agreement's performance frameworks

Target frameworks	Priority Reforms	Socio-economic outcomes
Outcome statements: *The changes the Agreement is seeking to achieve*	**Four Priority Reforms**	**Seventeen outcome areas**
Targets: *The specific measurable goals that governments are accountable for achieving.*	Key measures of the changes governments are making in the way they are working	Key measures of the changes in life outcomes for Aboriginal and Torres Strait Islander people
Supporting indicators: *Measures that provide greater insight into how governments are tracking*	Includes indicators: • that track how the Priority Reforms are being implemented, and • that track the outcomes experienced by Aboriginal and Torres Strait Islander people	Includes indicators: • that track the **Drivers** that significantly affect whether a target will be met; and • that provide **Contextual information** about the experiences of Aboriginal and Torres Strait Islander people
Disaggregations: *How the targets will be broken down for reporting*	By jurisdiction and socio-economic outcome area	By population group/cohort and geographic areas
Data development items: *Measures that require further work to be developed*	Additional concepts that will provide a better understanding of the Priority Reforms	Additional concepts that will provide a better understanding of the socio-economic outcomes

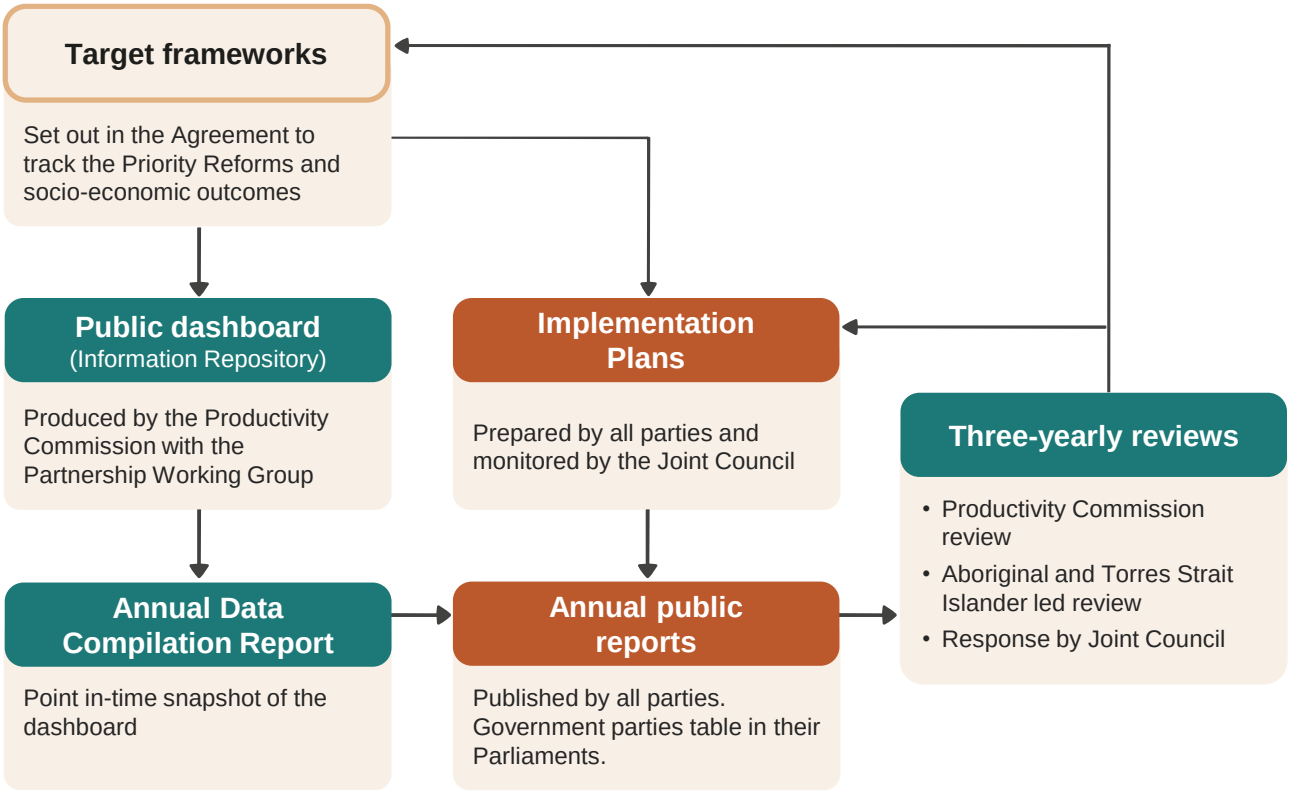
Chapter 8 of the Agreement establishes how the parties must set out what they will do to implement the Agreement, while chapter 9 establishes the arrangements for publicly reporting on their actions and progress. The main mechanisms include (figure 6.2):

- **implementation plans** that are developed by each party to the Agreement that are meant to rigorously set out how they will achieve the Priority Reforms and socio-economic outcomes

- a publicly accessible **dashboard** maintained by the Productivity Commission and underpinned by an information repository that provides up-to-date information on the targets and indicators in the monitoring framework. A point-in-time snapshot of the dashboard is also to be provided in an **annual data compilation report (ADCR)**
- **annual reports** that are prepared by each party to publicly self-report on the actions that they have taken to implement the Agreement and their progress against the targets (based on data from the dashboard and ADCR)
- **reviews**, including an independent review conducted by the Commission and an Aboriginal and Torres Strait Islander-led review, to be completed every three years and responded to by the Joint Council on Closing the Gap (Joint Council).

The Agreement allows for the three-yearly reviews to provide advice to the Joint Council on potential changes to the target frameworks. The Joint Council can also approve changes to the frameworks found to be necessary from data development work.

Figure 6.2 – The Agreement's reporting mechanisms



The performance monitoring approach sought to address some of the issues with the previous approach under the National Indigenous Reform Agreement

The Agreement's approach to performance monitoring is an evolution of the approach in the National Indigenous Reform Agreement (NIRA). Reviews of the NIRA informed the development of the new performance monitoring approach under the Agreement (box 6.1).

Box 6.1 – Lessons from the performance monitoring approach in the National Indigenous Reform Agreement (NIRA)

The NIRA's performance monitoring approach was broadly seen as bringing unprecedented attention to outcomes for Aboriginal and Torres Strait Islander people (NIAA 2019b, p. 1) and was perceived by some as effective in mobilising effort made by governments to achieve the outcomes (Nous Group 2014, p. 45). Some of the identified strengths of the NIRA performance monitoring approach were that it:

- utilised a building block approach[a] that recognised a joint need for action across portfolios and the interconnectedness of outcomes (NIAA 2019b, p. 2)
- established high-level outcomes and targets that identified key priorities and initially prompted strategic investment (NIAA 2019b, pp. 2, 6)
- implemented robust processes for collecting and reporting data on the targets and managing data quality (ANAO 2019, p. 9).

However, the NIRA's performance monitoring approach also had its weaknesses. These included:

- limited engagement with Aboriginal and Torres Strait Islander people on the design and implementation of the approach (ANAO 2019, p. 9)
- only including outcomes for individuals (that did not account for structural inequities), which contributed to a deficit-based narrative and omitting important outcome areas (such as culture and justice) (NIAA 2019a, pp. 22–23)
- setting targets that were unrealistic about how soon improvements could be achieved and did not account for, or provide an understanding of, regional variation (Biddle et al. 2017, p. 2)
- a lack of indicators that measured the performance of government policies and programs or the drivers that contributed to achieving the targets (NIAA 2019b, p. 5)
- policies and programs were not directly linked to the elements of the performance framework (ANAO 2019, pp. 8–9)
- a failure to establish an evaluation framework to measure the impact of policies and programs on the targets (ANAO 2019, p. 10).

a. The NIRA contained seven strategic building blocks supporting the Closing the Gap targets: early childhood, schooling, health, economic participation, healthy homes, safe communities, and governance and leadership. Each building block had identified outcomes (SCRGSP 2009, p. 12).

Many of the weaknesses in the NIRA performance framework were found to reflect the Australian, state and territory governments' lack of engagement with Aboriginal and Torres Strait Islander people in its design (ANAO 2019, p. 22; NIAA 2019a, p. 21, 2019b, p. 5). When the NIRA was refreshed, Aboriginal and Torres Strait Islander peak bodies and communities successfully advocated for a performance monitoring approach founded on formal partnership (box 6.2).

Box 6.2 – Engaging Aboriginal and Torres Strait Islander people in the design of the performance monitoring framework

The process to refresh the National Indigenous Reform Agreement (NIRA) commenced in late 2017 and included a series of meetings and roundtables with Aboriginal and Torres Strait Islander people (DPMC 2019a, pp. 166–167).

- In February 2018, the Special Gathering of Prominent Aboriginal and Torres Strait Islander Australians produced a statement for the former Council of Australian Governments (COAG) recommending priority areas for the next phase of Closing the Gap.
- These priorities served as the foundation for further community consultations, including 18 national roundtables with over 1000 people in state capital cities and regional centres across Australia, culminating in a national peaks workshop in April 2018.
- In May and June 2018, the Australian Government hosted a series of technical workshops to develop targets and indicators, informed by 170 public submissions. These were attended by officials from all jurisdictions and subject matter experts, including representatives from Aboriginal and Torres Strait Islander organisations and communities, academics and practitioners.
- A second series of national consultations on the outputs of those workshops followed.

A draft version of the new Agreement's performance framework was issued at the December 2018 COAG meeting (Coalition of Peaks 2020a, p. 74). It included 12 outcomes and 15 draft targets which had been refined from 23 targets that were considered in earlier technical workshops (Coalition of Peaks 2019, p. 22).

In March 2019, the Partnership Agreement on Closing the Gap was established between the Australian, state and territory governments, the Coalition of Aboriginal and Torres Strait Islander Peak Organisations (the Coalition of Peaks) and the Australian Local Government Association (ALGA) to enable shared decision-making with Aboriginal and Torres Strait Islander people in developing, implementing and monitoring the new National Agreement. Following this, the Coalition of Peaks was engaged as a partner in developing the new performance monitoring approach.

- In 2019, the Partnership Working Group (PWG) reviewed the NIRA performance monitoring framework with a view of understanding its strengths and weaknesses to inform the creation of the new agreement (NIAA 2019b, p. 1).
- The Coalition of Peaks undertook engagement with Aboriginal and Torres Strait Islander people, communities, and organisations to gather their feedback on the draft COAG targets. There were a range of responses; however, the general feedback was that changes were required to the outcomes, measures and focus of the targets (Coalition of Peaks 2020a, p. 74).

The Coalition of Peaks and Australian governments agreed that the feedback from the engagements would be reviewed by the Joint Council on Closing the Gap with the intention that the Joint Council undertake a deliberative process to ensure the draft Agreement fully reflected the perspectives of the engagements (Coalition of Peaks 2020a, p. 89). The PWG was progressively provided draft sections of the engagement summaries by the Coalition of Peaks to allow adequate time to properly consider the feedback in the drafting of the Agreement.

Box 6.2 – Engaging Aboriginal and Torres Strait Islander people in the design of the performance monitoring framework

In reflecting on the development of the performance monitoring approach, the Coalition of Peaks noted:

> The general process of negotiation of the targets and indicators was not convened as well as it could have been and was truncated in time. Further, the targets and indicators were designed around existing data sets and not necessarily what the best measures might be. The Coalition of Peaks wanted to ensure that existing targets and data sets were maintained so that long term trends could be tracked. However, we would have preferred additional time being allocated to all parties for a more in detail consideration of measuring and monitoring the socio-economic targets. However, on balance, the Coalition of Peaks determined that it was more important to reach agreement and focus on changing the way governments work, through the Priority Reforms. Without changing the way governments work, we will not see improvements in the lives of Aboriginal and Torres Strait Islander people and communities. On the targets and indicators, and as a way to continue the discussion with governments, it was agreed to develop a 'data development plan' and to update the indicators as more data became available over time. (Coalition of Peaks, pers. comm., 5 July 2023)

The resulting framework sought to maintain and update some existing NIRA targets to ensure continuity and the ability to track outcomes over longer timeframes (such as life expectancy, early childhood education, educational attainment, employment). It also sought to incorporate outcomes identified as important in engagements with Aboriginal and Torres Strait Islander people, both in terms of community understandings of wellbeing (connection to Country and culture) and areas requiring improved government effort (child protection, criminal justice, mental health) (Coalition of Peaks, pers. comm., 5 July 2023). The most notable change was the addition of the Priority Reforms targets and indicators to monitor change in governments' ways of working with Aboriginal and Torres Strait Islander people, a key priority identified in engagements (Coalition of Peaks 2020a).

After the signing of the Agreement, the Joint Council endorsed indicators for the four Priority Reforms (with measures still to be developed), a revised target (family violence) and a new target (access to information) (Joint Council 2020, p. 2), and more recently has endorsed another new target (community infrastructure) (Joint Council 2021d, p. 1). Following Joint Council endorsement, the targets were recommended to First Ministers, the Lead Convenor of the Coalition of Peaks and the President of ALGA for inclusion in the National Agreement.

The Commission's approach to reviewing performance monitoring under the Agreement

The Commission's approach to reviewing the Agreement's performance monitoring approach focuses on five key questions.

- Is there a shared understanding of the purpose of performance monitoring?
- Does the performance framework have a clear conceptual logic?
- Is the measurement approach balanced and fit-for-purpose?
- Are clear and appropriate data governance arrangements in place?
- Does reporting provide the information that is needed in an accessible way?

Underpinning these questions is the principle of centring the voices of Aboriginal and Torres Strait Islander people (box 6.3). This is the key lens through which the Commission has assessed the Agreement's performance monitoring approach.

Box 6.3 – Centring Aboriginal and Torres Strait Islander people, perspectives and knowledges in performance monitoring frameworks

For the National Agreement on Closing the Gap, centring Aboriginal and Torres Strait Islander people, perspectives and knowledges is fundamental to a well-designed performance monitoring approach. The logic behind this is grounded in both ethics and efficacy. Ethically, it affirms Aboriginal and Torres Strait Islander people's right to participate in decision-making about matters that affect them, recognising that people value and understand outcomes differently. This right is enshrined in the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), to which Australia is a signatory. In regards to efficacy, there is evidence that policies and programs that directly engage people affected in their design, implementation and evaluation achieve better outcomes (RCPDCNT 2017, vol. 1 p. 256). This is because people affected by policies and programs have unique insight into the drivers of social problems, their interactions with policy implementation, and how policy could be improved.

As set out in the Commission's *Indigenous Evaluation Strategy*, centring Aboriginal and Torres Strait Islander people, perspectives and knowledges means both 'recognising the diverse cultures (languages, knowledge systems, beliefs and histories) and the impacts of contemporary and historical policies and programs on the wellbeing of Aboriginal and Torres Strait Islander people' (PC 2020b, p. 8). It also involves 'building partnerships with Aboriginal and Torres Strait Islander people to define policy and program objectives, decide on evaluation questions, how evaluations will be conducted and how evaluation findings will be interpreted' (PC 2020c, p. 382). While the focus of the strategy is on evaluation, its principles also apply to performance monitoring as the foundation for evaluation.

Some aspects of cultural and historical recognition are harder to achieve in the context of national monitoring frameworks that rely on aggregate statistics. In this case, principles for 'indigenising' national statistics developed by Kukutai and Walter (2015, p. 317) provide more direct guidance. They draw on Taylor's concept of the 'recognition space', which is the 'small intersect between Indigenous cultural values and practices concerning wellbeing; and government reporting frameworks and concepts' where 'policy makers and Indigenous peoples can seek to build meaningful engagement and measurement' (Kukutai and Walter 2015, p. 318; Taylor 2008, p. 116). In doing so, the goal is to shift government statistics away from misrecognition towards greater functionality for Indigenous people. The five recognition principles are listed below (Kukutai and Walter 2015, pp. 321–323).

- **Recognise geographic diversity.** This means acknowledging that the default data disaggregation at the jurisdictional or remoteness level are of limited relevance to Indigenous people because they obscure variation across communities. It calls for greater regional disaggregation to increase functionality for Indigenous communities.
- **Recognise cultural diversity.** This means going beyond an Indigenous identifier that frames Indigenous people as an ethnic or racial minority population to recognising Indigenous people as 'rights-bearing peoples with a distinctive status that is recognised internationally'. To do so, governments should seek to account for the many First Nations that make up the Aboriginal and Torres Strait Islander population, their cultural and historical uniqueness and vitality.

Box 6.3 – Centring Aboriginal and Torres Strait Islander people, perspectives and knowledges in performance monitoring frameworks

- **Recognise other ways of knowing.** This applies to the narratives built around official statistics, from their intent and design to their interpretation. It means moving away from the framing of Indigenous people as a disadvantaged minority or a problem to be solved to rights-bearing people contending with unequal institutional arrangements. This means highlighting structural sources of inequality and focusing on enabling Aboriginal and Torres Strait Islander strengths and aspirations.
- **Recognise the need for mutual capability-building.** While governments recognise the need to build data capability within Indigenous communities, there is also a need to build the capability of non-Indigenous people to recognise how their worldview shapes their understanding of statistical functionality and how this relates to Indigenous understandings.
- **Recognise Indigenous decision-making.** Perhaps the most important principle, this means enabling Aboriginal and Torres Strait Islander people to participate in decision-making in the design, management and use of data about them. This draws on the right to self-determination enshrined in UNDRIP, particularly articles 18, 19 and 23.

Fundamentally, the centring principle is about ensuring governance arrangements and processes at all stages of performance monitoring enable the meaningful participation of Aboriginal and Torres Strait Islander people and incorporate their knowledges and perspectives. This has practical applications in each of the key elements of performance monitoring.

6.2 Is there a shared understanding of the purpose of performance monitoring?

For performance monitoring to be effective, the purpose of a performance monitoring approach must be clearly understood and supported by the parties who report against and use it. A well-defined purpose establishes the intended use of the framework, who will use the information collected, and how (Morgan and Homel 2011, p. 11 quoting Audit Commission 2020). It defines the scope for the measurement approach, data collection and reporting arrangements.

Performance monitoring could have multiple purposes, and these should be clearly articulated so that the monitoring approach can be designed to achieve them. Developing a shared understanding of the purpose is best enabled through partnership and co-design with key reporting participants and users. This contributes to acceptance of the approach by all parties and greater motivation towards and achievement of targets (Goh 2012, p. 34).

The Agreement indicates multiple purposes for performance monitoring

The Agreement does not include an explicit description of the purpose of its performance monitoring approach. At a high level, it establishes that the parties have agreed to the targets ‘to know how we are tracking against the objectives and outcomes of this Agreement’ (clause 78). Beyond this, there are several clauses in the Agreement which suggest how the Agreement’s performance data and reporting is intended to be used. These purposes include: enabling independent oversight and public accountability; driving effort at

the jurisdictional level; monitoring the distribution of progress across different Aboriginal and Torres Strait Islander populations; and prioritising Aboriginal and Torres Strait Islander cultures.

There is broad agreement that performance monitoring should drive jurisdictional effort and public accountability

Chapter 9 of the Agreement links reporting to **independent oversight and public accountability** (clause 115). Clauses in the Agreement suggest an emphasis on jurisdictional accountability, particularly to Aboriginal and Torres Strait Islander people. Clause 97 states that 'it is important for Aboriginal and Torres Strait Islander people to know that the new way of working is being implemented through the life of the Agreement and [to be able to] monitor its progress'.

Review participants broadly agreed with this public accountability purpose, with some differences in emphasis. The Australian Government affirmed:

> As reflected in the National Agreement, key functions of the performance reporting include the provision of publicly available, regular and transparent information to enhance accountability across the Partnership. (NIAA, pers. comm., 6 June 2023)

Many review participants also stressed the need for regular, systematic public reporting on the Priority Reforms and government actions to hold governments to account for progress (Australian Council of TESOL Associations, sub. 11, p. 30; The Lowitja Institute, sub. 15, p. 7; National Health Leadership Forum, sub. 19, p. 4; Public Health Association of Australia, sub. 16, p. 1). For example, the Close the Gap Campaign highlighted the 'need to focus on the reform priorities as the foundational measures' and emphasised:

> We need to see action across the Priority Reform areas and other key frameworks, such as the National Anti-racism Framework, to ensure there is a robust evaluation framework that holds each jurisdiction to account on making genuine progress on their commitment to transformation. (sub. 17, p. 3)

In addition to enabling public transparency, the Agreement establishes the role of performance reporting in **driving jurisdictional effort** through review and response mechanisms. Specifically, if a three-yearly review identifies that a target is off-track, actions to get the target back on track must be included in jurisdictional implementation plans (clause 91). The Joint Council must also publicly respond to reviews with any recommendations for amendments to the Agreement and comments on jurisdictional progress and suggestions for future approaches (clauses 129-130). The parties are also required to 'regularly review the level of ambition of the targets' to ensure that they continue to reflect their commitment to 'stretching beyond a business-as-usual approach in order to accelerate improvements in life outcomes for Aboriginal and Torres Strait Islander people' (clause 84).

Parties to the Agreement affirmed the role of performance monitoring in aligning effort across jurisdictions and their agencies. For example, the National Indigenous Australians Agency (NIAA) noted that performance data reported on the Closing the Gap dashboard is 'regularly discussed at Partnership Working Group and Joint Council as a means to regularly track progress and discuss emerging issues' (NIAA, pers. comm., 6 June 2023). New South Wales has introduced a governance structure and reporting requirements that are intended to ensure significant decisions on the Agreement are made in partnership with the New South Wales Coalition of Aboriginal Peak Organisations (NSW CAPO). The NSW Government submitted:

> To date, quarterly ministerial meetings are held with all responsible NSW Government ministers to regularly report on progress. The ministerial meetings are attended by key stakeholders including senior executives from the NSW Government, NSW CAPO leads and relevant ministers, to:
>
> - discuss progress and delivery against commitments in the NSW Implementation Plans

- explore strategic opportunities and unlock challenges to achieving Priority Reforms and socio-economic outcome targets across government.

> The meetings further act as a reporting mechanism where government departments are held accountable for their respective delivery responsibilities. NSW CAPO representatives are at the table alongside ministers and senior public servants, signalling and embedding strong accountability and commitment to working in partnership. (NSW Government, sub. 32, p. 10)

The Agreement also specifies that as part of its role in driving effort, performance monitoring should **provide an understanding of progress for different Aboriginal and Torres Strait Islander population groups** to identify 'where greater effort is needed' (clause 82d). This includes disaggregation by demographic groups and geographical areas (clause 82d) and by groups 'likely to experience greater levels of disadvantage', including stolen generation survivors, people with disability, and people identifying as LGBTQI+ (clause 93). Many review participants affirmed the importance of geographic disaggregation to reveal variations in action and progress (Aboriginal Health Council of Western Australia, sub. 22, p. 3; Bill Arthur, sub. 26, p. 2; Federation of Victorian Traditional Owner Corporations, sub. 24, p. 5; Torres Shire Council, sub. 6, p. 4). However, regarding disaggregating data by disability status, the First Peoples Disability Network cautioned that while this data is important, representation of people with disability in governance is necessary to ensure data is First Nations disability-centred and not misinterpreted or misused (First Peoples Disability Network, pers. comm., 3 July 2023).

Prioritisation of culture in performance monitoring could play a role in shifting policy narratives about Aboriginal and Torres Strait Islander people

The Agreement frames performance monitoring in the context of the parties' overarching commitment to **prioritising Aboriginal and Torres Strait Islander cultures**. This is encapsulated in clause 21, which states that all activities under the Agreement are to be implemented in a way that 'takes full account of, promotes and does not diminish in any way, the cultures of Aboriginal and Torres Strait Islander people'. This is to be demonstrated through implementation plans (clause 107), the Priority Reforms (clause 22), and new outcome areas, targets and indicators 'to support the cultural wellbeing of Aboriginal and Torres Strait Islander people in areas of languages; cultural practices; land and waters; and access to culturally relevant communications' (clause 23). The Agreement also commits the parties to developing appropriate contextual indicators and information on the cultural determinants of health and wellbeing to support reporting on the targets (clause 94).

Review participants indicated a role for performance monitoring in supporting a paradigm shift in policy narratives about Aboriginal and Torres Strait Islander people. In its submission, the Lowitja Institute explained:

> Data is a powerful tool. Data can be used to hold governments and the community-controlled sector to account on actions under the National Agreement, however there is a risk that this can be decontextualised and misused if data sovereignty and data governance mechanisms are not in place. The oversupply of deficit-based data has created a discourse that sees Aboriginal and Torres Strait Islander peoples presented as a problem, or as wholly responsible for inequities. Data, when used properly, can be a powerful tool in changing this discourse. (sub. 15, p. 7)

Performance monitoring can support this change through the recognition of Aboriginal and Torres Strait Islander people, knowledges and perspectives in its design, implementation and interpretation. As discussed in section 6.2, further developing a conceptual logic that articulates how the Priority Reforms are intended to advance the socio-economic outcomes would do more to support this narrative shift.

Some argue that performance monitoring should drive effort at the local level, as described in Priority Reform 4

The Commission heard through engagements and submissions that performance monitoring under the Agreement should inform decision-making and drive effort in communities (Closing the Gap Campaign, sub. 17, p. 8). For example, the Aboriginal Health Council of Western Australia said that performance data must enable an assessment of policy and the impacts of programs at the community level.

> The socio-economic outcomes need to be disaggregated, measured and reported in the context of different demographics. For instance, while progress on outcomes should be reported in connection to their relevant sectors, it should also be reported in relation to geographical regions and Aboriginal community groups. Providing data analysis based on each state/territory will not tell the full story; an initiative might work well in some Aboriginal communities, but it might not be effective or culturally appropriate in others … Reporting on socio-economic outcomes must be disaggregated to reflect levels of effectiveness in individual Aboriginal communities. (sub. 22, p. 3)

Priority Reform 4 recognises that 'disaggregated data and information is most useful to Aboriginal and Torres Strait Islander organisations and communities to obtain a comprehensive picture of what is happening in their communities and make decisions about their futures' (clause 70). It commits governments to collecting and reporting on data 'at sufficient levels of disaggregation' to inform and support local decision-making (clause 71c).

Some clauses under Priority Reform 4 also seem to recognise that community advocacy and monitoring of government efforts to 'close the gap' rely to some extent on regional data. For example, clause 69c acknowledges that regional data enables communities to hold governments to account for Priority Reform 3 by 'measuring the transformation of government organisations operating in their regions to be more responsive and accountable for Closing the Gap.' Clause 75a notes that the six community data projects will support communities to 'drive their own development and discussions with governments on Closing the Gap'.

The inclusion of the Australian Local Government Association (ALGA) as a government party to the Agreement (clause 11) also raises questions as to what extent the Agreement holds local governments to account for progress. Clause 79 states that 'Government Parties have the same level of commitment and accountability' for Priority Reform and socio-economic targets. However, reporting on these targets is specified at the national, state and territory levels to assess jurisdictional progress (clause 89) and prompt jurisdictional action (clause 91).

The Agreement's performance monitoring approach is unlikely to be the best vehicle to measure community-defined outcomes to inform local decision-making. The Agreement's DDP defines 'community data' as driven by the priorities of local communities, responsive to local decision-making needs, and owned and managed by communities (Joint Council 2022b, p. 7). Communities have different priorities, and these will not always align with the outcomes negotiated in the Agreement. Targets and supporting indicators at the jurisdictional level may not adequately capture these priorities.

The DDP as described in the Agreement is scoped to address data development items listed in the Agreement's performance monitoring framework (clause 92). However, the DDP seems to address broader data development agendas under the Agreement, including how new initiatives will be monitored and evaluated. The DDP states that work undertaken through the DDP should '[include] Aboriginal and Torres Strait Islander people having access to, and the capability to use, locally-relevant data and information to set and monitor the implementation of efforts to close the gap, their priorities and drive their own development' (Joint Council 2022b, p. 6). The DDP also considers how data development items could 'prioritise or further the use of community data – reflecting the importance of Priority Reform Four' (Joint Council 2022b, p. 12).

Ultimately, the intention of the Agreement to reflect community-level priorities in performance monitoring is ambiguous. The design of the Agreement's performance monitoring approach, with targets and reporting arrangements set at the jurisdictional level does not currently support it. Further disaggregation of outcomes indicators could be explored to better hold jurisdictions to account for equitable progress across regions (section 6.4). Community-driven data development could also be advanced alongside work on the performance monitoring approach, through local and regional data projects or by ensuring new policies and programs are designed and evaluated in a way that recognises community diversity and self-determination.

6.3 Does the performance framework have a clear conceptual logic?

A monitoring framework should be underpinned by a conceptual logic that establishes the desired outcomes and provides an understanding of how they will be achieved (box 6.4). A clearly articulated conceptual logic supports the identification of key points of influence, prioritisation of effort, and evaluation of a reform's actions against its intent (Goldsworthy 2021, p. 2; Ramia et al. 2021, p. 16). In the context of the Agreement, it is particularly important that the conceptual logic reflects Aboriginal and Torres Strait Islander people's understandings of progress, in terms of valued outcomes and the key factors influencing progress.

Box 6.4 – What are conceptual logics, program logics and theories of change?

A conceptual logic is a model or diagram of relationships describing how policy actions or reforms are intended to influence short- to long-term outcomes. Logics vary in the level of change they describe and detail included (DoF 2015, pp. 22–26). Conceptual logics tend to describe a high-level or abstracted set of causal relationships. When applied to policies and programs as 'program logics', they take on more detail in the form of specific resource inputs, actions, immediate outputs such as people served or activities delivered, and short-, medium- and long-term outcomes (Ramia et al. 2021, pp. 18–19). Long-term outcomes are the most difficult to attribute to policy efforts as they take time to appear and can be influenced by many factors. The inclusion of intermediate outcomes can provide useful milestones to track the contribution of policy actions towards the achievement of outcomes that require longer time scales to observe (ANAO 2004, pp. 11–13; Nous Group 2014, pp. 26–27; Ramia et al. 2021, p. 19). As well as identifying key factors that are intended to drive progress, the logic should illustrate important causal links across different outcomes.

The term 'logic' is sometimes used interchangeably with 'theory of change'. While they both describe how social change is intended to be achieved, theories of change tend to include more comprehensive information about how change occurs (Goldsworthy 2021). A theory of change may be based on an established theory (such as a human rights or capability approach) or be supported by empirical research, lived experience and knowledge of people impacted by policy efforts.

A theory of change or logic will necessarily be a simplified representation of how change occurs. While conceptual logics are often diagrammed as a linear chain of cause and effect, social outcomes are often the result of the actions of many interdependent systems and people (French et al. 2021, p. 115). For example, life expectancy is influenced by many policy domains including health, community, culture, social security, housing, education, employment, and justice, and how these interact with each other in the lives of

Box 6.4 – What are conceptual logics, program logics and theories of change?

people and communities. As such, progress may be better understood through an ecological or systems lens which conceptualises different domains or levels of outcomes (for example, individual, family, community, institutions, environment) and the interactions between them (Ramia et al. 2021, pp. 7–8).

The conceptual logic linking Priority Reforms with outcomes needs to be explicitly articulated and applied

The Agreement outlines the key building blocks of the reform effort (including a statement of objective, desired outcomes, a commitment to prioritising Aboriginal and Torres Strait Islander cultures, and an agreed set of Priority Reforms) (box 6.5). However, it does not explicitly set out a logic linking them that would support a shared understanding of the intended change. It does not explain how the Priority Reforms will contribute to improved socio-economic outcomes beyond broadly stating that 'full implementation of the Priority Reforms will support an accelerated achievement of the socio-economic targets' (clause 80).

Box 6.5 – The implied logic of the Agreement describes how self-determination and cultural recognition drive outcomes

While the Agreement does not explicitly set out a conceptual logic describing how the Priority Reforms will drive change in outcomes, a partial logic can be derived from its elements. The implied conceptual logic links the Priority Reforms to the socio-economic outcomes through the centring of Aboriginal and Torres Strait Islander perspectives and knowledges in policies and programs. It can be described as follows.

- The Agreement aims to improve life outcomes through changes in the relationship between governments and Aboriginal and Torres Strait Islander people that enable greater self-determination and cultural recognition. The Priority Reforms describe how the Agreement will bring about these changes.
- The Priority Reforms will promote greater recognition of Aboriginal and Torres Strait Islander cultures and their historical treatment.
- This recognition will reinforce efforts to strengthen Aboriginal and Torres Strait Islander leadership in the design and delivery of policies and programs, through shared decision-making, Aboriginal and Torres Strait Islander community control and access to relevant data.
- Together, the Priority Reforms will contribute to the development of more culturally safe and responsive policies and programs.
- As a result, Aboriginal and Torres Strait Islander people will be able to access better quality and more culturally relevant services. This will reduce barriers to participation in social and economic activities valued by Aboriginal and Torres Strait Islander people, which will lead to improved life outcomes.

Given the variety of indicators in the performance monitoring framework (figure 6.1), this description necessarily privileges some 'drivers' over others, but the Commission has attempted to describe the logic in a way that aligns with the emphasis on self-determination and prioritisation of culture in the Agreement.

Box 6.5 – The implied logic of the Agreement describes how self-determination and cultural recognition drive outcomes

The implied logic provides some guidance around prioritisation of effort, particularly around common drivers in the Priority Reforms and cultural determinants. It should be tested and further developed by the parties to the Agreement to ensure it reflects current intentions, specifies key elements at each level, and identifies common drivers and interdependencies between the socio-economic outcomes. This should be done in a way that is consistent with the principle of centring of Aboriginal and Torres Strait Islander people, perspectives, priorities, and knowledges.

The performance monitoring framework lacks a clear conceptual logic. The outcomes, targets, and supporting indicators for the Priority Reforms and socio-economic outcomes are listed in two separate target framework tables (tables A and B) and grouped by outcome area. This obscures the relationships between the reforms, cultural determinants, and socio-economic outcomes, outlining the drivers for each in their own siloed policy domain. The framework does not articulate how supporting indicators in each outcome area relate to what the Agreement seeks to achieve. Instead, it includes a large number of indicators and data development items (over 300) without a clear or consistent rationale for why some were included and others excluded.

Clarifying the conceptual logic is critical to the effectiveness of the performance framework and further development of the measurement approach. Without a logic, it is difficult to evaluate whether the Agreement is progressing as intended, and this undermines the framework's utility as an accountability mechanism. This issue was identified by the Australian National Audit Office as hindering the implementation and evaluation of the NIRA, resulting in a recommendation that action plans under the 'refreshed Closing the Gap framework clearly [identify] the links between program inputs, outputs and outcomes and the framework's higher-level outcomes and targets' (ANAO 2019, p. 52).

A clear conceptual logic is also necessary to drive a shared understanding of the expected change and the relationship between policy actions and outcomes. Reflecting on progress to date, the Coalition of Peaks noted:

> Even when there is acknowledgement of the National Agreement, there can often be a disparity in the understanding of its premise. The premise of the National Agreement is that an overhaul is needed to the way governments work if we are to see progress against the socio-economic targets. While the Priority Reforms are designed to change the way governments work with our communities and organisations, there tends to be over-emphasis on achieving the socio-economic outcomes in isolation, or simply completing the listed partnership actions. Governments must understand, embrace, and embed the Priority Reforms in their jurisdiction if we are going to deliver and drive accelerated progress to close the gap. (sub. 25, p. 2)

When applied by jurisdictions and in specific policy sectors, a high-level logic can frame more detailed strategies, roadmaps, and program logics linking government actions with their intended outcomes in the short to long term. For example, the *Safe and Supported Aboriginal and Torres Strait Islander First Action Plan* includes a theory of change linking self-determination and culturally safe and responsive policies and services with actions aligned with the Priority Reforms and their impact on child protection outcomes (DSS 2022c, pp. 9–13). This clarifies government strategies for the public as well, making it easier for the community to understand government actions and hold governments to account for progress. In contrast, the jurisdictional implementation plans under the Agreement do not set out a clear strategic approach (Michael Dillon, sub. 5, pp. 2–3).

Without a defined conceptual logic, the performance framework is at risk of contributing to some unintended effects.

- It can result in *ad-hoc or insufficient investment in the transformative change necessary* to shift to new ways of working. Without a change of view, governments will continue to focus on actions addressing the socio-economic outcomes without understanding the role of the Priority Reforms in creating change (Coalition of Peaks, sub. 25, p. 2). As a result, non-Indigenous framings of policy solutions will continue to crowd out solutions developed from Aboriginal and Torres Strait Islander people's perspectives.
- It can *hinder a prioritisation of effort* by obscuring the critical conditions for change. This could lead to short-termism as policy efforts target actions that are perceived as more achievable (or seen as 'low hanging fruit') but may not significantly shift outcomes. For example, efforts to increase Year 12 attainment might focus on increasing enrolment in post-primary boarding schools. However, this can interrupt young people's connection to their community and Country and puts them in environments where quality bilingual education might not be supported, contributing to barriers to learning and negative impacts on wellbeing (Australian Council of TESOL Associations, sub. 11, p. 23).
- It can contribute to *siloed policy responses,* hindering broader progress in improving life outcomes by not making trade-offs, interdependencies and common drivers clear (Coalition of Peaks, sub. 25, pp. 3–4; Community First Development, sub. 9, pp. 9, 11; Federation of Victorian Traditional Owner Corporations, sub. 24, p. 2). The Queensland Family and Child Commission reflected:

  > In our experience, the process of the adoption of targets by governments has narrowed responsibility, and siloed actions and outcomes into traditional portfolios where the opportunity for collective impact and momentum has been lost. Specifically, and by example, the target to reduce the overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home-care became a target for the Minister and Department responsible for child safety – however, the solutions to this issue lie outside that portfolio. (sub. 8, p. 2)

- It can reinforce deficit narratives of Aboriginal and Torres Strait Islander people, which can have destructive effects on the wellbeing of Aboriginal and Torres Strait Islander people and drive policy responses that fail to address the flawed systems that are producing negative outcomes. When connections are not made between systemic drivers and outcomes, deficit discourses can fill in the gap with stories attributing problems to Aboriginal and Torres Strait Islander people (Aboriginal Family Legal Service WA, sub. 7, p. 9; Australian Education Union, sub. 3, p. 4; Federation of Victorian Traditional Owner Corporations, sub. 24, p. 1; Fogarty et al. 2018, p. xi; Lowitja Institute, sub. 15, p. 7). In addition to their destructive effects on the wellbeing of Aboriginal and Torres Strait Islander people, these narratives also drive policy responses seeking to change the behaviour of Aboriginal and Torres Strait Islander people rather than the flawed systems producing poor outcomes. An example of this can be observed in the 2009 Closing the Gap report, which initially seems to acknowledge the failures of successive governments to effectively coordinate and fund efforts in remote areas, but then goes on to shift responsibility back onto Aboriginal and Torres Strait Islander people (Fogarty et al. 2018, p. 20). The report states:

  > In more recent times, governments have taken strong action to intervene in Indigenous communities in order to protect children from violence and abuse. While such urgent action has been and may again be necessary in the future, too little focus has been given to the longer term task of building personal and community responsibility – a challenge that must be met if Indigenous life outcomes are to improve. (FaHCSIA 2009, p. 4)

The Coalition of Peaks emphasised that monitoring the Priority Reforms was an important means of moving away from deficit narratives.

> To shift away from the deficit framing of the past, the Coalition of Peaks sought to achieve a recalibration of the Closing the Gap policy by the inclusion of the Priority Reforms. The intention was to place the spotlight on the way governments work and to also have this reported on annually. (Coalition of Peaks, pers. comm., 5 July 2023)

Spelling out the links between the Priority Reforms and socio-economic outcomes and ensuring indicators of the desired changes are identified and reported on will enable a better interpretation of disparities in life outcomes.

6.4 Is the measurement approach balanced and fit-for-purpose?

The design of a measurement approach is a balancing act. Performance monitoring must include sufficient information to adequately assess progress, but not so much as to make data collection overly burdensome or overwhelm people's capacity to interpret it. Central to this balancing act is a shared understanding of the purpose of performance monitoring, the decisions it is intended to inform, and the key points of influence intended to drive change (box 6.6).

Box 6.6 – A balanced, fit-for-purpose measurement approach

A well-designed measurement approach should balance the comprehensiveness of performance information with the cost of collecting and analysing it. Performance measures can provide information about a policy's or program's contribution to outcomes (effectiveness), the distribution of outcomes (equity), the nature of what is being delivered (actions or outputs in terms of quantity, quality, cost), and how well it was delivered (efficiency and participant satisfaction) (ANAO 2004, p. 16; DoF 2015, p. 30).

Selecting the minimum number of fit-for-purpose indicators

The set of indictors chosen should support the intended uses of the framework (as defined by its purpose) (DoF 2015, pp. 16, 36–38). For example, if a framework is intended to inform resource allocation decisions, the measurement approach will need to include cost and quantity indicators. Similarly, the indicators should be able to be disaggregated to match the level of decisions that the framework is intended to inform. For example, data informing state and territory policy will need to be disaggregated at that level and may require further disaggregation to determine whether progress has been evenly distributed or limited to certain geographic areas.

A framework should only include the minimum number of indicators that are needed to track intended changes. Having too many indicators can make the framework difficult to interpret and use (NAO 2001, p. 11; Nous Group 2014, p. 27). Moreover, the benefit of additional indicators must be weighed against the costs (financial and non-financial) of developing, collecting and reporting on them (DoF 2015, p. 19; NAO 2001, p. 16).

Criteria for selecting measures

While it is often difficult to identify measures that comprehensively capture an outcome, they should represent the best approximation at a standard to which all parties agree, in a way that balances relevance with the practical costs of data collection (ANAO 2004, p. 13). Selected measures should be

Box 6.6 – A balanced, fit-for-purpose measurement approach

complete, relevant and reliable (NAO 2001, pp. 16–17; PC 2019, p. 140, 2022f, p. 265).

- **Complete:** Measures should provide a balanced account of the overall performance story, enabling assessment of actions and outcomes. Data should be available at a frequency and format to inform timely decision-making. Where data is not available, the value and cost of developing it should be considered.
- **Relevant:** Measures should meaningfully capture the key concepts underpinning objectives, especially from the perspective of people impacted by policy initiatives (box 6.3). Measures should be able to be influenced, at least in part, by government policy and clear in their description of progress.
- **Reliable:** Measures should validly and consistently capture the intended concept and draw on credible data sources.

To build support and ownership of the approach, all main parties who will report against and use performance data should be engaged selecting the indicators and measures (Goh 2012, pp. 34–36; NAO 2001, pp. 11–12). Since parties may assess selection criteria and their trade-offs differently, the selection process should be systematic and well-documented (NAO 2001, pp. 11–12). In the context of the Agreement, centring Aboriginal and Torres Strait Islander people's perspectives in this process is especially important (box 6.3). Most existing national data has been developed from non-Indigenous perspectives, so measures that reflect Aboriginal and Torres Strait Islander perspectives are more likely to require data development. To the extent that all parties can come to a shared understanding, this will enhance credibility and motivate action.

Performance targets that motivate and focus effort

Performance targets are often suggested as an additional accountability mechanism. Their aim is to focus effort on high-priority areas by setting specific, measurable goals defining the expected change and time frame for achieving it. This represents the desired future result, based on an understanding of historical trends, factors impacting progress, and expected effort (DoF 2015, p. 35). Targets provide points of reference for assessing progress. Progress could also be assessed against past results (baseline) or comparisons to a standard (benchmark). Additional information can be provided as context to aid interpretation of trends (ANAO 2004, p. 23).

While there has been a trend towards outcomes-based targets to enable flexibility in funding and approach, the complexity of social policy outcomes often makes policy attribution difficult, complicating accountability. Where agreements are underpinned by specific policy reform directions, indicators on reform actions, outputs or intermediate outcomes can provide early, tangible targets for change. However, when output indicators become targets, care must be taken to ensure they do not encourage quantity over quality or activity without regard to the intent or objective behind it.

The measurement approach fails to monitor critical indicators of change and risks reinforcing business-as-usual

The lack of clear purpose and conceptual logic has resulted in a measurement approach that is extensive, overly muddled and highly ambitious. Indicators for each Priority Reform and socio-economic outcome seem to have been developed in isolation, without consideration of the common drivers the Agreement seeks to influence across outcomes. Each socio-economic outcome area identifies target indicators as well as supporting indicators categorised as drivers or context for targets. The problem with this is that any number

of factors could act as drivers or context for social outcomes, and the rationale for including some over others is not clear (PC 2023d).

The Agreement identifies an overwhelming number of indicators of varying relevance and effort to collect, most of which are not currently reported. There are reporting gaps for all four Priority Reform targets, four of the 19 socio-economic targets, 143 supporting indicators and 129 data development items (table 6.1). The large number of indicators obscures the data most critical to informing change, hinders interpretation and dilutes accountability. Unless critical change indicators are identified and prioritised for development, there is a risk that the measurement approach will produce a fragmented data set that fails to coherently monitor progress against the Agreement.

Table 6.1 – Data availability gaps[a]

Number of data items reported on the Closing the Gap dashboard compared to those included in the Agreement

	Priority Reforms	Socio-economic outcomes
Targets	0 of 4	15 of 19
Supporting indicators	0 of 18	21 of 146
Data development items	0 of 6	0 of 123

a. As of July 2023.

Source: Joint Council on Closing the Gap (2022b, pp. 14–36); PC (2023e).

Identifying critical indicators of change is especially important given the measurement approach faces significant trade-offs between data availability and relevance. Most existing national data has been developed to inform government priorities from non-Indigenous understandings of progress. Thus, the measurement approach requires significant data development to reflect Aboriginal and Torres Strait Islander perspectives. The Agreement's performance measurement approach attempts to manage these trade-offs by drawing on existing data and specifying areas for data development. The NIAA recognised in its submission that 'much of the data is derived from mainstream datasets which, although useful in terms of understanding the inequalities experienced by First Nations people, are limited in their scope for including information specifically designed for First Nations people' (sub. 30, p. 2).

Further development of the measurement approach is necessary to both clarify the critical changes to be monitored and to identify indicators to appropriately track that change. Without this work, the measurement approach will continue to draw on a somewhat arbitrary assortment of existing data that only serves to dilute accountability and reinforce business-as-usual. This is particularly evident in areas significant to the reform with large data gaps – namely the Priority Reforms, cultural determinants of socio-economic outcomes, and the new socio-economic targets without appropriate data.

Data on Priority Reforms could direct attention to new ways of working, but the measurement approach requires further development

The most critical data gap identified by participants in the review was the lack of data on the Priority Reforms. Systematic monitoring of the Priority Reforms has been identified as the highest data development priority by the parties to the Agreement and was also noted as a priority by submissions and engagements for this review. The Coalition of Peaks said that it was:

> … deeply worried that despite the inclusion of the Priority Reforms in the performance monitoring framework, there has been no annual independent and uniform assessment of governments'

> efforts to address the Priority Reforms and no agreed way of defining progress that would enable an easily accessible way of monitoring the performance of governments. Too much focus continues to be on the socio-economic targets and their progress, without an examination to how progress is related to efforts by governments on the Priority Reforms. We will not close the gap without changing the way governments work and we need to have an independent, uniform and consistent way of monitoring governments' implementation of the Priority Reforms. (Coalition of Peaks, pers. comm., 5 July 2023)

The Lowitja Institute echoed this concern.

> Governments must uphold their commitments to the National Agreement, and their responsibility within the Partnership to both gather and share data on its progress. The lack of consistent data collection on the progress towards the Priority Reforms from states and territories undermines the success of the National Agreement and is revealing of Governments' commitment to the agreement. (sub. 15, p. 9)

The monitoring framework for the Priority Reforms was introduced to hold governments to account for the structural changes necessary to advance socio-economic outcomes. A number of submissions also argued for indicators that more directly held governments to account for actions across socio-economic outcomes, such as indicators assessing the accessibility and quality of services and funding relative to need (Australian Council of TESOL Associations, sub. 11, p. 13; Close the Gap Campaign, sub. 17, p. 2; Public Health Association of Australia, sub. 16, p. 1).

In the Coalition of Peaks' engagements informing the development of the Agreement, almost all survey participants believed it was important to measure and publicly report on progress against the Priority Reforms, though views on how to measure them varied (2020a, pp. 35–37, 50–52, 64–67).

The Priority Reform monitoring framework in the Agreement identifies targets, supporting indicators, outcomes and data development items. However, these are often not defined in a way that will enable effective monitoring of performance.

- The targets describe a direction of change, but do not specify the degree of change expected or the timeframe for achieving it. For instance, the target for Priority Reform 2 is to increase the amount of government funding for Aboriginal and Torres Strait Islander programs and services going through Aboriginal and Torres Strait Islander community-controlled organisations (appendix C). There could be good reasons for flexibility: the change required might vary significantly across policy sectors and jurisdictions, making a prescriptive level of change inappropriate. A lack of trend data to set informed targets could also complicate the task. The downside to this ambiguity is that it is unlikely to be as effective in focusing effort, and even minimal change could be interpreted as meeting the target.
- Many of the indicators are so broad that they provide little direction as to what the framework was intending to measure. For example, the target for Priority Reform 3 is a decrease in the proportion of Aboriginal and Torres Strait Islander people who have experiences of racism, but the outcome is about ensuring governments, their organisations and institutions and the services they fund are culturally safe and responsive (appendix C). As one participant to this review noted, it is not clear if this target includes experiences of racism within any context, such as 'supermarkets and sports grounds' (Michael Dillon, sub. 5, p. 5). Racism also covers a broad range of experiences: from racially-motivated discrimination and abuse to a lack of cultural safety or recognition, and policies and practices with racially-differentiated outcomes. While one could argue that the reforms intend to address all of these, intentional definition will aid development and attribution.
- Some indicators as defined will not provide sufficient evidence of change. For instance, Priority Reform 3 indicators include the number of government mainstream institutions and agencies reporting actions to implement the transformation elements, which include identifying and eliminating racism, embedding

meaningful cultural safety, and supporting Aboriginal and Torres Strait Islander cultures. This suggests that any reported actions would be sufficient, even if only tangentially related or of minor impact. In another example, Priority Reform 1 identifies the 'number of partnerships by function, such as decision-making or strategic' as an indicator. More partnerships do not necessarily indicate that the shared decision-making intended by Priority Reform 1 is being achieved (chapter 2).

Recognising these issues, the PWG engaged a third party to further develop the measurement approach, which will include developing measurement concepts and specifications and describing how measures will be collected, either through existing data or new data development (PC 2023d, p. 17). This work is expected to be completed by mid-2024.

Some data on the Priority Reforms could be sourced from other commitments, but data outside of this will need to be further developed

The Priority Reform monitoring framework in table A of the Agreement includes targets and supporting indicators that predominately capture outputs. Some indicator data could be captured through other commitments in the Agreement, such as the partnership stocktakes and the expenditure reviews, if they were consistently reported and collated across jurisdictions.

For example, Priority Reform 1 includes indicators for the number of partnerships meeting the strong partnership elements defined in clauses 32 and 33 of the Agreement. Jurisdictional partnership stocktakes were due in 2022 and were to be reviewed against the partnership elements and strengthened by 2023 (clause 36). Government parties are also required to report on the number of partnerships, their achievements and assessment against the strong partnership elements in their annual reports (clause 37). Reporting standards ensuring this information is reported consistently to defined specifications would enable data collation and comparisons across jurisdictions. However, to date, only three jurisdictions have made their partnership reviews public (Queensland, Victoria and the Australian Government) and have done so using inconsistent definitions, assessment criteria and formats (chapter 2).

Monitoring of Priority Reform 2 could also draw from data developed to meet other commitments in the Agreement. The target for Priority Reform 2 is to increase the amount of government funding for Aboriginal and Torres Strait Islander programs and services going through Aboriginal and Torres Strait Islander community-controlled organisations (appendix C). Clause 113 commits government parties to reviewing current spending on Aboriginal and Torres Strait Islander programs and services to identify opportunities for reprioritisation to community-controlled organisations by July 2022. These reviews could have provided a baseline against which to assess progress. However, only four jurisdictions have completed reviews and only two (New South Wales and the ACT) have publicly released them. Moreover, these reviews are not comparable due to differences in scope and methodology (chapter 3, box 3.10). Some jurisdictions have yet to agree on a methodology. As with Priority Reform 1, consistent reporting and assessment of commitments in jurisdictional annual reports would also address data gaps in Priority Reform 2, including assessments of sectors targeted for sector strengthening plans against the strong sector elements (clause 45) and contracts awarded as a result of funding reprioritisation policies and new funding initiatives (clauses 55 and 118).

Priority Reforms 3 and 4 require more extensive data development. Beyond the target framework in table A of the Agreement, jurisdictions have not committed to specific reporting actions other than to provide information on how they are addressing these in their annual reports (clauses 65 and 73). Work on Priority Reform 3 will need to conceptually define and develop a measurement approach for monitoring the transformation elements listed in clause 59, including identifying and eliminating racism and embedding and practicing meaningful cultural safety. The measurement approach for Priority Reform 4 will also require more definitional work, for example, in determining what constitutes a 'regional data project' and at what point a regional data profile would be considered 'comprehensive'.

The measurement approach does not adequately prioritise culture

A second significant gap in the measurement approach is in the identification of indicators that adequately reflect the centrality of culture to life outcomes. The Agreement prioritises culture in performance monitoring through the addition of two new socio-economic outcomes – outcome 15 on land and waters and outcome 16 on culture and language. It also includes a commitment to identifying contextual indicators and information on the cultural determinants of wellbeing to aid reporting (clause 94). However, as the Australian Council of TESOL Associations put it, the current approach is 'inconsistent, sporadic, tokenistic and inadequate' because it fails to recognise the centrality of cultural determinants like language across the Priority Reforms and socio-economic outcomes (sub. 11, p. 11). This criticism was echoed across several submissions (Annika David, sub. 27, p. 2; Kimberley Aboriginal Law and Cultural Centre, sub. 23, p. 6; Torres Shire Council, sub. 6, p. 1). The Federation of Victorian Traditional Owner Corporations further commented:

> Though the Agreement recognises the centrality of culture to Indigenous health and well-being (in clause 5), there is little reference to the cultural aspects of health and well-being in the Agreement's targets and indicators (with the exception of socio-economic outcomes 15 and 16). (sub. 24, p. 2)

While the domain of cultural policy is often associated with the arts and creative sector, the definition of culture is much broader than that. Culture encompasses a community's knowledge, beliefs, values, norms, and stories in addition to their expression in practices such as traditions, customs, languages and the arts. Prioritising culture therefore means centring Aboriginal and Torres Strait Islander people, knowledges and perspectives in the design and implementation of policy (Parter et al. 2019, 2021).

As the Kimberley Aboriginal Law and Cultural Centre explained:

> Aboriginal and Torres Strait Islander people are the holders of cultural knowledge and practice. They must therefore define how the cultural determinants of health are embedded in policy in programs. This means ensuring Aboriginal and Torres Strait Islander leadership to shift current policymaking and program implementation practices. This will require shared commitment and collaboration across all levels of government to truth-telling, including a recognition of racism as a barrier to implementing cultural determinant approaches. (2022, p. 18)

In this way, prioritising culture has implications across the Priority Reforms and socio-economic outcomes. This seems to be recognised in the Agreement (clause 94), though it is not fully reflected in the measurement approach.

Review participants suggested culture could be better prioritised in the measurement approach by:

- integrating Priority Reform indicators of self-determination and cultural responsiveness across socio-economic outcomes
- including indicators of cultural determinants across outcomes
- re-evaluating some targets and indicators in terms of their cultural appropriateness and scope.

The Agreement seeks to centre Aboriginal and Torres Strait Islander people's knowledges and perspectives in the design and implementation of policy through the Priority Reforms. The Priority Reforms both seek to increase the cultural responsiveness of mainstream government institutions and strengthen the capability of Aboriginal and Torres Strait Islander people to exercise self-determination. Therefore, prioritising culture in the measurement approach means prioritising indicators related to the Priority Reforms and applying them across socio-economic outcomes, where relevant. This might look like incorporating indicators of community control in service delivery, access to culturally appropriate services, barriers to services and cultural safety in interactions with governments and the services they fund. For example, socio-economic outcome 3 on early childhood education includes

indicators for the number of Aboriginal and Torres Strait Islander early childhood education and care service providers (relating to Priority Reform 2) and access to culturally appropriate early childhood education programs (an intermediate outcome of Priority Reform implementation). Socio-economic outcome 5 on student learning potential identifies student experiences of racism as a data development item (Priority Reform 3).

A second means of prioritising culture would be to incorporate indicators of cultural determinants across socio-economic outcomes. This would consider how policies and services supporting connection to community, culture, language and Country could be implemented and monitored through the Agreement in areas such as health, social and emotional wellbeing, education, economic participation and development, family violence, child protection and incarceration and detention (Federation of Victorian Traditional Owners Corporations, sub. 24, pp. 2, 5; Kimberley Aboriginal Law and Cultural Centre, sub. 23, pp. 6–7; Translational Research in Indigenous Language Ecologies Collective, sub. 20, pp. 10–14). This would have the benefit of highlighting common drivers and interrelationships between socio-economic outcomes. This might be implemented through the collection of quantitative indicators or evaluated as a set of principles underpinning new policy and program initiatives. Box 6.7 uses the example of languages to consider how cultural determinants might be incorporated throughout the performance framework.

Third, review participants said that prioritising culture requires re-evaluating some of the targets and supporting indicators or expanding the scope of the indicators reflected in some outcomes. This was raised in regard to the ability of the Australian Early Development Census and the National Assessment Program – Literacy and Numeracy to appropriately capture the outcomes of early childhood thriving and student learning potential. Review participants argued that these assessments conflate English language literacy with development, are susceptible to misinterpretation of children's behaviour based on cultural norms, and fail to recognise competencies that Aboriginal and Torres Strait Islander people consider important to children's learning and development (Australian Council of TESOL Associations, sub. 11, pp. 15-16; Australian Education Union, sub. 3, pp. 4-5; Translational Research in Indigenous Language Ecologies Collective, sub. 20, pp. 4-5). Issues with the National Assessment Program – Literacy and Numeracy were also raised in the Coalition of Peaks' engagements informing the framework (Coalition of Peaks 2020a, pp. 78–80).

Review participants also said a broader understanding of culture needed to be recognised. Outcome 16 on cultures and languages only includes indicators on languages, which ignores other aspects of flourishing cultures such as cultural expression and the arts, spiritual and religious beliefs and practices and traditional knowledge and healing (Federation of Victorian Traditional Owner Corporations, sub. 24, p. 5; Kimberley Aboriginal Law and Cultural Centre, sub. 23, pp. 6 7; Lowitja Institute 2020, p. 13) For example, the Federation of Victorian Traditional Owner Corporations commented:

> The indicators for outcome 16 are focused solely on language rejuvenation and retention. They do not refer to knowledge of and participation in arts-based cultural expression (art and crafts, dance, music, song), ceremonial traditions, knowledge of ancestral stories, relationships with living ancestor/Elders, spirituality or the exercise of traditional knowledge and cultural practices e.g. recognition and use of traditional knowledge in land and water management. (sub. 24, p. 5)

These indicators could be incorporated into socio-economic outcome 16, other relevant outcomes including those on land and waters (outcome 15) or social and emotional wellbeing (outcome 14) or elevated to their own outcomes and targets.

Box 6.7 – Prioritising culture through language indicators across outcomes

One way of prioritising culture in the performance framework is by including supporting indicators of the cultural determinants of life outcomes across relevant outcome areas. For example, submissions to the review suggested the performance framework could be improved to reflect the importance of languages across outcomes.

Aboriginal and Torres Strait Islander people have diverse language backgrounds. The framework could monitor the lack of linguistically appropriate services and resulting service barriers through indicators such as:

- access to both culturally and linguistically appropriate services and information, including the availability of interpreters and translation of material
- language barriers to service access
- language representation and use across localities
- disaggregation of some outcomes by main language spoken and English proficiency (such as early childhood thriving, student learning potential, employment participation, interaction with the criminal justice system).

Achieving the Priority Reforms requires investing in a workforce that can provide culturally and linguistically appropriate services. The framework could monitor this through indicators such as:

- the number of courses, qualifications and training and employment pathways offered for Aboriginal and Torres Strait Islander languages
- access to quality bilingual education, broken down by whether the service is primarily geared towards people who speak Aboriginal and Torres Strait Islander languages as a first language or as an additional language
- training and employment of staff speaking local languages
- training for mainstream institutions in linguistically and culturally appropriate responses
- access to on-Country post-primary schooling.

Reviving a sleeping language and increasing the strength of an established language follow different pathways. The framework could acknowledge this by monitoring:

- the number of languages increasing in strength rather than the number of languages meeting a strength threshold
- the number of languages officially recognised by the ABS and Australian Institute of Aboriginal and Torres Strait Islander Studies
- the number of people identifying culturally with a language and self-assessed proficiency.

Finally, the framework could ensure measures do not conflate language literacy with development, either by replacing those that do (such as the Australian Early Development Census and the National Assessment Program – Literacy and Numeracy) or disaggregating them by student language background.

Source: Australian Council of TESOL Associations (sub. 11); Translational Research in Indigenous Language Ecologies Collective (sub. 20).

Four socio-economic targets lack data to report on progress, with three relying on surveys with uncertain futures

Of the 19 socio-economic targets, four currently lack sufficient data to report on progress (PC 2023d, p. 37).

These are:

- Target 9b: All households within discrete[10] Aboriginal or Torres Strait Islander communities, or in or near a town, receive essential services by 2031.
- Target 13: Reduce all forms of family violence and abuse against Aboriginal and Torres Strait Islander women and children by at least 50% by 2031.
- Target 16: Sustained increase in the number and strength of Aboriginal and Torres Strait Islander languages being spoken by 2031.
- Target 17: Aboriginal and Torres Strait Islander people have equal levels of digital inclusion by 2026.

Of these four, three are new targets developed following commencement of the Agreement (targets 9b, 13 and 17), and three currently rely on surveys with uncertain futures (targets 13, 16 and 17). Without data to assess progress, these targets will be less effective in their ability to focus effort.

Target 9b requires data development as there is no existing source that collates this data across jurisdictions. The Data and Digital Ministers' Community Infrastructure project, operating under the second National Data Sharing Work Program, commenced in late 2022 and concluded in June 2023. It was an initial data scoping exercise aimed at identifying data on the coverage, quality and frequency of electricity and drinking water supply in discrete Aboriginal and Torres Strait Islander communities (two of the four essential services covered by target 9b). The working group presented draft indicators to the PWG in April 2023 and worked with governments and service providers in each jurisdiction to draw up data sharing agreements for provision of baseline target data. Discussions are ongoing with regard to necessary next steps required to develop a reporting baseline for the target including, at the Commonwealth level, between NIAA and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts. The NIAA has advised that data for the other services covered by the target (wastewater and rubbish removal) are held by different parties (including private providers and local councils) and may require a different approach to data development (NIAA, pers. comm., 10 July 2023).

Target 16 draws on the National Indigenous Languages Survey (NILS) undertaken by the Australian Institute of Aboriginal and Torres Strait Islander Studies (PC 2023c). Baseline data was drawn from the 2018-19 survey, and the next survey is planned to be fielded prior to 2024. However, the NILS is conducted irregularly (NILS1 was conducted in 2004-05, NILS2 in 2014-15 and NILS3 in 2018-19) and monitoring progress on this target will rely on ensuring future survey waves go forward within the lifetime of the Agreement. Methodologies have also varied across waves according to the objectives of each wave, which could make constructing time series data more difficult.

The two remaining targets with data gaps (targets 13 and 17) come from ABS surveys fielded by the Centre for Aboriginal and Torres Strait Islander Statistics: the National Aboriginal and Torres Strait Islander Health Survey (NATSIHS) and the National Aboriginal and Torres Strait Islander Social Survey (NATSISS). The ABS advised that following the 2022-23 NATSIHS, the timing of future surveys is 'uncertain and not yet factored into the ABS

[10] The definition of discrete community used in the Agreement draws on the ABS 2016 census dictionary: 'A discrete community is a geographic location, bounded by physical or legal boundaries, which is inhabited or intended to be inhabited predominantly (i.e. greater than 50% of usual residents) by Aboriginal or Torres Strait Islander peoples, with housing or infrastructure (power, water, sewerage) that is managed on a community basis. Discrete communities have populations of (but not limited to) 50 or more Aboriginal and Torres Strait Islander people' (ABS 2016).

forward work program' (ABS, sub. 1, p. 3). Target 17 on digital inclusion can draw from items in the 2022-23 wave of NATSIHS but has no planned updates beyond that (ABS, sub. 1, p. 7). The Australian Digital Inclusion Index could be used as a source of data – it has better data on internet affordability, quality and capability – but it does not identify Aboriginal and Torres Strait Islander people (ABS, sub. 1, p. 7).

The future of target 13 on family violence is more complex. In the past, data on physical family violence has been included in NATSIHS (and before that the NATSISS), but as part of the most recent NATSIHS consultation process in 2020, an expert advisory panel on violence (the Harm Panel) advised the ABS that the NATSIHS was not an appropriate way to collect data on violence.

> Privacy, risk of harm, absence of Aboriginal and Torres Strait Islander interviewers, insufficient post survey support, and respondent burden were among the common themes identified as key issues. The violence module has not been included in the 2022-23 NATSIHS … The ABS is working with other Commonwealth agencies, led by DSS, to identify opportunities to produce fit-for-purpose statistics which provide culturally safe information about Aboriginal and Torres Strait Islander peoples' experiences of family, domestic, and sexual violence. (ABS, sub. 1, p. 6)

Review participants also raised concerns about family violence measurement, particularly that the target indicator did not capture sexual or other forms of violence and that administrative data across agencies and systems needed to be harmonised (PC 2023g, p. 16).

In short, progress on two of the targets (16 and 17) could be reported through existing national surveys, such as the NILS or NATSIHS, if future waves are fielded. These surveys are also potential sources for supporting indicators across outcomes, particularly outcomes 1, 5, 7, 9, 13, 14, 15 and 17 (ABS, sub. 1, pp. 3-7). The other two targets without progress data (targets 9b and 13) require further data development and will need to be prioritised as part of data development.

The scope of some outcomes is not fully captured by the targets and supporting indicators

Some review participants highlighted areas that they saw as missing from the targets that affect the achievement of several socio-economic outcomes. Examples included that:

- the importance of adult literacy was absent from the outcomes relating to employment (outcome 8 – economic participation and development) and justice (outcome 10 – criminal justice) (Australian Council of TESOL Associations, sub. 11, p. 21)
- the value of supporting cultural expression was absent from outcomes relating to physical (outcome 1 – long and healthy lives) and emotional wellbeing (outcome 14 – social and emotional wellbeing) (Federation of Victorian Traditional Owner Corporations, sub. 24, p. 2; Kimberley Aboriginal Law and Culture Centre, sub. 23, pp. 6-7)
- there was no acknowledgement of the role of the Aboriginal and Torres Strait Islander business sector in supporting economic development and employment (outcome 8 – economic participation and development) (Indigenous Business Australia, sub. 29, pp. 8, 12; Kinaway Chamber of Commerce, sub. 21, p. 4).

Review participants also expressed concern about how well the targets reflected the scope and intent of the socio-economic outcomes that they are intended to measure (PC 2023g, p. 16). For example, socio-economic outcome 3 aims for children to be engaged in high quality, culturally appropriate early childhood education, but target 3 only measures the percentage of Aboriginal and Torres Strait Islander children enrolled in year-before-fulltime-schooling programs (Translational Research in Indigenous Language Ecologies Collective, sub. 20, p. 3). Similarly, the targets for socio-economic outcome 15 (people maintain a distinctive cultural, spiritual, physical and economic relationship with their land and waters) aim to

increase the amount of land and sea held under native title rather than address whether those rights can be meaningfully exercised (Federation of Victorian Traditional Owner Corporations, sub. 24, p. 5). As targets are the key measures by which governments are accountable, there is a risk that any important aspects of the outcomes not covered by the respective targets will be overlooked. These gaps might be addressed in some areas by elevating an existing supporting indicator to be an additional or replacement target.

In some cases, individual jurisdictions have adopted additional targets, goals or measures in their implementation plans to address missing areas (box 6.8). For example, the ACT, NSW and Victorian Governments have each committed to targets or goals to grow the Aboriginal and Torres Strait Islander business sector. Committing to additional targets may allow governments and Aboriginal and Torres Strait Islander partners to direct their effort to particular priorities in their jurisdictions. If these jurisdiction-specific targets are found to be effective and more broadly relevant at the national level, they could inform the future adoption of new or replacement targets in the Agreement's performance framework (as per clauses 85 and 86).

Box 6.8 – Jurisdictional targets that go beyond the Agreement's performance framework

The ACT, NSW and Victorian Governments have each adopted additional outcome areas and targets in their jurisdictional implementation plans that they intend to report against.

ACT

The ACT Government and the Aboriginal and Torres Strait Islander Elected Body have agreed to the *ACT Aboriginal and Torres Strait Islander Agreement 2019 – 2028* (the ACT Agreement), which they are pursing alongside and as part of their implementation plan for the National Agreement on Closing the Gap. The ACT Agreement incorporates the socio-economic targets from the National Agreement grouped under interconnected focus areas, but for five targets (targets 3,7,8,9 and 10), it commits to achieving parity with non-Indigenous people. The ACT's first implementation plan asserts that this represents an increased aspiration for these targets given the ACT's baseline levels. While this may be the case, it cannot be established until the jurisdictions agree on the individual contributions that each will reach to achieve the national targets. The ACT Agreement also includes an additional target to 'increase the proportion of high value contracts awarded to Aboriginal and Torres Strait Islander businesses', with the intended outcome that 'wealth is created through growth of the Aboriginal and Torres Strait Islander corporate sector' (ACT Government 2021, p. 26).

New South Wales

New South Wales has committed to a fifth Priority Reform: employment, business growth and economic prosperity, with a desired outcome that 'Aboriginal and Torres Strait Islander peoples in NSW are empowered to access pathways through education, training and employment that align with their aspirations, and Aboriginal and Torres Strait Islander businesses grow and flourish' (NSW Government 2022c, p. 55). The NSW Government's first implementation plan notes that the additional Priority Reform was strongly supported in community consultations undertaken by the NSW Coalition of Aboriginal Peak Organisations and explains that it is intended to further accelerate progress against socio-economic outcomes 7 and 8 (NSW Government and NSW CAPO 2021, p. 37).

Box 6.8 – Jurisdictional targets that go beyond the Agreement's performance framework

Victoria

Victoria has aligned its implementation plan with the Victorian Aboriginal Affairs Framework 2018–2023 (the VAAF). The VAAF is the Victorian Government's overarching framework for advancing self-determination and improving outcomes for Aboriginal Victorians. The Framework sets out key enablers for self-determination and 20 goals across six domain areas (children, family & home; learning & skills; opportunity & prosperity; heath & wellbeing; justice & safety; and culture & Country). Victoria's implementation plan notes that the VAAF goals are more comprehensive than the targets set out in the Agreement (for example, goal 8 in the VAAF is that 'Aboriginal workers achieve wealth equality' and includes an objective to 'increase Aboriginal business ownership and support Aboriginal entrepreneurs'). However, unlike the Agreement, the VAAF does not commit to achieving specific timebound targets.

Source: ACT Government (2021); NSW Government (2022c; 2021); Victorian Government (2021, 2022c).

National targets do not adequately hold states and territories to account for progress

The Agreement specifies national targets, but does not describe how much each state and territory needs to contribute to achieve them

Government parties to the Agreement are jointly accountable for a set of 23 national targets that monitor progress against the Priority Reforms and socio-economic outcomes. However, the Agreement does not describe how jurisdictions will be held to account for their contribution to these targets – it simply specifies that 'targets are designed to be met at the national level, while recognising that starting points, past trends and local circumstances differ so jurisdictional outcomes may vary' (clause 83). That is, there is no agreed approach for determining whether individual jurisdictions have made acceptable progress.

In the absence of direct guidance, the Commission has worked with the PWG to develop an approach. The Commission currently evaluates national progress for each target as on or off track against a linear trend to the target year. Target indicators are then disaggregated by jurisdiction and progress for each jurisdiction is assessed against the baseline as improving, worsening, or not changing. Jurisdictions have interpreted their contributions in one of two ways in their annual reports – some adopt the assessment of the Productivity Commission, while others self-assess against national targets (Queensland, Tasmania) (section 6.6).

The approach developed by the Commission is currently under independent review, the goal of which is to identify options for measuring jurisdictional contributions to meeting the national target (PC 2023d, p. 35). Three broad potential approaches are possible.

- National targets could be applied to jurisdictions, so that each is responsible for meeting the same target, regardless of their starting point. If each jurisdiction met the national target, then the target would be met nationally. The primary benefit of this approach is simplicity, while the drawback is that effort would be unevenly distributed (jurisdictions further away from the target would need to apply more effort), and it would not incentivise those that had already met the target at baseline to do more.
- Jurisdictions could negotiate different levels of contribution to the national target, which would effectively translate to jurisdiction-specific targets. While, in this case, jurisdiction-specific targets might more

accurately reflect the priorities and circumstances in jurisdictions, the disadvantage is increasing complexity and the costs of negotiation in terms of time and effort.

- National targets could be maintained without jurisdictional targets or contribution commitments (as is the case now), but annual reports would calculate the contribution of each jurisdiction to the national target to date. This would highlight where some have contributed more than others, which could aid learning and improvement. However, without jurisdictional targets or commitments, this would not set expectations for jurisdictions for which they could be held to account.

Further geographic disaggregation of target data will support communities in holding jurisdictions to account for progress across regions

Many participants in the review questioned the value of state or territory data alone, arguing that further geographic disaggregation was necessary to hold jurisdictions to account for progress across regions (Aboriginal Health Council of Western Australia, sub. 22, p. 3; Arthur, sub. 26, p. 2; Federation of Victorian Traditional Owner Corporations, sub. 24, p. 5; Torres Shire Council, sub. 6, p. 4). For example, the Close the Gap Campaign argued for more geographically disaggregated data and analysis on needs-based funding to hold jurisdictions to account for 'what actually needs to be done to achieve the targets, and in particular, the services required' (sub. 17, p. 2). As recognised by Priority Reform 4, data can be an important tool for communities in advocating to governments.

Without disaggregated data, there is a risk that resources and outcomes will not be distributed equitably, as investment in particular regions drives the achievement of jurisdictional targets. The Coalition of Peaks explained that it:

> … raised concerns about the way the targets and indicators would be reported on and that they would not provide an accurate picture of the 'gap'. For example, in areas like housing and education, it may be possible to close the gap by focussing only on urban areas and obfuscating a widening and large gap in remote areas. (Coalition of Peaks, pers. comm., 5 July 2023)

This concern is validated in data reported in the ADCR using data disaggregated by remoteness, which finds most improvement across targets is driven by changes in major cities and regional areas, while remote and very remote areas see little to no improvement (PC 2023d, p. 30).

In addition to recognising the unequal distribution of resources across regions, arguments for further geographic disaggregation are often enmeshed with the need to recognise community diversity and self-determination. For example, the Torres Shire Council noted the wide discrepancy in outcomes between its region and the rest of Queensland and argued that regional autonomy in the codesign and evaluation of programs is fundamental to change (box 6.9). This echoes points made in the Coalition of Peaks' engagements informing the Agreement that targets should be relevant to regions (Coalition of Peaks 2020a, p. 83).

The Agreement recognises that further geographic disaggregation of socio-economic targets is important to identify where greater effort is needed (clause 82d), and this has been affirmed by government parties. Members of the PWG have indicated that the Commission should explore further geographic disaggregation of target data when specifying existing data for the Closing the Gap dashboard (PC 2022c). However, perspectives varied on the relevant level of geography and the need for further engagement with Aboriginal and Torres Strait Islander organisations and communities was noted.

Regional disaggregation of national target indicators will largely require additional data development work. While some data, particularly data derived from the five-yearly census, are publicly available at smaller geographic levels, smaller populations could make trends more volatile and harder to interpret (ABS, sub. 1, pp. 2-3). The ABS and AIHW publish several data products making geographically disaggregated data

accessible to the public, including the ABS's TableBuilder and 'Data by Region' and the AIHW's Regional Insights for Indigenous Communities website. Geographic disaggregation for other data will require data development and harmonisation.

Box 6.9 – Focusing on the jurisdictional level can obscure regional priorities and needs: an example in the Torres Strait

The Torres Shire Council is a local government area located in Far North Queensland covering large sections of the Torres Strait and the northern tip of Cape York Peninsula. Statistics provided by the Torres Shire Council, drawing on Queensland Regional Profiles data, showed that while people in the region have similar rates of educational attainment relative to greater Queensland, they also experience much lower incomes, higher unemployment and higher rates of homelessness. The Council described the unique conditions faced by the region: the entire region is classified as very remote, compared to just 1% of Queensland as a whole, and this is reflected in the high cost of living and challenges accessing key infrastructure and services, such as internet access and post-primary education. While some challenges such as high transport costs particularly impact the region, disparities in outcomes are the result of policy choices.

The Council noted that there are over 30 state and federal agencies on Thursday Island providing government services, crowding out local delivery and jobs. The impact of mainland-driven policy is two-fold. First, policy priorities of the region will not always align with state priorities. For example, mainland government organisations offer non-local staff subsidised housing, an offer not extended to local staff. While this addresses recruitment difficulties, it does not resolve the broader issue of housing availability and affordability – and even exacerbates it. Second, it denies local organisations the opportunity to design services attuned to the cultures and languages of the Torres Strait and Northern Peninsula. Statistics show a significant majority of people in the region speak a language other than English at home, with multiple Indigenous languages represented, compared to less than 15% of Queenslanders.

The Torres Shire Council has asked the Queensland Government Statistician's Office to produce an annual report card compiling statistics for the region relative to the rest of Queensland and Australia to direct local effort and monitor progress to parity. The Council noted that this level of data aligns with the proposal for a regional voice and emphasised, 'For too long, policy makers and governments have over-complicated the root cause of policy and program failures affecting First Nations people … Council submits that the root cause is the absence of Indigenous agency, Indigenous policy design and Indigenous program control' (p. 3).

Source: Torres Shire Council, sub. 6.

Another challenge is determining the level of geographic disaggregation that can best balance utility and cost of development. This will need to consider both the appropriate level and boundaries. Data for smaller regions could be more meaningful, but will also be more costly to develop, and risk misaligning with community priorities if not developed in partnership. Appropriate geographic boundaries must also be agreed upon, and there are a few existing classifications to consider. In addition to its standard geographic classifications, the ABS has developed an Indigenous geographic structure. It identifies three levels from region to local community and was designed around the organising structure of the Aboriginal and Torres Strait Islander Commission. Service areas such as health regions often have their own regional structures.

The most appropriate level of regional disaggregation will therefore need to be negotiated by parties to the Agreement, drawing on engagement with data custodians and Aboriginal and Torres Strait Islander communities and organisations.

Ultimately, targets need to be set in a way that appropriately directs attention at the desired level of decision-making. In the Agreement, the Australian, state and territory governments have committed to equal accountability for achieving targets (clause 79). National targets will not adequately hold states and territories to account for progress unless their expected contribution is defined. Furthermore, without regional disaggregation of target data, communities cannot hold states and territories to account for the equitable distribution of progress across diverse regions.

6.5 Are clear and appropriate data governance arrangements in place?

Performance monitoring frameworks should be supported by governance arrangements that ensure the timely availability, accuracy, and ethical collection and use of data. These supporting arrangements safeguard the credibility of the data and assure it is of sufficient quality for use in decision-making. Good data governance should identify parties responsible for the development, implementation and maintenance of the framework and outline clear work plans, processes and standards (ANAO 2004, p. 28, 2023).

In recognition of the ways data has been used to problematise Aboriginal and Torres Strait Islander people and justify policies contrary to community needs, data collection regarding Aboriginal and Torres Strait Islander people must centre Aboriginal and Torres Strait Islander people, perspectives and knowledges in data governance arrangements (PC 2020b, pp. 10–11). Fundamentally, this means that Aboriginal and Torres Strait Islander people are the leaders or partners in decision-making regarding the collection and use of data in their communities and should be enabled to do so through appropriate resourcing. This includes considering how data governance arrangements could incorporate principles of Indigenous data sovereignty and governance to ensure data collection is ethical and useful for Aboriginal and Torres Strait Islander communities (AIGI 2018; Walter et al. 2018). While the Agreement commits to shared decision-making and access to data, the relationship between Indigenous data sovereignty and the implementation of the Agreement has not been made explicit (chapter 5).

Progress in meeting data commitments has been inadequate and requires improved governance and prioritisation of effort

Progress in meeting data commitments specified in the Agreement has been slow, and the task has exceeded the capability and resourcing of current data governance arrangements. Table 6.2 outlines the three data workstreams set out in the Agreement and progress to date. Most indicators remain unreported and data development commitments have been delayed. At this pace, data specification and development work is unlikely to be completed under current resourcing within the life of the Agreement. This was acknowledged by the NIAA:

> A further key issue in the area of reporting is that the demand for detailed, regular data may far outweigh the ability, or in some cases the resolve, to supply it. (sub. 30, p. 5)

Attempting to fully populate the information repository with all data planned may not be the best use of resourcing and effort. As discussed in section 6.4, the large number of indicators and their broad scope could overwhelm capacity to interpret and use them in decision-making. Efficient progress relies on further

developing the conceptual logic and measurement approach and ensuring data governance arrangements are set up to achieve this.

Table 6.2 – Limited progress in meeting data commitments

Key commitments	Agreed timing	Assessment of progress
Government actions • Use targets to track progress against the objectives and outcomes of the Agreement (clauses 78 and 79, tables A and B). • Publicly report on performance data through the Closing the Gap dashboard and the annual data compilation report (ADCR) (clauses 88, 89, 115, 116 and 117).	Annually	• No data are being reported on the Priority Reform targets or indicators. • Four of the 19 socio-economic outcome (SEO) targets lack data to track progress: community infrastructure (SEO 9b), family violence (SEO 13), culture and languages (SEO 16) and access to information (SEO 17). • Socio-economic targets with progress assessments have been disaggregated by jurisdiction, gender/sex, age, disability, remoteness areas, and socio-economic status of the locality, where data is available. • Twenty one out of 146 socio-economic outcome supporting indicators are reported across all but one outcome area.
Partnership action Develop four new targets for: • community infrastructure • inland waters • family violence • access to information (clause 87).	By July 2021	• The inland waters target has not yet been agreed. • Targets 9b, 13 and 17 have been agreed, but do not have data to assess progress.
Partnership action Establish a data development plan (DDP) for data development items identified in tables A and B (clause 92). The DDP should: • be developed in partnership • prioritise data development actions • outline clear timeframes for actions to be delivered and identify responsible parties • be reviewed by the Joint Council following the three-yearly reviews.	By July 2022	• The DDP includes 123 data development items and was endorsed by the Joint Council in August 2022. It covered some requirements, but did not specify clear timeframes for delivery of data development actions or identify responsible parties. • A traffic light report to monitor data development, which includes action owners and timeframes, is expected for review by the Joint Council by the end of 2023 (DRWG 2023a).

Responsibility for data development needs to be clearly established

Table 6.3 outlines the data governance arrangements under the Agreement. As outlined in chapter 1, the Joint Council and the PWG are the main governance bodies for the Agreement and their responsibilities include overseeing data development and reporting. The Agreement distinguishes between responsibilities for managing existing data (clause 117) and new data requiring development (clause 92). Responsibilities were divided based on the anticipated work required. The Commission would lead work specifying, compiling and reporting on existing data with the PWG. The Data and Reporting Working Group (DRWG), which

reports to the PWG, would coordinate new data development with responsible agencies, data custodians and representatives from the Coalition of Peaks. The working groups are made up of representatives from the parties to the Agreement, with the NIAA serving as secretariat.

Indicators not included under the Data Development heading within the target frameworks were to be drawn from existing data collections. However, in practice, some of the indicators that were assumed to have existing data sources do not exist, are not routinely collected or have been found to be unsuitable (ABS, sub. 1, pp. 3-7). In effect, this has meant that responsibility for developing the measures for the Priority Reforms, the four socio-economic targets and the many supporting indicators without suitable data was not formally established.

Table 6.3 – Data governance arrangements under the Agreement

	Chair	Membership	Responsibilities
Joint Council	• Australian Government Minister for Indigenous Australians • An Aboriginal and Torres Strait Islander representative nominated by the Coalition of Peaks.	• One Minister nominated by each jurisdiction and one representative from the Australian Local Government Association • Twelve representatives nominated by the Coalition of Peaks, with broad geographic and subject matter coverage.	• Agree to new or updated targets and indicators • Monitor implementation of the National Agreement, including progress against implementation plans and partnership actions • Endorse and review the data development plan (DDP).
Partnership Working Group (PWG, reporting to Joint Council)	• A senior government official • Lead Convenor or a representative of the Coalition of Peaks.	• A nominated senior official from each jurisdiction and the Australian Local Government Association • Representatives from the Coalition of Peaks • There should be approximately equal representation of Government Parties to the number of Coalition of Peaks representatives in the membership.	• Make decisions on data development actions on the advice of the Data and Reporting Working Group. • The Productivity Commission will work with the PWG to: • develop and maintain the Information Repository, drawing together existing data sources • publish a publicly available dashboard with data and reporting materials to be updated annually at minimum • publish an annual data compilation report providing a snapshot of dashboard material.
Data and Reporting Working Group (DRWG, reporting to PWG)	• A representative from the National Indigenous Australians Agency (NIAA) • A representative from the Coalition of Peaks.	• Government representatives from relevant departments in each jurisdiction • Attendance by subject matter experts from departments is at the discretion of jurisdictions • Representatives from the Coalition of Peaks (though	• Provide advice and technical support to the PWG on data and reporting issues • Develop DDP that prioritises data development actions, outlines clear timeframes for actions, and identifies responsible parties • Monitor implementation of the DDP through quarterly updates to the DRWG and annual updates to the Joint Council

Chair	Membership	Responsibilities
	they may delegate to the NIAA) • Major Australian Government data custodians (ABS, AIHW) • Australian Government portfolio agencies with a responsibility for delivering data items identified in the DDP • Productivity Commission (observer) • Indigenous and non-Indigenous technical experts as required.	• Make recommendations for additions to the DDP, including data development arising from establishing indicators for the four Priority Reforms or new targets • Advise on changing the way data is collected and developed consistent with the Priority Reforms to support the objectives of the Agreement • Providing technical advice to assist the Productivity Commission with its reporting obligations.

Source: DRWG (2023b); Joint Council (2023a).

In 2021-22, the Commission worked with the PWG to develop measurement concepts and calculations for the Priority Reforms. However, given issues with existing datasets and questions regarding the intent of some indicators in the framework, the PWG determined that further cultural and technical expertise was required. In 2023, the PWG engaged a third party to further develop the measurement approach for the Priority Reforms (PC 2023d, p. 17).

The process and responsibility for developing data for the new socio-economic targets and supporting indicators without data remains unspecified. Within the current data specification process, the Commission searches for existing datasets that could provide data for indicators, develops specifications for the measures, then reviews specifications with the PWG to ensure they reflect the intent of the indicator. Measure specifications that meet the intent are added to the dashboard. However, if the specification is not appropriate or no existing datasets can be found, the process to progress data development is not clear.

Governance arrangements indicate that coordination of data development could consolidate under the DRWG through the DDP, but DDP development and implementation has been delayed and is still in its initial stages. The terms of reference for the DRWG indicates that it will make 'recommendations for additions to the Data Development Plan' including any data development activities that arise from establishing indicators for the Priority Reforms or new targets (DRWG 2023b, p. 1). However, data on the Priority Reforms and new socio-economic targets (except family violence) was not included in the DDP endorsed by Joint Council in August 2022 (Joint Council 2022b, p. 1). Furthermore, the DDP did not identify data development action owners or timeframes for delivery, so responsibilities and accountabilities remain unclear. Work to identify action owners and timeframes in a 'traffic light' report is underway and is expected to be delivered to the Joint Council by the end of 2023 (DRWG 2023a). This report will be reviewed quarterly by the DRWG and annually by the Joint Council to monitor progress. In the meantime, it is unclear how the DRWG would coordinate further engagement with data custodians and Aboriginal and Torres Strait Islander organisations and communities to resolve outstanding issues in the measurement approach.

Existing processes and resourcing are insufficient to prioritise effort and resolve broader issues in the measurement approach

To manage the scope of data work, the DRWG and the Commission (in partnership with the PWG) have developed frameworks for prioritising the development of their workstreams (box 6.10). Each have been developed for a specific purpose: the Commission's framework prioritises specification of existing data and the DRWG prioritises new data development in the DDP. The parallel processes introduce some challenges to coherent problem-solving and contribute to a situation in which work continues without resolving more fundamental issues with the measurement approach.

These processes have not resolved the lack of clear conceptual logic in the performance measurement framework and its ongoing impact on the prioritisation of effort and analysis. For example, the DDP assigns priority for data development based on the centrality of the item to demonstrating progress against the Priority Reforms and socio-economic outcomes, but the criteria driving assessments of centrality are not specified (Joint Council 2022b, p. 12). Without criteria or a conceptual logic to draw from in the Agreement, it is difficult to determine how the centrality assessment was made, or even how it should be made. Different participants in this process will inevitably bring different definitions of centrality that must be articulated, negotiated and documented with a clear and transparent rationale. This is especially important in monitoring whether Aboriginal and Torres Strait Islander perspectives have been centred.

Box 6.10 – Frameworks for prioritising effort in data specification and development

How the Commission and PWG prioritise specification of existing data

Each year, the Commission works with the PWG to identify the highest priority indicators to add to the Closing the Gap information repository and dashboard. From these discussions, priority has been assigned to:

- data on the Priority Reforms, and where this has not been possible due to data gaps, supporting socio-economic indicators that more closely link to government action under the Priority Reforms, such as work in the policy partnerships
- supporting indicators that address target information gaps or are not reported elsewhere. Target information gaps could include conceptual gaps (where the specified target does not cover key elements of the outcome), timing gaps (to supplement infrequently reported or lagged targets), and drivers that would provide greater insight into target trends (particularly those that are worsening)
- disaggregations for targets where sufficient data exists to make a progress assessment. These are included across jurisdictions, where data is available and of adequate quality (PC 2021, pp. 2–6, 2022b, p. 5).

How the DRWG prioritises data development in the data development plan (DDP)

The DDP ranks the priority of data development items as high, medium or low and assigns them a broad timeframe for the start of work (2022–2024, 2025–2027, 2028–2030) based on the following criteria:

- centrality to demonstrating progress against the Priority Reforms and socio-economic outcomes
- type of data work to be completed, including disaggregating established data sources (29 items), harmonising definitions and collection methods across jurisdictions (43 items), developing new data concepts (65 items), and developing community data (13 items)[a]

Box 6.10 – Frameworks for prioritising effort in data specification and development

- whether the item prioritises or furthers the use of community data
- whether work is planned or underway. (Joint Council 2022b)

Work planned or underway and data requiring conceptual development are allocated to an earlier timeframe to start. Out of 123 data development items, the DDP identified 61 items where data development would start by 2024, 38 of which were assessed as high priority.

a. When two or more categories were listed as 'and', 'or', '/' all categories were counted.

Another example of how the lack of conceptual logic impacts on data development is that the DDP continues the practice of separating data development items by outcome rather than considering common drivers across socio-economic outcomes (Joint Council 2022b, pp. 14–36). This obscures opportunities for the consolidation of data development, especially in the development of new data concepts. Unless these broader issues are resolved, data development is at risk of producing a fragmented and diffuse data set that struggles to present a coherent account of progress.

The case for a Bureau of Indigenous Data

Based on the rate of progress to date, the outstanding indicators and data items are unlikely to be developed to monitor progress within the life of the current targets. As outlined above there are three key issues:

- responsibilities for data development are fragmented
- processes for developing the 'existing' indicators specified in the target frameworks and the vast number of data items identified in the DDP are not coordinated
- a lack of adequate resourcing and capacity – the DRWG is responsible for advising on and monitoring the DDP, but is not set up to undertake or commission the work that is needed.

As a result, the accountabilities and costs of data development are at risk of being hidden across multiple working groups and data custodians with different priorities. Moreover, a failure to advance data development also risks inhibiting progress on Priority Reform 4. This is because the DDP is intended to prioritise and further the use of locally relevant community data (Joint Council 2022, p. 12). In addition to missing indicators, there are also a range of material data quality and methodological issues requiring cross-jurisdictional collaboration that impact the assessment of progress (box 6.11).

The Commission's draft report concluded that a concerted effort is needed to advance data development and proposed that a new entity be appointed with dedicated resourcing and staffing to coordinate and oversee the activities required.

Beyond data development, the Commission is also recommending that the Agreement be amended to explicitly include Indigenous Data Sovereignty (IDS) under Priority Reform Four (**recommendation 2, action 2.1**). The amendment would include a new commitment for governments to partner with Aboriginal and Torres Strait Islander people to embed Indigenous Data Governance (IDG) into existing data systems, build capability, and invest in Indigenous data infrastructure (chapter 5). This is both a longer-term and more expansive undertaking than data development – it entails Aboriginal and Torres Strait Islander communities having the ability to define, develop, access, use and govern data and information that is locally-relevant and reflects their priorities, values, cultures and diversity.

Critically, Aboriginal and Torres Strait Islander people must be at the forefront in determining how IDG is designed and implemented. To ensure they have the necessary authority and resourcing, the Commission is recommending that the Parties commit to establishing an independent *Bureau of Indigenous Data* (BoID) with cross-jurisdictional authority. This recommendation aligns with calls in submissions from Aboriginal and Torres Strait Islander organisations for the establishment of an 'Indigenous Data Authority' (Kowa Collaboration, sub. 80, p. 4; Maiam nayri Wingara, sub. 73, p. 2) and the NIAA's suggestion that the entity should have a role in supporting agencies to enact the Australian Government's forthcoming Framework for Governance of Indigenous Data (sub. 60, attachment A, p. 1). The *Bureau of Indigenous Data* is a placeholder name for the entity. It is intended to reflect that its role will include strategic leadership, data management, and safeguarding functions.

Box 6.11 – Data quality issues that can affect assessments of progress

Data quality issues can affect the accuracy, relevance and reliability of existing indicators that are available to assess progress. This includes data not being collected by Indigenous status or being collected inconsistently, collection difficulties resulting in undercounting in remote and very remote areas, and data systems that are unequipped to capture clan or mob affiliation (Lovett et al. 2020c, p. 4; PC 2023d, p. 38).

Another known issue that affects the assessment of progress for many of the targets are changes in how Aboriginal and Torres Strait Islander people identify over time. Between 2016 and 2021, the Census of Aboriginal and Torres Strait Islander people increased by 25.2%, with less than half of this change (43.5%) attributable to demographic factors – births, deaths and migration (ABS 2021). The remainder of the change was attributable to non-demographic factors including changes in people's choices to identify as being of Aboriginal and/or Torres Strait Islander origin, as well as changes in Census coverage and response rates. Where the extent of these changes varies by age group or location (i.e. metro, regional, remote) they can bias measures such as life-expectancy estimates.

Functions and responsibilities

The draft report identified a set of key functions that could be consolidated within an entity given responsibility to lead data development for the Agreement. This included:

- developing a clear conceptual logic to underpin the Agreement's performance monitoring approach
- identifying the most critical indicators of change and prioritising them for data development
- determining the most appropriate level of geographic data disaggregation to hold jurisdictions to account for progress at a regional level, balancing community needs and data limitations
- coordinating and developing solutions for indicators without data with data custodians and Aboriginal and Torres Strait Islander organisations and communities. This could include the design of new survey instruments or the re-development of existing ones.

To develop a clear conceptual logic and well-defined measurement approach, the entity must have the remit to redevelop and improve the structure of the existing targets framework. However, it should build upon the work that has already been commissioned by the Joint Council to develop a measurement approach for the Priority Reforms and review the methodology for assessing jurisdictional progress against the targets (as discussed in section 6.4). The revised framework should link the reform actions and outputs under the

Priority Reforms to the resulting intermediate outcomes intended to drive improvements in Aboriginal and Torres Strait Islander life outcomes. Where appropriate, these intermediate outcomes should include common drivers of change across the socio-economic outcomes.

Overall, there was broad support from government and Aboriginal and Torres Strait Islander participants for these proposed functions (APO NT, sub. 69, p. 11; Law Council of Australia, sub. 83, attachment, p. 8; Ngaweeyan Maar-oo, sub. 65, p. 4; NT Government, sub. 70, p. 10; PHAA, sub 68, p. 5; VACCHO, sub. 67, p. 5). Multiple government agencies reiterated that the entity would need to bring together various overlapping but disjointed roles and workstreams, coordinate and oversee data development work across governments and engage with Aboriginal and Torres Strait Islander communities and organisations (AIHW, sub. 57; NIAA, sub. 60, attachment A, p. 1; NT Government, sub. 70, p. 10; SA Government, sub. 54, p. 18;). An important element of this will be ensuring that there is on-going input regarding the data needs and priorities from the Agreements key partnership forums, including the policy and place-based partnerships.

The Commission envisages that work related to the conceptual logic and measurement approach would be performed in-house by the bureau. However, as the Northern Territory Government suggested (NT Government, sub. 70, p. 10), the BoID could commission other agencies with the existing capability to undertake any required data collection work, rather than performing this function itself. Recognising the potential impact of data quality issues (APO NT, sub. 69; Dijrra, sub. 82; Michael Dillon, sub. 37), the entity should also have a role in reviewing the quality and appropriateness of existing indicators, assessing the impact of key methodological issues and advising on potential solutions.

The BoID's primary role would be to promote and advance Indigenous Data Governance

Progressing data development for the Agreement is an important and immediate priority for the BoID. However, its primary ongoing role will be to: a) support governments to embed IDG into their data systems and practices and, b) invest in enhancing the data capability of Aboriginal and Torres Strait Islander organisations and communities.

Review participants, including Professors Maggie Walter and Ray Lovett (sub. 94), Kowa Collaboration (sub. 80, p. 5) and DEG (sub. 53) identified a range of roles and activities that could advance these objectives. Drawing on these submissions, the Commission envisages that the BoID could be tasked with four core functions, each which could be carried through multiple activities.

Building Indigenous Data capability across the public service. At a minimum, this would include:

- socialising and promoting IDS and IDG to ensure that public servants understand the purpose of a new commitment to IDS in the Agreement
- coordinating the development of IDG action plans in each jurisdiction. The plans should consider all forms of Indigenous data, identify key barriers and priorities and establish implementation timeframes
- developing IDG guidance for agencies in areas such as data sharing agreements with ACCOs, protocols for data requests and informed consent for collecting of Indigenous data.

Reporting on Indigenous Data. This could include:

- maintaining the Closing the Gap Information Repository (Dashboard) and producing the Annual Data Compilation reports (currently undertaken by the Productivity Commission)
- consolidating national level Indigenous reporting frameworks, such as the Indigenous Expenditure Report and Overcoming Indigenous Disadvantage reports (both of which are currently earmarked for review) and the AIHW's Aboriginal and Torres Strait Islander Health Performance Framework
- supporting the development of performance monitoring frameworks for national level Indigenous plans, such as the National Aboriginal and Torres Strait Islander Health Plan 2021–2031.

Improving the development and management of Indigenous Data. This could include:

- establishing Indigenous data quality standards and a common metadata scheme that makes it easier for Indigenous data sets to be found and used and provides information about their origin.
- developing a national catalogue of Aboriginal and Torres Strait Islander data sets to improve visibility of existing Indigenous data and facilitate access to them.
- commissioning new national Indigenous data collections and / or assuming custodianship of specific existing collections, such as the National Aboriginal and Torres Strait Islander Health Survey (which as noted in section 6.4 is not yet factored into the ABS's future work program).
- investing in community-controlled data infrastructure, such as data warehouses that enable ACCOs and communities to store, manage and use their data and to control how it is accessed and shared.

Safeguarding the use of Indigenous Data. This could include:

- identifying and investigating systemic issues relating to the collection, sharing or management of Indigenous Data by government agencies
- developing protocols for accessing unit record data that identifies Aboriginal and Torres Strait Islander people
- advising on the impact of new policy or major project proposals that involve or affect Indigenous data.

Operating model

The ability for the BoID to effectively perform the functions outlined above will depend upon it having the right governance structure, capability and resourcing.

Governance structure

The Commission agrees with calls from participants who emphasised that the new entity must be Aboriginal and Torres Strait Islander led and governed (AFLS WA, sub 36, p. 8; Dharriwaa Elders Group, sub. 53, p. 7; First Nations Digital Inclusion Advisory Group, sub. 61, p. 3; IUIH, sub. 62, p. 26; VACCHO, sub. 67, p. 5; Maggie Walters and Ray Lovett, sub 94, p. 2), on the basis that this would ensure it fulfills commitments to the other Priority Reforms and the Agreement as a whole. This is consistent with the key principles of IDS articulated by Maiam nayri Wingara that the Commission has recommended be formally recognised in the Agreement (chapter 5). Moreover, as the ALFS WA (sub 36, p. 7) submitted it will help to ensure the BoID has the required Indigenous expertise and is accountable to Aboriginal and Torres Strait Islander communities. Some participants proposed the entity should be either created as or situated within an ACCO (VALS, sub. 76, p. 18, Lowitja Institute, sub. 85, p. 9). However, the Commission is of the view that to steward the implementation of IDG standards and practices across the public service, the BoID will require the independence and authority of a statutory agency. Participants also highlighted that the entity will also need to be able to work in partnership with State and Territory governments and Aboriginal and Torres Strait Islander organisations. For instance:

> If an organisation were appointed to lead data development work under the National Agreement consistent with Draft Recommendation 1, the Governance structure would need to have the trust and confidence of Aboriginal people as well as government… It would need to be equipped to work collaboratively with state and territory governments to ensure any outputs reflect unique jurisdictional perspectives and requirements. (SA Government, sub. 54, p. 18).

Finding this balance will be critical to ensure that the BoID has the requisite credibility and buy-in it needs to achieve its aims.

Capability

The BoID will require both strong technical and cultural capability. In terms of its technical capability, the BoID will require staff with qualifications in statistics, data science and survey research and experience in the design of monitoring frameworks and data development. It will also need policy expertise across the different outcome areas and sectors covered by the Agreement. To underpin its cultural capability, the BoID will need staff with qualifications in areas such as Indigenous studies and social epidemiology and research experience relating to Aboriginal and Torres Strait Islander wellbeing. The BoID should also have staff with experience working in the community-controlled sector and it must have a mature capacity from the outset to effectively engage with Aboriginal and Torres Strait Islander communities.

In terms of its specific IDG expertise, the BoID will require in-house knowledge of the legislative and regulatory arrangements across all jurisdictions relating to privacy, data-sharing and intellectual property as well as data governance specialists with experience developing data management plans and protocols. In addition to this, the BoID will need to be able to draw on strong working relationships within the IDS networks in Australia and internationally.

Resourcing

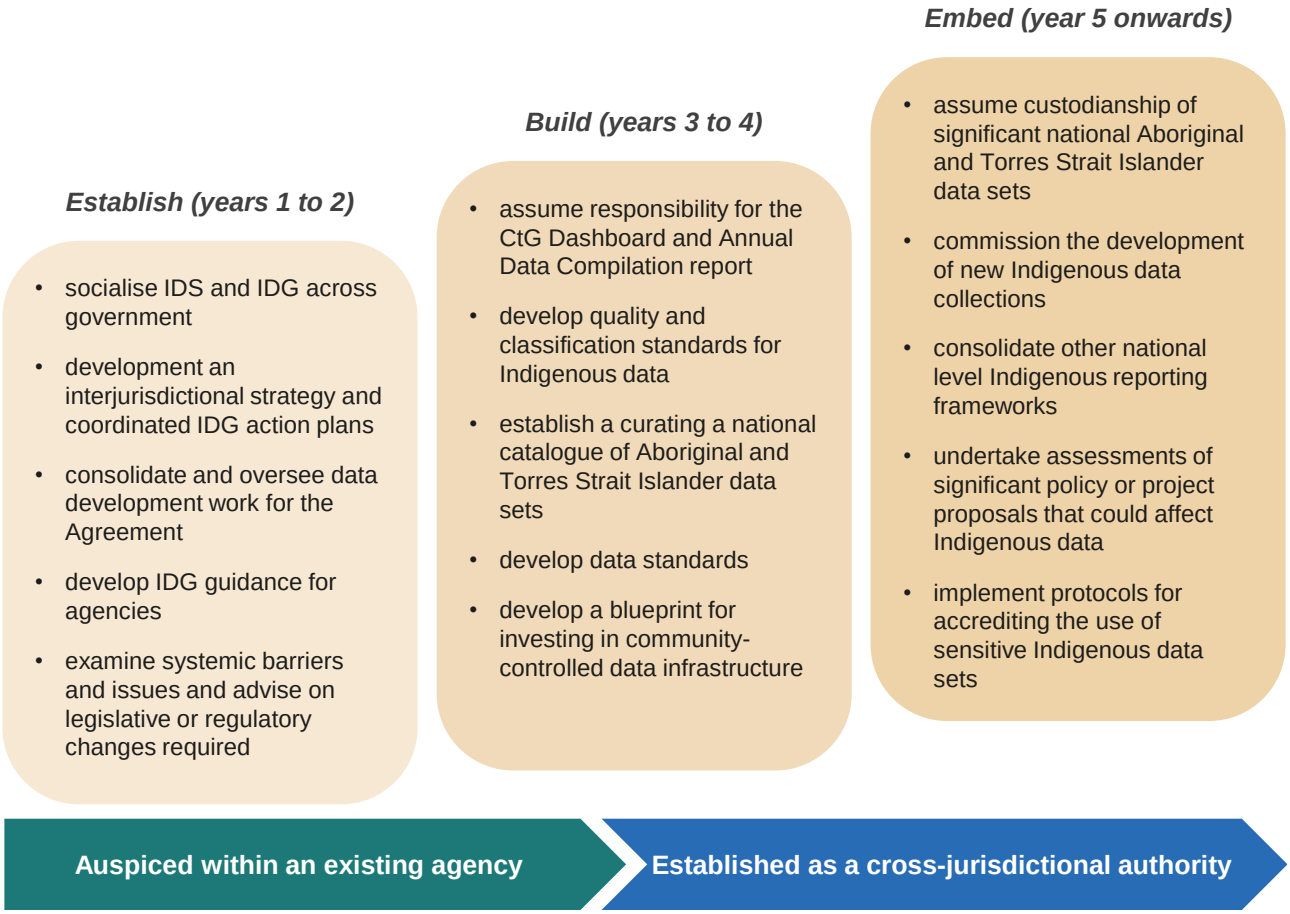
The BoID must be adequately resourced to undertake its responsibilities. This includes budget for its own staff as well as funding for it to commission other agencies to undertake data collection activities where required. As noted by the South Australian Government (sub. 54, p. 17), the total operating costs for the entity may require a significant on-going funding commitment which has not yet been budgeted for. As it would be a cross-jurisdictional entity, the Commission is of the view that the Australian, State and Territory governments should commit to jointly funding the BoID. While the BoID will entail additional government funding, it will also provide greater transparency of the actual costs of data development and help to reduce duplication of effort and other inefficiencies. Moreover, in the medium to long-term it has the potential to generate savings for governments by facilitating the creation and use of better data to inform more effective policy solutions (chapter 5).

The BoID should initially be auspiced by an appropriate existing agency and subsequently established under its own enabling legislation

The BoID needs to be stood-up quickly to avoid further delays to developing the data required to monitor progress against the Agreement. However, with respect to its IDG objectives, it will take time to fully scope and agree on its exact responsibilities and to settle on the design its operating model. The Commission therefore recommends that the BoID be set up in two-stages, whereby it is initially auspiced by an appropriate existing statutory agency and then subsequently established under its own legislation as a cross-jurisdictional statutory authority.

The BoID's functions and activities will also need to develop progressively (figure 6.3). This is important to its success for two reasons. First, in order for Aboriginal and Torres Strait people to lead the implementation of IDG there will need to be genuine and on-going engagement with communities and time to refine models and practices to operationalise IDG at different levels (for example, at the state/territory level and at the community level). Second, the IDG capability of government agencies will take time to mature. As the Australian Government's draft *Framework for the Governance of Indigenous Data* states, IDG requires consideration by all government agencies that collect or manage data, not only those that hold Indigenous-specific data collections. As such, the adoption and adherence to IDG practices will depend upon public servants having a clear understanding of the purpose and importance of IDS and IDG, similar to how the importance of good cyber security practice has been embedded into the public service in recent years.

Figure 6.3 – A potential roadmap for the BoID



While it is auspiced, the BoID should first focus on cultivating a sound understanding of concepts of IDS and IDG across government and stewarding the development of an interjurisdictional strategy and coordinated IDG action plans. Its other first-order priority should be to assume responsibility for data development under the Agreement and to begin to direct the work required. The BoID could also commence providing guidance to government agencies on establishing structures and procedures to incorporate IDG into their existing data systems. Alongside this, it could establish mechanisms to engage with Aboriginal and Torres Strait Islander organisations and communities to examine systemic barriers and issues and advise governments on potential legislative and regulatory changes that may be required to advance IDG.

Responsibility for reporting against the Agreement's performance framework could be transferred to the BoID within its first three years. As it continues to build its capability, the BoID could also begin to support the management of Indigenous data by curating a national catalogue of Aboriginal and Torres Strait Islander data sets and / or developing quality and classification standards for Indigenous data. In addition, the BoID could work with Peaks and other relevant partners to develop a blueprint for investing in community-controlled data infrastructure.

There are several existing agencies that could temporarily auspice the BoID. The auspicing agency should possess characteristics and competencies that will be complementary to the requisite features of the BoID's eventual operating model as outlined above. Accordingly, the selection of a suitable candidate agency should consider:

- the extent that it will provide arms-length independence from government

- whether it has relevant existing interjurisdictional responsibilities and authority
- the strength of its technical expertise and cultural capability, including its community engagement capacity and relationships with Aboriginal and Torres Strait Islander organisations
- its ability to support and successfully incubate the BoID.

AIATSIS has expertise in developing Indigenous research ethics frameworks and protocols and managing a large cultural heritage catalogue, however it does not have the existing technical data capability that the BoID will require. In contrast, while the ABS and AIHW have the requisite data and reporting capability, they are large agencies with many other priorities and have limited existing Indigenous leadership and governance. Some participants suggested the Productivity Commission, noting its existing responsibility for performance monitoring under the National Agreement. The Commission is already supporting the PWG with data development and it would be well-positioned to continue to support this work. It also has an appointed Indigenous commissioner, however it does not have existing IDG expertise.

It would be beneficial for the agency that auspices the BoID to have existing governance arrangements that include substantive Aboriginal and Torres Strait Islander representation. However, the BoID should be overseen by its own separate Indigenous Data Board. The Board should be initially appointed by the Joint Council and comprise of Aboriginal and Torres Strait Islander people with relevant expertise and experience. The main responsibilities of the Board (while the BoID is auspiced) would include:

- signing-off on the conceptual logic and data development priorities for the Agreement's performance monitoring framework for it to be endorsed by the Joint Council
- overseeing the development of an inter-governmental IDG strategy and jurisdictional action plans
- advising on the enabling legislation to the establish the BoID and developing a corporate plan for the BoID which specifies its on-going functions and operating model.

The BoID would be led by a Chief Indigenous Data Executive, appointed by the Board. The Chief Indigenous Data Executive could establish MoUs with key government agencies (such as the ABS, AIHW, ONDC) and enter formal partnership agreements with Indigenous research organisations. The MoUs would clarify shared workstreams and responsibilities and affirm the BoID's operational remit. In addition, the partnerships could help provide the BoID with expertise and capacity, for instance via secondments or advisory roles and the assignment of agency-level IDG champions or liaison officers. The DRWG could be re-purposed into an advisory group/s to support the BoID's work on the Agreement's performance monitoring framework and inter-governmental IDG strategy. The BoID could also convene reference groups relating to specific socio-economic areas that would include representatives from the relevant policy partnerships and community organisations.

By no later than 2028, the BoID should be established under its own legislation and invested with the necessary authority by all jurisdictions to carry out its functions. At this point, the BoID would have the capability to provide a national leadership role in stewarding the management of Indigenous data and safeguarding its use. The BoID could assume custodianship of significant national Aboriginal and Torres Strait Islander data sets and commission the development of new collections. It could also expand beyond reporting on Closing the Gap and consolidate other national level Indigenous reporting frameworks. As well as having responsibility for assessing the impact of major policy or project proposals that could affect Indigenous data, it could also implement protocols for accrediting the use of sensitive Indigenous data sets.

Key considerations

Could the intended outcomes be achieved another way?

The BoID would support governments to transform the way they work with Indigenous data, by embedding IDG into standard data practices. In the short term, it would ensure a coordinated effort to advance data development and provide clearer visibility of priority data development actions, timeframes and resourcing requirements. It would also build understanding of IDS and IDG across government, and steward the development of a cross-jurisdictional strategic plan. Over the medium to long-term, it could enable the practical implementation of the principles of IDS and IDG in the development of new Indigenous data and datasets, emerging from the needs identified by Aboriginal and Torres Strait Islander communities and organisations.

Some participants questioned whether these outcomes could be achieved through means other than the establishment of a new entity (AIHW, sub. 57; Children's Ground, sub. 72) or cautioned against establishing a new body (Empowered Communities, sub. 89). However, there is no obvious alternative to advance the data development work that is needed. Moreover, IDG requires cross-jurisdictional collaboration and there is no existing entity to support and monitor government commitments to Priority Reform 4.

Although some of the proposed data management functions could overlap with the scope of work of other agencies, most notably the Office of the National Data Commissioner (ONDC), the ONDC does not have the resourcing or governance structure to lead on IDG. That said, there will be opportunity to learn from the ONDC's work establishing the Australian data catalogue, which could provide lessons for the development of an Indigenous data catalogue.

Other participants asked whether the independent mechanisms should perform the role (QHRC, sub. 45). However, the Commission is of the view that the function of the BoID is substantively different to the intended functions of the independent mechanism, chapter 7), although it would advance the development of performance data that will assist the independent mechanisms in assessing whether governments are meeting their commitments. It is also expected that the BoID and the independent mechanisms would collaborate on matters relating to progress towards Priority Reform 4.

What are the key risks and challenges that will need to be managed?

Feasibility

Some review participants emphasised that IDG requires a long-term commitment and cautioned against taking on too much, too soon. For example, the Dharriwaa Elders Group submitted that it is important that the entity is not too ambitious or over claim what it can achieve for communities (sub. 53, p. 7). The Commission heard similar messages at its IDS roundtable (chapter 8).

It will be important that the BoID has a clear purpose and core functions, and for its work to be staged and expanded as its capacity and expertise grows over time. Strong Aboriginal and Torres Strait Islander governance and the phased approach to developing its functions as described above will be critical.

How will it enable communities to realise their data capability?

It will be necessary that the BoID avoids an overly centralised or top-down approach, as this is inconsistent with the right of Aboriginal and Torres Strait Islander communities to govern data in ways that align with the aspirations and needs of particular communities. This view was emphasised by the Kowa Collaboration which said that:

> Kowa Collaboration stands firmly behind the principle of self-determination, which includes the right of First Nations communities to govern their data in ways aligned with their self-identified

> goals and aspirations. We caution against centralised approaches that may inadvertently infringe upon this fundamental right. (sub. 80, pp. 5-6*)*

The BoID will need to determine where it is appropriate and effective to develop national standards and arrangements relating to IDG and where such arrangements should be established at the regional or local level. A mature capacity to engage widely with communities will be critical and overtime the BoID could develop a regional footprint.

Further, the BoID is only one part of the solution to embedding IDG. Other initiatives, including the data projects under the Agreement (chapter 5) and work underway within governments and by Aboriginal and Torres Strait Islander organisations, are also aimed at supporting IDS at the community level.

Action 2.2
Establish a Bureau of Indigenous Data

Parties to the National Agreement on Closing the Gap should commit to establishing a Bureau of Indigenous Data (BoID) that will:

- support governments to embed Indigenous Data Governance (IDG) into their data systems and practices
- invest in enhancing the data capability Aboriginal and Torres Strait Islander organisations and communities
- consolidate and oversee data development work for the Agreement.

The BoID should be governed by an Indigenous Data Board, comprised of Aboriginal and Torres Strait Islander people initially appointed by Joint Council. It should be funded jointly by the Australian, state and territory Governments.

Over the short term (1–2 years), the BoID should be auspiced by an existing statutory agency and tasked with:

- developing a clear conceptual logic to underpin performance monitoring for the Agreement
- coordinating and overseeing data development for the critical indicators
- promoting and building understanding of Indigenous Data Sovereignty (IDS) and IDG across all governments
- stewarding the development of an intergovernmental plan for IDG.

By no later than 2028, the BoID should be established under its own legislation as an independent cross-jurisdictional authority. The exact functions of the statutory BoID should be determined by advice from the Indigenous Data Board, and could include:

- maintaining the Closing the Gap dashboard and annual reporting
- developing Indigenous data standards and/or protocols
- managing national Indigenous surveys and datasets and establishing new collections
- investing in data infrastructure, such as warehouses for community-controlled data
- advising on the use of Indigenous data
- addressing systemic problems with the implementation of Priority Reform 4.

6.6 Is reporting providing the information that is needed in an accessible way?

The parties have committed to rigorously set out how they will implement the Agreement and publicly report on their actions and progress. The main mechanisms for this are the implementation plans, annual reports and the public dashboard and annual data compilation reports.

These arrangements are intended to support independent oversight and accountability. Specifically, they are meant to ensure that Aboriginal and Torres Strait Islander people, organisations and communities know what actions the parties have committed to, if they are being implemented as planned, and whether the parties' efforts are contributing to improved outcomes. Reporting also forms part of the Agreement's joint communication strategy which aims to support Aboriginal and Torres Strait Islander people to take ownership of, and engage in, the implementation of the Agreement (Joint Council 2023b, p. 11).

The implementation plans and annual reports should be closely linked, with the dashboard ensuring that progress against the targets is measured consistently across the jurisdictions. To be most useful, plans should set out a clear strategy that identifies the factors that are inhibiting progress, the key enabling capabilities that are needed, and the significant actions that will create the conditions for change. The plans should detail how (and by whom) the actions will be delivered, the intended results and any key risks that need to be managed.

Performance reporting should then present a coherent account of what has been done, that puts results in context by describing their significance and implications. Reporting should highlight both good and poor performance and transparently explain why specific actions are off-track and what will be done in response. In the context of the Agreement, it is critical that there are mechanisms to ensure that assessments of performance centre the perspectives, priorities and knowledges of Aboriginal and Torres Strait Islander people.

The dashboard and annual data compilation report require further development

The Agreement stipulates that the Commission will develop and maintain a publicly accessible dashboard that presents the most up-to-date data on the targets and indicators specified in the performance framework. In addition, the Commission is also required to produce an annual data compilation report (ADCR) which provides a point-in-time snapshot of the dashboard. Rather than prescribing detailed specifications for the dashboard and ADCR, the Agreement requires the Commission to develop them by working with Joint Council, through the PWG (box 6.12).

The dashboard was launched in June 2021 and has been updated five times as of July 2023. The dashboard includes interactive visualisations and data tables for the available targets, supporting indicators and disaggregations. A visual summary assessment of progress is shown for each target, indicating by jurisdiction whether there has been improvement, no change or worsening. If there has been an improvement at the national level, it indicates whether the target is on-track to be met. The dashboard includes detailed information on how the measures are specified as well as guidance on how to interpret the data, including data quality considerations. However, commentary about the data is limited to brief descriptive explanations.

The Commission has published three ADCRs (2021–2023), based on the dashboard as of June each year. The ADCR has evolved as the number of targets and indicators with reportable data in the dashboard has increased. The most recent ADCR provides an overall assessment of progress across the socio-economic outcomes and a brief descriptive analysis of the key trends affecting different population groups. It also

includes a detailed summary of progress by jurisdiction for each socio-economic outcome (where data is available) and provides an overview of the measurement and data quality issues to be considered when interpreting the results (PC 2023d).

Box 6.12 – Dashboard and annual data compilation report requirements

The Agreement only includes a few basic specifications for the dashboard and ADCR. They include that:

- the dashboard will be updated regularly (at least annually) and maintained for the life of the Agreement (clause 116)
- the dashboard will be underpinned by an information repository that draws together data from existing sources (clause 116)
- reporting on the targets will show progress to close the gap, relative to non-Indigenous people. It will also include target trajectories that show the rate of change needed to meet each target from a starting baseline year. By comparing them to the actual performance of the target indicators, the trajectories are intended to inform whether the parties are 'on-track' (clause 88).

The dashboard and ADCR only provide a partial view of progress

The role of the dashboard and ADCR is to make the performance monitoring data accessible so that it can be used to support accountability and drive jurisdictional effort. The reporting tools are intended to provide a single source of performance information to ensure that progress is measured consistently. Accordingly, governments are required to draw from the dashboard and ADCR to publicly report on their progress in their annual reports.

Beyond this, the Commission only has a partial understanding of how the reporting tools are currently being used. The reports are regularly tabled at Joint Council and PWG meetings to inform the parties' internal discussions of progress and deliberations on emerging issues. Some jurisdictions also told the Commission that they are making use of the dashboard and ADCR to inform agencies about progress and provide context for policy discussions. For example:

> The Australian government makes very extensive use of material published on the dashboard and in the ADCRs. This includes as input into: Briefing and advice to the Ministers to inform their media releases, Implementation Plan, input into NPPs for NIAA and other responsible departments, annual reports, reporting to Closing the Gap governance network through the Partnership Working Group. Regional offices and service delivery organisations. Accountability and use as an evidence base for influencing and informing policy … The recent incorporation of data disaggregations on the Dashboard furthers the commitment to some extent to Priority Reform Four in the National Agreement. (NIAA, pers. comm., 6 June 2023)

Aboriginal and Torres Strait Islander organisations and non-government organisations that the Commission heard from were generally supportive of the role of the reports in providing transparency. However, the National Health Leadership Forum submitted that they appear to be 'primarily intended for the use of governments rather than for communities or the public' (sub 84, p. 7) and similarly the IUIH that they 'are of little use for meaningful engagement with the community or for service planning or design' (sub 62, p. 27).

There are several issues that limit the dashboard and ADCR in their current forms from being used to achieve the purposes of the Agreement's performance monitoring approach. They include that:

- Slow progress in compiling and developing the required data means that **a large number of indicators are yet to be reported on** (section 6.4). The lack of any data on the Priority Reforms significantly curtails the ability of the reports to be used to drive jurisdictional effort. The Coalition of Peaks noted that while the dashboard provides 'an accountability mechanism that may reduce the limitations of biases and political narratives of implementation plans and annual reports, the data only indicates whether progress is occurring or not, rather than what needs to be focused on to get back on track' (sub. 25, p. 4). It added that embedding the Priority Reforms is especially important to ensure that data could be interpreted and used by Aboriginal and Torres Strait Islander people to advance and advocate for changes in policy and services to improve life outcomes.
- The dashboard and ADCR currently **only provide a top-line view of progress**. The target and supporting indicator data is presented by jurisdiction and can be disaggregated by remoteness area (that is, 'major city', 'regional', and 'remote'). However, under the existing measurement approach, the reports do not allow each jurisdiction's overall performance to be broken down by region (such as for northern or south east Queensland). This is an issue for accountability as it allows strong performance in certain regions to potentially mask a lack of progress or effort in other parts of a jurisdiction.
- The **dashboard does not link to related data collections** that could allow it to function as a central source of information. Regional-level breakdowns for some of the targets are already available through other sources (for example, the ABS's TableBuilder). Similarly, data relating to the supporting indicators for some socio-economic outcomes are also available in existing data collections. However, users of the dashboard will not necessarily be aware of these or know how to access them.

Both ACCOs and government agencies commented that the dashboard could be more user-friendly and accessible to those who may not have experience using data tools (SA Government, sub. 54, p. 19; NIAA, sub. 60, attachment C, p. 36; NHFLS, sub. 84, p. 7; Children's Ground, sub. 72, p. 12). And several participants made specific suggestions for how to make the reports easier to use. For example, the ABS (sub. 1, p. 3) pointed out in its submission that the dashboard does not allow the disaggregated data to be directly compared to the population-level data. A related limitation is that the target disaggregations are discretely visualised (such as by gender and age) and this can mask material differences in progress for intersectional sub-groups (such as young males compared to young females) (PC 2023d, p. 33). Another participant also suggested that the accessibility of the dashboard could be enhanced by using maps to present the data (Bill Arthur, sub. 26, p. 1). The National Health Leadership Forum (sub 84, p. 8) recommended the introduction of factsheets that provide comparative summaries of the key initiatives and total expenditure of each jurisdiction across the SEO areas, in addition to reporting on their progress against the targets.

Reporting continues to focus on the gaps between Indigenous and non-Indigenous outcomes without context to aid interpretation

As public reports, the dashboard and ADCR inform how the community understands whether progress is being made to improve life outcomes for Aboriginal and Torres Strait Islander people, and why. Review participants expressed concern that reporting currently remains overly focused on highlighting the 'gaps' between Aboriginal and Torres Strait Islander people and non-Indigenous people. While this reveals inequality, without context, it also risks attributing problems to Aboriginal and Torres Strait Islander people, rather than the current and historical inequities. This concern was raised in submissions and in the Commission's engagement with ACCOs. For example, the Federation of Victorian Traditional Owner Corporations explained:

> … The focus on 'gaps' frames and represents Aboriginal and Torres Strait Islander people in a narrative of negativity, deficiency, and failure. While deficit data can be useful to highlight inequalities and draw attention to areas requiring more effective and appropriate service delivery from governments, when repeatedly restated, such statistics can also contribute to a narrative that

> reduces Aboriginal and Torres Strait Islander people into a statistical problem. Moreover, such deficit discourse can place responsibility for inequalities with Aboriginal and Torres Strait Islander people and communities, and obscures underlying structural inequalities and more sophisticated understandings of the roles that factors such as language, culture, Country and community play in health outcomes. (sub. 24, p. 1)

While the Agreement specifies that reporting on the targets will show progress relative to non-Indigenous people (clause 88), it was intended that this would be presented alongside data measuring the Priority Reforms and other factors influencing outcomes (including social and cultural determinants). This is consistent with reviews of the NIRA, which found reporting lacked indicators of government performance and the structural factors that affect progress, such as racism and the functioning of the justice system (Markham et al. 2018, p. 2; NIAA 2019b, p. 5).

In addition to the missing indicators, the design and content of the dashboard and ADCR has been constrained by the lack of a clear conceptual logic for the performance monitoring framework (section 6.2). The dashboard mirrors the layout of the target frameworks in the Agreement: it is divided into distinct sections for the Priority Reforms and socio-economic outcomes, with individual pages for each outcome. The target data is presented upfront by Indigenous status, with the disaggregations and supporting indicators presented in separate subsections. This design conceals the interrelationships between the socio-economic outcomes and the role of the Priority Reforms. Furthermore, the dashboard and ADCR provide little information explaining why the different measures matter and how they are related.

The reports could provide greater context to support users to interpret the target data by incorporating findings from relevant research and evaluations. For instance, the Commission's former *Overcoming Indigenous Disadvantage* reports drew on research literature to explain the significance of the results and the importance of different contributing factors. However, to avoid duplication, the scope of the dashboard and ADCR should take into account the functions of other established reports and data tools (such as the AIHW's Aboriginal and Torres Strait Islander Health Performance Framework).

A key issue is how decisions about the design and development of the performance reports are made and who is involved. Mechanisms are needed to centre the voices and perspectives of Aboriginal and Torres Strait Islander people in the assessment of the performance data and the story it tells. As the Children's Ground submitted:

> … more work needs to be done to provide the local data story for communities. If communities are an intended audience of Closing the Gap performance reporting (as they should be) then investment needs to be made in working with First Nations people to design performance reporting that is accessible to communities who may not have experience in understanding, working with and using western data systems. (sub. 72, p. 12)

While the dashboard and ADCR are overseen by the PWG, which includes representatives from the Coalition of Peaks, it is unclear whether this arrangement provides sufficient opportunity for Aboriginal and Torres Strait Islander people and organisations to advise on the content of the reports and how they could be improved. A related issue is whether the current arrangements provide an appropriate level of independent oversight, noting that the Joint Council currently has responsibility for signing-off on updates to the dashboard and new ADCR releases.

Many of these issues could be expected to be resolved by the BoID, which would be responsible for developing a clear conceptual logic to underpin the Agreement's performance monitoring approach and for leading the associated data development work, including identifying the most critical indicators for change. The outcomes of this work would need to flow through to the dashboard and the ADCR. It therefore makes sense for the BoID to also assume responsibility for the dashboard and ADCR. This would help to ensure

that the voices and perspectives of Aboriginal and Torres Strait Islander people are centred through assessments of performance data and the stories that are told through the dashboard and ADCR.

Implementation plans do not demonstrate a strategic approach or consistently adhere to agreed elements

The Agreement commits the parties to developing rigorous implementation plans that 'respond to the differing needs, priorities and circumstances of Aboriginal and Torres Strait Islander people across Australia' (clause 96) and 'support achievement of the Agreement's objectives and outcomes' (clause 104). The plans are intended to ensure that Aboriginal and Torres Strait Islander people know that the parties are advancing a new way of working and can monitor their progress. Section 8 of the Agreement establishes how the implementation plans are to be developed, what they must include and how progress on the actions named within them will be monitored (box 6.13).

Box 6.13 – Implementation plans

Chapter 8 of the Agreement sets out specific requirements for the jurisdictions' implementation plans (clause 108), Australian Local Government Association's implementation plans (clause 109) and the Coalition of Peaks' implementation plans (clause 110).

Jurisdictional implementation plans must:

- be whole-of-government plans, covering government agencies and statutory bodies
- be developed and delivered in partnership between governments, the Coalition of Peaks, and other Aboriginal and Torres Strait Islander partners
- set out how existing policies and programs will be aligned to the Agreement
- set out actions to achieve the Priority Reforms and partnership actions
- set out actions to achieve the agreed outcomes and targets
- for transparency, include information on funding and timeframes for actions
- include the approach to annual reporting, including when they will release their public report
- include information on how the states and territories will work with local government to implement the Agreement.

In addition to these requirements, the parties must also demonstrate in their implementation plans 'a commitment to undertake all actions in a way that takes full account of, promotes, and does not diminish in any way, the cultures of Aboriginal and Torres Strait Islander people' (clause 107).

Clause 111 establishes that the Joint Council is responsible for monitoring the progress of parties against their implementation plans. It allows for the Joint Council to advise the parties on implementation but not to approve their plans or make formal recommendations on them.

All parties were required to deliver their implementation plans to the Joint Council within 12 months of the Agreement commencing (that is, by July 2021). The Agreement does not stipulate what time period the plans should cover or how regularly they should be reviewed, but it does suggest that they are intended to be living documents. Notably, clause 91 requires the parties to include actions in their implementation plans to address any targets that are found to be off-track by one of the Commission's three-yearly reviews.

All parties released their first implementation plans between June and September 2021. The plans cover different time periods – for example, the Victorian and Tasmanian Governments' plans relate to the period 2021–23, whereas the NSW and Queensland Governments' first plans cover only 2021. As of December 2023, the Australian, NSW, Queensland, WA, and ACT Governments, as well as the Australian Local Government Association (ALGA) and Coalition of Peaks had released their second implementation plans. The SA Government is yet to publish a second implementation plan.

Collectively, the jurisdictional implementation plans include over 2,000 actions, many of which relate to existing initiatives or policies. All the plans include actions to implement the Priority Reforms and all but the NT and ACT Governments' plans set out specific actions for the socio-economic outcomes.

Overall, the jurisdictional plans often do not adhere to the agreed elements (although the second plans show signs of improvement). The three major weaknesses of the implementation plans, are that they display:

- limited evidence that the plans have been developed in partnership
- a lack of a strategic, whole-of-government approach
- a lack of transparency about how the actions will be delivered.

These shortcomings (each of which are discussed in detail below) make it hard for Aboriginal and Torres Strait Islander organisations and the community more broadly to understand whether governments are moving beyond a business-as-usual approach and to hold them accountable for the actions set out in their plans.

Limited evidence of being developed in partnership

A central tenet of the Agreement is that the government parties will share decision-making with Aboriginal and Torres Strait Islander people. The implementation plans were an important opportunity to embed this principle from the start.

While all jurisdictions included statements about their commitment to working in partnership, most provided little explanation to describe how their plans were developed in partnership. Five of the nine first implementation plans included an individual forward or opening statement from a peak body or other partner, and two included a co-signed statement. Some governments stated that their plans were a collaborative process (for example, the NT Government's plan). However, other plans indicated that the involvement of Aboriginal and Torres Strait Islander partners was limited to seeking input through consultation. The Tasmanian Aboriginal Centre (TAC) and the Queensland Aboriginal and Torres Strait Islander Coalition (QATSIC) both acknowledged that their participation in the development of the first plans for their respective jurisdictions fell short of a genuine partnership effort.

> With no extra resources we have not been able to achieve the Aboriginal participation we would like. We need extra time for Tasmanian Aboriginal people to express what change is needed for themselves and their families to achieve their own aspirations. (Tasmanian Government 2022, p. 3)

> Due to resourcing constraints, QATSIC had limited input into the review of Queensland's Closing the Gap Implementation Plan 2022. However, this will change with funding now provided to QATSIC members and Queensland Government's commitment to working together to close the gap in socio-economic outcomes for Aboriginal and Torres Strait Islander people. (Coalition of Peaks 2021, p. 41)

This is consistent with a key concern the Commission heard during its engagements – that Aboriginal and Torres Strait Islander partners did not have the opportunity to meaningfully contribute to the development of the implementation plans, with organisations in some jurisdictions abstaining from providing feedback because the plans appeared to be already decided (PC 2023g, p. 4). This needs to change.

> Developing implementation plans in partnership with First Nations communities is critical. Meaningful engagement and local design by First Nations people will inform and shape policies and initiatives that are culturally appropriate, locally relevant, effective, and reflective of community needs and aspirations. (Children's Ground, sub. 72, p. 14)

Some jurisdictions' second implementation plans show signs of improvement. For example, the NSW Government's second plan was developed in partnership with NSW Coalition of Aboriginal Peak Organisations (NSW CAPO) and informed by a NSW CAPO-led community consultation process (NSW Government 2022c, p. 9). The plan links each of its proposed actions to key findings from the community consultations and sets forward a joint process to interactively review and update the actions. NSW CAPO noted that:

> 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. (sub. 77, p. 9)

Lists of piecemeal actions rather than whole-of-government strategies

The jurisdictional implementation plans are intended to set out how governments will transform the way they are working to accelerate improved life outcomes for Aboriginal and Torres Strait Islander people. In reality, the first plans largely consist of long lists of actions, many of which are minor, pre-existing, or only superficially linked to the Priority Reform or socio-economic outcome that they are listed against. For example:

- A majority of arrangements listed under Priority Reform 1 could be categorised as advisory panels or reference groups, with limited explanation given about how governments meaningfully partnered with these groups to share decision-making authority.
- Many of the Priority Reform 2 actions in the first implementation plans were existing initiatives, such as supporting ACCOs to understand the NDIS and building awareness of the scheme (Victorian Government 2021, p. 72).
- Actions relating to Priority Reform 3, to support the transformation of mainstream institutions and agencies, included modest artistic projects such as adding Aboriginal and Torres Strait Islander artwork to Queensland Boating and Fisheries Patrol boats (Queensland Government 2023a, p. 20).
- Priority Reform 4 actions included business-as-usual reporting against existing government performance frameworks and other actions that were seemingly irrelevant to enhancing the ability of Aboriginal and Torres Strait Islander people to access, or use data. An example was 'training to support Aboriginal and Torres Strait Islander board members to perform effectively on government boards and committees', listed in the ACT Government's implementation plan.

Overall, the implementation plans fail to set out a coherent strategy or basic 'theory of change'. Done well, this would identify the existing issues and barriers that are impeding the Priority Reforms and socio-economic outcomes, articulate the conditions and factors that will enable change, and then explain why and how the proposed actions will contribute to bringing that change about. The plans also fail to explain the interconnectedness of the Priority Reforms and how they will be embedded in the socio-economic outcome areas to drive change. Without this understanding, it is often difficult to discern the relative importance of the actions and whether they will collectively amount to a meaningful response. This concern was raised by many participants – for example:

> 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. (Michael Dillon, sub. 5, p. 3)

He went on to say:

> The implementation plans produced so far (required under the agreement) are not in fact implementation plans, but lists of what governments are already doing with some marginal new monies added. (Michael Dillon, sub. 37, p. 12)

The implementation plans are also meant to 'be whole-of-government plans, covering government agencies and statutory bodies'. Most plans assign actions to a responsible lead department, but many agencies and other entities are not included. Out of the close to 200 Australian Government entities and companies only 31 are listed in the Australian Government's Closing the Gap Actions Table (NIAA 2023a). None of the plans prescribe a process to ensure that all government entities individually set out the actions they will take to support the implementation of the Priority Reforms and any socio-economic outcomes that are relevant to their policy area. This omission is important, as genuine whole-of-government action is necessary to successfully implement the profound and lasting changes envisaged in the Agreement.

Finally, few jurisdictions substantively describe how they will work with and support local governments to implement the Agreement. Most of the plans appear to have been developed within minimal or no input from the jurisdictions' local government association, and with little consideration of the role that local governments might play in implementation of the Agreement (chapter 3). The Northern Territory is a notable exception – the Local Government Association of the Northern Territory (LGANT) was a joint partner in the development of the Northern Territory's implementation plan, and the association committed to specific actions to support Priority Reforms 2 and 3 (NT Government 2022a, pp. 2, 26, 30).

A lack of transparency about how actions will be delivered

Despite being required to ensure transparency, details on the funding and timeframes for actions in most jurisdictional plans are either missing or vague. Three jurisdictions did not include action-level funding information in their plans (New South Wales, South Australia and Tasmania), while the remaining jurisdictions frequently indicated 'new' initiatives were to be delivered within existing funding or resourcing. Timeframes are inconsistently reported for similar types of actions and often indicated as 'ongoing', rather than committing to a deliverable milestone or review point.

Other issues with how actions are set out in jurisdictional plans include that:

- most plans do not indicate the current status of progress (for example, whether the action has commenced) and/or key next steps to advance it
- some plans only list a responsible Minister but not a responsible agency. While it is not a requirement, none of the plans assign a responsible official or statutory office holder
- plans do not provide links to documents or websites where more information about each action can be found, making it difficult for anyone to understand the action in detail.

Review participants emphasised the importance of addressing these shortcomings. For example, Children's Ground said:

> Implementation plans should provide a detailed roadmap of actions that will be undertaken to achieve the Priority Reforms, socio-economic outcomes, and targets defined in the Agreement. Clear, actionable steps with specified responsibilities and timelines are crucial for effective execution. (sub. 72, p. 14)

The Australian Government's 2023 implementation plan is a better example. It links to a searchable online actions table – each action includes a basic description of how it addresses a Priority Reform and/or socio-economic outcomes, whether it is a new or existing action, and whether it is an Aboriginal- and Torres

Strait Islander-specific action (NIAA 2023a). Allocated resourcing, delivery timeframes and the responsible Minister and agency are specified for nearly all actions. The online actions table also identifies which supporting indicator(s) from the Agreement's performance framework each action relates to.

A new approach to developing implementation plans is required

It is clear that implementation plans need to improve in order for them to be the strategic documents envisaged in the Agreement.

One way to support this change could be for there to be greater oversight of the planning process – review participants suggested several roles that the independent mechanism might play in relation to implementation plans (box 6.14).

Box 6.14 – The independent mechanism and implementation plans

Several review participants suggested the independent mechanism should play a key role in reviewing, and thereby improving the quality of, implementation plans. For example, the National Health Leadership Forum said:

> 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. (sub. 84, p. 7)

The Queensland Indigenous Family Violence Legal Service said:

> Alongside a specific independent mechanism for Priority Reform 3, we could investigate establishing an additional Aboriginal and Torres Strait Islander-led independent mechanism specifically focused on building and ensuring accountability. A standalone independent mechanism could play a role in reviewing CTG implementation plans and annual reports for instance. (QIFVLS, sub. 87, p. 8)

Others advocated for the independent mechanism to assess progress and performance against implementation plans. For instance, the Victorian Aboriginal Legal Service said:

> The Victorian Closing the Gap Implementation Plan 2021–2023 was developed jointly by the Aboriginal Executive Council (AEC) and the Victorian Government. It is concerning and deeply disappointing that this Implementation Plan has not been adhered to, and there have been significant delays to progressing critical reforms. … oversight and monitoring of Victoria's progress in implementing the National Agreement should be carried out by an independent Aboriginal-led mechanism in Victoria to provide oversight and accountability for implementing the National Agreement in Victoria. (VALS, sub. 76, p. 22)

Box 6.14 – The independent mechanism and implementation plans

And NSW CAPO said:

> 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. (sub. 77, p. 9)

Once established, the independent mechanisms in each jurisdiction may choose to play a role in reviewing and/or approving implementation plans (chapter 7). But the Australian, State and Territory governments also need to write implementation plans not as largely backward looking audits of current action, but rather as strategies whose outputs should logically lead to the outcomes in the Agreement, in collaboration with Aboriginal and Torres Strait Islander people.

Action 1.5
Governments writing implementation plans more strategically, in collaboration with Aboriginal and Torres Strait Islander people

The Australian, state and territory governments should:

- treat Closing the Gap implementation plans as strategic documents (not as 'laundry lists' of current activities)
- work closely with Aboriginal and Torres Strait Islander partners to agree strategies and actions that are substantiative and critical to achieving the objectives of the Agreement
- develop a clearly articulated theory of change that demonstrates how the agreed strategies and actions will contribute to the desired change
- include only the strategies and actions agreed with Aboriginal and Torres Strait Islander partners in implementation plans, together with details of the funding and timeframe for each agreed action
- ensure that implementation plans fully reflect the diversity of regional needs, cultures, characteristics and governance structures in the jurisdiction (such as the unique culture, governance and needs of people living in the Torres Strait)
- report on every one of the agreed strategies and actions in Closing the Gap annual reports
- only update implementation plans when there are changes that affect the agreed strategies.

Annual reports largely do not provide a comprehensive or balanced account of progress

The annual reports are the main mechanism for the parties to publicly self-report on what each has done to implement the Agreement and the progress this has made. As set out by clause 118, the reports are required to:

- draw from the dashboard and ADCR, to ensure consistency of measures of progress
- include information on their efforts to implement the four Priority Reform areas and how they align with the principles for action
- demonstrate how their efforts, investment and actions are aligned and support the achievement of Closing the Gap goals

- list the number of Aboriginal and Torres Strait Islander community-controlled organisations and other Aboriginal and Torres Strait Islander organisations that have been allocated funding as per the relevant commitments in the Agreement.

Several other clauses throughout the Agreement include additional requirements for the jurisdictional reports, including that governments provide information on their partnerships (clause 37) and the actions they have taken to: strengthen the community-controlled sector (clause 47); meet the transformation elements of Priority Reform 3 (clause 65); and improve access to data and information by Aboriginal and Torres Strait Islander people and organisations (clause 73).

All jurisdictions except for Tasmania tabled their first annual reports in their respective Parliaments between September and November 2022 and made them available through their websites. The ALGA and Coalition of Peaks also respectively published their first annual reports in October and November 2022. The Tasmanian Government tabled its first annual report in May 2023, and it is available on Tasmanian Parliament's website. As of December 2023, the WA, SA and ACT governments have now released their second annual reports.

The quality of the annual reports varies considerably and none of the jurisdictional reports adhere to all of the required elements. For example, none clearly report the total number of Aboriginal and Torres Strait Islander community-controlled organisations and other Aboriginal and Torres Strait Islander organisations that have been allocated funding and only some reported on the implementation of their sector strengthening plans (chapter 3).

Reporting on progress is not always consistent with the dashboard

The Australian, State and Territory Governments' first annual reports all drew from the dashboard and ADCR to report on progress against the socio-economic targets. Most included data to compare progress in their jurisdiction to the national average, with some also including data to compare progress relative to non-Indigenous people. However, some jurisdictions have made their own assessments of the progress data which diverge from the agreed approach applied by the dashboard and ADCR.

As specified by the Agreement, the dashboard and ADCR assess the targets as 'on- or off-track' at the national level (section 6.4). But because the parties have not agreed on what amount of progress each jurisdiction will contribute to achieve the targets, their progress is only described as either 'improving', 'no change' or 'worsening'. While most jurisdictions followed this approach, Queensland and Tasmania reported their own summary assessments of whether they were on-track to meet each target (neither outlined their assessment method). Both the NSW and the ACT's annual reports also describe their jurisdictions as being 'on or off-track' against some outcomes. Without a commitment to jurisdiction-specific contributions for each target and a common assessment methodology, the inclusion of self-assessments in the annual reports has the potential to give a misleading picture of progress and undermines the independence of progress assessment.

Some jurisdictions have also drawn on their own data sets to compliment the dashboard data or report on other measures of progress. For example:

- Victoria's 2021 annual report followed the Victorian Aboriginal Affairs Framework (the VAAF) rather than the Agreement's performance framework. It reported on progress against the VAAF's 20 goals (using visualisations from the VAAF dashboard) and nested the Agreement's socio-economic targets under the relevant goals.
- The NT annual report closely followed the dashboard but also drew on data collected for its *Everyone Together Aboriginal Affairs Strategy* to report on targets that did not have new data since the baseline (for example, Target 13 – Family safety). Similarly, Queensland's annual snapshot report presented data

measuring several supporting indicators that are not yet available on the dashboard (such as home ownership rates for Outcome 9 – Housing).

By drawing on their own data sets, governments can provide a more granular picture of what is happening in their jurisdictions (for instance, the Northern Territory's annual report provides a breakdown of housing overcrowding by region). However, it also has the potential to lead to a proliferation of inconsistent measures – for example the rate of Aboriginal and Torres Strait Islander children in out-of-home care reported in the 2021 Victorian annual report (which is based on an aggregate annual count) is inconsistent with the rate reported by the dashboard and ADCR (which is a point-in-time count).

The requirement for the parties to draw on the dashboard and ADCR in their annual reports ensures that they are comparable and mitigates the risk of governments cherry-picking favourable assessment methods or indicators. The Agreement does not preclude jurisdictions from including additional indicators, but these will be of most value where they focus on filling data gaps and are clearly described.

Annual reports do not give a transparent, objective account of whether governments have met their commitments

The annual reports are intended to provide the community with a transparent account of the progress that each party has made against the actions they committed to. However, the Commission found that many jurisdictions' annual reports are difficult to reconcile with their implementation plans.

A basic challenge is that the annual reports only include a subset of the actions that governments have committed to, while also including updates on actions that were not set out in the implementation plans. For example, only two jurisdictions reported against all the Priority Reform 1 actions they committed to in their first implementation plans. In the other direction, nearly a fifth of the Priority Reform 1 actions reported on in the jurisdictions' first annual reports had not been included in their implementation plans. This echoes the findings of the ACT Audit Office, which reviewed the implementation of the 2019 ACT Aboriginal and Torres Strait Islander Agreement (2019 Agreement).

> Reporting does not enable Aboriginal and Torres Strait Islander communities to hold the government to account for the implementation of the 2019 Agreement as it is not materially complete or faithfully presented. As the differences between the directorate implementation plans and the focus area action plans have not been disclosed publicly, communities cannot know of all commitments included in the 2019 Agreement. This, taken together with the lack of structure and neutrality to external reporting, prevents stakeholders from understanding the status of the implementation of the 2019 Agreement. (ACT Audit Office 2023, p. 2)

While it is reasonable for the parties to amend and update their plans, the extent of the inconsistency between what governments have said they would do and what they have reported on undermines the credibility of the annual reports. Moreover, it signals a lack of strategic focus and intent – the implementation plans and annual reports should only include actions and activities that have been agreed with Aboriginal and Torres Strait Islander partners as substantive and critical to achieving the objectives of the Agreement.

Another issue is that the descriptions of actions are often high-level or incomplete, which makes it difficult to assess their status. While not an explicit requirement, it is fair to expect that annual reports provide an indication of which planed initiatives are on track and which are delayed or discontinued. However, the annual reports mostly do not indicate whether actions are on-track to be delivered as planned.

Similarly, there is typically no discussion of delivery risks or issues and how they are being addressed. For example, the action summary table in the NSW Government's annual report labels most actions as 'on-going' or 'in-progress', without specifying whether they are on- or off-track, and many actions include little or no information

about what progress has been made. The NT annual report illustrates somewhat better practice. Its progress summary table includes a unique identifier for each action that can be linked back to its implementation plan. The table provides short descriptions of the purpose of each action and some details on what has been done to date or committed to. It also specified the dollar amounts invested for some, but not all, actions.

Jurisdictional annual reports include little input from Aboriginal and Torres Strait Islander partners that reflects their assessment of progress

By and large, the annual reports focus on highlighting achievements and listing what activities have been undertaken. Significantly less attention is given to describing what has not been delivered or areas where there has been little progress. As the Coalition of Peaks pointed out in its submission to the review, this is a long-standing problem.

> While intending to outline how governments are implementing and progressing the National Agreement, these documents [implementation plans and annual reports] are often continuing traditional government practices of highlighting selected achievements while neglecting systemic issues that limit progress. (sub. 25, p. 4)

The credibility of annual reports is improved when they provide a balanced representation of performance that discloses shortcomings and explains how they will be addressed (ANAO 2004, p. 39). In line with this, guidance for Commonwealth entities on how to prepare their annual performance statements (under the Public Governance, Performance and Accountability Act 2013) advises that rather than only listing specific achievements, they should include an informative analysis of the positive and negative factors that have contributed to performance (DoF 2023a).

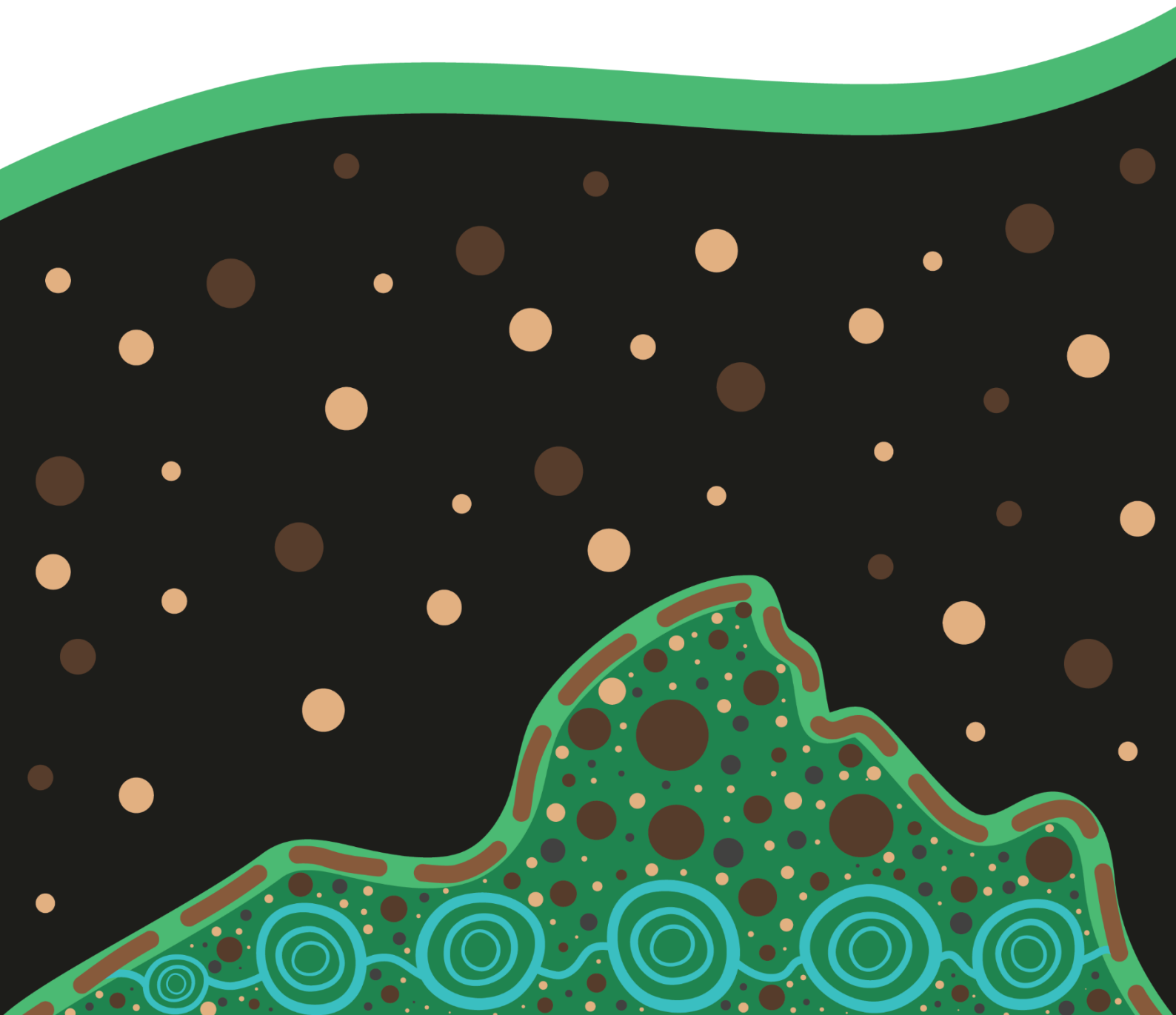
Overall, the first annual reports give little account of how the Aboriginal and Torres Strait Islander partners view the progress that has been made in their jurisdictions. While the Coalition of Peaks' annual report includes progress updates from each partner, only five of the nine jurisdictional annual reports for 2022 included an opening statement or forward from the local Aboriginal and Torres Strait Islander partner. The inclusion of unfiltered appraisals from Aboriginal and Torres Strait Islander partners would enhance the credibility of the annual reports and their usefulness for future planning. In addition, allowing partners to provide early input on the design of the reports is likely to make them more accessible to Aboriginal and Torres Strait Islander people. However, the Agreement does not currently specify how and what type of input Aboriginal and Torres Strait Islander partners should be able to provide.

The weaknesses of the jurisdictional annual reports on Closing the Gap undermines their intended purpose to support accountability and drive actions to improve outcomes for Aboriginal and Torres Strait Islander people. The community needs to be able to clearly see how the actions in the implementation plans will collectively lead to delivering on the objectives of the Agreement. Annual reports need to provide an accurate and balanced account of what has and has not progressed and why. Chapter 7 makes recommendations to strengthen the Agreement's accountability mechanisms, including changes to mainstream annual reporting and providing greater transparency about the actions being taken to implement the Agreement.

Review of the National Agreement on Closing the Gap

Accountability for improving life outcomes for Aboriginal and Torres Strait Islander people

Chapter 7



Key points

The accountability mechanisms in the Agreement are weak. They largely rely on self-reporting and are not sufficient to influence the type and scale of change required to improve life outcomes.

Governments are continuing to make decisions that contradict their commitments in the Agreement, that do not reflect Aboriginal and Torres Strait Islander people's priorities and perspectives and that exacerbate, rather than remedy, disadvantage and discrimination. Insufficient incentives for change and inadequate accountability mechanisms mean that these types of decisions could continue unchecked.

The Agreement recognises that government organisations cannot be relied on to transform on their own. This is why Priority Reform 3 requires governments to establish an independent mechanism to 'support, monitor, and report on the transformation of mainstream agencies and institutions'.

- Most jurisdictions will not 'identify, develop or strengthen' a mechanism in 2023, as the Agreement requires.
- The independent mechanism needs to be established without further delay. It should have an expanded role overseeing all of the Agreement (not just Priority Reform 3) and a legislative basis to help guarantee its ongoing existence and the power behind its functions.

Governments need to fundamentally rethink mainstream government systems and culture to deliver the unprecedented shift they have committed to in the Agreement. Stronger accountability is also needed for undertaking the many actions that are essential components of this profound and lasting change.

- Central agencies should review and update Cabinet and Budget processes so that all submissions demonstrate the impacts of the policy proposal on Aboriginal and Torres Strait Islander people, and how the policy proposal aligns with, and has been developed in accordance with, the Priority Reforms.
- Ministers should meet regularly with Aboriginal and Torres Strait Islander peak bodies to discuss key issues, including peaks' perspectives on obstructions to progress against the Agreement.
- Building cultural capability and relationships with Aboriginal and Torres Strait Islander people needs to be built into the employment requirements and KPIs of public sector CEOs, executives and employees.
- Governments need to designate a senior leadership group to drive change throughout the public sector in each jurisdiction, through improved communication, role modelling and skills building.

The resources that governments have committed to the implementation of the Agreement have fallen far short of the ambition of the Agreement.

- Additional resources are required to enable Aboriginal and Torres Strait Islander people and organisations to apply their knowledge and expertise to the implementation of the Agreement. This includes funding for the design and delivery of programs and services, and for participation in government processes.
- Resources are also required for government organisations to implement the Priority Reforms and to support robust accountability mechanisms.

Transparency is essential so that the community can clearly see how government actions are improving outcomes for Aboriginal and Torres Strait Islander people. To help achieve this:

- all government organisations should report annually on the substantive activities they undertook to implement the Priority Reforms and the demonstrated outcomes of those activities
- stocktakes, expenditure reviews and other documents developed under the Agreement should be published.

These proposed measures will only be effective if they are implemented in ways that are consistent with the Agreement, and centre Aboriginal and Torres Strait Islander people and perspectives.

The National Agreement on Closing the Gap (the Agreement) is unlike other national agreements. It is the first that includes a non-government party as a signatory – the Coalition of Aboriginal and Torres Strait Islander Peak Organisations (the Coalition of Peaks). It is ambitious in the scale of change required, calling for an unprecedented, structural shift in the way governments work with Aboriginal and Torres Strait Islander people.

In signing the Agreement, governments made a commitment – to Aboriginal and Torres Strait Islander people, to the Coalition of Peaks, to each other and to the nation – to 'a fundamentally new way of developing and implementing policies and programs that impact on the lives of Aboriginal and Torres Strait Islander people' (clause 4) and to do so 'in a way that takes full account of, promotes, and does not diminish in any way, the cultures of Aboriginal and Torres Strait Islander people' (clause 21). The ultimate end goal is to improve the life outcomes of Aboriginal and Torres Strait Islander people (clause 7). This paper considers how to ensure that governments fully understand, and are held accountable for delivering on, that commitment.

7.1 Governments are not consistently adhering to – and are sometimes contravening – the Agreement

Governments' actions will not deliver the unprecedented shift they have committed to

Governments have made varying levels of progress towards each of the Priority Reforms, socio-economic outcomes and associated actions (chapters 2 to 6). But the overall picture is that governments' current piecemeal actions will not deliver the fundamental transformation they have committed to.

During engagements, review participants told us that although the Agreement requires a paradigm shift in the way government organisations operate, the implementation of the Agreement has not moved beyond business-as-usual, that progress is slow and that they are not seeing the types of action or understanding that will bring about real change (PC 2023g, p. 4). This concern was echoed in submissions from Aboriginal and Torres Strait Islander organisations. For example, Aboriginal Peak Organisations Northern Territory said:

> The overwhelming message from APO NT and other Coalition of Peaks members is that the structural and transformative aims of the National Agreement are simply not being met. Despite many years of the National Agreement and predecessor COAG Agreements, government agencies are still resistant to change that promotes Aboriginal self-determination in principle and practice. And we know that self-determination provides the best means to better outcomes. (APO NT, sub. 10, p. 3)

Concerns about the omission of Aboriginal and Torres Strait Islander people and perspectives from key legislative, policy and program approaches remain widespread. One example of this can be seen in response to the Intergenerational Report, a key document published by the Australian Treasury every five years which 'examines the long-term sustainability of current policies and how demographic, technological and other structural trends may affect the economy and the budget over the next 40 years' (Frydenberg 2021, p. xv). However:

> … the 2021 report did not discuss the situation of First Nations people at all for any measure. There can be no excuse for this glaring omission. (McCallum et al. 2023, p. 148)

Review participants also highlighted the wide gap between governments' rhetoric and governments' actions in implementing the Agreement.

> … first nations arts and culture remain peripheral to the Closing the Gap Agenda. We hear language like 'strong Aboriginal and Torres Strait Islander cultures are fundamental to improved

> life outcomes for Aboriginal and Torres Strait Islander people.' But there are very few, if any, tangible policies and programs around implementing support for culture. (KALACC, sub. 23, p. 9)

The wide gap between governments' rhetoric and action appears to stem, in part, from a failure by governments to fully grasp the nature and scale of the change required to fulfil the Agreement. Despite some pockets of good practice, many parts of government are still operating in what amounts to a variation of business-as-usual, where their actions to implement the Agreement are simply tweaks of, or actions overlayed onto, existing systems, rather than root-and-branch transformations. This entails reconsidering and fundamentally re-evaluating existing ways of doing business, as opposed to trying to shoehorn business-as-usual into radical reform. Closing the Gap implementation plans and annual reports provide an incomplete picture of what governments are doing or not doing (chapter 6), and the Commission has not been able to conduct a detailed examination of what is happening inside every government organisation. However, based on the available information it is the Commission's assessment that whatever changes are being made are not leading to improvements that are noticeable and meaningful for Aboriginal and Torres Strait Islander people.

The absence of improvement is exacerbated by the lack of conceptual logic for system-wide change, meaning there is no indication of how the myriad of small actions governments have listed in their implementation plans (some of which were already underway before the Agreement) are capable of delivering the large-scale, transformational change they have committed to under the Agreement.

Governments continue to act without regard to, and sometimes in contravention of, the Agreement

The Agreement was signed in July 2020. In the three and a half years since then, governments have continued to make decisions that contradict their commitments in the Agreement, that do not reflect Aboriginal and Torres Strait Islander people's priorities and perspectives and that exacerbate, rather than remedy, disadvantage and discrimination. Examples of such decisions are too easy to find.

- The Queensland Government made changes to bail laws that will mean more Aboriginal and Torres Strait Islander young people are incarcerated for longer periods of time (chapter 4, box 4.1). This is in the context of Queensland having one of the highest jurisdictional rates of Aboriginal and Torres Strait Islander young people in detention on an average day in 2021-22 (40.9 per 10,000 young people aged 10-17, compared to 22.3 per 10,000 nationally) (PC 2023d). There are also similar examples of government decisions that contradict the Agreement in relation to youth justice systems in other jurisdictions (chapter 8).
- In Victoria, the independent broad-based anti-corruption commission (IBAC) last year identified 'concerning patterns in how Victoria Police handles the investigation of complaints made by Aboriginal people and serious incidents involving Aboriginal people … Victoria Police has considerable work to do to ensure that it investigates complaints and serious incidents involving Aboriginal people thoroughly and impartially' (IBAC 2022, pp. 8, 80).
- The UN Committee on Elimination of Racial Discrimination expressed concern that Western Australia did not adequately consult Aboriginal people before adopting its *Aboriginal Cultural Heritage Act 2021*. The committee noted 'the discretionary power attributed to the Minister of Aboriginal Affairs and the absence of effective remedies and legal redress for Aboriginal peoples to challenge his decisions will maintain the structural racism of the cultural heritage legal and policy scheme, which has already led to the destruction of Aboriginal cultural heritage in Western Australia' (Bossuyt 2021).
- In July 2022, the Northern Territory Government changed the alcohol restrictions that applied in over 400 'alcohol protected areas' (mainly remote Aboriginal communities) without adequate consultation with Aboriginal communities and against the advice of Aboriginal community-controlled organisations (ACCOs) in the Northern Territory (NTCOSS 2022).

- A Parliamentary Inquiry into Aboriginal cultural fishing in New South Wales found that NSW fisheries officers have a culture of targeting Aboriginal fishers for enforcement action due to a poor understanding of what constitutes cultural fishing. Aboriginal fishers have felt scared and harassed after being racially profiled, targeted and subject to over-surveillance by fisheries officers (New South Wales Legislative Council 2022, p. 19).
- In September 2022, the UN Human Rights Committee found that Australia's failure to adequately protect Torres Strait Islander people against adverse impacts of climate change violated their rights to enjoy their culture and be free from arbitrary interferences with their private life, family and home (chapter 4).

The shortcomings of current accountability mechanisms mean that these types of decisions could continue to go unchecked – changes are needed to strengthen governments' accountability to Aboriginal and Torres Strait Islander people and to drive more meaningful, effective and widespread action across government organisations. The need for change is pressing, as the Law Council of Australia pointed out.

> The requirements of the National Agreement are urgent. Aboriginal and Torres Strait Islander peoples have been subject to dispossession, discrimination and significant breaches of human rights across multiple areas, historically and in contemporary Australia, not least in the treatment of persons in contact with the criminal justice and child protection systems. These practices and impacts continue in the present day, including through the policies of governments and public institutions, extending cycles of intergenerational trauma, disrespect and injustice, and contributing to broader socioeconomic disadvantage and barriers to wellbeing and improved life expectancy. (sub. 83, pp. 6–7)

7.2 Changes are needed so that governments fully grasp and are held accountable for the agreed reforms

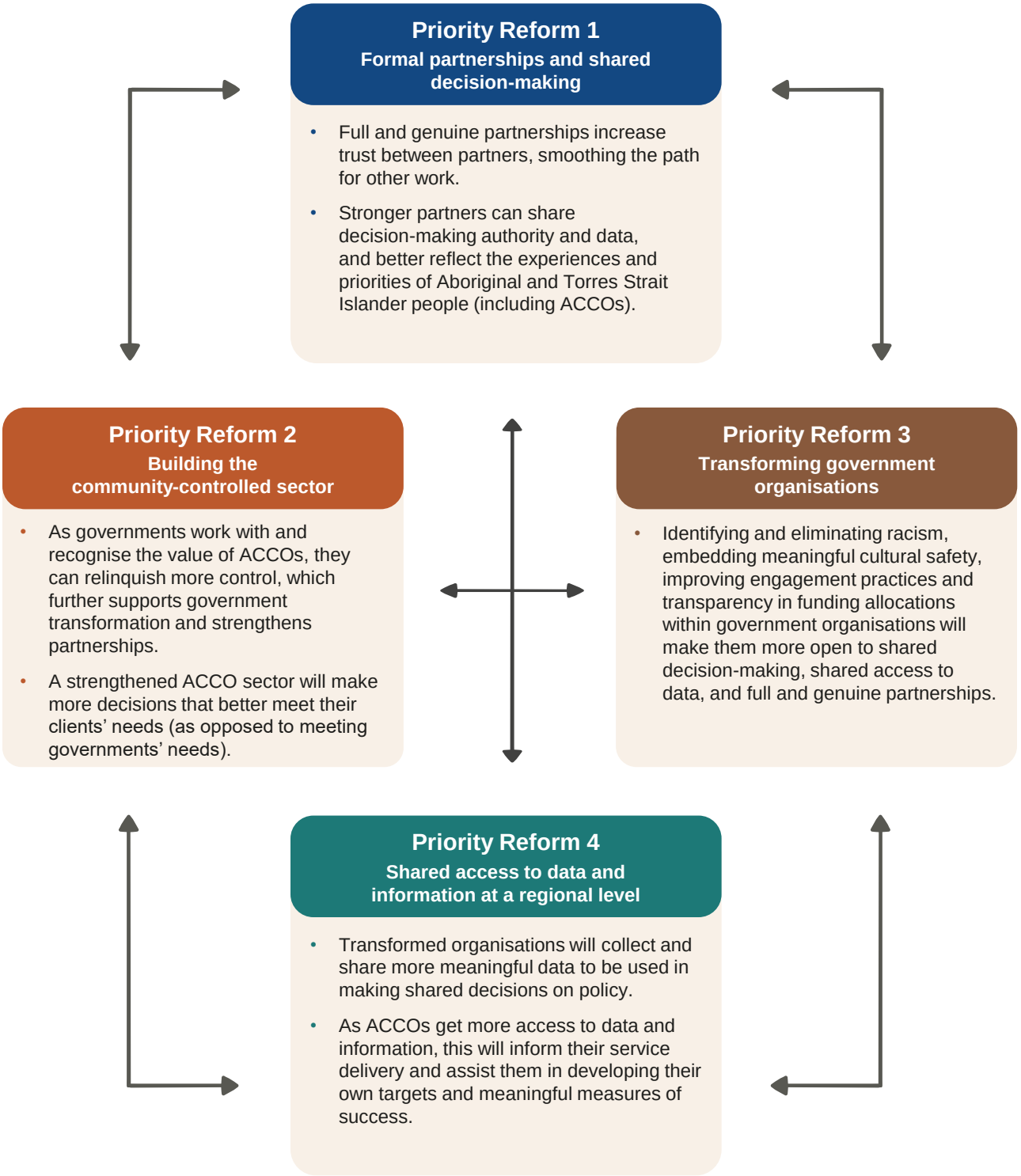
The Priority Reforms need to progress together

Understanding why governments continue to act in ways that contradict the Agreement is necessary in order to put an end to the behaviour. An underlying cause appears to be that there is not widespread understanding of, and sufficient attention given to, two key points.

First, there is not a shared vision of what change should look like and the actions required to progress to that point. As noted in chapter 6, the Agreement does not explicitly articulate a conceptual logic linking the Priority Reforms that would enable a shared understanding of the intended changes. In particular, the Agreement does not describe how the Priority Reforms interact or how they will contribute to improved socio-economic outcomes. And in the main, governments have not demonstrated that they have grasped the depth and magnitude of change and self-reflection that the Priority Reforms require of them. The actions that have been implemented tend towards those that are easiest – the 'low-hanging fruit' – rather than those that will put into effect the paradigm shift that the Agreement fundamentally requires (chapter 4).

Second, there is little appreciation of the important connections between each of the elements of the Agreement. Each Priority Reform supports, and is supported by, the other Priority Reforms, with the ultimate aim of securing and accelerating improvements in the lives of Aboriginal and Torres Strait Islander people (figure 7.1). Effectively, they are enablers for each other. But this interconnection is not explicitly recognised in the Agreement.

Figure 7.1 – The Priority Reforms are closely interconnected



Interconnection adds difficulty and complexity to the reform task, and means that slow progress towards one of the Priority Reforms can stifle progress towards the other Priority Reforms. In particular, Priority Reform 3 is more than a complement for the other Priority Reforms, it is a critical enabler.

Interdependencies can also impede progress towards the outcomes envisaged in the Agreement. For example, in drawing attention to decline in outcomes for school readiness, adult incarceration, suicide, and

children in out-of-home care since the signing of the Agreement, the Close the Gap campaign pointed out that 'a decline across any target area will only make the work to improving all outcomes more difficult' (sub. 17, p. 1). The interconnection between the Priority Reforms can also make it much harder to hold any person or organisation accountable for progress on any particular reform element.

Existing accountability mechanisms lack the ability to drive change

The Agreement includes a suite of accountability mechanisms. These are similar to the accountability mechanisms that are used in other national agreements, and include public reporting and regular reviews. There is also provision for the creation of an independent mechanism to support, monitor, and report on the transformation of mainstream agencies and institutions (box 7.1). Each of these mechanisms plays a role and is important for transparency and providing information to Aboriginal and Torres Strait Islander people and communities, and to the public more broadly.

Box 7.1 – Closing the Gap accountability mechanisms

Section 9 of the Agreement is titled 'Being publicly accountable for our actions'. It contains six accountability mechanisms.

1. A publicly accessible **dashboard**, prepared by the Commission, to provide up-to-date information on the framework's **targets** and **indicators** by drawing from a single information repository that compiles data from existing data sources. The dashboard is complemented by an **annual data compilation report** that provides a point-in-time snapshot of the dashboard.
2. **Annual reports** published by each party to the Agreement that provide information on their individual progress against the performance frameworks and their implementation plans.
3. An **independent review** of progress undertaken by the Commission every three years.
4. An **Aboriginal and Torres Strait Islander led review**, to be carried out within twelve months of each of the Commission's reviews.
5. The **Joint Council** will provide a formal **response** to both reviews within six months of receiving them.
6. The **Joint Council** will provide the parties to the Agreement with an **annual update** at a meeting for discussion and advice on implementation issues.

In addition, clause 67 of the Agreement provides that governments agree to each identify, develop or strengthen an **independent mechanism**, or mechanisms, that will support, monitor, and report on the transformation of mainstream agencies and institutions. The mechanism, or mechanisms, will:

- support mainstream agencies and institutions to embed transformation elements in government agencies and institutions, and monitoring their progress
- be recognisable for Aboriginal and Torres Strait Islander people and be culturally safe
- engage with Aboriginal and Torres Strait Islander people to listen and to respond to concerns about mainstream institutions and agencies
- report publicly on the transformation of mainstream agencies and institutions, including progress, barriers and solutions.

This situates the independent mechanism as a component of Priority Reform 3, with no clear role in relation to the other Priority Reforms, the socio-economic outcomes or the Agreement more broadly.

Despite the range of accountability mechanisms in the Agreement, numerous review participants told us that they are not sufficient to influence the type of change envisaged in the Agreement. For example, the National Close the Gap Campaign said that:

> The Closing the Gap Strategy currently lacks the accountability infrastructure to create the holistic policy lifecycle that First Nations peoples deserve. The Close the Gap Campaign argues for accountability measures that are culturally appropriate, thorough, empowering, responsive, flexible, and unapologetic. (sub. 71, p. 18)

And the Queensland Human Rights Commission said:

> Given the inadequacy of existing accountability measures under the Agreement and the consequent lack of positive progress in many of the socio-economic target areas, improvement in accountability is both imperative and urgent. (QHRC, sub. 45, p. 5)

Michael Dillon was of the view that:

> … the current framework and architecture is an overwhelmingly complex and convoluted bureaucratic maze, deliberately designed (in my view – drawing on my own experience as a bureaucrat at both Commonwealth and state levels) to ensure governments cannot and thus will not be held accountable for failure while giving the appearance of action. (sub. 37, p. 2)

The Commission agrees that there are important deficiencies in current accountability mechanisms. They do not provide sufficient opportunity for Aboriginal and Torres Strait Islander people to be heard and to raise concerns, they do not include all relevant government organisations, they do not provide clarity about how governments' actions are (or should be) linked to outcomes and there has been limited progress on putting in place an independent mechanism in most jurisdictions (chapters 4 and 6). In addition, current accountability mechanisms:

- are not sufficiently independent
- do not contain timely and appropriate consequences for failure
- are not informed by the learnings of evaluation.

There is no independent oversight

The Agreement provides that the Joint Council is responsible for ongoing administration and oversight of this Agreement (clause 139). But as the parties to the Agreement comprise the membership of Joint Council, this 'oversight' has little effect – the parties are simply reporting to themselves.

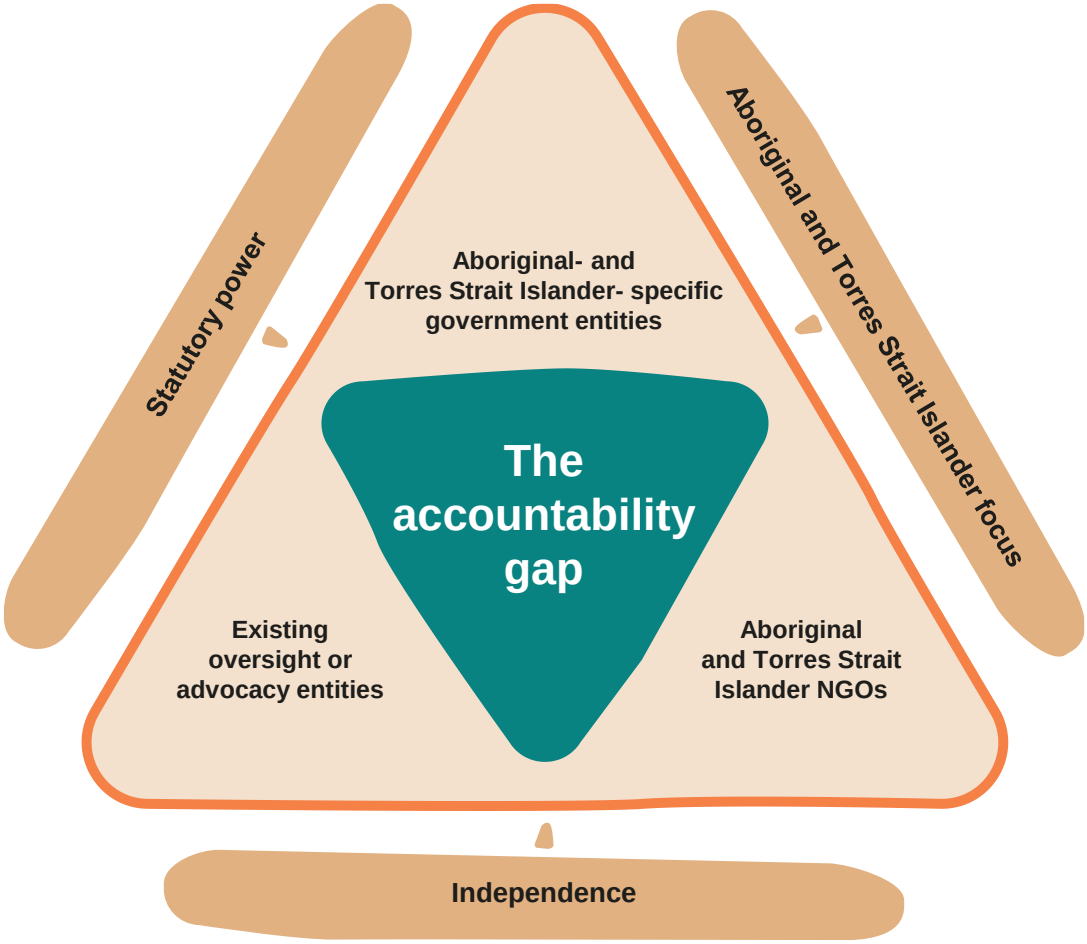
This is the antithesis of effective practice, in which oversight bodies that have a greater degree of independence operate with more objectivity and transparency, as the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) pointed out.

> A strong and transparent accountability framework is fundamental to keep discretionary decision makers focussed on securing the best outcomes for Aboriginal people. AIATSIS submits that this will be better facilitated through a dedicated entity with statutory powers and independence from the government of the day. (Strelein and Hassing 2018, p. 1)

Independent oversight that centres Aboriginal and Torres Strait Islander peoples' perspectives, priorities and knowledges is essential to address the gap at the intersection of existing accountability mechanisms. The gap arises because some existing accountability mechanisms are independent of government, some have statutory power, some focus specifically on matters relating to Aboriginal and Torres Strait Islander people and communities (the sides of the triangle in figure 7.2). Some have dual features (such as Aboriginal and Torres Strait Islander NGOs, which focus on Aboriginal and Torres Strait Islander issues and are, as the

names suggests, independent of government) (the corners of the triangle in figure 7.2). But no existing accountability mechanisms have all three – independence and statutory power and an Aboriginal and Torres Strait Islander focus (the gap in the centre of figure 7.2).

Figure 7.2 – An accountability gap



Source: adapted from WADPC (2018, p. 6).

This gap is an important limitation, as the Lowitja Institute pointed out, using Victoria as an example.

> … specialist accountability agencies like the Victorian Ombudsman, the Office of the Auditor General and the Independent Broad-based Anti-Corruption Commission, are tasked with ensuring the overarching integrity of government systems and processes. Many of these accountability entities gain authority from legislation whilst being operationally independent. They have powers, including those to obtain and share information and data, begin inquiries, investigate complaints, and make statements on how to improve government performance. However, a key limitation is that none of these agencies have an exclusive focus on government performance as it relates to Aboriginal interests and priorities. (Lowitja Institute, sub. 85, p. 10)

And in New South Wales, community consultations run by NSW CAPO found that:

> Accountability is needed in everyday interactions. Complaints by Aboriginal people are being ignored, or not taken seriously. A more effective and independent system for raising issues is needed. (2022, p. 27)

Several jurisdictions have recognised a gap in oversight and accountability, and are working to develop accountability frameworks. For example, the Australian Government said:

> By the end of 2023, the Commonwealth will develop a Monitoring and Accountability Framework … in partnership with Aboriginal and Torres Strait Islander expertise and the Coalition of Peaks. This will measure and drive cultural, systemic and structural transformation across Commonwealth agencies. (2023a, p. 24)

The Western Australian Government said that it 'is in the preliminary stages of scoping a whole-of-government Aboriginal affairs accountability framework, which will draw on existing advisory and independent review mechanisms in the first phase' (2022a, p. 24).

But these accountability frameworks are not yet public and will not apply in most jurisdictions. And the extent to which they will centre Aboriginal and Torres Strait Islander people, perspectives, priorities and knowledges to address the accountability gap, or to create a locus of accountability with real consequences that impact behaviour, is not yet clear.

There are no consequences for failure

As it currently stands, governments do not face timely or appropriate consequences for failure to meet the commitments they made in the Agreement. Decision-makers have not faced negative repercussions (timely or otherwise) for poor decisions, or for the continuation of similar practices that exacerbate, rather than remedy, disadvantage and discrimination.

Where governments have behaved in ways that were contrary to the Agreement – for example, by imposing a program or service in a community without meaningfully consulting that community, or by giving Aboriginal and Torres Strait Islander people and organisations too little time to meaningfully respond to a request for engagement – those people, organisations and communities have no way to hold governments to account. The Agreement does not provide any recourse, and does not stop the program being implemented or the decision being made without meaningful engagement or input from Aboriginal and Torres Strait Islander people.

The Commission has previously noted 'government agencies must not only be 'called' to account; they must also be 'held' to account. Accountability is incomplete without effective consequences or sanctions' (PC 2012, p. 239). The weakness (or effective absence) of accountability mechanisms means that the implementation of the Agreement depends heavily (or solely) on individuals being motivated to 'do the right thing'. While many individuals are motivated, this does not (and will not) provide the necessary impetus for comprehensive and sustained systems change.

Evaluations of government progress are not undertaken or do not lead to governments learning from them

Evaluation is an essential component of holding governments accountable for outcomes, and identifying opportunities to improve outcomes, to support learning and adaptation or to use funds more effectively. Publishing evaluations can further enhance accountability by increasing visibility and pressure for agencies to follow up with a management response to evaluation findings. Publishing evaluations also has many other benefits, including supporting learning, improvement and the diffusion of knowledge. But there is a lack of published evaluation of policies and programs affecting Aboriginal and Torres Strait Islander people (PC 2020c, p. 99).

The problem is not a total absence of evaluation, but rather an absence of evaluation focused on governments' actions to implement the Agreement and that puts outcomes for Aboriginal and Torres Strait Islander people at the centre.

> … the problem is not simply one of 'not enough evaluation'. It appears that there is a significant amount of time, energy and money … spent on monitoring and evaluation in Indigenous affairs … A big part of the problem is that current evaluation efforts focus on the wrong things. Most effort appears to be on either ensuring accountability for expenditures (compliance) or demonstrating value for money, rather than on finding ways to improve outcomes. (QPC 2017b, p. 227)

There can also be reluctance to learn from evaluation. For example, an Australia and New Zealand School of Government (ANZSOG) paper prepared for the Independent Review of the Australian Public Service (APS) concluded that:

> In examining their past performance, departments and agencies are often more concerned with reputational risk, seeking to pre-empt or divert criticism rather than learning from experience and feedback. In this context, evaluation is often also seen as yesterday's news or a second-order and lower-priority issue. Evaluation processes and findings then become just one more thing that needs to be defensively managed, or an opportunity for quick grabs to justify current and future decisions and activities. (Bray et al. 2019, p. 6)

In 2020, the Commission published an Indigenous Evaluation Strategy that is designed to address these concerns.

> The Strategy puts Aboriginal and Torres Strait Islander people at its centre. To achieve better outcomes, what Aboriginal and Torres Strait Islander people value, their knowledges, and lived experiences needs to be reflected in what is evaluated, how evaluation is undertaken and the outcomes of policies and programs … If the outcomes of policies are not what is valued by Aboriginal and Torres Strait Islander people, then those policies will likely have limited value and little prospect of success. (PC 2020c, pp. 2, 4)

However, the Australian Government has not responded to the Indigenous Evaluation Strategy, and there is still no systemic, whole-of-government approach to Indigenous evaluation. The recent establishment of the Australian Centre for Evaluation, which lists the Indigenous Evaluation Strategy among its recommended resources (Treasury 2023), provides an opportunity to strengthen the focus on, and stewardship of, Indigenous evaluation.

There have also been a number of evaluations published since 2020 that put Aboriginal and Torres Strait Islander people at the centre. These span a range of settings, from health services in Western Australia (Wright et al. 2021) to local decision-making in New South Wales (Howard-Wagner and Markham 2022). But more evaluations that put Aboriginal and Torres Strait Islander people at the centre are still needed in every policy domain. Without such evaluations, it will be impossible to hold governments to account for their actions to implement the Agreement.

Stronger accountability mechanisms are needed

The deficiencies in current accountability mechanisms raise questions as to the status and influence of the Agreement and its ability to drive change. Several participants questioned whether the Agreement is a suitable mechanism to disrupt the status quo.

> Unfortunately, the National Agreement is not legally-binding on any signatory party, hence making compliance voluntary rather than mandatory; and having no sanctions on parties for non-compliance. (Jon Altman, sub. 51, p. 1)

> Setting up another high level Closing the Gap commitment agreed by COAG (now National Cabinet) — albeit with empowerment, partnership, and shared decision making nominated as a

> Priority Reform area — provides no change in incentives and no 'teeth' of the kind likely to induce government from the inertia of the status quo. (Empowered Communities, sub. 89, p. 4)

These issues are not unique to the National Agreement on Closing the Gap – similar concerns have been raised about other national agreements. For example, in its 2020 review of the National Agreement for Skills and Workforce Development (NASWD), the Commission found that 'the NASWD's performance framework is not sufficient to hold governments to account on their reform commitments, nor on the performance of their VET system' (PC 2020d, p. 7) and that failure to mee the performance targets in the NASWD is 'a disheartening legacy common to many of the targets set under other national agreements' (PC 2020d, p. 6).

But the shortfalls of previous national agreements stem in large part from their singular focus on achieving targets for particular outcomes. The Agreement is fundamentally different, because its Priority Reforms represent a new way of working for governments and set the Agreement apart from its predecessor – the National Indigenous Reform Agreement (NIRA). A key lesson from the NIRA was that when presented in isolation, socio-economic targets can problematise Aboriginal and Torres Strait Islander people, rather than the structures and systems that are driving these outcomes. It is these structures and systems which need to change to achieve improvements in life outcomes. This is the focus of the Priority Reforms.

And there are many things that can be done to improve implementation of, and hold people and organisations accountable for delivering, the Priority Reforms. This will only have benefits, as the Indigenous Education Consultative Meeting pointed out.

> Accountability should not be seen as a burden or pure compliance, rather as an opportunity to ensure all interested parties can feel assured that everything is being done to ensure our future generations are secure, thrive and our culture is celebrated. (sub. 63, p. 4)

The following sections each outline potential reform directions to achieve this better future. They are to:

- establish an independent mechanism with an expanded role
- change whole-of government systems and processes to drive implementation of the Priority Reforms
- adequately resource the implementation of the Agreement
- improving transparency about actions taken to implement the Agreement.

While none of the actions recommended as part of these reform directions can, on its own, shift the trajectory of progress, together they can influence the incentives of those working at all levels of government, and drive the necessary changes in governments' efforts to implement the Agreement.

7.3 Establishing an independent mechanism with an expanded role

Better recognising the interdependency of the Priority Reforms

A key mechanism for accountability within the Agreement is the independent mechanism (box 7.1). As noted above, clause 67 of the Agreement provides that governments 'agree to each identify, develop or strengthen an independent mechanism, or mechanisms, that will support, monitor, and report on the transformation of mainstream agencies and institutions'. The Commission interprets this as meaning that the Australian, state and territory governments will each establish their own independent mechanism.

However, as discussed in chapter 4, there has been limited progress on putting in place an independent mechanism in most jurisdictions. While a lack of progress in implementing any aspect of the Agreement is far from ideal, the absence of significant action in establishing the independent mechanism in any jurisdiction

does provide an opportunity to expand its role beyond Priority Reform 3, so that it can drive accountability for progress towards all of the Priority Reforms.

With very few exceptions, participants emphasised the importance of the independent mechanism being able to look beyond Priority Reform 3 to hold governments to account for all of the elements of the Agreement as a whole (box 7.2).

Box 7.2 – The independent mechanism beyond Priority Reform 3

APO NT

> The Independent Mechanism should have a broader role, driving accountability across all of the Priority Reforms. (sub. 69, p. 12)

ANTAR

> ANTAR believes that an independent mechanism is crucial, and that it should utilise a human-rights framework as an accountability measure. We are supportive of this mechanism having a broader role beyond Priority Reform 3 in order to drive accountability for progress towards all of the Priority Reforms, so long as this independent body is well-resourced in order to be able to carry out this work without compromise. (sub. 42, p. 14)

Coalition of Peaks

> … we think it would be important for the independent mechanism to have a broader function than monitoring Priority Reform three and could be extended to monitor the whole implementation of the National Agreement by governments and other reforms with a significant impact on Aboriginal and Torres Strait Islander people. (sub. 58, pp. 3–4)

Lowitja Institute

> In light of the limitations to the scope and functions of existing Commonwealth Government accountability mechanisms, the Lowitja Institute agrees that the role of the … independent mechanism(s) should be expanded beyond Priority Reform 3. (sub. 85, p. 11)

NSW CAPO

> 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. (sub. 77, p. 11)

Queensland Human Rights Commission

> The QHRC submits that the role of the independent mechanism should not be limited to Priority Reform 3. As is clear from the draft report, Priority Reform 3 is not the only area in which progress and accountability have been inadequate. For this reason, the QHRC supports the broadening of the independent mechanism's role to supporting, monitoring, reporting, evaluating, and driving accountability in relation to all four Priority Reforms and all socio-economic targets included in the Agreement. (sub. 45, p. 7)

The Commission recognises that Priority Reform 3 is a critical enabler for the achievement of the other Priority Reforms, and that without additional effort to implement it, there is a risk that the objectives of the Agreement will not be met. However, as noted above, there are important connections between the Priority Reforms – each Priority Reform supports, and is supported by, the other Priority Reforms, with the ultimate aim of securing and accelerating improvements in the lives of Aboriginal and Torres Strait Islander people. If it were to consider Priority Reform 3 in isolation from the other Priority Reforms, the independent mechanism may struggle to take due account of the connections and dependencies between them, or the ultimate contribution of the Priority Reforms to the socio-economic outcomes envisaged in the Agreement. An independent mechanism with a broader role – one that goes beyond Priority Reform 3 – would be better placed to drive accountability for progress towards all of the outcomes of the Agreement, and to hold governments to account for commitments made and the services they fund, and provide system-level advice for improved policies, programs and services affecting Aboriginal and Torres Strait Islander people. This would help to ensure that governments understand and respond to the views, aspirations and interests of Aboriginal and Torres Strait Islander people and enable their self-determination.

If the independent mechanism were clearly positioned at the centre of the accountability gap described in section 7.2, it could play a key role in strengthening accountability.

> We believe the system would be significantly improved by the presence of an influential and independent entity with the resources to pay close attention to what government is doing and the power to shine a spotlight on policies or practices that fail to contribute to better outcomes for Aboriginal people. (WA DPC 2018, p. 9)

The independent mechanism is likely to take different forms and names in different jurisdictions, to better fit with existing institutions in each jurisdiction. But regardless of its exact form or name, the independent mechanism should be able to shine a spotlight on good and bad practices under the Agreement and advocate for improved policies, programs and services affecting Aboriginal and Torres Strait Islander people.

Potential features of the independent mechanism

Features suggested in the draft report

In the draft report, the Commission discussed features that would support the effectiveness of each jurisdiction's independent mechanism. We noted that, as suggested by its name, **independence** is an essential feature of the independent mechanism. We also put forward a range of other features that would support its effectiveness, including that it:

- be **governed and led by Aboriginal and Torres Strait Islander people**, chosen with input from Aboriginal and Torres Strait Islander people and communities
- have a **legislative basis** to guarantee its ongoing existence and the power behind its functions, and to enable it to hold governments to account
- have **sufficient guaranteed funding** so that it can build and maintain organisational capabilities, and determine its priorities without undue influence from governments
- have a **broad remit** covering all aspects of governments' relationships with Aboriginal and Torres Strait Islander people (subject to the role and remit of all of the Aboriginal and Torres Strait Islander bodies described in section 7.3, and of any new bodies that are created)
- have **full control of its work program**, so it can initiate its own inquiries, conduct its own research, benchmark performance, and review all relevant documents (such as Closing the Gap implementation plans and annual reports)
- be able to compel government agencies to provide information

- can **intervene in real time** to support Aboriginal and Torres Strait Islander people who have complaints about government agencies
- **operate with transparency,** including freedom to publish reports and findings
- **not engage in program delivery** and **not administer funding or programs**, so that it is never in a position of needing to pass judgement on its own actions or inaction.

Participants emphasised the importance of each of these features. For example, the Aboriginal Family Legal Service WA said that:

> Independent mechanisms to support, monitor and report on the transformation of mainstream agencies and institutions must be Aboriginal-led and must report directly to their respective State Parliaments. This should include … an Office of Accountability in Aboriginal Affairs in every state and territory. An Office of Accountability, for example, should be a separate statutory body designed to strengthen government accountability to Aboriginal people in Western Australia and advocate for Aboriginal people's interests in government policy and performance. The Office should provide an Aboriginal-led, independent and transparent oversight and review mechanism with the capacity and resources to track the performance of government at every point where government intersects with the lives of Aboriginal people, including but not limited to government action to enable Aboriginal self-determination. The non-Indigenous population has access to a range of advocacy bodies for adults as well as children and it seems reasonable to provide the equivalent for the Aboriginal population. (sub. 7, p. 8)

ANTAR said that it 'is in full support of the potential features listed on page 73 of the Commission's draft report' (sub. 42, p. 15). There was also broad support for the independent mechanism assessing and/or overseeing Closing the Gap implementation plans and annual reports (including from the Coalition of Peaks, sub. 58, pp. 3–4; Victorian Aboriginal Legal Service, sub. 76, p. 22) and for it to make recommendations regarding implementation and performance (ANTAR, sub. 42, p. 15).

The features suggested by the Commission are also very similar to those included in the Lowitja Institute's proposal for a Victorian Aboriginal Authority (box 7.3).

Box 7.3 – Proposal for a Victorian Aboriginal Authority

Through 2022 and 2023, Lowitja Institute worked in partnership with the Victorian Aboriginal Community Controlled Health Organisation (VACCHO) to conduct a feasibility study for a new, Aboriginal-led, independent statutory accountability entity, aimed at increasing oversight of Victorian government programs that affect Aboriginal peoples. The *Victorian Aboriginal Authority: An Initial Feasibility Study for Discussion* (Lowitja Institute 2023) … proposed the establishment of a Victorian Aboriginal Authority – a new, Aboriginal-led, independent statutory accountability entity, to strengthen oversight of Victorian Government programs for Aboriginal people. Important functions of this body would include monitoring and reporting publicly on the implementation of government commitments and policies in relation to Aboriginal peoples and making recommendations for improvements. The Authority would be established in legislation, appoint Commissioner(s), be operationally independent, conduct inquiries, engage with the Aboriginal community-controlled sector and report annually to Parliament.

Box 7.3 – Proposal for a Victorian Aboriginal Authority

The model proposed in the Victorian Aboriginal Authority Feasibility Study could be considered as a response for the Victorian Government in its commitment under the National Agreement and other arrangements. Additionally, we believe that this model could be successfully applied in other states and territories, and at the Commonwealth level, in the development of an independent mechanism (cl. 67) to support, monitor and report on the transformation of mainstream agencies and institutions.

Source: Lowitja Institute, sub. 85, pp. 12–13.

Additional features proposed by participants

Public hearings

Participants suggested a range of other features that they considered to be essential for the independent mechanism. One frequently suggested feature was the ability to hold public hearings. For example, the Queensland Human Rights Commission said that:

> The power to conduct public hearings and compel witnesses, such as responsible ministers and government officials, to attend and give evidence is essential if the independent mechanism is to effectively drive accountability. Proceedings should be recorded, and the transcripts tabled in parliament, to ensure that evidence given can be relied on to formulate solutions to identified problems and promote transparency – another essential feature of an effective accountability measure. (sub. 45, p. 6)

APO NT proposed that:

> … the Independent Mechanism should hold an annual public panel in each state and territory to ask questions and hear directly from government leaders. In the NT, the Independent Mechanism should meet with a panel including the Chief Minister and the members of the NT Executive Council on Aboriginal Affairs to ask questions about progress against the National Agreement. This public panel should be designed to create a level of accountability against all four of the Priority Reforms, and responsibility for embedding these reforms upon the highest level of government in the NT. (sub. 69, p. 13)

Several participants from Victoria (including the Victorian Aboriginal Child Care Agency, sub. 75, p. 4 and the Victorian Aboriginal Legal Service, sub. 76, p. 20) suggested that the independent mechanism should have functions similar to those of Victoria's Public Accounts and Estimates Committee (PAEC). PAEC's functions include conducting inquiries into any aspect of public administration or public sector finances, scrutinising budget papers and reviewing the outcomes achieved from budget expenditure and revenue (Parliament of Victoria 2023).

These types of hearings would align with those already undertaken by the Aboriginal and Torres Strait Islander Elected Body in the ACT. Its hearings help to 'bring the important priorities of the local Aboriginal and Torres Strait Islander community to the attention of the ACT Government' (ATSIEB 2023).

Accountability through relationships at the national, jurisdictional and local levels

One of the reasons that governments gave for their delay in establishing an independent mechanism was the need to clarify the potential role of a national independent mechanism, in relation to that of the Australian

Government's independent mechanism and jurisdictional independent mechanisms (chapter 4). This appears to be, at least in part, a stalling tactic, as the Agreement is clear that each government party agrees to establish an independent mechanism. The potential role of, and interactions with, the independent mechanisms in other jurisdictions should not be an excuse for further delay in establishing an independent mechanism in any one jurisdiction.

But once established, it will be important for the independent mechanism in each jurisdiction to develop relationships with, and learn from, the independent mechanisms in other jurisdictions. Participants also emphasised the importance of the independent mechanism forming relationships and connecting with communities throughout the country. For example, Children's Ground said that:

> … our service systems and strategies for monitoring and evaluating policies and programs need to establish empowerment of First Nations people in monitoring and evaluation, service delivery and in local, jurisdictional and national systems and policy development and decision-making. These should be informed and led by First Nations voices from all corners of Australia – from those who live in cities and large towns through to those who live in remote communities who have a different lived experience in relation to social, economic, education, health and wellbeing service access and outcomes. This needs to be a significant consideration in the establishment of any independent body tasked with monitoring and evaluation transparency and accountability. (sub. 72, p. 16)

And Dharriwaa Elders Group considered that:

> Any independent mechanism will need to be accountable to government stakeholders and most importantly community stakeholders. Achieving this will be the challenge at a systems level due to the diversity of community-based leadership and representation … it will not be trusted or perceived as effective if it does not have the capability to build relationships within the sectors which ACCOs and representative entities operate and are networked. (sub. 53, p. 8)

The Coalition of Peaks said that it would 'expect that the independent mechanism would work together across jurisdictions to provide a comprehensive national picture' (sub. 58, p. 4). Ensuring that the independent mechanisms in each jurisdiction work together is particularly important, and would help them to learn from each other as they address common issues.

Other features

Participants suggested a range of other features that they considered to be essential for the independent mechanism. For example, the National Close the Gap Campaign said that:

> … the independent mechanism should engage closely with and be supported by other established bodies such as the Office of Indigenous Policy Evaluation [and] the Indigenous Evaluation Council. They can operate in parallel and in partnership with the independent mechanism, which should have a specific mandate to hold governments to account for listening to these advisory bodies and evaluate progress against target reforms. (sub. 71, p. 17)

And the Queensland Human Rights Commission emphasised the importance of the independent mechanism having wide-ranging expertise.

> … the independent mechanism must have the expertise, or access to the expertise, required to identify reasons for inadequate or negative progress and to develop solutions in partnership with the Coalition of Peaks and other relevant organisations. Such expertise would include expertise in all fields relevant to the socioeconomic targets listed in the Agreement, but not be limited to these fields. To enable thorough understanding of what the barriers to progress are, how they arise, and

> how to overcome them, knowledge and expertise in statistics and data analysis is imperative. (QHRC, sub. 45, p. 6)

In engagements, the Commission heard some support for the independent mechanism having a whistleblower function. This function would further strengthen, and potentially expand, its ability to intervene in real time to support Aboriginal and Torres Strait Islander people who have complaints about government agencies. To encourage whistleblowers to come forward with their concerns and protect them when they do, the legislation that establishes the independent mechanism would need to give certain people (perhaps those who work for government organisations and for ACCOs) legal rights and protections as whistleblowers, and describe how, and to whom, whistleblowing reports should be made.

The independent mechanism could also play a vital role in ensuring the quality of government departments' transformation strategies. As noted in chapter 4, that strategy should be underpinned by an Aboriginal- and Torres Strait Islander-led assessment of the departments' history with Aboriginal and Torres Strait Islander people, institutional racism in the department, unconscious bias in the department and the department's current approach to engagement with Aboriginal and Torres Strait Islander people. The independent mechanism could contribute to, or provide quality assurance of, each of these assessments. This kind of oversight of transformation strategies has worked well in New Zealand, where Te Arawhiti reviewed and, in some cases required remedial work on, government agencies' plans for building their internal capability to improve Māori–Crown relations (Te Arawhiti 2022b, p. 16).

Interaction between features

In designing the details of the independent mechanism, it will be important to consider the interaction between features. For example, a broad remit will only be sustainable if it is accompanied by sufficient funding, and the effectiveness of public hearings will depend on having the capacity and expertise to be well prepared for them. In addition, the potential role of the independent mechanism in supporting the development of the Aboriginal community-controlled sector requires careful consideration, as a mandate to support a sector or organisation does not sit easily with a mandate to hold that sector or organisation to account.

Some of the potential functions of the independent mechanism overlap with those undertaken by Te Arawhiti (the Office for Māori–Crown Relations) (box 7.4), which provides an opportunity to learn from the New Zealand experience.

Box 7.4 – Te Arawhiti

Te Arawhiti (the Office for Māori–Crown Relations) is a New Zealand Government agency that, since its establishment in January 2019, has worked to foster strong, ongoing and effective relationships with Māori across the New Zealand Government (Te Arawhiti 2023e). Its functions span four key areas.

- Te Kāhui Whakatau negotiates the settlement of historical Treaty of Waitangi claims. This includes advising and helping claimant groups prepare for negotiations. Te Kāhui Whakatau reports to the Minister for Treaty of Waitangi Negotiations (Te Arawhiti 2023d).
- Te Kāhui Takutai Moana supports the recognition of customary interests in common marine and coastal areas (Te Arawhiti 2023b).

Box 7.4 – Te Arawhiti

- Te Kāhui Whakamana (settlement commitments) supports the Crown to deliver on its Treaty settlement commitments (Te Arawhiti 2023c).
- Te Kāhui Hīkina (Māori–Crown Relations) supports the Minister for Māori–Crown Relations to deliver on the responsibilities of the Māori–Crown Relations portfolio (Te Arawhiti 2023a).

It is these latter two functions that have the most parallels to the potential function of the independent mechanism(s) in Australia. The responsibilities of the Te Kāhui Hīkina portfolio are to:

- ensure the Crown meets its Treaty settlement commitments
- develop engagement, co-design and partnering principles that ensure agencies generate optimal solutions across social, environmental, cultural and economic development
- ensure the engagement of public sector agencies with Māori is meaningful
- provide strategic leadership and advice on contemporary Treaty issues
- broker solutions to challenging relationship issues with Māori
- coordinate significant Māori–Crown events on behalf of the Crown
- provide strategic advice to the New Zealand Prime Minister and the Cabinet on the risks and opportunities in Māori–Crown partnerships (Te Arawhiti 2023a).

As part of ensuring the engagement of public sector agencies with Māori is meaningful, Te Kāhui Hīkina has developed an engagement framework and engagement guidelines, and works directly with agencies that are planning engagement with Māori (Te Arawhiti 2022a).

Te Arawhiti also leads the system for public sector Māori–Crown capability by focusing on increased understanding of Māori–Crown engagement and Whāinga Amorangi (transforming leadership). In 2021-22, this included reviewing proposed plans from the 36 core government agencies that were required to develop a plan to 'build their internal capability to improve Māori Crown relations'. In some cases, Te Arawhiti required those agencies to do remedial work on their plans before it endorsed them (Te Arawhiti 2022b, p. 16).

Te Kāhui Whakamana supports the Crown to deliver on its Treaty settlement commitments. It helps the Crown gain an overview of its Treaty settlement commitments, assists coordination across agencies responsible for implementing commitments and acts as an initial contact point for enquiries on post-settlement matters. It also works with iwi (Māori nations) and government agencies to resolve issues after settlement. In addition, Te Kāhui Whakamana supports the Crown to act fairly as a Treaty partner by looking for opportunities for partnership between the Crown and settled groups, and ensuring agencies and local government are aware of their Treaty settlement commitments (Te Arawhiti 2023c).

The process for determining the optimal mix of responsibilities, powers, funding and features for the independent mechanism should be led by Aboriginal and Torres Strait Islander people in each jurisdiction. Differences between jurisdictions – notably the potential for an elected representative body to be involved in decisions about how to best constitute the independent mechanism in some jurisdictions – may affect the timeframes within which this process can be undertaken. For example, the South Australian Government said that it:

> … is committed to exploring the essential features of, and suitable models for, the independent mechanism, in partnership with SAACCON and the SA First Nations Voice. The outcomes of

> these conversations cannot be pre-empted and will therefore not be known until 2024 after the SA First Nations Voice has been elected. (sub. 54, p. 22)

Similarly, the Victorian Government said that 'both treaty and the Yoorrook Justice Commission will likely lead to significant systemic reform, including in relation to systems oversight and accountability' and that it will work with these First Nations partners to consider the best approaches for establishing the independent mechanism (Victorian Government 2021, p. 23).

To the extent that this indicates an intent to allow sufficient time to work in partnership with, and to be led by, the appropriate Aboriginal and Torres Strait Islander representatives, this is to be commended, as those practices are all too rare (chapter 2). But it is also important that an independent mechanism is established in each jurisdiction without further delay.

Action 4.1
Establish the independent mechanism in each jurisdiction without further delay

The Agreement provides for an independent mechanism that will drive accountability by supporting, monitoring and reporting on governments' transformations. But there has been limited progress towards establishing an independent mechanism and most jurisdictions will not have a mechanism by the end of 2023 as agreed.

The Australian, state and territory governments should prioritise establishment of an independent mechanism for their jurisdiction, and should ensure that it is not further delayed.

Aboriginal and Torres Strait Islander people should lead decision-making about the establishment of the independent mechanism.

Features that would support the effectiveness of the independent mechanism include:

- being **governed and led by Aboriginal and Torres Strait Islander people**, chosen with input from Aboriginal and Torres Strait Islander people and communities
- having a **legislative basis** to help guarantee its ongoing existence and the power behind its functions
- having sufficient guaranteed funding so that it can build and maintain organisational capabilities, and determine its priorities without undue influence from governments
- having a **broad remit** covering all aspects of governments' relationships with Aboriginal and Torres Strait Islander people (subject to the role and remit of other Aboriginal and Torres Strait Islander bodies, such as elected bodies or truth-telling commissions)
- having **full control of its work program**, so it can initiate its own inquiries, conduct its own research, benchmark performance, and review all relevant documents (such as Closing the Gap implementation plans and annual reports, and government departments' transformation strategies)
- being able to require government organisations to provide information (with powers akin to those of auditors)
- being able to **intervene in real time** to support Aboriginal and Torres Strait Islander organisations that have concerns about the way in which government actions or decisions are affecting Aboriginal and Torres Strait Islander people or organisations (potentially with specific provisions for whistleblowing)
- **operating with transparency**, including freedom to hold public hearings and to publish its own reports and findings at a time of its choosing
- **not engaging in program delivery and not administer funding or programs**, so that it is never in a position of needing to pass judgement on its own actions or inaction.

7.4 Driving accountability for implementing the Priority Reforms through government leadership and systems

The new and emerging Aboriginal and Torres Strait Islander bodies described in chapter 2, together with the independent mechanism once established, will help to ensure that governments are held accountable for progress towards the outcomes of the Agreement. But it is not reasonable or appropriate to put the burden for fundamentally rethinking government systems on newly created bodies that sit outside of government – governments need to hold themselves accountable for making changes from within.

This will necessitate the creation of better governance systems, so that accountability at the level of a jurisdiction's government affects the day-to-day actions of public sector CEOs, executives and employees in that jurisdiction. The need for improved governance and accountability was highlighted by inquiry participants, who told us that better mechanisms are needed to ensure that senior department executives understand and engage with the Closing the Gap initiatives (PC 2023g, p. 4), and that this understanding and engagement cascades down to middle managers and staff.

In considering how to implement systems that hold governments accountable for changing their operations, it is worthwhile to consider what lessons can be learned from other large-scale government transformation initiatives, such as the implementation of the National Competition Policy (box 7.5).

Box 7.5 – Lessons from the implementation of the National Competition Policy

The National Competition Policy (NCP) was implemented in the 1990s and early 2000s. It was based on the principle that competitive markets better serve the interests of consumers and the wider community. The focus of the NCP reforms was on exposing some previously sheltered industries to competition and applying a more national approach to competition issues. To achieve this, the NCP involved changes to competition laws, as well as numerous reforms set out in three intergovernmental agreements.

Key features of the institutional framework for the NCP included:

- financial incentives – called 'competition payments' – made by the Australian Government to the state and territory governments to return the fiscal dividend from their implementation of agreed reform commitments
- the creation of the National Competition Council (NCC), which was tasked with assessing governments' progress with implementing their reform commitments. The NCC's reports were published when the Australian Treasurer decided to release the competition payments to state and territory governments for each tranche of progress (NCC nd).

These arrangements led to significant progress in reducing anti-competitive regulations. But they did not lead to reform in all of the areas covered by the NCP, and a range of anti-competitive regulations remained in place. For example, the extent of reform of alcohol regulations varied by state, and the NCC withheld payments from several jurisdictions due to lack of progress (Harper et al. 2015, p. 146).

In 2015, the Competition Policy Review found that:

> Several lessons may be drawn from Australia's experience of implementing the [NCP]:
>
> - All jurisdictions need to commit to the policy and its implementation.
> - Oversight of progress should be independent and transparent to 'hold governments to account'.

Box 7.5 – Lessons from the implementation of the National Competition Policy

- The benefits of reform need to be argued and, where possible, measured (Harper et al. 2015, p. 75).

The Competition Policy Review also cautioned that while the competition payments assisted governments in delivering their reform agendas, the payments distorted the public message around the need for reform, creating a focus on withholding payments rather than the benefits that would flow from reform. It also meant that progress with competition policy reform waned when the competition payments ceased (Harper et al. 2015, p. 445).

Lessons to emerge from these transformations include the importance of committed leadership, the need to articulate the benefits of change (and to clearly communicate those benefits so that they are understood by everyone involved) and the key role that independent oversight can play in driving change. Funding and investing in change is also essential, though funding on its own is unlikely to be a sufficient motivator for change.

Drawing on these lessons, the Commission is recommending a number of ways to enhance accountabilities for implementation of the Agreement by changing whole-of government systems and processes. They are:

- reviewing and updating Cabinet and Budget processes so that all submissions demonstrate the impacts of the policy proposal on Aboriginal and Torres Strait Islander people, and how the policy proposal aligns with, and has been developed in accordance with, the Priority Reforms
- requiring Ministers to meet with Aboriginal and Torres Strait Islander peak bodies regularly to discuss key issues, including peaks' perspective of obstructions to progress against the Agreement
- embedding responsibility for improving cultural capability and relationships with Aboriginal and Torres Strait Islander people into the core employment requirements of all public sector CEOs, executives and employees
- designating a senior leadership group to drive public sector change in each jurisdiction.

In chapter 3, the Commission also recommends that governments review and update commissioning processes so that they explicitly incorporate accountability for funders to abide by the Priority Reforms when commissioning programs and services. This could include requirements for governments to provide data to ACCOs to enable the design and delivery of services that best meet the priorities and needs of service users. Such obligations would provide another mechanism by which Aboriginal and Torres Strait Islander people could hold governments accountable.

These new approaches to enhancing accountability within the public sector are designed to work alongside, and to complement, the Agreement and its Priority Reforms. All of the recommended changes will only be effective if they are implemented in ways that are consistent with the Agreement, and centre Aboriginal and Torres Strait Islander people and perspectives. So, for example, the new responsibilities for public sector CEOs, executives and employees should be developed in partnership with Aboriginal and Torres Strait Islander people, and should cover all of the transformation elements in Priority Reform 3.

Ensuring that Cabinet and Budget processes explicitly promote, support and encourage the Priority Reforms

In order to successfully embed each of the Priority Reforms, system-level changes to governments' processes are required. Changing whole-of-government decision-making processes – especially Cabinet and budget processes – is a key component of system change.

Changes to Cabinet and Budget processes in many jurisdictions are promising

In the draft report, the Commission recommended that governments should ensure that whole-of-government processes actively drive changes to deliver the outcomes of the Agreement and noted that, at a minimum, this would require reviewing Cabinet and Budget arrangements to ensure that they support the Agreement and its Priority Reforms. It was expected that in many cases, this would require central agencies to make changes to those arrangements, as well as to provide more robust guidance for agencies about best-practice approaches (PC 2023i, p. 78).

This recommendation was broadly supported by review participants (including AFLS, sub. 36, pp. 8–9; Coalition of Peaks, sub. 58, p. 4; IUIH Network, sub. 62, p. 33; Ngaweeyan Maar-oo, sub. 65, p. 4; PHAA, sub. 68, p. 5; VACCHO, sub. 67, p. 1).

> We seek more coordinated Ministerial and senior departmental leadership that demonstrates commitment to the National Agreement through its incorporation into Cabinet and whole-of-government priorities and processes. The Priority Reforms should guide all government work relating to and affecting Aboriginal people. To date, we have not seen this happening. This shift will require effort and hard work and will only be possible when the highest levels of government implement the Priority Reforms. (APO NT, sub. 69, p. 3)

Some jurisdictions have already made changes to Cabinet, Budget and other high-level decision-making processes as part of their efforts to implement the Priority Reforms. These changes take a range of forms (table 7.1). But other jurisdictions have not capitalised on opportunities to do so. For example, Tasmania updated its Cabinet Handbook in March 2023. The new handbook includes a requirement to consider the effect of proposals 'on particular groups such as single-parent families, geographically isolated groups, people of diverse language and cultural and gender backgrounds', but no explicit reference to the Aboriginal and Torres Strait Islander people or to the Agreement (TDPC 2023a, p. 19).

Table 7.1 – Some jurisdictions have made changes to embed Closing the Gap in the decision-making processes of government

Australian Government

The Budget Process Operating Rules are currently being reviewed, and this will include consideration relating to Closing the Gap requirements (NIAA, sub. 60, att. A, p. 3). There is already a requirement for government organisations seeking new funding to demonstrate how the relevant initiative will meet obligations under the Agreement, 'including the Priority Reforms and relevant socio-economic targets' (DoF 2022, p. 6).

The Cabinet Handbook now includes a commitment to 'early, meaningful consultation' with the National Indigenous Australians Agency (NIAA) to: 'give genuine consideration to the impact of proposals on Indigenous Australians, early in the policy development process; ensure new policy proposals are developed in line with the Government's commitments in the National Agreement on Closing the Gap, and align with and advance the Closing the Gap Priority Reforms and socio-economic outcomes and targets as appropriate' (DPMC 2022, p. 7). To support this work, the NIAA is developing a First Nations Impact Assessments Framework that is intended to 'support Australian Public Service agencies to assess the implementation of the Priority Reforms in the development of new policies and programs, and effectively consider the impact on First Nations peoples' (Australian Government 2023a, p. 25).

New South Wales

'NSW Treasury worked in partnership with Aboriginal Affairs and NSW CAPO to develop a customised, culturally appropriate evaluation framework to analyse Closing the Gap budget proposals from Government and Aboriginal communities, as part of the 2022-23 NSW Budget. This framework balances NSW Treasury's standard evidence-based requirements and economic impact considerations with culturally appropriate principles developed by Aboriginal peak bodies' (NSW Government 2022a, p. 56). Ultimately, 27 initiatives were endorsed by the NSW Partnership Working Group and NSW Joint Council for submission to the 2022-23 Budget process (NSW Government, sub. 32, p. 18). Building on this work, the NSW Government has committed to establishing a First Nations Budget model by 2024, which 'will ensure that shared decision-making, community consultation and cultural appropriateness are incorporated when designing funded programs or services for Aboriginal communities' (NSW Government 2022c, pp. 41–42).

Victoria

The Department of Treasury and Finance told the Commission that it has refined business case templates to promote greater collaboration between departments and Aboriginal communities in the development of budget bids, and that self-determination principles have also been applied to the principles Premier and Cabinet and Treasury and Finance use in the assessment of bid proposals (pers. comm., 18 July 2023). This is line with commitments made in 2020 (VDTF 2020).

Queensland

Cabinet submissions 'must include an assessment of the effect of the proposal on the reframed relationship and must detail how the proposal supports government efforts to reframe the relationship including, where applicable, supporting the Queensland Government in meeting our obligations under the National Agreement on Closing the Gap' (Qld DPC 2023, p. 71) (see box 7.10 for more on 'reframing the relationship' in Queensland).

In addition, the Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts 'must be consulted where relevant, as early as possible in the policy development process to assist in the assessment of any positive or negative impacts on the reframed relationship and efforts to meet socio-economic targets' (Qld DPC 2023, p. 98).

South Australia

'The Department of the Premier and Cabinet will review how Closing the Gap policy impact is reviewed in Cabinet processes, including appropriate Cabinet Committee oversight. It will update policy guidance to support policy officers to identify and evaluate Closing the Gap impact on relevant policy submissions' (South Australian Government, sub. 54, p. 26)

Western Australia

Treasury now has an Aboriginal Affairs Coordination Unit, which has a role 'reviewing investment proposals and policy considerations across government to bring a greater focus on Aboriginal outcomes in decision making to support meeting the socioeconomic targets under the National Agreement' (Government of Western Australia 2022a, p. 25).

Northern Territory

All Cabinet submissions require a Closing the Gap impact statement, which must show how proposals align with and support the Agreement, and how agencies have engaged with Aboriginal people during the development of the proposal. The Department of the Chief Minister and Cabinet developed guidance and training resources to support adoption of these new requirements (NT Government 2022a, p. 46). The Northern Territory Government is exploring options for aligning Budget processes with the Agreement (NT Government, sub. 70, p. 12) and there is currently an inquiry into a process to review bills for their impact on First Nations Territorians (Legislative Assembly of the Northern Territory 2023b).

ACT

All Cabinet and Budget submissions are accompanied by a wellbeing impact assessment (ACT Government 2022c). Questions in the wellbeing impact assessment include:

- will the identified impact support commitments under the National Agreement on Closing the Gap and ACT Aboriginal and Torres Strait Islander Agreement regarding self-determination, building the community-controlled sector, transforming government organisations and data sovereignty? If so, how?
- will the proposal make data more transparent and available to Aboriginal and Torres Strait Islander communities? (ACT Government 2022i).

… but there remains room for improvement

Despite the changes to Cabinet and Budget arrangements outlined in table 7.1, there remains room for improvement. First, while some governments have created obligations for engagement with the agency with primary responsibility for Aboriginal and Torres Strait Islander policy, multiple participants stressed that engagement within government is not a substitute for engagement with the community and is contrary to the principles of the Agreement.

> Often, we will ask about consultation undertaken and realise that consulting Aboriginal staff in the Department is being used as a proxy for community consultation. Government speaking about its agenda to its employees cannot be a substitute for meaningful engagement with Aboriginal families and communities. (Absec, sub. 88, p. 6)

> The prerequisite principles of mutual respect, transparency, and accountability are negatively impacted by Government processes and the role of central agencies. Restrictive budget processes and cabinet-in-confidence requirements impede the work being done by community-controlled organisations. These processes need to be fixed. At times, the line between Government and community is purposefully blurred by First Nations-specific agencies such as NIAA and AIATSIS. Decisions made by an 'Indigenous Government Agency' or where internal consultation has taken place with 'Indigenous APS staff' cannot replace actual partnership. (First Languages Australia, sub. 79, p. 2)

Without genuine and ongoing engagement with Aboriginal and Torres Strait Islander community members, governments will not be able to deliver on their commitment to ensure that Aboriginal and Torres Strait Islander people have led the design and delivery of services that affect them (clause 6).

A second and related concern is that, even where decision-making processes have been redesigned to implement the Priority Reforms, the changes are too modest in scope or still do not allow community

participation in all of the relevant steps of the decision-making process. For example, the Australian Government Department of Social Services submitted that:

> … challenges have arisen where there is conflict between new policy proposals that advocate for community-led solutions and Budget processes that require detailed policy parameters. In some cases, the extent of this detail cannot be provided before engagement with communities on design and implementation. This can hinder genuine community-led approaches. (DSS, sub. 74, p. 11)

The Australian Government Department of Health and Aged Care cited the Cancer Care Package as a recent and successful example of working in partnership with the National Aboriginal Community Controlled Health Organisation (NACCHO) on costings 'but current central agency processes and templates do not always support new ways of doing things under the Priority Reforms' (Department of Health and Aged Care, pers. comm., 18 October 2023). The Institute for Urban Indigenous Health (IUIH) submitted that consideration be given to:

> State and Commonwealth budget processes mandating proactive engagement with the ACCO sector through *not only* the Coalition of Peaks membership but also jurisdictional ACCO peaks and local and regional ACCOs to enable timely submission of budget priorities from the sector, and budgets that are responsive to differing regional funding needs and priorities. (sub. 62, p. 33, emphasis added)

Third, there have been no changes at all to embed the Priority Reforms in many important components of governments' decision-making processes. For example, the Victorian Aboriginal Child Care Agency (VACCA) submitted that although the Victorian Government 'has a longstanding promise to improve its budget processes to ensure Aboriginal community involvement' it has 'acknowledged that the state Budget process does not currently have a mechanism which allows for Aboriginal community decision-making on budget priorities and outcomes' (sub. 75, p. 5).

It is essential that Aboriginal and Torres Strait Islander organisations are involved in developing any new processes, as SNAICC pointed out.

> Governments must engage with the relevant Aboriginal and Torres Strait Islander peak bodies and lead service providers in designing new approaches to Cabinet, Budget, funding and contracting arrangements to ensure that these processes do not inadvertently perpetuate discriminatory or exclusionary practices. (sub. 96, p. 8)

Indeed, it is important to see changes to Cabinet and Budget processes that align the commitments of all of the Priority Reforms. This could mean, for example, that instead of requiring consultation with the government department or agency with responsibility for Aboriginal and Torres Strait Islander policy, there would be a requirement to engage directly with Aboriginal and Torres Strait Islander partners on issues affecting them (as already required under the Agreement).

It is also important that changes are made to all of the components of decision-making processes. Changes to Cabinet *and* Budget systems will be more impactful than changes to Cabinet or Budget systems alone. And there also needs to be a process for ensuring that changes to Cabinet and Budget systems are reflected in handbooks, toolkits and other guidance materials. Such a process might have meant that when the Australian Government updated its Guide to Policy Impact Analysis, it consulted with the NIAA (as required by its Cabinet processes) or with Aboriginal and Torres Strait Islander partners. But instead, the March 2023 edition of the guide mentions 'indigeneity' once and contains no guidance about the need to, and or the importance of, assessing the impact of policies on Aboriginal and Torres Strait Islander people (DPMC 2023b), in clear contravention of the Agreement.

It is also essential that staff receive training and support to effectively follow the new guidance. This is something that the Victorian Department of Treasury and Finance has recognised, undertaking to provide 'Aboriginal cultural awareness training to all staff, and further self-determination training for budget analysts and executives' (VDTF 2020, p. 8).

Action 3.3
Review and update Cabinet and Budget processes so that they explicitly promote, support and encourage the Priority Reforms

The Australian, state and territory governments should task the relevant central agencies with reviewing and, where necessary, updating Cabinet and Budget processes so that they explicitly promote, support and encourage implementation of the Priority Reforms. This should include requiring all Cabinet and Budget submissions to demonstrate:

- the impacts of the policy proposal on Aboriginal and Torres Strait Islander people
- how the policy proposal aligns with, and has been developed in accordance with, the Priority Reforms.

Relevant central agencies should ensure that other government organisations receive training and support so that they understand and can effectively implement the new Cabinet and Budget requirements.

Regular meetings between Ministers and Aboriginal and Torres Strait Islander peak bodies

Ensuring that Cabinet and Budget processes fulfill commitments to explicitly promote, support and encourage implementation of the Priority Reforms is essential. But many other key government decisions are made by individual Ministers. Given the complex web of legislation that governs Ministerial decision-making authority, Ministers will continue to be responsible for a large proportion of government decisions for the foreseeable future.

It is therefore critical that individual Ministers actively obtain the input of Aboriginal and Torres Strait Islander people into decision-making processes directly, over and above the advice they receive from their public servants. Without it, they will not hear the priority or perspectives they need to, in order to have informed input into Cabinet decisions and to make the decisions for which they have direct delegation. Hearing directly from Aboriginal and Torres Strait Islander people will also help to build each Minister's capacity to act in accordance with the Agreement. It also ensures the advice is not subject to filtration by agencies that are still a long way behind where they need to be in their own transformation, and therefore their ability to promote this input (chapter 4).

Review participants sought greater Ministerial involvement – from all Ministers, not just Ministers for Aboriginal Affairs – in Closing the Gap. For example, APO NT submitted that:

> To give effect to the Priority Reforms and progress the socioeconomic targets in the National Agreement, we need leadership from Ministers and their senior public servants. In the NT Government, this should not only be the responsibility of the Minister for Aboriginal Affairs and the Office of Aboriginal Affairs, but all NT Ministers and government agencies. (sub. 69, p. 3)

And IUIH suggested dedicated Cabinet meetings for the purpose of discussing progress on Closing the Gap (sub. 62, p. 33).

Some jurisdictions already have processes in place so that individual Ministers meet regularly with Aboriginal and Torres Strait Islander representatives, and hear their priorities and perspectives. For example, in Queensland, individual Ministers and departmental CEOs act as 'individual champions' for 18 discrete Aboriginal and Torres Strait Islander communities. The intention of this arrangement is for 'ministers [to] work closely with mayors and community leaders from their partner community to engage more effectively with Cabinet on the opportunities and challenges facing Aboriginal and Torres Strait Islander communities' (DTATSIPCA 2022). And in New South Wales:

> Accountability and delivery of Closing the Gap across government has been pursued through quarterly progress meetings to monitor delivery of the Implementation Plan and to discuss strategic challenges and opportunities. These meetings have been introduced by the Premier and attended by NSW CAPO with every NSW Minister and cluster responsible for Closing the Gap. (NSW Government 2022b, pp. 6–7).

The Commission heard that this type of arrangement – in which Ministers responsible for key policy areas meet regularly with the jurisdictional Aboriginal and Torres Strait Islander peak – has considerable merit. It reflects the intent of the Agreement, in which 'the views and expertise of Aboriginal and Torres Strait Islander people, including Elders, Traditional Owners and Native Title holders, communities and organisations will continue to provide central guidance to the Coalition of Peaks and Australian Governments throughout the life of this Agreement' (clause 9), and translates this intent to the level at which responsibility sits.

Meetings between Ministers and Aboriginal and Torres Strait Islander peaks would not replace other partnership arrangements, or other forums for consultation and coordination at which departmental CEOs and other public servants are present. Rather, they would help to give effect to the Agreement by providing a direct avenue into Ministerial decision-makers on key strategic matters.

The Commission is recommending that meetings between Ministers and Aboriginal and Torres Strait Islander peak bodies initially take place at least twice per year. Quarterly meetings, such as in New South Wales, could also be considered. To allow maximum participation, the agenda for each meeting should be set well in advance, by agreement between both parties.

Action 1.3

Regular meetings between Ministers and Aboriginal and Torres Strait Islander peak bodies

The Australian, state and territory governments should ensure that Ministers meet with relevant Aboriginal and Torres Strait Islander peak bodies, without departmental officials present, at least twice per year.

Designating a senior leadership group to drive public sector change in each jurisdiction

Effective leaders who are committed to driving the Priority Reforms and creating an authorising environment that explicitly supports this paradigm shift are critical for driving the transformational change envisaged by the Agreement. But as it stands:

- in some jurisdictions, no senior leader or leadership group is tasked with driving jurisdiction-wide change by promoting and embedding the required changes throughout the public sector
- in other jurisdictions, multiple people and organisations have been given that task (box 7.6).

Involving multiple leaders in Closing the Gap leadership and governance arrangements is, on the face of it, a positive step, as all public sectors leaders and employees have a role to play in delivering the Priority Reforms. But there is also a considerable risk that if everyone is responsible, no one is responsible for driving whole of government and system-wide change, nor is anyone ultimately accountable for lack of progress.

Box 7.6 – Leading public sector change: everyone's responsibility or no one's?

Several jurisdictions told the Commission that, instead of designating a senior leader or leadership group to drive change throughout their public sector, they have decided that leading change should be a shared responsibility. For example, the WA Government said that it:

> … has endorsed formal Closing the Gap Governance Arrangements that ensure responsibility for the four Priority Reform Areas are shared by all Ministers and all WA Government Agencies. (sub. 43, p. 3)

Similarly, the Australian Government listed multiple people and organisations as being responsible for leading implementation of the Priority Reforms.

> The Commonwealth Secretaries Board is responsible for the stewardship of the Australian Public Service (APS), including identifying and setting the strategic priorities for the APS. This includes an elevated responsibility for driving the Closing the Gap Priority Reforms across the Commonwealth. For example, the Partnership Priorities Committee (a sub-committee of the Secretaries Board) seeks to steer better policy outcomes for Australians by embedding partnership culture and behaviour in the public service to ensure consistent, natural and early engagement and co-design with all sectors, including First Nations People.
>
> Secretaries are required to report to Secretaries Board on progress towards implementing Priority Reforms for their department.
>
> The Joint Working Group is a suitable forum of Commonwealth Deputy Secretaries and senior representatives from the Coalition of Peaks to drive jurisdiction-wide change.
>
> The Chief Operating Officers Committee has significant authority to drive accountability through the public sector. (NIAA, sub. 60, att. A, pp. 2–3)

In addition, the Order to Establish the NIAA as an Executive Agency requires the NIAA 'to lead and coordinate the development and implementation of Australia's Closing the Gap targets in partnership with Indigenous Australians'.

When seeking to embed significant change in large and complex organisations, four elements are essential for successful leadership.

- **Continuous, consistent communication.** In order for change to succeed in any organisation, employees must understand what change is expected and why. Creating this shared understanding requires 'clear, persuasive and consistent communication from leaders and involvement from staff. Communication must be more or less continuous, not one-off' (Thodey et al. 2019, p. 82). But communication about the changes needed to implement the Priority Reforms does not appear to have reached (let alone continuously and consistently reached) all of the 2.4 million public sector workers across federal, state,

territory and local government organisations whose ways of working may need to change (chapter 4). We heard that awareness of the Agreement is variable across the public sector and is often concentrated towards the top of the organisational hierarchy, but that further down the hierarchy (at the service delivery level and in regional offices) awareness is often inconsistent or non-existent (PC 2023g, p. 11). (And of course, awareness of the need to change is only the first step in the change process. The willingness to do things differently and actually make change is also essential.)

- **Role modelling and reinforcement.** Role-modelling is one of the most powerful ways in which leaders can drive change, as employees internalise patterns of behaviour to which they are commonly exposed (Gladman et al. 2015, p. 2). Witnessing influential leaders acting consistently with expected new behaviours helps people feel confident to take the risk associated with changing. An analysis of more than 80 government transformations in 18 countries found that:

> Leaders of successful transformations were twice as likely as their peers in unsuccessful initiatives to role-model the behavior they expected of public servants. Such role models of transformation make major personal commitments, are ready to spend their political capital, and often put the outcomes of the change effort ahead of their own interests. (Allas et al. 2018, p. 49)

- **Building skills and providing tools.** Employees must be equipped with the skills, capabilities and tools to act in new ways. Failing to do so necessarily undermines their ability to change, while building up the ability and confidence of individuals to act in new ways creates positive reinforcement. But as explained in chapter 4, there is a paucity of evidence about the effectiveness of cultural capability training across the public sector. Without clarity about whose job it is to obtain this evidence, public sector organisations will continue to be 'flying blind'.
- **Rewarding desired behaviours.** Incentives and reward mechanisms (such as learning and development, performance assessment at all levels, promotions and appointments) must align with the expected behaviours and reinforce desired change. This is why the Commission is recommending embedding responsibility for improving and demonstrating cultural capability and building relationships with Aboriginal and Torres Strait Islander people into the employment requirements of public sector CEOs, executives and employees (action 3.5, below).

Which senior leader or leadership group would be best placed to drive jurisdiction-wide change?

While the leadership gap is clear, the best option for filling the gap is not as easy to identify. The Commission considered several potential leadership options. Each of the potential leadership options have different strengths and would require different changes to support them – there is no perfect 'off-the-shelf' solution ready to deliver the innovative leadership required.

Review participants – including the Law Council of Australia (sub. 83, p. 8), the National Health Leadership Forum (sub. 84, p. 11) and numerous others mentioned below – supported choosing a leader to fill the gap.

> PHAA supports the proposal for a leadership group to promote and embed changes to systems and culture, to improve cultural capability and relationships with Aboriginal and Torres Strait Islander people and to eliminate institutional racism [and] drive change in the public sector. However this would require a significant change management process, likely being a process developed using Western business philosophies that would not necessarily take into account Indigenous worldviews and ways of knowing, being and doing. (PHAA, sub. 68, p. 8)

The Commission agrees. Indeed, the magnitude of the change required and the need for a significant change management process is the very reason why we a recommending designating visible, high-level leaders who

are committed to driving the Priority Reforms and creating an authorising environment that explicitly support the Reforms, are critical for driving the transformational change envisaged by the Agreement.

Secretaries of the Department of the Prime Minister, Premier or Chief Minister?

The Secretaries of the Departments of the Prime Minister, Premier or Chief Minister play a key role in public sector leadership. In some jurisdictions, the Secretary is explicitly designated as the head of the public service. For example, in Tasmania, the Secretary of the Department of Premier and Cabinet is the Head of the State Service (TDPC nd). In some other jurisdictions, the Secretary does not have a formally designated role as head of the public service, but nonetheless provides sector-wide leadership. For instance, in the APS:

> The [Prime Minister and Cabinet] Secretary is Chair of Secretaries Board, attends Cabinet meetings and is principal adviser to the Prime Minister. As a matter of practice, and consistent with these responsibilities, the [Prime Minister and Cabinet] Secretary serves as the most senior leader of the APS. However, the role is not formally recognised as such. Nor are the responsibilities of the role outlined comprehensively in legislation. (Thodey et al. 2019, p. 285)

This senior leadership position – whether legislated or not – places the Secretaries of the Departments of the Prime Minister, Premier or Chief Minister in an ideal position to drive the systemic, jurisdiction-wide changes that are needed to deliver on the Agreement. For example, APO NT said:

> … the Chief Executive of the Department of Chief Minister and Cabinet (CMC) is the appropriate public servant to drive jurisdiction-wide change. The CMC Chief Executive chairs the meeting of all department chief executives. This is the appropriate forum for developing and communicating a coordinated strategy for all agencies to embed the Priority Reforms. (sub. 69, p. 13)

Similarly, the Queensland Human Rights Commission (QHRC) considered that the Department of the Premier and Cabinet (DPC) should have a leadership role in delivering the transformation committed to under the Agreement.

> Given the gravity of the current circumstances … the DPC should have a coordination and leadership role throughout the Queensland Government on all actions and policies associated with performance under the Agreement. DPC has sufficient influence throughout the Queensland Government to lend authority to its leadership, thus promoting accountability in all departments and agencies (sub. 45, pp. 4-5)

However, it is unclear whether Secretaries have the deep knowledge of Aboriginal and Torres Strait Islander perspectives that is needed to effectively drive the required changes. While Secretaries can reasonably be expected to have an understanding of Aboriginal and Torres Strait Islander culture and communities, they do not have the depth of experience and understanding that Aboriginal and Torres Strait Islander people would bring to the role (box 7.7).

Box 7.7 – The importance of lived experience in leadership

In Australia and internationally, lived experience is increasingly being recognised as key to informing the design, delivery and evaluation of government policies and programs, and the operations of government organisations.

> A lived experience recognises the effects of ongoing negative historical impacts and or specific events on the social and emotional wellbeing of Aboriginal and Torres Strait Islander peoples. It encompasses the cultural, spiritual, physical, emotional and mental wellbeing of the individual, family or community. (Black Dog Institute 2020)

Having leaders with lived experience in permanent positions ensures that these perspectives become an ongoing and formalised part of the policy and decision-making rather than a one-off consultation.

> When people with lived experiences of racism are missing from the organisation, especially in leadership, racial diversity is not prioritised. This means racial tokenism can often be confused for racial diversity. … Racial tokenism locks in racism by:

- perpetuating stereotypes and unconscious bias
- putting an enormous burden of representation on that person or people
- enabling anti-racism actions to be easily avoided by just not inviting the person with lived experiences to relevant meetings. (DCA 2022, p. 45)

Often there needs to be a critical mass of people with lived experiences, especially in leadership teams, before an organisation understands that their policies and practices may not be so race-neutral after all (DCA 2022, p. 48). In building that critical mass, it is important to recognise the potential challenges and vulnerabilities involved for lived experience leaders, such as the risk of tokenism, the emotional toll it can take (especially when working in isolation) and the need for effective support and training.

Some viewed the absence of deep knowledge and experience of Aboriginal and Torres Strait Islander cultures as being of lesser importance than the authority to drive change. For example, the Queensland Indigenous Family Violence Legal Service said:

> … secretaries of the Departments of the Prime Minister, Premier or Chief Minister would hold the largest influence and have the positional authority to drive change within the public sector across all jurisdictions. What they lack regarding deep knowledge of Aboriginal and Torres Strait Islander perspectives can be compensated through their power and influence within government. (Queensland Indigenous Family Violence Legal Service, sub. 87, p. 9)

This points to a potential role for Secretaries of the Departments of the Prime Minister, Premier or Chief Minister, either as individuals or as members of high-level leadership groups, such as secretaries boards.

Secretaries boards and similar leadership groups?

Many jurisdictions have forums in which the leaders of government departments and/or agencies come together to lead initiatives across the public service or public sector. For example, ‘the Victorian Secretaries’ Board

promotes leadership and coordinates initiatives across the public sector' (VPSC 2023b). In the APS, the functions of the Secretaries Board are set out in section 64 of the *Public Service Act 1999* (Cth). They are to:

- take responsibility for the stewardship of the APS and for developing and implementing strategies to improve the APS
- identify strategic priorities for the APS and consider issues that affect the APS
- set an annual work program, and direct subcommittees to develop strategies to address APS-wide issues and make recommendations to the Secretaries Board
- draw together advice from senior leaders in government, business and the community
- work collaboratively and model leadership behaviours.

As part of this leadership role, secretaries boards and similar groups already play a role ensuring that matters affecting Aboriginal and Torres Strait Islander people are considered by all government agencies and employees. For example, the CEO of the NIAA attends meetings of the APS Secretaries Board 'to report on First Nations reforms and any related agenda items' (DPMC 2023d) (though the NIAA CEO attending meetings is not a substitute for being a full member of the Secretaries Board – which is not currently the case – or for Secretaries for delivering change in their respective departments). In Western Australia, the Public Sector Leadership Council published a 'narrative to drive a future enabled public sector in Western Australia' that included 'empowering First Nations people with a secure future' as one of six strategic priorities for the future of the WA public sector (WA PSLC 2023, pp. 1, 6).

Despite their role in sector leadership, secretaries boards and similar groups typically play a coordination (rather than a decision-making) role. While the individual members of the board have clear responsibilities as individuals, and the backing of a department to help them fulfill those responsibilities, they do not have the same responsibilities or resources as a group. For example, the Victorian Secretaries' Board does not have legal status (VPSC 2023b). So while secretaries boards and similar groups have influence and can lead by example, they may not be in a position to provide the kind of oversight and accountability that is necessary to drive change. For example, in the APS:

> In not requiring the Secretaries Board to publish an annual account of its stewardship of the public service, the [*Public Service Act 1999* (Cth)] also makes it clear that the board's role is to support the secretaries rather than provide the sort of systemic strategic leadership and oversight expected from a board in the private sector. Clearly it is a 'board' in name only, being nothing more than an executive management committee and without providing the direction expected of an executive management committee … (Ferguson 2019, p. 186)

Without a mandate for decision-making or oversight, it will be challenging for secretaries' boards and similar leadership groups to drive the systemic, jurisdiction-wide changes that are needed to deliver on the Agreement. And of course, not all jurisdictions currently have secretaries' boards and similar leadership groups. Even if such a group was to be created, it may take considerable time before a newly formed group is in a position to drive the systemic, jurisdiction-wide changes that are needed to deliver on the Agreement. But these challenges could be overcome with an appropriate combination of legislative change, resourcing and commitment, as well as the positional authority that only Secretaries Boards, as a group of the most senior officials in government, can bring.

And, as noted above, each of the potential leadership options have different strengths and will require different changes to support them – there is no perfect 'off-the-shelf' solution ready to deliver the innovative leadership required.

Participants with recent experience of secretary-level leadership groups spoke highly of the ways in which secretaries can increase awareness of Aboriginal and Torres Strait Islander perspectives. For example, VACCA said that in Victoria:

> The loss of relationship between the [Aboriginal Executive Council] and the [Secretaries Leadership Group] 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. (sub. 75, p. 4)

In contrast, Jon Altman referred to 'an earlier attempt at the Commonwealth level with the Secretaries Group and Priority Regions to instigate such change nearly 20 years ago' and noted that 'there is no evidence that such an approach was successful, perhaps because senior bureaucrats are more accountable to politicians than to the perspectives of Indigenous stakeholders' (sub. 51, p. 12).

While it is incontestable that senior bureaucrats are accountable to politicians, the task of leading implementation of the Priority Reforms is very different to the task of the former Secretaries Group on Indigenous Affairs. This latter group comprised a select group of secretaries, and grew out of the group of secretaries overseeing the COAG trial arrangements in the early 2000s (Gray and Sanders 2006). This meant that its focus was on delivering services in particular locations, not on driving change within the public sector, as the Commission is recommending.

Departments or agencies with responsibility for Aboriginal and Torres Strait Islander policy?

In each jurisdiction, there is an agency, a government department or an office within a department, that has responsibility for Aboriginal and Torres Strait Islander policy.

In most jurisdictions, this function sits within the Department of the Premier or Chief Minister. For example, in the Northern Territory, the Office of Aboriginal Affairs sits within the Department of Chief Minister and Cabinet, and is 'responsible for providing support, engagement and advice to Aboriginal people and government on significant Aboriginal Affairs priorities' (NT Government 2021). Similarly:

- Aboriginal Affairs NSW sits within the NSW Department of Premier and Cabinet (NSW DPC 2023)
- responsibility for First Nations–State Relations sits within the Victorian Department of Premier and Cabinet (Victorian DPC 2021)
- in Western Australia, the Aboriginal Engagement Directorate sits within the WA Department of the Premier and Cabinet (WA DPC 2023a)
- in Tasmania, the Office of Aboriginal Affairs sits within the Community Partnerships and Priorities Division of the Tasmanian Department of Premier and Cabinet (TDPC 2023b).

In other jurisdictions, responsibility for Aboriginal and Torres Strait Islander policy sits outside the Premier's or Chief Minister's department.

- The Attorney-General's Department is the South Australian Government's lead agency on Aboriginal affairs (SA AGD 2022a).
- In Queensland, the lead agency is the Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts (QPSC 2023).
- In the ACT, the Office for Aboriginal and Torres Strait Islander Affairs sits within the Community Service Directorate (ACT Government 2023c).

At the Australian Government level, the NIAA was created in July 2019, when the Indigenous Affairs Group that was previously part of the Department of the Prime Minister and Cabinet was established as its own agency within the Prime Minister and Cabinet portfolio (NIAA 2022).

These departments and agencies are well placed to have the expertise to design changes that improve governments' ability to work effectively with Aboriginal and Torres Strait Islander people. But, for the most part, as relatively small divisions or offices within larger agencies, they may not have the necessary authority, resources, capacity or influence to reach outside their own agencies and motivate other, often much larger, agencies to make the significant changes that were committed to in the Agreement. For example, the Queensland Indigenous Family Violence Legal Service said:

> From a Queensland perspective, our concern is that the Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts (DTATSIPCA) does not have sufficient influence within Government. (sub. 87, p. 9)

The limited reach and influence of departments or agencies with responsibility for Aboriginal and Torres Strait Islander policy suggests that other options may be more effective in driving change throughout the public sector.

Public service or public sector commissioners?

Another potential leader who could drive changes across all government agencies is the public service or public sector commissioner. A key part of their role is building the capability and values of the people who work in the public sector. And in the APS, the Australian Public Service Commissioner has considerable influence.

> In structural terms the APS commissioner is the second-most important person in the operations of the public service being appointed by and reporting to the prime minister, head of a statutory authority (the APSC), advising the prime minister on the appointment (and termination) of the secretary of [the Department of the Prime Minster and Cabinet] … being a member of the Secretaries Board, and providing the prime minister with advice about the performance of his departmental head. (Ferguson 2019, p. 185)

The APS Commissioner is also one of the leaders of the APS Reform agenda. One of the intended outcomes of APS reform is that 'the APS has effective relationships and partnerships with First Nations peoples' (APS RO 2023a, p. 21). However, work towards this outcome – and towards Priority Reform 3 more broadly – requires further development.

> The initial initiatives that are working towards this outcome are currently in design. It is anticipated that these initiatives will lay the groundwork, structure and relationships to develop genuine and meaningful partnerships with First Nations peoples and communities. (APS RO 2023a, p. 21)

In other jurisdictions, public service or public sector commissioners are already active in efforts to drive change across the public service. For example, the NSW Public Service Commission provides freely accessible resources designed to build cultural awareness of Aboriginal peoples past interactions with government, the diversity of Aboriginal people and culture, and significant Aboriginal events and celebrations (NSW PSC 2021). In Queensland, the new *Public Sector Act 2022* gives the Public Sector Commissioner a strengthened role as a systems leader, steward and enabler, and an increased scope of work that reaches across a larger number of public sector entities. There is also a new duty for public sector employees to actively promote the perspectives of Aboriginal and Torres Strait Islander peoples (see below). And in New Zealand, the NZ Public Service Commissioner was given new responsibilities under the *Public Service Act 2020* (NZ) to support the implementation of the Māori–Crown provisions of the Act (box 7.8). These examples point to a potential role for the public service or public sector commissioners in identifying and eliminating institutional racism, and improving the cultural capability and relationships with Aboriginal and Torres Strait Islander people throughout the public sector.

Box 7.8 – The NZ Public Service Commissioner's role in improving Māori–Crown relations in New Zealand

Under the *Public Service Act 2020* (NZ), the role of the New Zealand public service includes supporting the Crown in its relationships with Māori under the Treaty of Waitangi (section 14(1)). The Act gives the New Zealand Public Service Commissioner responsibility for developing and maintaining the capability of the public service to engage with Māori and to understand Māori perspectives (section 14(2)) (this responsibility is shared with public service chief executives and executive boards).

The Commissioner is also responsible for developing and implementing a strategy for the development of senior leadership and management capability in the public service (section 61), and, in doing so, must recognise the aims and aspirations of Māori, the employment requirements of Māori, and the need for greater involvement of Māori in the public service (section 73(3)(d)).

To give effect to these requirements, the NZ Public Service Commission (Te Kawa Mataaho) is working with Te Arawhiti (the Office for Māori–Crown Relations) and Te Puni Kōkiri (the Ministry for Māori Development) to lead a whole-of-system approach to supporting leaders and agencies to fulfil their responsibilities. Initiatives have included:

- appointment of a statutory Deputy Public Service Commissioner whose core focus is on system leadership for Māori–Crown relations
- appointment of Te Hāpai Ō (the Māori Advisory Committee) to assist with the implementation of the Public Service Act, particularly regarding the Crown's obligations to and relationships with Māori
- leading development opportunities for public service leaders with a focus on building Māori–Crown capability, and the Rangatahi Māori Emerging Leaders Programme
- active encouragement of all agencies and leaders to fulfil their responsibilities under Maihi Karauna (the Crown's Strategy for Māori Language Revitalisation 2019–2023), in partnership with Te Taura Whiri i te Reo Māori (the Māori Language Commission). This includes system implementation of Whāinga Amorangi: Transforming Leadership, led by Te Arawhiti
- inclusion of a specific category for Māori–Crown relationships in Te Hāpai Hāpori (the Spirit of Service Awards) to highlight excellent practice (Te Kawa Mataaho 2023b).

The potential for a public sector commissioner to drive changes towards closing the gap received some support.

> VACCHO is supportive of Closing the Gap supporting a new role to drive jurisdictional change, however we have concerns around the placement of that position and its scope and accountability … We recommend a 'Public Sector Commissioner' position to work in partnership with a paid representative from the Partnership Council to ensure … the jurisdictional changes will have the desired effect on Closing the Gap and the Aboriginal and Torres Strait Islander community. (sub. 67, p. 5)

But this support was not uniform. For example, NSW CAPO said that:

> … 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. (sub. 77, p. 12)

The Commission's view on leadership for Closing the Gap

On balance, the Commission considers that a senior leadership group is best placed to drive the transformational change required across the public sector in each jurisdiction. In many states and territories, this will be a Secretaries Board or Secretaries Leadership Group.

There is also the option of creating a new leadership group for this purpose, as in South Australia (box 7.9). Depending on how it is structured, a newly created group could have the benefit of increasing the number and proportion of Aboriginal and Torres Strait Islander people in leadership. Indeed, ensuring that the leadership group is informed by Aboriginal and Torres Strait Islander people's perspectives, priorities and knowledges is essential.

> It is crucial that any leadership group tasked with driving change in the public sector turn to Aboriginal and Torres Strait Islander worldviews and ways of knowing to inform their concepts of 'change' and 'improvement' rather than assuming or inheriting western models and theories of change. (ANTAR, sub. 42, p. 17)

To ensure that this occurs in a systematic way, the Commission is recommending that the senior leadership group chosen to lead public sector change should meet with the relevant Aboriginal and Torres Strait Islander peak body at least twice per year. These meetings would be in addition to those that the Aboriginal and Torres Strait Islander peak body has with Ministers (action 1.3, above).

Regardless of the leader or leadership group chosen in each jurisdiction, changes to legislation, administrative orders or other legal instruments are likely to be required in order to properly confer the new functions on them. The exact nature of the required changes will vary between jurisdictions.

Box 7.9 – South Australia's Aboriginal Affairs Executive Committee

In 2020, the SA Government created an Aboriginal Affairs Executive Committee.

The committee is co-chaired by the Executive Director, Aboriginal Affairs and Reconciliation from the Attorney-General's Department and the Chief Executive of Department for Correctional Services. Its membership is made up of chief executives and Aboriginal senior leaders in the SA public sector.

The committee has established working groups that will concentrate on four priorities:

- over-representation of Aboriginal South Australians in the criminal justice sector
- economic participation
- supporting growth in ACCOs
- building capacity in vulnerable families.

Each working group consists of about 16 members, at least half of whom are Aboriginal and are drawn from across the SA public sector.

Sources: SA AGD (2022b); SA Government (2021).

Action 3.4
Designate a senior leadership group to drive public sector change in each jurisdiction

The Australian, state and territory governments should task a senior leadership group with a wide span of influence (such as the Secretaries Board or another senior leadership group) with promoting and embedding the transformation of public sector systems and culture.

At a minimum, this should include supporting transformation with:

- continuous, consistent communication
- role modelling and reinforcement
- encouragement and support for desired behaviours
- relevant tools and skills-building.

The senior leadership group chosen to lead public sector change should meet with the relevant jurisdictional Aboriginal and Torres Strait Islander peak body at least twice per year.

Clear responsibilities for Closing the Gap in the employment requirements of public sector CEOs, executives and workers

As well as leadership from above, it is essential that everyone who is employed in the public sector understands and implements the Agreement.

> Although fundamental change must be driven from the top, it is important that it is not just top down. While they need a strong authorising environment, all public servants have a role to play in ensuring they have or acquire the knowledge and skills to play their part. (Hoffman 2022, p. 12)

This is why stronger leadership needs to be accompanied by embedding responsibility for improving cultural capability and relationships with Aboriginal and Torres Strait Islander people into public sector employment requirements.

New Zealand and Queensland show how public sector employment requirements are being used to drive behaviour change

In each jurisdiction across Australia, public sector CEOs, executives and employees must have certain capabilities and meet certain standards of competence, ethics and behaviour.

- In some jurisdictions, the standards of performance and behaviour are prescribed in legislation. For instance, the *Public Service Act 1999* (Cth) sets out the APS Values, APS Code of Conduct, APS Employment Principles and the roles and responsibilities of departmental secretaries.
- In other jurisdictions, the power to set standards is delegated to officials. For example, in Western Australia, the *Public Sector Management Act 1994* (WA) gives the WA Public Service Commissioner power to set public sector standards, codes of ethics and codes of conduct.

But regardless of their exact legislative basis, the existence of standards of performance and behaviour provide a potential mechanism for changing the incentives and motivations of public sector CEOs, executives and employees.

New Zealand has already changed the legislation governing public sector employment to change public servants' behaviour towards First Nations people. The *Public Service Act 2020* (NZ) explicitly recognises the role of the public service to support the Crown in its relationships with Māori under the Treaty of Waitangi, and makes chief executives of public sector agencies accountable to their Minister for upholding their

responsibilities to support the Crown's relationships with Māori. Similar changes have recently been introduced in Queensland, drawing on the New Zealand experience (box 7.10).

Box 7.10 – Reframing the Queensland public sector's relationship with Aboriginal and Torres Strait Islander peoples

Queensland's *Public Sector Act 2022* (the Queensland PS Act) commenced in March 2023. It aims to ensure that the Queensland public sector is responsive to the community it serves and:

- supports the state government in reframing its relationship with Aboriginal peoples and Torres Strait Islander peoples
- ensures fairness in the employment relationship and fair treatment of its employees
- is high-performing and apolitical.

The Queensland PS Act draws on the example of New Zealand's *Public Service Act 2020*, which:

> … explicitly recognises the role of the New Zealand public service to support the Crown in its relationships with Māori under Te Tiriti o Waitangi/the Treaty of Waitangi, and places responsibilities on public service leaders to develop and maintain cultural capability and understanding of Māori perspectives. Similarly, [the *Public Sector Act 2022* (Qld)] places responsibilities on chief executives to support a reframed relationship between Aboriginal peoples and Torres Strait Islander peoples and the State. (Queensland Government 2022a, p. 9)

The Queensland PS Act designates all public sector entities (including government departments, hospital and health services, Queensland Police, and most statutory offices, boards, committees, councils, bodies and other groups established under legislation) as 'reframing entities'. Reframing entities must:

a. recognise and honour Aboriginal peoples and Torres Strait Islander peoples as the first peoples of Queensland
b. engage in truth-telling about the shared history of all Australians
c. recognise the importance to Aboriginal peoples and Torres Strait Islander peoples of the right to self-determination
d. promote cultural safety and cultural capability at all levels of the public sector
e. work in partnership with Aboriginal peoples and Torres Strait Islander peoples to actively promote, include and act in a way that aligns with their perspectives, in particular when making decisions directly affecting them
f. ensure the workforce and leadership of the entities are reflective of the community they serve
g. promote a fair and inclusive public sector that supports a sense of dignity and belonging for Aboriginal peoples and Torres Strait Islander peoples
h. support the aims, aspirations and employment needs of Aboriginal peoples and Torres Strait Islander peoples and the need for their greater involvement in the public sector.

In effect, this gives all employees of reframing entities a duty to actively promote the perspectives of Aboriginal and Torres Strait Islander peoples.

Chief executives of reframing entities have additional responsibilities, including to make a plan for developing the entity's cultural capability, publishing the plan, conducting an annual audit of the entity's performance as measured against the plan, and reviewing the plan annually.

Given that the Queensland PS Act has only been in operation since March 2023, it is too soon to assess its effects. And while New Zealand's *Public Service Act 2020* has been operating since August 2020, it has not yet been evaluated (Te Kawa Mataaho 2023a).

Early indications of its effectiveness can be found in the NZ State of the Public Service report, which notes that 'a majority of public servants are committed and feel supported to build their understanding of te reo and tikanga Māori [Māori language and customs], but there are relatively low levels of proficiency' (Te Kawa Mataaho 2022, p. 38). NZ public servants' commitment to Māori language and customs bodes well for future progress, as:

> Organizational capability and behavior are based on the attitudes, outlooks, and skills of a collection of individuals. And individuals will only sustainably change their behavior if they see the point of the change and agree with it. (Allas et al. 2018, p. 64)

The Queensland Government made clear that including requirements for cultural capability in public sector employment legislation is the start – not the end – of the journey.

> 'Cultural capability' of an entity is defined as the integration of knowledge about the experiences and aspirations of Aboriginal peoples and Torres Strait Islander peoples into the entity's workplace standards, policies, practices and attitudes to produce improved outcomes for Aboriginal peoples and Torres Strait Islander peoples.
>
> Cultural capability and cultural safety are steps on a continuum towards the aspirational goals of 'cultural competence' and 'cultural security' respectively. Given the current status quo in Queensland's public sector, the [Public Sector Act] establishes a baseline for reframing entities to achieve cultural capability and therefore cultural capability has been defined. Other terms have intentionally not been defined, however as reframing entities mature on the journey to cultural competence and cultural security, there may be further opportunities to characterise these concepts as part of the entity's operational workplace standards, policies, and practices. (Queensland Government 2022a, p. 17)

So while requiring all public sector CEOs, executives and employees to become culturally capable will not immediately result in cultural competence and cultural security, it is a necessary step on that journey.

Valuing the perspectives of Aboriginal and Torres Strait Islander people needs to be a core public sector behaviour

Review participants were supportive of requiring all public sector CEOs, executives and employees to become culturally capable (box 7.11).

Box 7.11 – Cultural capability must be a core requirement of public sector employment

Coalition of Peaks

> To support the full implementation of the Priority Reforms by the public service, we would like to see public service legislation in all jurisdictions amended to reflect a requirement to abide by the Priority Reforms. We think Priority Reform one should be particularly reflected. Should the referendum on the Voice not be successful, this will provide an alternative way to help

Box 7.11 – Cultural capability must be a core requirement of public sector employment

ensure Aboriginal and Torres Strait Islander voices are considered in decisions on policies and programs that impact on us, as per Priority Reform one. (sub. 58, pp. 3–4)

Children's Ground

This is an opportunity to recommend that all public servants and staff in government funded organisations and programs have KPIs within their remit in order to improve cultural capability and relationships with First Nations people and to eliminate institutional racism throughout the public sector. KPIs should also include individuals considering and working towards how they can contribute to cultural safety, understanding the history and truth of Australia's First Nations people and how they can positively impact, progress and support First Nations people and communities in their work. (sub. 72, p. 17)

Victorian Aboriginal Legal Service

As recommended by the Commission, employment requirements of all public sector CEOs, executives and employees [should] require them to continually demonstrate how they have sought to: improve their cultural capability; develop relationships with Aboriginal and Torres Strait Islander people; identify and eliminate institutional racism; support the principles outlined in the National Agreement on Closing the Gap. (sub. 76, p. 6)

Ngaweeyan Maar-oo Koorie Caucus

Cultural safety and capability must be mandated for all services providing for or working with Aboriginal and Torres Strait Islander communities. (sub. 65, p. 4)

IUIH

The IUIH Network supports draft recommendation 3 [Embed responsibility for improving cultural capability and relationships with Aboriginal and Torres Strait Islander people into public sector employment requirements] and notes that one way for senior public sector employees to demonstrate they have upheld the principles of the National Agreement is to increase investment in the ACCO sector, including for regional commissioning and service delivery, and to improve data sharing at a regional and local level. (sub. 62, p. 8)

APO NT

To be effective at driving change, the determination on cultural capability would need to carry weight in the overall assessment of the executive's annual performance review and their future employment … this assessment should consider not only the cultural capability of senior executives, but also the extent to which the executive is embedding the Priority Reforms across their work agenda. For example, the approach taken by senior executives negotiating with Aboriginal partners to develop actions for Implementation Plans should be considered as part of the assessment for the senior executive's employment requirements. (sub. 69, p. 14)

In jurisdictions other than Queensland, governments have not underpinned their commitment to 'listen to the voices and aspirations of Aboriginal and Torres Strait Islander people and change the way we work in response' (clause 19) with changes to their standards for public servants' performance and behaviour. Without an explicit instruction that puts valuing the perspectives of Aboriginal and Torres Strait Islander people on par with other core public services values and behaviours, it is not clear how the public sector will change.

Lessons from the Independent Review of the Australian Public Service suggest that changes to employment arrangements are an essential part of driving cultural change in the public sector.

> Incentives and reward mechanisms must align with the expected behaviours. Too often organisations reward things that are misaligned with the desired behaviours of the organisation. Learning and development, performance assessment at all levels, promotions and appointments need to reinforce desired change. (Thodey et al. 2019, p. 83)

The Australian Government has said that in the second half of 2023, it:

> … will explore further opportunities to review the *Public Service Act 1999* and related legislation to embed the Priority Reforms. Making these changes to the legislative frameworks that govern how the public service operates will better enable government organisations, and the services they provide, to be culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people. (Australian Government 2023a, p. 24)

The exact form these changes will take is still unclear, and amendments to the *Public Service Act 1999* (Cth) proposed in May 2023 – and still under consideration by Parliament at the end of November 2023 – do not include any changes that would make the APS more culturally safe or responsive to the needs of Aboriginal and Torres Strait Islander people (APS RO 2023b).

More broadly, it is not acceptable for government employees to treat adhering to the principles of the Agreement as optional – these principles reflect essential skills and behaviours without which governments cannot hope to deliver on their Closing the Gap commitments.

These principles should flow through into the performance agreements and KPIs of CEOs, executives and employees. The nature of the change to performance agreements and KPIs will vary depending on level of seniority. The strongest requirements should be placed on CEOs and executives, who would have the responsibility of opening up their organisation's processes and operations to Aboriginal and Torres Strait Islander eyes for identification of institutionalised racism (which, as discussed in chapter 4, is not something that government organisations can do internally).

The change to performance agreements and KPIs will also vary depending on role. Those whose role involves providing policy advice about, or contributing to the design and delivery of services to, Aboriginal and Torres Strait Islander people should have more stringent KPIs than those whose role is procedural or technical in nature (such as a tax clerk or meteorologist).

Action 3.5
Embed responsibility for improving cultural capability and relationships with Aboriginal and Torres Strait Islander people into public sector employment requirements

It is not acceptable for government employees to treat adhering to the principles of the Agreement as optional – these principles reflect essential skills and behaviours without which governments cannot hope to deliver on their Closing the Gap commitments. Changes to employment requirements are an essential part of driving cultural change in the public sector.

In early 2023, the Queensland Government implemented legislation which requires public sector CEOs, executives and employees to enhance their cultural capability and support the state government in reframing its relationship with Aboriginal and Torres Strait Islander people.

Following the Queensland model, the Australian, territory and other state governments should ensure that the employment requirements of all public sector CEOs, executives and employees require them to continually demonstrate how they have sought to:

- improve their cultural capability
- understand Aboriginal and Torres Strait Islander history and context
- eliminate institutional racism
- develop relationships with Aboriginal and Torres Strait Islander people
- support the principles outlined in the National Agreement on Closing the Gap.

These requirements should flow through into the performance agreements and KPIs of CEOs, executives and employees, with the strongest requirements placed on CEOs and executives.

7.5 Resourcing the implementation of the Agreement

Adequately resourcing the Priority Reforms

To date, the resources that governments have committed to the implementation of the Agreement have fallen far short of the ambition of the Agreement. Examples of resourcing being inadequate to deliver the intended outcomes can be found across each of the Priority Reforms. And inadequate resourcing leads to numerous challenges, including that:

- governments often underestimate the time and funding needed to engage in shared decision making (chapter 2). While participation in decision making is a core part of public servants' role, for ACCOs participation goes beyond their core business, and the Commission heard that many ACCOs are required to attend multiple events every week when they are already resource-stretched.
- insufficient time and funding are a significant constraint to Aboriginal and Torres Strait Islander organisations participating in the Justice Policy Partnership (chapter 2)
- ACCOs have to argue and justify their role in decision-making (despite the commitment to shared decision-making in the Agreement). This takes time, money and resources away from ACCOs' core work with Aboriginal and Torres Strait Islander people (chapter 3)
- the transition of service provision from mainstream providers to ACCOs is put at risk when the factors required for a successful transition are not sufficiently resourced (chapter 3)
- tying funding to particular expenditure items or timeframes constrains ACCOs from reallocating resources among their priorities, reducing their impact (chapter 3)

- transformation cannot occur in the absence of resources dedicated to communicating the need for change, required training (such as cultural awareness training), developing new processes and practices, any required restructuring of the organisation, and the testing and implementing of change initiatives (chapter 4)
- implementing a commitment to Indigenous Data Sovereignty would involve a significant investment to reform existing data systems, build capability and establish Indigenous-controlled data infrastructure. This would require additional dedicated funding and resourcing by all governments (chapter 5)
- data specification and development work is unlikely to be completed under current resourcing within the life of the Agreement (chapter 6)
- most jurisdictions are yet to establish an independent mechanism, which will need guaranteed funding so that it can build and maintain organisational capabilities, and determine its priorities without undue influence from governments (section 7.3 above).

Each of these issues are likely to pose barriers to progress towards implementing the Priority Reforms and improving socio-economic outcomes. They also disproportionally affect Aboriginal and Torres Strait Islander organisations, as NSW CAPO pointed out (box 7.12).

Box 7.12 – Effectively resourcing the partnership: a view from NSW CAPO

> 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. The impact of this is felt more greatly in the sectors which have a 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 the broad portfolio of work covered by large central agencies. The imbalance is compounded when central agencies are able to resource Aboriginal outcomes branches and/or dedicated Closing the Gap teams larger than the resource that sits with respective Peak.
>
> 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.

Source: NSW CAPO, sub. 77, pp. 2–3.

APO NT suggested how to address this disadvantage.

> We are seeking a whole-of-government strategy to resource the Closing the Gap work program. On shared decision making, we are resourced to participate in a small number of the forums where we contribute our advice and experience to governments. On transitions, we are looking for coordinated and significant investments into our Aboriginal Community Controlled Organisations

> (ACCOs) to enable them to take on services. On government transformations, we would like to see Implementation Plans accounted for in budget processes, and staff job descriptions designed around implementing the Priority Reforms. On data sovereignty, we want to see investments in collecting and sharing data differently. (sub. 69, pp. 2–3)

In addition to financial resources, time is also an essential resource. For example, the First Peoples Disability Network said that 'government needs to recognise that cultural ways of doing consultations and engagement takes time and has its own method' (sub. 95, p. 17). APO NT said that 'working with governments in the way envisioned by the National Agreement will take time for our organisations' (sub. 69, p. 3) and the NT Government submitted that:

> Systemic change takes time, and requires multiple levers which, over time, change the status quo. While it is acknowledged that government processes can be protracted, so can working in genuine partnership. Giving our Closing the Gap partners enough time to form their own position is an important aspect of this partnership, and one that, at least for the Northern Territory, has taken precedence over working quickly. (sub. 70, p. 5)

The SA Government (sub. 54, p. 23) and the WA Government (sub. 43, p. 3) also emphasised that taking the time to put effective foundations in place can pay off later on. For example, the SA Government said that it:

> … has focused its attention on establishing the foundations which will leave us best placed to meet our commitments under the National Agreement over the long term. Key activities include developing a governance model which will ensure the SA Government is accountable directly to Aboriginal people and communities, and genuine efforts to build a relationship of trust and openness with SAACCON.
>
> Placing initial emphasis on getting the fundamentals right may result in a perception that there has been limited progress in achieving the wholesale transformational change required by Priority Reform 3. However, we believe this early work will lead to better outcomes in the long term. (sub. 54, p. 23)

These points echo those made by the Royal Commission into Aboriginal Deaths in Custody, which recommended that 'Aboriginal communities and organizations should not be crowded with programmes but allowed time to think their position through and formulate the order in which they want to attend to things – then come back to the broader society to discuss decisions that they have made' (RCIADIC 1991b, p. 22).

Another important consideration is that resourcing cannot be 'set and forget'. The needs of people, organisations and communities can change rapidly, as can the level of resources required to adequately meet those needs. This is especially the case when changes are occurring in the broader landscape, as is the case for many aspects of policy affecting Aboriginal and Torres Strait Islander people. For example, in relation to the establishment of the independent mechanism the Ngaweeyan Maar-oo Koorie Caucus said:

> It will be important to ensure that any monitoring and accountability mechanisms that are introduced do not additionally burden already overstretched ACCOs. (sub. 65, p. 2)

Action 1.4
Governments adequately resourcing the implementation of the Agreement

The Australian, state and territory governments should ensure that the resources they devote to the implementation of the Agreement are commensurate with the ambition of the Agreement.

At a minimum, this should include additional resourcing for:

- Aboriginal and Torres Strait Islander people and organisations to enable them to apply their knowledge and expertise to the implementation of the Agreement. This includes funding for the design and delivery of programs and services but also funding for participation in government processes to ensure that Aboriginal and Torres Strait Islander knowledges and expertise are central in these processes
- government organisations to implement the Priority Reforms
- accountability mechanisms to oversee the implementation of the Priority Reforms and drive change.

Including Closing the Gap in other intergovernmental agreements

Many of the actions that are needed to overcome the entrenched inequality faced by too many Aboriginal and Torres Strait Islander people are not specified in the National Agreement on Closing the Gap – they are instead found in other intergovernmental agreements. These agreements are part of the broader framework of federal financial relations (box 7.13).

Box 7.13 – The federal financial relations framework

The Intergovernmental Agreement on Federal Financial Relations (IGA FFR) came into effect on 1 January 2009. It recognises that the states and territories have primary responsibility for many services affecting Australians' wellbeing, and that coordinated action is necessary to address national economic and social challenges. It also reflects the fact that, while states and territories have primary responsibility for many areas of service delivery, the Australian Government has greater capacity to raise revenues — a disparity known as vertical fiscal imbalance (PC 2022b, p. 60). Through the IGA FFR, the Australian Government 'commits to the provision of on-going financial support for the states' and territories' service delivery effort' (COAG 2008a, p. 4).

In August 2020, governments implemented new arrangements for Commonwealth-state funding agreements, known as the Federation Funding Agreements (FFA) Framework. This new architecture:

> … consolidated federal funding arrangements into two forms of agreements, National Federation Funding Agreements (NFFA) and Sectoral Federation Funding Agreements (Sectoral FFAs). NFFA typically contain significant policy content and act as sources of ongoing funding, and have relatively complex and bespoke terms and conditions. The Sectoral FFAs, covering Health, Education and Skills, Infrastructure, Environment, and Affordable Housing, Community Services and Other, consolidated all existing National Partnership Agreements, Streamlined Agreements and Project Agreements as schedules. New agreements under the relevant Sectoral FFA are now termed FFA schedules. (COAG 2022)

The agreements in the federal financial relations framework play a key role in setting policy objectives and allocating funding to achieve the agreed objectives in each of the sectors they cover. This means that many of the policies and programs that will contribute to achieving the socio-economic outcomes in the National Agreement on Closing the Gap will be determined, or highly influenced, by these other agreements.

Review participants recognised the importance of ensuring that other agreements reflect governments' obligations under the National Agreement on Closing the Gap. For example, IUIH said that:

> In the health sector, the most significant opportunities for Closing the Gap exist in leveraging 'mainstream' and system-wide policy and funding mechanisms. There are many health partnerships, not explicitly related to the National Agreement [on Closing the Gap], where policy and funding decisions are made at a system-level that have a significant impact on access to services and the health and wellbeing outcomes of Aboriginal and Torres Strait Islander peoples but where the community-controlled sector has no real opportunity to provide input or advice. (sub. 62, p. 13)

And the Coalition of Peaks said:

> Mainstream National Agreements are a critical funding and performance mechanism to be mobilised by Governments to 'closing the gap'. We also note that many of the Indigenous-specific Intergovernmental Agreements have ceased in recent years with no replacement. This places greater emphasis on ensuring that mainstream National Agreements are responsive to the needs of Aboriginal and Torres Strait Islander people and make a significant contribution to 'closing the gap'. We would like to see this issue highlighted … as an area for immediate attention for governments as we note that the negotiations between governments on the Housing and Homelessness Agreement and the Schools Reform Agreement are well advanced. (sub. 58, p. 4)

The Commission agrees that the agreements currently being negotiated should reflect the commitments made in the National Agreement on Closing the Gap. This is an essential prerequisite for delivering on the National Agreement on Closing the Gap.

New or revised agreements about cross-cutting issues need to contain sufficient funding to deliver policies and programs that will contribute to achieving the socio-economic outcomes in the National Agreement on Closing the Gap. They also need to be developed using processes that are consistent with the Priority Reforms. This means, for example, that new policies being considered for inclusion in a national or wide-ranging sectoral agreement should be developed in partnership with Aboriginal and Torres Strait Islander people, and should include explicit consideration of the role of, and funding for, the Aboriginal and Torres Strait Islander community-controlled sector. And when intergovernmental agreements are being evaluated, Aboriginal and Torres Strait Islander perspectives should be central in that evaluation.

Action 4.2
Embed the commitments of the National Agreement on Closing the Gap in other intergovernmental agreements

To enshrine the cross-cutting nature of the National Agreement on Closing the Gap, the Australian, state and territory governments should ensure that their obligations under the National Agreement on Closing the Gap:

- are embedded in commitments in other significant intergovernmental agreements, when existing agreements are revised or new agreements are developed
- inform the way in which they go about revising existing intergovernmental agreements and negotiating new agreements.

7.6 Improving transparency of actions taken to implement the Agreement

The need for transparency is emphasised in multiple places in the Agreement. Transparency is essential so that the community can clearly see how parties intend for their actions to deliver the objectives of the Agreement and lead to improved outcomes for Aboriginal and Torres Strait Islander people.

One of the main ways in which transparency could be improved is to improve jurisdictional implementation plans and annual reports. This is considered in detail in chapter 6. But briefly, it should involve governments writing implementation plans that include actions that are based on a clear theory of change, in collaboration with Aboriginal and Torres Strait Islander people (action 1.5). This would mean:

- treating Closing the Gap implementation plans as strategic documents that position the Agreement and its Priority Reforms as their compass (not as 'laundry lists' of current activities)
- working closely with Aboriginal and Torres Strait Islander partners to agree strategies and actions that are substantiative and critical to achieving the objectives of the Agreement
- developing a clearly articulated theory of change that demonstrates how the agreed strategies and actions will contribute to the desired change
- including only the strategies and actions agreed with Aboriginal and Torres Strait Islander partners in implementation plans, together with details of the funding and timeframe for each agreed action
- reporting on every one of the agreed strategies and actions in Closing the Gap annual reports
- updating implementation plans when there are changes that affect the agreed strategies.

But in addition to better jurisdictional implementation plans and annual reports, there are also other ways in which transparency could be improved. They are:

- including information about Closing the Gap in government organisations' annual reports
- publishing many more of the documents developed under the Agreement.

Information about Closing the Gap in government organisations' annual reports

Annual reports contain much more than financial information

All government organisations — departments, statutory bodies, commissions, hospitals and health services, government-owned companies, local governments and every other type of government organisation – are required to prepare annual reports. These reports must comply with relevant legislation or rules and include certain specified information, which makes them an important input for accountability. For example, in New South Wales:

> The annual report is the key medium by which NSW Public Sector entities discharge their accountability to the Parliament, the Government and the public. It provides an overview of an entity's activities and financial position relating to the preceding year. (New South Wales Treasury 2022a)

In addition to financial statements, a wide range of other information is typically included in government agencies' annual reports (box 7.14).

Box 7.14 – Content of annual reports – an example from the Northern Territory

Jurisdictions each have legislation (and in some cases, other legislative instruments) that prescribe the content of government agencies' annual reports. For example, in the Northern Territory the *Public Sector Employment and Management Act 1993* (NT) requires the agencies covered by that Act to produce an annual report within three months after the end of the financial year. The report must contain information about:

- the functions and objectives of the agency
- legislation administered
- organisation overview, including number of employees of each designation and any variation in those numbers since the last report
- operations, initiatives and achievements relating to planning, efficiency, effectiveness, performance and service delivery to the community
- measures taken to ensure public sector principles were upheld
- management training and staff development programs
- occupational health and safety programs, and
- financial statements prepared in accordance with sections 11 and 13 of the *Financial Management Act 1995* (NT).

And under the *Local Government Act 2019* (NT), local governments must prepare annual reports containing a range of information about their activities and financial transactions.

Source: NT Department of the Chief Minister and Cabinet (2022, p. 5).

The annual reporting requirements for Australian Government agencies are even broader. They include requirements for reporting everything from judicial decisions to procurement practices to support small and medium enterprises (DoF 2023b) to how the agency's activities accord with the principles of ecologically sustainable development (DCCEEW 2023).

How could reporting on Closing the Gap actions be included in annual reports?

In some jurisdictions, agencies' annual reports must include reporting on the measures taken to ensure public sector principles are upheld or the number and proportion of Aboriginal and Torres Strait Islander staff. These requirements, together with the proposed changes to those principles (which form the basis of public sector employment requirements – action 3.5) could, in effect, require agencies in those jurisdictions to report on some of the actions they are taking to implement the Agreement.

But this kind of partial reporting is not a substitute for comprehensive and considered reporting on how agencies are implementing each of the Priority Reforms.

> To shift away from the deficit framing of the past, the Coalition of Peaks sought to achieve a recalibration of the Closing the Gap policy by the inclusion of the Priority Reforms. The intention was to place the spotlight on the way governments work and to also have this reported on annually. (Coalition of Peaks, pers. comm., 5 July 2023)

Requiring government agencies to include information about their actions to implement the Priority Reforms in their annual reports would provide an important means of ensuring that they are making a substantive effort to implement them and to track the outcomes achieved for Aboriginal and Torres Strait Islander people.

The introduction of a similar requirement was recently recommended by the ACT Audit Office.

> The Chief Minister, Treasury and Economic Development Directorate should review and update the annual report directions to explicitly require ACT Government directorates and agencies to report their progress in implementing the [ACT Aboriginal and Torres Strait Islander Agreement 2019–2028] faithfully and without bias. (ACT Audit Office 2023, p. 8)

Many review participants also supported the idea of requiring all government agencies to include information about their substantive activities to Closing the Gap in each of their annual reports (for example, APO NT, sub. 69, p. 14; IUIH Network, sub. 62, p. 9; Law Council of Australia, sub. 83, p. 8; Queensland Indigenous Family Violence Legal Service, sub. 87, p. 8; Victorian Aboriginal Legal Service, sub. 76, p. 22).

Reporting on Closing the Gap in agencies' annual reports could take the form of requiring each agency to report on the substantive activities it undertook to implement the Priority Reforms, an explanation of how those activities contribute to achieving the Priority Reforms and the demonstrated outcomes of those activities. This would be a principles-based requirement that could adapt depending on each agency's function – for example, a government department that commissions health or community services from many ACCOs would report more extensively on its activities to implement the Priority Reforms than a government-owned company whose work does not involve commissioning any services for Aboriginal and Torres Strait Islander people.

At a minimum, a requirement to report on Closing the Gap in agencies' annual reports should include reporting on:

- how each of the Priority Reforms have been implemented in the agency
- how the agency has contributed to relevant socio-economic outcomes
- how the agency tracks the outcomes it achieves for Aboriginal and Torres Strait Islander people
- how the agency assessed the effectiveness of each of the above actions.

For example, IUIH said that it:

> … supports draft recommendation 5 [include a statement on Closing the Gap in government agencies' annual reports] and suggests that the recommendation be strengthened by requiring that the annual reports of government agencies specifically report on the following:
>
> - The number of ACCOs funded by the agencies (existing commitment)
> - The quantum of investment through ACCOs, and where relevant to the agency, is broken down by Indigenous-specific and mainstream program investment
> - The proportion of Indigenous-specific program investment flowing to ACCOs. (sub. 62, p. 9)

Statements on Closing the Gap in agencies' annual report would be a complement to, and would not replace, improvements to Closing the Gap annual reports and implementation plans (action 1.5 above).

In practice, a requirement to report on Closing the Gap in agencies' annual reports could be similar to the current requirement for Australian Government agencies to report on their environmental performance and contribution to ecologically sustainable development (box 7.15).

Box 7.15 – Reporting on environmental matters in annual reports

Under section 516A of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act), the annual reports of Australian Government departments, authorities and agencies must:

- report how the agency's activities have accorded with the principles of Ecologically Sustainable Development (ESD)
- identify how their departmental outcomes contributed to ESD
- report on their impacts upon the environment and measures taken to minimise those impacts
- identify the review mechanisms they used to improve the effectiveness of their measures to minimise its impact upon the environment (DCCEEW 2023).

The former Department of the Environment, Water, Heritage and the Arts produced guidelines to assist agencies to meet these requirements, which include simple tools and template that agencies can apply when undertaking their EPBC Act reporting (DEWHA 2010).

An independent review of the EPBC Act commented on the effectiveness of requiring Australian Government agencies to report on ESD activities and outcomes in their annual reports.

> The intent is to provide a mechanism to ensure the Commonwealth is considering ESD in its operations, but this has been lost over time. The reality is that most Commonwealth entities report on their use of recycled paper or the energy efficiency of buildings, but exclude the environmental impacts of the policies and programs they implement. It is an administrative burden with no real benefit. (Samuel 2020, p. 177)

This provides an important reminder that even if they are beneficial when implemented, reporting requirements should not be left unchanged for decades, as once they have spurred the change they were designed to achieve, they risk becoming an unnecessary burden over time.

In addition to improving transparency, requiring government agencies to include information about Closing the Gap in their annual reports would have other benefits.

- It would ensure that all government organisations – including those that are not currently included in implementation plans and annual reports (chapter 6) – are taking action to meet their responsibilities under the Agreement.
- As agency CEOs are ultimately responsible for all of the contents of their agency's annual report, it would provide another means of ensuring that CEOs are aware of, and pay attention to, the agency's actions to implement the Priority Reforms and to track the outcomes achieved for Aboriginal and Torres Strait Islander people.
- The legislation or rules about what must be included in annual reports would provide another lever to increase the perceived consequences of failure to adhere to the Agreement.

This is not to deny that there is the potential for agencies to treat including information about Closing the Gap in their annual reports as simply another reporting burden – a 'tick and flick' exercise. However, an agency that adopts this 'tick and flick' attitude is highly likely to be one that is currently doing little, if anything, to implement the Priority Reforms. This means that taking actions to implement the Priority Reforms, even if largely motivated by the need to fulfill the reporting requirement, would be a step in the right direction.

Action 4.3
Include a statement on Closing the Gap in government organisations' annual reports

The Australian, state and territory governments each have legislation or rules that require government organisations — departments, statutory bodies, commissions, hospitals and health services, government-owned companies, local governments and every other type of government organisation – to prepare annual reports containing certain specified information. But there are currently no legislation or rules that create reporting obligations in relation to Closing the Gap.

The Australian, state and territory governments should amend all relevant legislation or rules to include a requirement for every government organisation to include a statement on Closing the Gap in its annual report.

The purpose of the Closing the Gap Statement would be to provide transparency about the substantive activities that each government organisation is undertaking to implement the Agreement's Priority Reforms and the demonstrated outcomes of those activities.

The exact criteria that the Closing the Gap statements must meet should be designed by Aboriginal and Torres Strait Islander peak bodies and included in the relevant legislation or rules.

Publishing documents developed under the Agreement

Another important element of transparency is to make it clear to the community how governments' actions will collectively lead to delivery of the reforms to which they have committed. But many of the outputs that have been developed under, or are highly relevant to, the Agreement are not publicly available.

- **Partnership stocktakes and reviews**. Only Queensland, Victoria and the Australian Government have published partnership stocktakes and reviews – others remain ongoing or unpublished (chapter 2).
- **Partnership agreements**. Of the five policy partnerships, four (justice, early childhood care and development, social and emotional wellbeing, and Aboriginal and Torres Strait Islander languages) have been made public (chapter 2).
- **Expenditure reviews**. Only four jurisdictions (New South Wales, South Australia, Western Australia and the ACT) have publicly released their reviews of expenditure on Aboriginal and Torres Strait Islander programs and services (chapter 3).
- **Evaluations**. Currently, it is not easy for policy makers and other evaluation users to access evaluation evidence, nor is it easy to identify evidence gaps that evaluations could fill. Many evaluations are not published, and evaluation evidence is not collected in one central place (PC 2020c, p. 39).

When stocktakes, agreements, reviews and evaluations are not published, it makes it much harder for Aboriginal and Torres Strait Islander organisations and communities, as well as the broader Australian community, to understand whether governments are moving beyond a business-as-usual approach, and to hold them accountable for meeting their commitments.

> There is a clear need to increase transparency across all aspects of the National Agreement, including each of the governance structures, as well as processes linked to development of jurisdictional Implementation Plans and monitoring implementation. (Victorian Aboriginal Legal Service, sub. 76, p. 23)

Other review participants who supported publishing documents developed under the Agreement included APO NT (sub. 69, p. 15), the Law Council of Australia (sub. 83, p. 8) and SNAICC (sub. 96, p. 8).

As with all of the actions under the Agreement, it is essential that improving transparency by publishing all relevant documents is done in a way that is consistent with the Agreement and its Priority Reforms, and centres Aboriginal and Torres Strait Islander people and perspectives. This includes following Indigenous Data Sovereignty principles (chapter 5).

> The application of ethical practices sees Aboriginal communities as the owners of all evaluation reports. It is communities' decision to release reports and to whom including publication. Taking this approach, all but one of the reports arising from the OCHRE [NSW Government plan for Aboriginal Affairs] evaluation have been published. At this stage the unpublished report has been made available to the relevant public service agency to inform the development of policy and practice. (Aboriginal Affairs NSW 2019, p. 3)

Other good practices include publishing a response to evaluation findings (box 7.16). This is essential, as transparency about issues without action to address them can compound the very issues that the action is designed to address.

> States often think of accountability as the uncovering and sharing of information to the public through transparency mechanisms or from agents to principals in funding arrangements. However, to be effective, accountability frameworks must not only provide information, but result in action, or they will fatigue and undermine trust in change across Indigenous-settler relationships. (Jumbunna Institute 2020, p. 27)

Box 7.16 – Good practice in publishing and responding to evaluations

In its Indigenous Evaluation Strategy, the Commission found that:

> … agencies should publish all evaluations of policies and programs affecting Aboriginal and Torres Strait Islander people. Where there are concerns that publishing a full evaluation report would compromise confidentiality or privacy, or where there is culturally sensitive information, a summary report should be published instead. All published evaluation reports should have a clear and concise summary of the evaluation findings. Evaluation reports should document details of data collected, approaches and methods used, ethical practices, limitations of the evaluation, and costs. The evaluation summary report should also document how the evaluation adhered to the principles of the [Indigenous Evaluation] Strategy.
>
> Consistent with good ethical research practice, agencies should share evaluation findings with Aboriginal and Torres Strait Islander people, communities and organisations who are participants in evaluations or stakeholders in the relevant policies and programs.
>
> Agencies should also publish their management response to evaluation findings (this could be included as part of the evaluation report or separately). This should include an explanation about what they have learned, what they have changed in response to the findings, and any further action they intend to take.

Source: PC (2020c, p. 39).

Action 4.4
Publish all the documents developed under the Agreement

An important element of transparency is to make it clear to the community how governments' actions will collectively lead to delivery of the reforms to which they have committed. But many of the stocktakes, agreements, reviews and evaluations that have been developed under, or are highly relevant to, the Agreement are not publicly available. This makes it much harder for Aboriginal and Torres Strait Islander people, as well as the broader Australian community, to understand whether governments are moving beyond a business-as-usual approach, and to hold them accountable for meeting their commitments.

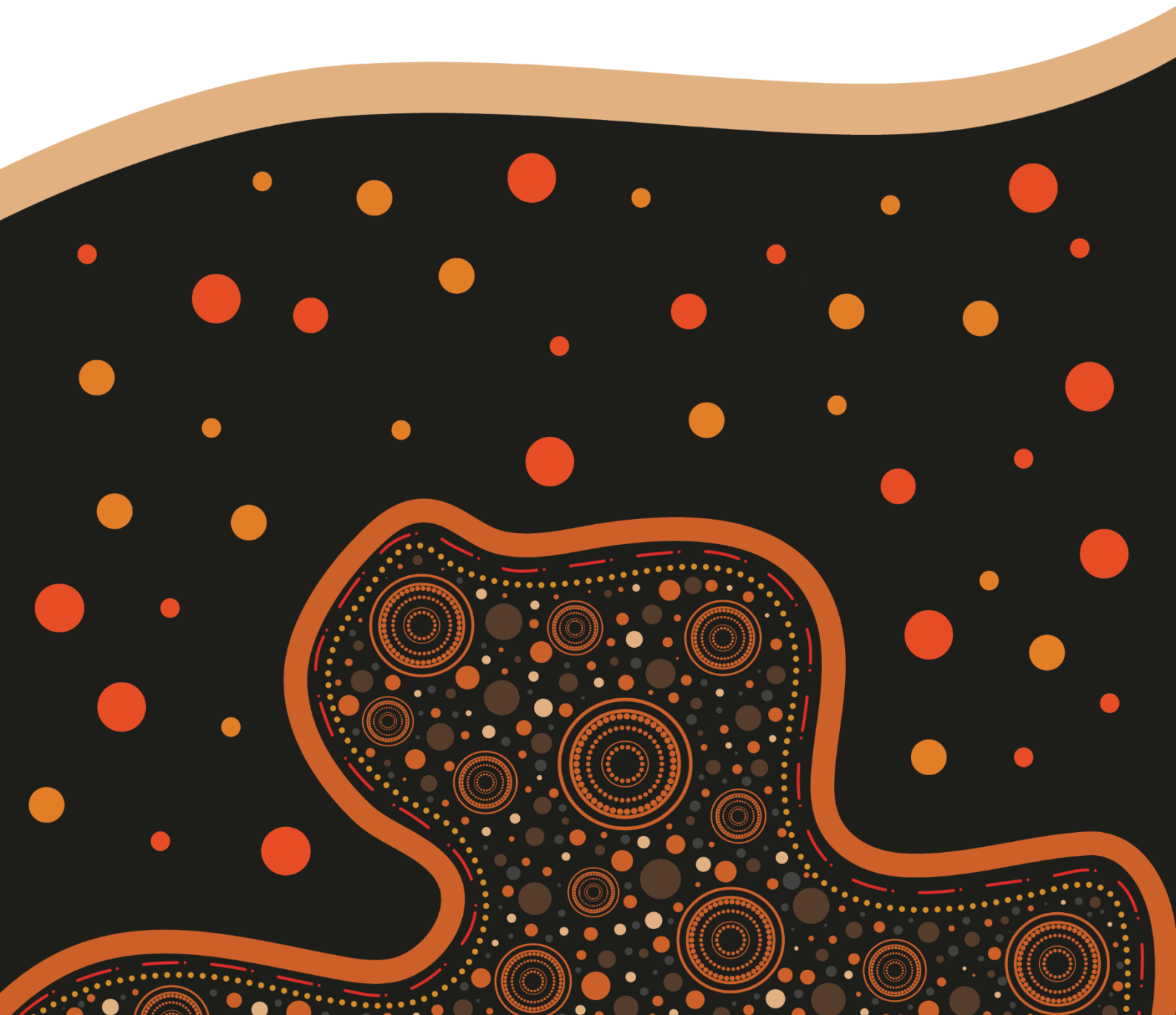
The Australian, state and territory governments should make public all of the outputs that are developed under the Agreement. This includes:

- partnership stocktakes
- partnership agreements
- expenditure reviews
- evaluation
- transformation strategies (action 3.1).

Review of the National Agreement on Closing the Gap

Progress on socio-economic outcomes

Chapter 8



Key points

The previous chapters have assessed the extent to which governments are implementing the Priority Reforms. This chapter takes a deep dive into how governments are implementing them with specific reference to three of the 17 socio-economic outcome areas (SEOs) in the Agreement, namely:

- SEO 11 (Youth justice), with a focus on reforms in youth justice to raise the minimum age of criminal responsibility (raising the MACR).
- SEO 12 (Child protection), with a focus on the policy of delegated authority for child placement in out-of-home care.
- SEO 13 (Family safety), with a focus on the Aboriginal and Torres Strait Islander Action Plan ('Action Plan') (part of the National Plan to End Violence against Women and Children 2022–2032).

In examining these reforms, the focus has been on the process of design and implementation, rather than on the relative merits in achieving their respective SEO targets.

Raising the MACR, delegated authority, and the Action Plan demonstrate some governments' willingness to change their approach across the three SEOs to adopt policies championed for decades by Aboriginal and Torres Strait Islander people.

Nevertheless, gaps are identified on the extent to which these reforms reflect the significant transformation required of each government to implement the Priority Reforms.

- Governments still require Aboriginal and Torres Strait Islander people to fit into mainstream approaches. This ignores Aboriginal and Torres Strait Islander people's conceptions of the 'problem' to be 'solved' and limits recognition of Aboriginal and Torres Strait Islander people's rights to self-determination.
- With the exception of raising the MACR, reforms have focused on targeted programs for Aboriginal and Torres Strait Islander people, without engaging on reforms to mainstream systems and institutions that have significant impacts on outcomes across the three SEOs.
- Across all three policies, governments have limited the extent to which Aboriginal and Torres Strait Islander people have determined the pace and direction of reform. This is particularly evident where reforms are undermined by other government policies that contradict their intended outcomes, such as governments changing rebuttable presumptions for bail and increasing sentences for youth offences at the same time as attempting to address overincarceration by raising the MACR.

Across the three reforms, governments have demonstrated a willingness to partner with Aboriginal and Torres Strait Islander people, but have largely retained the power over key decisions, including whose voices are incorporated and how investment decisions are made.

There have been some promising commitments to improving data across the three SEOs, including a recognition of Indigenous data sovereignty as a key guiding principle under the Action Plan. Nevertheless, there are gaps in data and in sharing data and progress in many areas is slow.

8.1 Assessing alignment of actions to improve socio-economic outcomes with the Agreement

As part of the National Agreement on Closing the Gap (the Agreement), parties have committed to pursuing actions to promote 17 socio-economic outcome (SEO) areas that reflect important aspects of the life experiences of Aboriginal and Torres Strait Islander people. Progress towards these SEOs is measured against national-level targets aimed at overcoming the entrenched inequality faced by too many Aboriginal and Torres Strait Islander people relative to all Australians. As noted in chapter 6, there is currently no indication of how all governments should be held to account for their contribution to achieving these targets.

This chapter assesses whether governments are adhering to their commitments across all four Priority Reforms in the Agreement when making policy decisions to improve SEOs. This approach reflects the logic embedded in the Agreement, where the Priority Reforms are aimed at accelerating changes in life outcomes for Aboriginal and Torres Strait Islander people (figure 8.1). The interplay between the Priority Reforms is depicted in the figure below as the principle of centring Aboriginal and Torres Strait Islander people's perspectives and knowledges in policies and programs – but could also refer to an overarching goal of self-determination (this is discussed further in chapter 2).

As part of the Commission's engagement on SEOs and on the question of which to prioritise as part of this initial review, the Commission received a range of views (box 8.1). This likely reflects pressing issues that exist across many of the SEO areas in the Agreement, and the interplay in outcomes across the SEOs – that is, that outcomes are influenced by a complex set of overlapping risk and protective factors, policies and other determinants across the SEOs. This paper focuses on three of the existing 17 SEO policy areas, namely SEO 11 (youth justice), SEO 12 (child protection), and SEO 13 (family safety). The selection of these three SEOs allows an exploration of the close links that exist across policy areas that relate to keeping Aboriginal and Torres Strait Islander children and families strong and safe from harm. These links have been explored at length for decades, including in the Bringing them Home Report (the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (HREOC 1997) – and continue to be highlighted in coronial inquests across Australia.

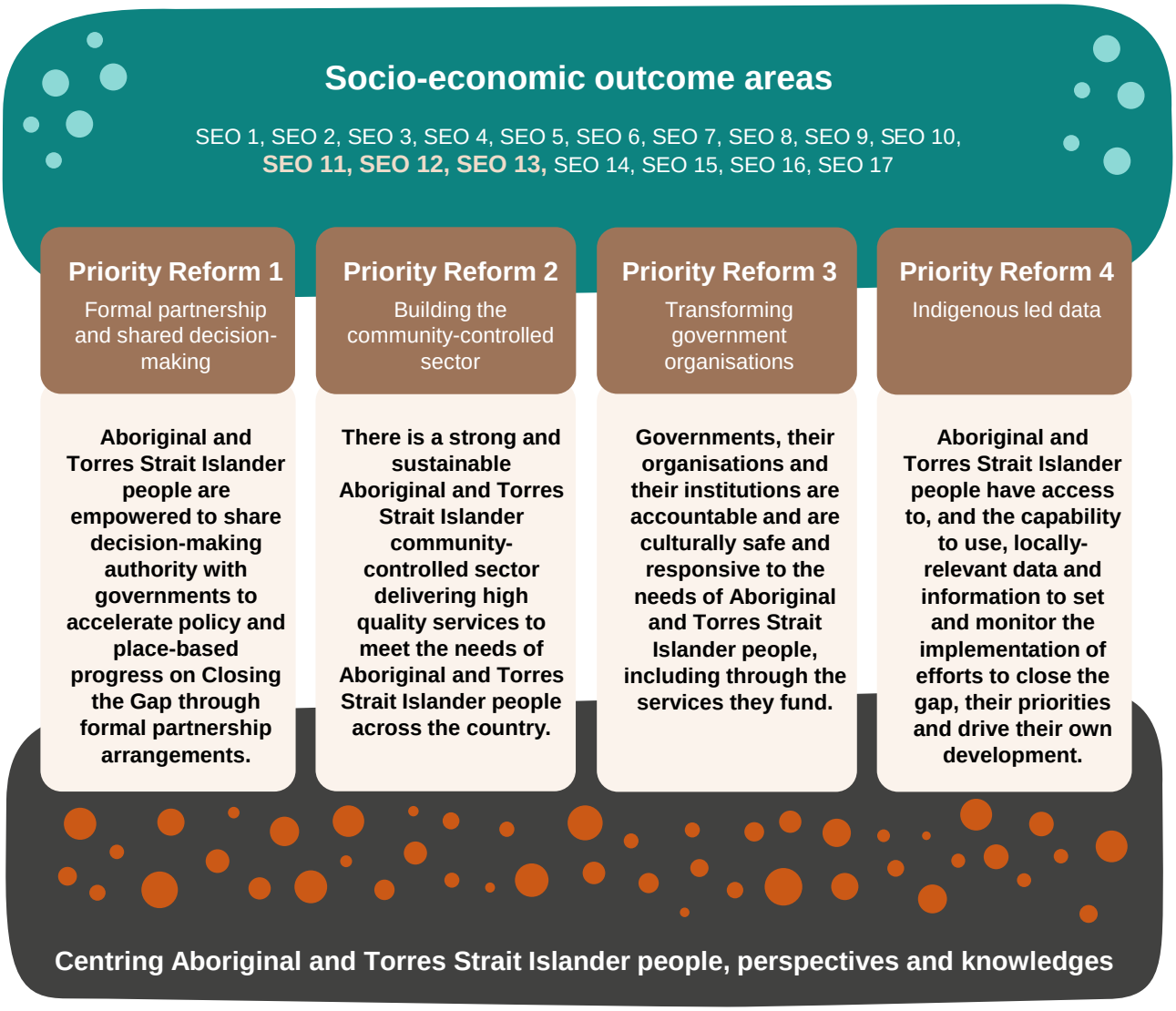
It is widely recognised that change in these policy areas is required to save the lives and protect the future of Aboriginal and Torres Strait Islander children.

Additionally, the choice of these three SEOs allows the Commission to analyse SEOs where there are different levels of progress against their identified targets. According to the latest Closing the Gap Annual Data Compilation Report, progress towards the SEO 11 target is 'on track', progress on SEO 12 is 'not on track', and progress on SEO 13 is 'unclear' – although part of this chapter will also explore how meaningful these targets appear to be against their intended objectives.

Given the breadth of actions governments are reportedly doing across these three SEOs, the Commission chose to take a deep dive into three 'prominent' policies within these SEOs. These policies are:

- reforms in youth justice to raise the minimum age of criminal responsibility (SEO 11)
- delegated authority for child placement in out-of-home care (a policy related to SEO 12)
- the Aboriginal and Torres Strait Islander Action Plan (part of the National Plan to End Violence against Women and Children 2022–2032) (SEO 13).

Figure 8.1 – Priority Reforms to accelerate changes in SEOs



The selection of these policies was informed by the key issues raised during the Commission's engagement with Aboriginal and Torres Strait Islander people and organisations during this review, as well as previous reports into child protection, family safety and youth justice policies. These policies are largely being implemented during the life of the Agreement, and there is an expectation that they should embody governments' commitments under the Priority Reforms. The extent to which their design and implementation does so is tested in this chapter. It is acknowledged throughout the chapter that these policies fit within a broader ecosystem of reforms that are needed to see progress within and across each SEO. For example, delegated authority seeks to partly address only one of the Aboriginal and Torres Strait Islander Child Placement Principles (around partnership) within the child protection system.

In selecting these policies, the Commission has not sought to evaluate their merits in achieving better outcomes within these SEOs. Rather, given these initiatives are designed to positively impact the relevant targets, the Commission has assessed whether these policies, in either the process of design or implementation, have incorporated key enablers (that is, the four Priority Reforms) that are expected to drive better outcomes. This approach to focus on process rather than outcomes reflects the early lifecycle of the Agreement. Future reviews would likely focus on the outcomes that these actions are making, some

indication of which will likely be seen through regular reporting of outcomes and targets in the Closing the Gap Annual Data Compilation Reports and dashboards.

Box 8.1 – SEOs emphasised in our engagement

In Review Paper 2, the Commission posed a question: 'Which socio-economic outcomes should the Commission focus on in the review, and why?' (PC 2022e, p. 11) Three Aboriginal and Torres Strait Islander organisations made submissions that provided answers. Two recommended reviewing all 17 SEOs arguing that all outcomes are interconnected and equally important (Aboriginal Health Council of Western Australia, sub. 22, p. 4; and Community First Development, sub. 9, p. 5). Another organisation proposed reviewing a selection that represents the variety of services under the Agreement (Aboriginal Family Legal Service WA, sub. 7, p. 3).

During engagements, we heard that government policy should better acknowledge the interplay between different socio-economic outcomes. Housing emerged as a key area to improve life outcomes for Aboriginal and Torres Strait Islander people, with its potential effects on physical and mental wellbeing, education, employment, family violence and incarceration. Queensland Indigenous Family Violence Legal Service (QIFVLS) also spoke of the intersection between the SEOs:

> QIFVLS' experience that family violence is the cornerstone or intersection, that links an Aboriginal and Torres Strait Islander person's connection to the child protection system, the youth justice system, adult criminal justice system, housing and/or homelessness, health and the family law system. (sub. 87, p. 4)

We also heard that despite some promising efforts to enable Aboriginal and Torres Strait Islander people to make decisions about what works best for their communities, these efforts have not led to systemic changes to reduce the over-representation of Aboriginal and Torres Strait Islander children in the child protection system. The scope of decision-making power shared by governments is often limited and constrained by the mainstream child protection framework and legal system, which itself needs to reform. The Commission heard that despite the success of ACCO led child protection decisions under delegated authority, child protection systems have not been reformed to learn from, and incorporate, these more successful ways of working. Participants also reported a lack of willingness to change the child protection and criminal justice systems despite numerous recommendation-filled reports. Indeed, the Commission heard that government measures, like longer sentences and reducing the availability of bail, may be worsening levels of adult incarceration and youth detention. A lack of a coordinated approach to addressing family violence was also highlighted. Each of these three SEOs were highlighted as areas where there has been insufficient investment in prevention and early intervention.

The Commission heard consistently from Aboriginal and Torres Strait Islander people and organisations that there are many examples where the incomplete implementation of the Priority Reforms is impeding improvements in various socio-economic outcomes.

8.2 Young people are not over-represented in the criminal justice system

Policy context of socio-economic outcome 11

Nationally we are on track to meet SEO 11, but some jurisdictional trends are static, or even going backwards

Socio-economic outcome 11 (SEO 11) of the Agreement is about reducing the over-representation of Aboriginal and Torres Strait Islander young people (10–17)[11] in detention. Despite only making up 6% of the Australian population between 10–17 years old (from June 2018 to June 2022), Aboriginal and Torres Strait Islander people represented 56% of all young people in detention in the June quarter of 2022 (AIHW 2022e, p. 2). The target in the Agreement is to reduce the rate of Aboriginal and Torres Strait Islander young people (10–17) in detention by at least 30% by 2023. In 2021-22, the average daily national rate of Aboriginal and Torres Strait Islander young people aged 10–17 years old in detention was 28.3 per 10,000 young people in the population. This is an increase from the previous year (23.4 per 10,000 young people) but a decrease from 32.0 per 10,000 young people in 2018-19 (the baseline year) (PC 2023j). Based on progress since the baseline year, the national target shows good improvement and is on track to be met. However, as this assessment is based on a limited number of data points it should be viewed cautiously.

Trends within jurisdictions show large variability, with some states making progress in reducing detention rates of young people, including New South Wales, Victoria, Western Australia, South Australia and Tasmania. This has compensated for other jurisdictions that have either gone backwards (Northern Territory) or are relatively unchanged (Queensland and the Australian Capital Territory) (PC 2023j).

Youth incarceration is influenced by a variety of factors

Most Aboriginal and Torres Strait Islander young people grow up in loving and supportive homes and will never come into contact with the justice system. However, due to a range of factors, Aboriginal and Torres Strait Islander young people are over-represented in the justice system. Rates of Aboriginal and Torres Strait Islander young people in detention can vary substantially between jurisdictions. In the June quarter 2022, the rate of Aboriginal and Torres Strait Islander children in detention was 12 per 10,000 in Victoria, while in the Northern Territory, it was 46 per 10,000 (AIHW 2022e, p. 28).

In 2021-22, most (79%) Aboriginal and Torres Strait Islander youth aged 10 and over in detention were unsentenced, meaning they had either been charged with an offence and were awaiting the outcome of their case, or they had been found guilty and were awaiting sentencing (AIHW 2023, p. 21). In the same period, the vast majority (98%) of youth in unsentenced detention were on remand, awaiting the outcome of their court matters (AIHW 2023, p. 21). Some of the young people on remand will go on to be found not guilty, or may have had less time in custody, if they had available bail options. Therefore, the system itself (remand and refusal of bail) is a contributor to Aboriginal and Torres Strait Islander youth incarceration.

[11] Different terminology is used for people aged 10-17 years old in the criminal justice system including children, young people and youth. For the purposes of this report, the Commission will use the term young people.

A large body of research has emerged in recent decades that identifies factors which can either correlate or increase the risk of entering detention. For instance, young people who:

- are in the child protection system are 12 times as likely as the general population to be under youth justice supervision (AIHW 2017, p. v). There is also evidence that children in out-of-home care are criminalised for behaviour that, if occurring in a family home, would not be reported to the youth justice system (CCYP 2023)
- are involved in the youth justice system are more like to have experienced family violence or neglect (Astridge et al. 2023)
- are in juvenile justice settings are more likely to have experienced multiple traumatic stressors which can be associated with developmental and health difficulties, and substance abuse (Harris 2023). Further, young people in detention are more likely to have an undiagnosed disability (such as foetal alcohol spectrum disorder [FASD]) or poor mental health (Bower et al. 2018; Telethon Kids Institute 2018)
- are homeless due to failures in the child protection system and those who access homelessness services often overlap with those who are involved in the youth justice system (AIHW 2016; Yfoundations 2021). Homelessness is also a key barrier to accessing bail (AIC 2013, p. 65).

In addition, the criminalisation of disadvantage can occur when Aboriginal and Torres Strait Islander children and young people do not have access to resources and services and their communities are overpoliced. For instance, laws that regulate the use of public space or punish 'crimes of necessity' can lead to Aboriginal and Torres Strait Islander young people being criminalised for minor offences like fare evading on public transport, stealing food or driving without a licence, the latter of which is more prevalent in remote areas (ALRC 2018; Walsh 2019).

> … there are now decades of evidence demonstrating that poverty, structural racism and inequitable distribution of resources contribute to who is incarcerated … Coming from a background of poverty with a lack of access to resources plays a significant role in contact with and entrenchment in criminal legal systems. Disadvantage in Australia, as elsewhere, is geographically concentrated, and research has highlighted the ways that characteristics associated with certain suburbs or areas can compound the disadvantageous circumstances of particular groups. (McCausland and Baldry 2023, pp. 45–46)

A long history of Aboriginal and Torres Strait Islander calls to reform the youth justice system have gone unheeded

Aboriginal and Torres Strait Islander communities have been calling for both the youth and adult justice systems to change for decades:

> For more than 30 years, for example, our colleagues and communities have called for governments to implement the recommendations of the report of the Royal Commission into Aboriginal Deaths in Custody. (Change the Record, sub. 66, p. 4)

A series of inquiries and reports in the decades following the Royal Commission into Aboriginal Deaths in Custody continue to provide insights into the causes, conditions and harms inflicted on Aboriginal and Torres Strait Islander young people in detention. They recommend governments align with international polices and conventions on human rights (including the Optional Protocol to the Convention against Torture) and propose practical reforms to the justice system (Disability Royal Commission 2023a; RCPDCNT 2016). The recommendations are echoed and expanded on by a number of reports by international agencies including the Committee on the Rights of the Child, and the UN Special Rapporteur on the rights of Indigenous peoples (AHRC 2018b; Tauli-Corpuz 2017).

> … [Pathways to Justice Report] provides real, tangible recommendations that the government has had the chance to consider and implement. Unfortunately, the Government's silence is deafening. It is compounded by other governments' failures to act. (LCA 2019)

> Australia's lamentable treatment of young people in detention has long been well known, and the [Australian Human Rights] Commission has repeatedly raised these issues with Australian governments. We urge them to heed the advice of senior judges, prison officials and child development experts calling for alternative approaches. (AHRC 2022b)

Other advocacy has also led to reforms being enacted that seek to address failures or gaps in other sectors that impact detention rates. For instance, section 28 of the *Bail Act 2013* (NSW) sought to hold government officials to account by requiring them, when requested, to provide information on actions taken to secure accommodation for a young person on remand due to a lack of adequate housing. Changes to the *Youth Justice Act 1992* (Qld) in 2019 made it no longer acceptable to hold a child in detention due to a lack of accommodation (Queensland Government 2019). Changes to police cautioning processes and the introduction of a framework to address the over-criminalisation of young people in out-of-home care in Victoria has also sought to decrease the entry of young people into the justice system (Victorian Government 2020; Yoorrook Justice Commission 2023d, p. 304).

Many of these reforms have not been adopted in full or applied in a consistent manner across all jurisdictions. Some reforms, like the above bail laws, have been subsequently reversed with harsher bail laws now in place (Brennan 2023; Editorial 2019). In fact, changes to the justice system are often enacted in light of 'trigger' cases, which see harsher measures put in place like stricter bail laws or increased penalties for relatively minor offences (Auld and Quilter 2020, p. 645). These reforms are rarely based on consultation with experts regarding the roots causes of the offences (Auld and Quilter 2020, p. 666) and are influenced by public opinion (Hazel 2008, p. 21). Perceptions of youth crime can also be heavily influenced by media reports that use tough on crime rhetoric, which can fail to recognise the benefits and effectiveness of therapeutic approaches in the long run (Edwards 2018, p. 228; SCA 2023, p. 16).

Raising the minimum age of criminal responsibility

Raising the minimum age of criminal responsibility (raising the MACR) is one such reform that has gained momentum among governments in the last five years. The MACR is the age at which a young person can commit and be charged with an offence. A growing body of research shows that young people have not fully cognitively matured, meaning they show less forethought, more impulsivity and are more susceptible to peer pressure or to be opportunistic (Farmer 2011). When coupled with trauma or disability, these characteristics can be more severe (Sentencing Advisory Council 2012, p. 12)

It is widely recognised that Australia's MACR, which was 10 years old in all jurisdictions until recently, is low according to international standards. In a 2008 study of 90 countries, 68% of those had a MACR of 12 years old or higher (AHRC 2020a, p. 12). While most Australian jurisdictions recognise, to some extent, that young people under the age of 14 years old should not be held criminally responsible for their actions through doli incapax (which is Latin for 'incapable of evil'), this practice is often applied poorly and inconsistently (AHRC 2021c, p. 1). Doli incapax is legislated in all states and territories except for New South Wales, Victoria and South Australia, where it is a common law principle (Drabsch 2022, p. 3). The application of doli incapax is also reactive, meaning it can only be applied once the child already has contact with the justice system. The earlier a child has contact with the justice system, the more likely they are to return (Cashmore 2020; QFCC 2022, p. 4; SAC 2016, p. 18). As such, one of the goals of raising the MACR is to remove the chance of a child unnecessarily coming into contact with the stress and trauma of the justice system. Other objectives include bringing Australia into line with its obligations under the Convention on the

Rights of Children, and with the latest research on children's brain development. Raising the MACR also means that governments need to identify alternative forms of assistance for children with complex needs that do not involve the criminal justice system (AHRC 2021c, pp. 1–2). Ultimately, raising the MACR through legislation, and changes to policies that have seen increased investments in support services, can minimise harm and reduce recidivism for young people who often have complex needs and priorities.

While raising the MACR to 14 years old would not result in large reductions in the overall number of Aboriginal and Torres Strait Islander young people in detention, it would have an impact on the over-representation of Aboriginal and Torres Strait Islander young people in detention. Young people under the age of 14 years old in detention made up just 5% of the prison population in 2023 (AIHW 2022e, p. 1). However, in the June quarter of 2022, the rate of children aged 10–13 years old in detention was 4.5 out of 10,000 for Aboriginal and Torres Strait Islander children and 0.1 per 10,000 for non-Indigenous children (AIHW 2022e, p. 2).

What does raising the MACR look like in practice?

To date, only the Northen Territory and the Australian Capital Territory have introduced legislation to raise the MACR. The Northern Territory legislation came into effect in August 2023, raising the MACR to 12 years old (NT Government 2023c). The Australian Capital Territory legislation raised the MACR to 12 years old in November 2023, with provisions to raise it to 14 years old in July 2025 (Legislative Assembly for the Australian Capital Territory 2023).

The Victorian Government has made promises to raise the MACR to 14 years old by 2027 but has yet to enact legislation (Premier of Victoria 2023). In June 2022, the Tasmanian Government committed to raising the minimum age of detention to 14 by 2024, which has some of the same effects as raising the MACR, but falls short in its overall objective to move away from a punitive approach to young people offending (Rockliff 2022). In December 2023, the Tasmanian Government further committed to raising the MACR to 14 years old by 2029 (Tasmanian Government 2023b, p. 5).[12] The Queensland, South Australian, Western Australian and New South Wales governments have not committed to raising the MACR.

Legislation that raises the MACR also includes additional amendments that clarify and support this change. This includes, for example investments in wrap around services and diversionary programs. The key changes enacted in the Northern Territory and Australian Capital Territory and, which have been committed to in Victoria are explored in box 8.2.

Box 8.2 – Key legislative and policy changes to support raising the MACR

Australian jurisdictions have largely taken (or committed to taking) similar approaches to raising the MACR. They include legislative amendments and a focus on investing in services or diversionary programs which aim to meet the complex needs of young people who may be at risk of offending. Some key features of their approach are noted below.

[12] The Commission has not assessed the decision-making process for this policy as it was announced during the final stages of the review.

Box 8.2 – Key legislative and policy changes to support raising the MACR

Simplification of Doli Incapax

In the Northern Territory, the statutory tests for doli incapax have been simplified into one test. The test applies to 12 and 13 year olds who commit an offence after 1 August 2023, or before August 2023 if the trial or hearing has yet to be started for that offence (NT Government 2023c).

In the Australian Capital Territory, doli incapax will be maintained and applied to young people who commit an offence that is considered an exception to the MACR (Legislative Assembly for the Australian Capital Territory 2023, p. 68).

Victoria will strengthen and codify the existing legal presumption of doli incapax for young people under 14 years old (Premier of Victoria 2023).

Exceptions to the raised MACR

Sometimes labelled as carve outs, these describe offences under which a child below the new MACR can be criminally charged. Carve outs often relate to serious offences, like murder or sexual assault and require proof that there was intent to cause death, grievous bodily harm or an act of indecency.

Section 38 of the Northern Territory's *Criminal Code Amendment (Age of Criminal Responsibility) Act 2022* does not allow for any child under 12 years old to be charged or convicted for any crime regardless of severity.

In the Australian Capital Territory, there are no carve outs under the new legislation for young people under 12 years old. Exceptions will be legislated for those aged 12 or 13 years old if they are alleged to have committed the most serious of offences (Legislative Assembly for the Australian Capital Territory 2023, p. 19).

The Victorian Government has indicated that there will likely be exceptions to raising the MACR for serious crimes, but more work needs to be done (Premier of Victoria 2023).

Expungement of records

In some cases, jurisdictions have stated they will erase past convictions from the records of young people who are under the MACR.

In the Northern Territory, past charges or convictions are expunged for young people under 12 years old. It is now an offence to disclose information about a charge or convention that has been removed (NT Government 2023c).

In the Australian Capital Territory, all convictions (except those subject to cave outs) committed by young people under the MACR will be extinguished, except for the purposes of working with vulnerable people (Legislative Assembly for the Australian Capital Territory 2023, p. 2).

It remains unclear if Victoria will expunge the records of young people under the MACR once legislation is introduced.

Investment in diversionary programs and support services

Diversionary programs seek to steer offenders away from the formal criminal justice system while therapeutic approaches to youth justice seek to address the psychological needs and wellbeing of young

Box 8.2 – Key legislative and policy changes to support raising the MACR

people who are at risk of offending (thereby diverting them) or who have offended. Diversionary programs and support services are currently used to varying degrees across all jurisdictions, however for those territories that have raised the MACR, there appears to be a more pointed investment into these services.

In the Northern Territory, young people who engage in behaviours that would have previously been considered an offense will now be referred to Territory Families, Housing and Communities (TFHC). TFHC will identify the support services needed to address the issues which may be causing the behaviour. These services will be delivered by the On The Right Track Program (NT Government 2023c).

The ACT Government has said that it will take a therapeutic approach to those young people now under the MACR. This includes creating a 'new Therapeutic Support Panel … introducing a new Intensive Therapy Order, and establishing minimum standards for intensive therapy places, to be used only where necessary as a last resort' (Legislative Assembly for the Australian Capital Territory 2023, p. 2).

In Victoria, an alternative service model will be developed for 12 and 13 year olds in consultation with an Independent Review Panel, ensuring there is still a safety-net for both at risk young people and the wider community. Victoria has also said that they will continue to invest in diversionary programs run by police (Premier of Victoria 2023).

Has design and implementation of raising the MACR reflected the four Priority Reforms?

The degree to which decisions have been made with Aboriginal and Torres Strait Islander people has varied

A number of reports including the Royal Commission into Aboriginal Deaths in Custody, Bringing Them Home and the Royal Commission into the Protection and Detention of Children in the Northern Territory have stated the importance of sharing decision-making to uphold self-determination, particularly in the justice sector (Cuneen 2019, pp. 15–16). Raising the MACR and keeping Aboriginal and Torres Strait Islander young people out of detention has been a long-standing priority for many Aboriginal and Torres Strait Islander communities.

> It is time for Australia to catch up with the rest of the world and listen to the medical experts which say no child under 14 years old should have any contact with the criminal legal system. (Change the Record 2020)

> We are of the view that raising the [minimum age of criminal responsibility] is a crucial and transformative step towards ending the overrepresentation of Aboriginal and Torres Strait Islander people in the legal system. (NATSILS as cited in Trevitt and Browne 2020, p. 4)

Jurisdictions that have committed to raising the MACR have, to some extent, listened to Aboriginal and Torres Strait Islander people and are closer to realising the objective of Priority Reform 1 than those that have not. However, the extent to which they are fully committed to sharing the necessary decision-making power is unclear given the lack of transparency and perceived inaction throughout the engagement process.

There is limited publicly available information on the reform process that occurred in the Northern Territory, after the Government's in principle commitment to raise the MACR to 12 years old in response to the Royal Commission on the Protection and Detention of Children in the Northern Territory report in 2017 (Vanovac 2018). A public submission from the Jesuit Social Services in September 2022 states there was an 'invitation to provide feedback on the proposed reform to the Criminal Code (Schedule 1 of the Criminal Code Act 1983) focused on raising the minimum age of criminal responsibility' (Jesuit Social Services 2022, p. 1). The Jesuit Social Services' submission references submissions made by the North Australian Aboriginal Justice Agency (NAAJA) and the NT Legal Aid Commission, however, due to a lack of publicly available information, the full engagement process largely remains unclear. This lack of clarity is concerning, given many ACCOs, including NAAJA, are firmly of the view that the MACR should be 14, not 12 years old.

> NAAJA view is that the statutory age of criminal responsibility should be 14 years of age and above. It is therefore necessary that all laws of the Commonwealth, States and Territories should have a consistent age of 14 years as the minimum age of criminal responsibility. (NAAJA 2020, p. 5)

The NT Government has stated it is not immediately raising the MACR to 14 years old because the Government would review the amendments two years after commencement to assess the appropriateness of the change to the MACR, the impact on services and support systems, and whether further amendments are necessary.

> The calls to go further and raise the minimum age of criminal responsibility to 14 are recognised and heard, but it is important to ensure that we are ready for that change. We as a community must have effective alternative action available, and we must be ready to support the needs of the youths and their families so they can break free from the cycle of crime and punishment. It is equally important to ensure that we have adequate service providers to accommodate the increasing needs so no child ever falls through the cracks. (Legislative Assembly of the Northern Territory 2022, p. 4900)

These commitments, while promising, may be viewed with scepticism from Aboriginal and Torres Strait Islander people given the history of unfulfilled commitments, and shifts in committed policy direction from changes in governments. For example, in the Northern Territory, the opposition has stated that they would seek to repeal the raising of the MACR legislation if they formed government in 2024 (Manfield 2023).

These matters exemplify the power imbalance that exists, and the difficulty in holding governments to account (which is discussed further in chapters 2 and 7 respectively).

The opaqueness of government engagement processes can hurt the credibility of governments, weaken their commitment to shared decision-making and further engender mistrust, all of which is detrimental to strong partnerships. In December 2019, the (then) Council of Attorneys-General (CAG) called for submissions into raising the MACR, which informed a draft report that was presented to CAG in July 2020. The report and the more than 80 submissions were not made public, despite requests from the Raise the Age Campaign and Freedom of Information requests from the Human Rights Law Centre. In May 2021, the Raise the Age campaign compiled and publicly released 48 submissions and highlighted 'the inaction of the CAG, and failure of leadership from the Commonwealth Government' (Raise the Age 2021).

> Three years ago Attorneys-General committed to explore options to raise the age. All they have done since then is kick the can down the road, while almost 500 children under the age of 14 languished behind bars last year alone. (Raise The Age 2023)

In December 2022, the Standing Council of Attorneys-General (formerly CAG) agreed to release the report, noting that it 'was never agreed by all jurisdictions at officer level nor provided to CAG for consideration' (AGD 2022e). In the same meeting, participants noted that the ambition of raising the MACR to 14 years old had changed:

> … in November 2021, State Attorneys-General supported development of a proposal to increase the minimum age of criminal responsibility from 10-12, including with regard to any carve outs, timing and discussion of implementation requirements. (AGD 2022e)

Change the Record called this change in approach a 'nothing announcement that does nothing to improve the lives of children, and nothing to close the gap' (Change the Record 2021a).

Conversely, the engagement process for raising the MACR in the Australian Capital Territory appears to be transparent and accessible. The ACT Government has been praised by some Aboriginal and Torres Strait Islander organisations for its action in raising the MACR to 14 years old.

> The ACT has made it clear that this reform is not only necessary, but it is achievable. They have released a clear roadmap to raising the age to 14 years old and ensuring the social and community programs are in place to support children and their families to thrive. (Change the Record 2020)

> ANTAR also commends the ACT Government for being the leading jurisdiction in Australia to pursue this legislative change. (ANTAR 2021, p. 3)

> Raising the MACR aligns with a commitment by the ACT Government to Closing the Gap (Target 11). (ALS 2023, p. 2)

After committing to raising the MACR following the 2020 election, the ACT Government commissioned an independent review, ensuring an Aboriginal consultant was included in the drafting. Following this, there were initial engagements and a discussion paper, which called for feedback within 3 months. The ACT Government synthesised and published the feedback they heard, using it to draft legislation which was introduced in May 2023. Following a public hearing for the Standing Committee Inquiry into Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023, sector workshops were held in July and August 2023 to develop service responses for young people (ACT Government 2023d).

Ensuring a process is transparent increases accountability and respects the time and expertise of Aboriginal and Torres Strait Islander organisations and advocates who provide input into the process. It is a necessary element in building trust and the start of rebalancing power. The Commission heard that despite many positive aspects of the engagement process, elements that Aboriginal and Torres Strait Islander organisations had adamantly opposed, were nevertheless included in the legislation, with little explanation as to why.

> In late November 2022 Change the Record staff attended a MACR Reference Group meeting with senior officials from the ACT Community Services Directorate as part of consultations on the bill … Directorate officials assured [us] … the government's approach and philosophy was non-punitive. As far as we are aware, the MACR Reference Group did not meet again.
>
> When the bill was released months later, we were surprised and dismayed to find that it provided for new offences that could criminalise families and carers of noncompliant children. We and other colleagues in civil society raised the provisions in our submissions to the ACT parliament's inquiry into the bill. CTR staff approached the ACT Attorney-General's office with questions, but these were referred to the Directorate.
>
> When Change the Record appeared in June 2023 at the ACT parliament's Standing Committee on Justice and Community Safety's inquiry into the Bill, we were not asked about our concerns about the new offences or some of the other concerns we'd raised … . We are unsure why all the concerns we and our colleagues raised were not explored in the committee process. (Change the Record, sub. 66, pp. 5–6)

Instances like the above illustrate that while governments understand they should be engaging and working with Aboriginal and Torres Strait Islander people, there remains limited options for Aboriginal and Torres Strait Islander

people to hold governments to account for when they fail to incorporate their advice. This power imbalance impedes governments from realising their commitment to Priority Reform 1. This was articulated in the Yoorrook Justice Commission hearings when they concluded that the Victorian Government had failed to listen to Aboriginal and Torres Strait Islander justice-related forums on other legislative actions.

> What eventuated was a stark reminder that the State retains power and control over the fate of First Peoples, even when it adopts the language of 'partnership', 'working together', 'respect', and 'self-determination'. (Yoorrook Justice Commission 2023d, p. 21)

This underscores the importance of Priority Reform 3, which focuses on governments transforming themselves to better work with Aboriginal and Torres Strait Islander people. Until then, governments still hold the power and ability to make unilateral decisions, and too often fail to listen to Aboriginal and Torres Strait Islander people.

There is a strong desire to invest in diversionary programs and in principle to have culturally relevant services

As part of raising the MACR, jurisdictions have made clear that investing in wrap around services is a crucial aspect alongside the legislative reform.

> Raising the MACR is an important priority of the Government, but it is embedded in a broader focus on building a better system for all children, young people, families and the community, including (but not limited to) children aged 10-13. (ACT Government 2022g, p. 3)

> As a modern society, we are aware of the serious and long-lasting adverse effects that incarceration can have on a child's life and rest of the community. Our government is breaking the cycle of youth crime through early intervention, prevention and diversion … We are cultivating a system that not only puts the safety and wellbeing of children at the forefront, but will ultimately make the community safer. (Legislative Assembly of the Northern Territory 2022, p. 4899)

The extent to which these services have been or will be designed, implemented and controlled by Aboriginal and Torres Strait Islander community organisations varies. While the *NT Criminal Code Amendment (Age of Criminal Responsibility) Bill* was introduced in October 2022, it only took effect in August 2023 with the NT Government citing the need to put programs in place and recruit staff (Manfield 2023). NT police will now refer young people under 12 years old who are engaging in negative behaviour to the Department of Territory Families Housing and Community (TFHC) through the new 'On the Right Track' diversionary program. TFHC will then assess which intervention programs are needed to respond to the 'health education, social, care and wellbeing needs of the child and family' (NT Government 2023b). The program has been allocated $5 million over two years, with officers based in Darwin, Alice Springs, Katherine and Tennant Creek (Chaseling 2023).

How this funding will be allocated or if it is sufficient to address the complex needs of the young people it seeks to support is unclear. There is evidence to suggest it may not be sufficient. The Justice Reform Initiative (JRI) estimated that the NT Government would need to commit $300 million over four years to assist community-led organisations to meet the growing demand for their services, in addition to capacity building needs. JRI further stated that 80% of this $300 million should be dedicated to 'First Nations-led organisations in recognition of the challenges and over-representation of First Nations people in the justice system' (Justice Reform Initiative 2023, p. 45).

JRI noted that there is ' … only a piecemeal approach to resourcing, expanding, and evaluating … [community led approaches with many] … First Nations community-led organisation … achieving remarkable outcomes with very limited support and resourcing' (Justice Reform Initiative 2023, p. 2).

In the Australian Capital Territory, 'the Aboriginal Controlled Sector is comparatively small and there are a limited number of ACCOs providing services to the local community' (ACT Government 2022b, p. 5). The Australian Capital Territory has recently undertaken sector workshops to 'inform development of the service responses needed to establish healthier pathways for children and young people' (ACT Government 2023d). Information coming from these workshops held in July and August 2023 has yet to be released, but in the ACT Government's submission they note that:

> In the last nine months, the ACT Government has established the Aboriginal Service Delivery Branch in the Community Services Directorate … The Branch's key focus is to support the development and enhancement of established, new and emerging ACCOs in the ACT to deliver human services to the Aboriginal and Torres Strait Islander community … We are already seeing a significant shift with additional funding being allocated to ACCOs providing critical services to the Aboriginal and Torres Strait Islander community … . The Government has also committed to invest more than $19 million in Gugan Gulwan Youth Aboriginal Corporation's purpose-built new facility. This is in recognition of the important work that Gugan Gulwan has delivered for Aboriginal and Torres Strait Islander children and families over the last 30 years, and will ensure that they have the facilities to meet the needs of a growing community into the future. (ACT Government, sub. 44, pp. 2–3)

The case of the Australian Capital Territory highlights a key point. If there is a small Aboriginal and Torres Strait Islander workforce or sector, or limited funding available to them to manage community diversionary and preventative programs, then inevitably mainstream organisations, both non-profit and government (i.e. police), may be contracted to deliver services. In doing so, the programs may become less culturally safe, decreasing involvement from Aboriginal and Torres Strait Islander children and young people and ultimately hinder their effectiveness. Yoorrook found that:

> Most Victorian diversion programs fail to embody … essential criteria for success. Aboriginal children are most disadvantaged by this. They are less likely to be referred to a diversion program. If they are referred, it may be to a diversion program that is not culturally appropriate or is based in mainstream or government agencies. As the evidence in other chapters indicates, First Peoples are (rightly) distrustful of mainstream … [diversionary] … programs fearing exposure to systemic racism, bias and a lack of cultural safety. (Yoorrook Justice Commission 2023d, p. 320)

This raises questions about the Victorian Government's plan to continue to invest in police-run diversionary programs (Premier of Victoria 2023) as part of their commitment to raise the MACR. This also contradicts their commitment to develop and grow the ACCO sector which is stated in their first implementation plan (Victorian Government 2021, p. 8).

Raising the MACR is a positive step but governments are still failing to transform and address institutionalised racism

In committing to raise the MACR, and subsequently investing in wrap around services to youth justice, jurisdictions like the Northern Territory, Victoria, the Australian Capital Territory, and to some extent Tasmania, have demonstrated understanding of the harmful impacts of the youth justice system and the role of structural reform in addressing these harms. A number of reports, starting with Royal Commission into Aboriginal Deaths in Custody, and continuing through to coronial inquests and research papers, have highlighted the structural ways that the youth justice system discriminates against Aboriginal and Torres Strait Islander people.

> Structural, unconscious or explicit bias manifests itself in the on-going deaths in custody of Aboriginal and Torres Strait Islander Peoples, and is directly attributable to the criminal justice

> system's pervasive police brutality, persistent want of care, and repeated failures to follow process or, even, the dictates of common humanity. (Cubillo 2021, p. 185)

However, the extent to which jurisdictions have addressed the institutional racism within the youth justice system and taken a consistent and effective approach to reform varies greatly. In the past five years, some jurisdictions, including Victoria and the Northern Territory, have introduced legislative reforms to reduce the availability of bail, despite warnings from ACCOs and experts, that this would increase the rate of over-incarceration of Aboriginal and Torres Strait Islander people, and reverse government commitments under the Agreement (Smit 2021; VALS 2022a). Change the Record highlighted the impacts of systemic racism:

> When the policy decisions of governments are racist or have the effect of widening racialised and gendered inequalities and enabling discrimination, they reduce the ability of street-level bureaucrats to make antiracist decisions and increase the likelihood that the grassroots implementation of policy will be institutionally racist. (Change the Record, sub. 66, pp. 8–9)

In May 2021, the NT Government introduced the *Youth Justice Legislation Amendment Bill 2021* which, once it became law, made it harder for young people to access bail. While the Northern Territory was the first jurisdiction to raise the MACR to 12 years old in August 2023, its decision to strengthen bail laws, despite opposition from Aboriginal and Torres Strait Islander organisations and advocates, demonstrates a failure to take a consistent policy approach to address the goals under SEO 11 in the Agreement. This is particularly the case, given that at the time the NT Government introduced legislation to raise the MACR to 12 years old, there was only one young person in detention at that age (Liotta 2022), yet the average daily number of young people in detention on remand in November 2022 (a month later) was between 35 and 40 (NT Government 2023d). While raising the MACR is an important reform within the Northern Territory, it is clear that other reforms are also needed.

In Victoria, similar evidence was presented to Yoorrook regarding the harm to Aboriginal and Torres Strait Islander adults and young people in light of government changes to bail laws in 2018.

> … government ignored the concerns and advice of First Peoples about the inevitable impact of its bail reforms, making a mockery of government commitments to self-determination and reducing over-imprisonment and eroding the trust that had been generated through the justice-related forums established to listen to and consult with Aboriginal people (Yoorrook Justice Commission 2023d, p. 21).

Yoorrook acknowledged that the Victorian Government is now willing to wind back bail laws, and highlighted changes to the Victoria Police Manual that increase the opportunities for police to issue cautions to young people as small steps of governments changing how they work (Yoorrook Justice Commission 2023d, pp. 21, 256). However, the onus is on governments to take a whole-of-government approach and prioritise transformation both in policy development and front-line services to avoid further harm to Aboriginal and Torres Strait Islander young people.

Data does not exist in some critical areas of youth detention

In 2017, Change the Record released the *Free to Be Kids National Plan of Action* report, which put forward eight actions 'to end the abuse and over-representation of Aboriginal and Torres Strait Islander children in prison' (Change the Record 2017, p. 1). One of the eight actions was to improve the collection and use of data stating that 'data collection and publication on youth justice in Australia is not sufficient in all states and territories to provide an evidence base for a fully informed policy approach' (Change the Record 2017, p. 4).

A key area where there is poor collection and availability of data is on Aboriginal and Torres Strait Islander young people with disabilities and mental health conditions in detention. A lack of data regarding disability

and mental health conditions amongst Aboriginal and Torres Strait Islander young people in detention can cause further harm through the failure to provide appropriate services and assistance, exposing them to abuse or neglect. It can also increase the likelihood that Aboriginal and Torres Strait Islander young people 'will become enmeshed in the criminal justice system' (Disability Royal Commission 2023c, p. 18) given they may not be able to understand or navigate the criminal justice system (AHRC 2021c, p. 1).

Nearly six years after Change the Record's Plan of Action, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability concluded that 'the number of First Nations people with cognitive disability in custody, particularly youth detention, is a hidden national crisis' (Disability Royal Commission 2023c, p. 18), yet 'no nationally consistent data indicates how many First Nations people … with disability are in prison, detention or other custodial settings' (Disability Royal Commission 2023b, p. 245). The limited available research shows that Aboriginal and Torres Strait Islander people are not just over-represented in the criminal justice system but also among people with a mental health disorders or cognitive disability (McCausland et al. 2017, p. 1). Studies show that 23.8% of young Aboriginal and Torres Strait Islander people in detention in New South Wales indicated having a severe intellectual disability and 47% of Aboriginal youth in detention in Western Australia were diagnosed with FASD (First Peoples Disability Network, sub. 95, p. 15). Further, 89% of sentenced young people at Banksia Hill Juvenile Detention Centre had at least one severe neurodevelopmental impairment and close to half had severe problems with language (Telethon Kids Institute 2018).

Addressing similar gaps in the collection of geospatial data, including where crimes occur, areas of socio-economic disadvantage and the provision of services, could further assist the design and delivery of diversionary programs and services more broadly (HoRSCATSIA 2011, p. 272).

In addition to issues around collection, the data gathered by some jurisdictional agencies about the services they fund and administer is often not shared between agencies. Not only does this result in siloing, it also affects the level of involvement and control over the delivery of services and programs by Aboriginal and Torres Strait Islander organisations. In a joint submission by the Aboriginal Legal Service (NSW/ACT), NAAJA and Queensland Aboriginal and Torres Strait Islander Legal Service to the Inquiry into high level of involvement of Indigenous juveniles and young adults in the criminal justice system, they state:

> Individual programs and services tend to be 'owned' by separate departments, resulting in lack of coordination, duplication, or – more frequently – gaps in services. … [Constant funding and governance conflicts] results in horizontal competition, the professional siloing of interventions and the undermining of – or indifference towards – the activities of other departments. Within government departments and agencies there is also vertical tension between various levels of the bureaucracy. Central control competes with local management. (HoRSCATSIA 2011, p. 287)

This lack of information sharing and coordination is particularly detrimental given a multi-disciplinary approach is often needed to address the systemic failures borne by Aboriginal and Torres Strait Islander young people who are in contact with the youth justice system. For example:

> Given the strong link between foetal alcohol spectrum disorder (FASD) and Indigenous youth offending, strategies are required to address the intersection of these two health and justice issues. However, often neither the health nor the justice department wants to take responsibility for the role they each believe the other should be playing. (HoRSCATSIA 2011, p. 287)

Data is also not frequently shared with many Aboriginal and Torres Strait Islander organisations. The Commission heard in engagements with many organisations that accessing government data, particularly data from police, is especially hard (chapter 9). If ACCOs do not have sufficient data to design and deliver services for Aboriginal and Torres Strait Islander young people at risk of entering detention, then other

changes made by governments under Priority Reform 2 will likely fail to deliver results. To that end, Change the Record has advocated for government to 'respect principles of data sovereignty' (2022a, p. 3) and to resource ACCOs 'to collect, own and analyse their own data to inform solutions to violence and disadvantage, and to evaluate strategies and programs' (2022a, p. 5).

8.3 Children are not over-represented in the child protection system

The policy context of socio-economic outcome 12

The vast majority of Aboriginal and Torres Strait Islander children live in supportive, loving environments in their Aboriginal and Torres Strait Islander knowledge and cultural systems (Martin 2017; Skelton et al. 2014). Despite parents of Aboriginal and Torres Strait Islander children wanting healthy, happy and successful lives for their children (Martin and Walter 2017, p. 56), many Aboriginal and Torres Strait Islander families and children face significant adversity. Colonisation, intergenerational trauma and systemic racism, including the widespread removal of children from their families, known as the Stolen Generations, have contributed to Aboriginal and Torres Strait Islander children being more likely to encounter the child protection system than Australian children overall (SNAICC and UTS 2022).

Outcomes for children in out-of-home care have worsened

Socio-economic outcome 12 (SEO 12) of the Agreement is about Aboriginal and Torres Strait Islander children and young people being able to grow up safe and cared for in family, community and culture. The target of SEO 12 is to reduce the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45% by 2031.

The SEO 12 target remains off track, and is worsening nationally. At 30 June 2022, the rate of Aboriginal and Torres Strait Islander children aged 0–17 years in out-of-home care was 56.8 per 1,000 children in the population. This is an increase from 54.2 per 1,000 children in 2019 (the baseline year). The average annual change was an increase of 0.91 per 1,000 children, with an average annual decrease of 2.03 per 1,000 children required to meet the target (PC 2023d, p. 66).

Progress against this target varies across jurisdictions. Victoria and South Australia have the highest rates of Aboriginal and Torres Strait Islander children in out-of-home care (102.2 and 92.7 per 1000 children respectively) and these rates have increased substantially since 2019. The rate is also worsening in Queensland and Tasmania. The Northern Territory has the lowest rate at 31.1 per 1000 children. The rate of Aboriginal and Torres Strait Islander children in care has improved since 2019 in the Northern Territory, New South Wales, and Western Australia (PC 2023d, p. 66).

These statistics somewhat belie the real-world impacts of the child protection system in Australia, where according to the Family Matters Campaign (2022, p. 5):

> Aboriginal and Torres Strait Islander children continue to be separated from their families, communities and cultures at devastatingly high rates. There were 22,243 Aboriginal and Torres Strait Islander children in out-of-home care: one in every 15.2 – at 30 June 2021, making our children 10.4 times more likely to be in out-of-home care than non-Indigenous children … These numbers differ slightly from those in other government reports, because they include children on third-party parental responsibility orders who are otherwise excluded by states and territories from the definition of out-of-home care.

In terms of the supporting indicators currently reported for this outcome area, nationally:

- 42.8% of children aged 0–17 years old in out-of-home care were Aboriginal and Torres Strait Islander at 30 June 2022 (representing 19,432 children and compared to a population in this age group of 6%)
- in 2021-22, 39.8 per 1,000 Aboriginal and Torres Strait Islander children aged 0–17 years were the subject of substantiated abuse, with emotional abuse the most common type, and the only type to increase from 2018-19. All other types (physical and sexual abuse and neglect) recorded decreases (PC 2023d, pp. 66–67, 2023f).

The child protection system is not promoting Aboriginal and Torres Strait Islander people's self-determination, and connection to culture and family

The ongoing high-rates of children being removed from their families affects Aboriginal and Torres Strait Islander people in profound ways – the importance of family and maintaining connections with cultures, community and Country are pillars of Aboriginal and Torres Strait Islander people's identity and are key sources of strength and wellbeing (Bourke et al. 2018; Dockery 2010; Salmon et al. 2018).

On this criterion, the child protection system is further failing Aboriginal and Torres Strait Islander children. In 2021, 6 in 10 Aboriginal and Torres Strait Islander children in out-of-home care were not living with Aboriginal and Torres Strait Islander relatives or kin or other Aboriginal and Torres Strait Islander carers. Victoria, Queensland, Tasmania and the Australian Capital Territory reported an increase from 2017 in the number of children placed with an Aboriginal or Torres Strait Islander relative or kin (AIHW 2022d).

Further, while child protection systems in each jurisdiction are intended to prioritise reunification where possible, low rates of reunification with Aboriginal and Torres Strait Islander children's birth families were observed in all jurisdictions. Nationally, just 16.4% of Aboriginal or Torres Strait Islander children in out-of-home care were reunified in 2020-21. Over the same period, 21.5% of non-Indigenous children in out-of-home care were reunified (AIHW 2022c).

Inquiries over decades have highlighted the benefits of greater self-determination in child placement outcomes for Aboriginal and Torres Strait Islander people. Landmark reports, as far back as the Royal Commission into Aboriginal Deaths in Custody (1991a) and the Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children (also known as the Bringing them Home report) (HREOC 1997), noted the significance since the 1970s of the development of Aboriginal and Torres Strait Islander Child Care Agencies and the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) (box 8.3). On the former, the Royal Commission noted that the underlying principle of these agencies is:

> … that the Aboriginal community was itself the best source of support for Aboriginal children and young people. In particular, these agencies stated aims are:
>
> - the preservation of Aboriginal families and the prevention of institutionalization;
> - the collocation of siblings in institutions and the re-uniting of families;
> - the development of self-help programs and the provision of resources which are supportive of Aboriginal families;
> - the development of culturally relevant policies for Aboriginal child and family welfare services. (RCIADIC 1991c, p. 62)

The latter was described in the Bringing them Home report as the 'single most significant change affecting welfare practice' (HREOC 1997, p. 379).

Box 8.3 – The Aboriginal and Torres Strait Islander Placement Principle

Thirty years ago, the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) was initiated through an Aboriginal community-led movement to recognise the importance of safe care within family and culture, and to ensure that the actions of forced removal of Aboriginal and Torres Strait Islander children that caused the Stolen Generations are not repeated. The ATSICPP is an expression of the rights of Aboriginal and Torres Strait Islander people, as articulated in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Its five interconnected elements span all parts of the child protection system:

- **Prevention** of entry into out-of-home care**.**
- **Partnership** with community in service design, delivery and individual case decisions.
- **Participation** of family members in decisions regarding the care and protection of children.
- **Placement** in out-of-home care in line with placement hierarchy to ensure cultural connection (i.e. with kin first).
- **Connection** to family, community, culture and Country for children in out-of-home care.

The implementation of the ATSICPP supports Aboriginal and Torres Strait Islander people and communities to have control over decisions that affect their children.

Source: Arney et al. (2015); SNAICC (2017).

The ATSICPP exists in legislation and policy in all jurisdictions in Australia, but the focus of implementation has traditionally been on the Placement and Connection elements. Despite longstanding commitment by governments to the ATSICPP, its implementation remains highly limited across the country (SNAICC and UTS 2022). Even in those elements of the ATSICPP that government have focused on, there are still problems in achieving them. For example, of the Aboriginal and Torres Strait Islander children aged 0-17 years in out-of-home care nationally as at 30 June 2021, only 63% were living with Aboriginal and Torres Strait Islander or non-Indigenous relatives or kin or other Aboriginal and Torres Strait Islander carers. Moreover, only 73% of all Aboriginal and Torres Strait Islander children in out-of-home care had a current cultural support plan (AIHW 2022d). And, as discussed above, just 16.4% of Aboriginal or Torres Strait Islander children were reunified with their families in 2020-21.

In 2021, under *Safe & Supported: the National Framework for Protecting Australia's Children 2021–2031*, all governments renewed their commitment to implementing all five elements of the ATSICPP. This included supporting delegation of authority in child protection to families, communities and Aboriginal and Torres Strait Islander community-controlled organisations (DSS 2021).

Delegated authority for child placements in out-of-home care

Under the *Safe and Supported: Aboriginal and Torres Strait Islander First Action Plan 2023–2026*, action 1 commits governments to 'progressive systems transformation that has First Nations self-determination at its centre' through implementing delegated authority. The commitment seeks to align with Priority Reform 2 in the Agreement, recognising that:

> … community control is an act of self-determination and that Aboriginal and Torres Strait Islander Community-Controlled Organisations (ACCOs) (including Aboriginal and Torres Strait Islander organisations in some jurisdictions) deliver better results for Aboriginal and Torres Strait Islander children, young people and families. (DSS 2022c, p. 22)

It expected that within the first two years of the action plan, all jurisdictions would have developed plans to enable self-determination and the delegation of legislative authority in child protection by Aboriginal and Torres Strait Islander people, including timelines for legislative reform (DSS 2022c, p. 22). Two jurisdictions, Victoria and Queensland, have already begun delegating child protection decision-making to ACCOs, and this will be explored further in this section. It is worth noting that this policy response represents only one of eight actions that have been identified in the first action plan, which are needed to improve outcomes. Other actions in the Safe and Supported first action plan include:

- investing in the community-controlled sector – shifting towards adequate and coordinated funding of early, targeted and culturally safe supports for Aboriginal and Torres Strait Islander children and families
- data sovereignty – building Aboriginal and Torres Strait Islander infrastructure for sovereignty of data and improve the Aboriginal and Torres Strait Islander evidence base
- Aboriginal and Torres Strait Islander workforce – developing a national approach to continue building a sustainable Aboriginal and Torres Strait Islander child and family sector workforce
- active efforts – implementing the ATSICPP to the standard of active efforts
- legal supports – improving availability and quality of legal support for Aboriginal and Torres Strait Islander children and families engaged with child protection systems
- advocating for accountability and oversight – establishing and strengthening advocacy through Aboriginal and Torres Strait Islander Commissioners and similar roles
- social determinants of child safety and wellbeing – working across portfolios impacting Aboriginal and Torres Strait Islander children and families (DSS 2022c, p. 7).

Victoria's Aboriginal Children in Aboriginal Care initiative

Under section 18 of the *Children, Youth and Families Act 2005* (Vic), the Secretary of the Department of Families, Fairness and Housing can authorise a principal officer of an Aboriginal community-controlled organisation (ACCO) to undertake case planning and case management responsibilities for Aboriginal children and young people subject to protection orders made in the family division of the Victorian Children's Court. The orders that can be transferred to authorised ACCOs include: family preservation; family reunification; care by Secretary (which gives parental responsibility for a child to the Department of Families, Fairness and Housing to the exclusion of all others); and long-term care.

The implementation of delegated authority came after undertaking 'As If' pilots in two initial sites beginning in 2013 with the Victorian Aboriginal Child Care Agency (VACCA) (VACCA 2017). *Aboriginal Children in Aboriginal Care* (ACAC), which formally operationalised section 18 of the Act, was launched in 2017 at the VACCA through a service known as Nugel ('belong' in Woi Wurrung language) (Victorian DHHS 2018). The program was expanded in 2019 at the Bendigo and District Aboriginal Co-operative, where the service is known as Mutjang bupuwingarrak mukman ('keeping our kids safe' in Dja Dja Wurrung language), and in 2023 at the Ballarat and District Aboriginal Cooperative (Victorian DFFH 2023a, 2023b). Pre-authorisation work is also underway to establish the initiative across other ACCOs. As at 31 December 2021, 206 Aboriginal children and young people were authorised to an ACCO, with additional funding in the 2020-21 State Budget to support the authorisation of up to 396 Aboriginal children and young people by 2024 (SNAICC and UTS 2022, pp. 79–80).

In June 2023, further legislative changes were made, when the Children and Health Legislation Amendment (Statement of Recognition, Aboriginal Self-determination and Other Matters) Act 2023 was passed. This broadens the authorisation under section 18, enabling the transfer of responsibilities to ACCOs for functions relating to the entire course of a child protection investigation: from the investigation of the first report until the making of a protection or other order. This allows an Aboriginal organisation to potentially intervene earlier to slow the rates of Aboriginal families entering further into the system. As the CEO of the VACCA

noted, '[every] child we prevent from entering the child protection system, from the youth justice system or from experiencing family violence, will create brighter futures. This is priceless' (VACCA 2023). Known as the *Community Protecting Boorais* program, the VACCA and the Bendigo and District Aboriginal Co-operative are currently delivering the program (Victorian DFFH 2023b).

Delegated authority in Queensland

In 2018, amendments to the *Child Protection Act 1999* (Qld) came into effect, which allowed the Chief Executive of the Department of Child Safety, Seniors and Disability Services to delegate functions and powers to the chief executive of an Aboriginal and Torres Strait Islander organisation. The delegation applies to many of the functions or powers that relate to an Aboriginal or Torres Strait Islander child at any point along the child protection continuum, including to a child who needs protection or likely to become in need of protection. The Department Chief Executive decides what powers are delegated and when, in partnership with the relevant ACCO. Authority is currently being delegated for case management, including 'sections that authorise decisions about whether contact with different members of a child's family, community or language group is "appropriate" or "in the child's best interests"' (SNAICC, sub. 96, p. 22).

A pilot began in 2020 in two trial sites, through Central Queensland Indigenous Development (CQID) and REFOCUS, who are making decisions in relation to certain aspects of the care and protection of approximately 40 children (QATSICPP and Qld DCYJMA 2023, p. 6; Queensland Government 2022c, p. 36). Different delegations were chosen to be exercised at each of the trial sites, with a focus on connection and reunification (QATSICPP 2021). The Queensland Family and Child Commission (sub. 8, p. 2) submitted that the pilot is having a positive outcome for reunification of children with their families in these communities.

The Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) and the Queensland Department of Child Safety, Seniors and Disability Services have also partnered to develop a 10-year blueprint for implementing delegated authority in Queensland, *Reclaiming our storyline: Transforming systems and practice by making decisions in our way* (QATSICPP and Qld DCYJMA 2023).

Has the design and implementation of Delegated Authority reflected the four Priority Reforms?

Delegated authority was legislated in both jurisdictions prior to the signing of the Agreement. Nevertheless, decisions to implement the policy and expand it to additional sites and ACCOs have occurred after governments have committed to new targets under the Agreement to address over-representation of Aboriginal and Torres Strait Islander children in out-of-home care, and more recently to do so by reflecting the priorities of Aboriginal and Torres Strait Islander people, articulated through the four Priority Reforms.

Delegated decision-making authority can contribute to self-determination

The delegation of authority over decisions to protect Aboriginal and Torres Strait Islander children to communities (and more specifically to community-controlled organisations) has been a longstanding priority to improve outcomes. As noted by SNAICC, delegated authority had proven successful internationally, for example, in the Canadian context they found that:

- they enable 'development of more responsive community-based services that allow for incorporation of Aboriginal values, beliefs and traditions, including more culturally appropriate practices; and
- they are more likely to lead to community capacity building initiatives and community caring models of service delivery that shift the focus from removal of children from family, community and culture. (SNAICC 2013, p. 17)

Delegating decision-making authority in the child protection system is closely aligned with Priority Reform 1. In both Victoria and Queensland, the sharing of decision-making authority has been formalised through a legislative mechanism, a key element of strong partnerships. QATSICPP found that delegated authority had contributed to increased collaboration, challenged power structures and supported the implementation of self-determination (QATSICPP 2021, p. 4). These reforms have been acknowledged as 'emerging' efforts of self-determination by the Family Matters Campaign, which highlighted:

> So-called 'delegated authority' approaches involve settler-colonial government authorities delegating some or all of the powers they normally exercise to Aboriginal and Torres Strait Islander community-controlled organisations and entities, enabling community-led decision making on issues such as risk and placement options. This has enabled them to make decisions that work for their communities, albeit under the authority of the department. (SNAICC and UTS 2022, p. 91)

> Delegated Authority … is not simply about a shift in power relations – it is about ensuring collaborative relations and an Aboriginal cultural lens is at the heart of every discussion and decision made in relation to Aboriginal and Torres Strait Islander children and families. The aim is to ensure children and families are empowered in the decisions that affect their lives and that their voices are not only heard but are included in the decision-making process. (SNAICC and UTS 2023, p. 98)

The legislative regime in Victoria was also acknowledged in the NSW independent review of Aboriginal children and young people in out-of-home care as a 'fuller expression of self-determination', compared to the efforts of the NSW Government (Davis 2019, p. 91).

All of these reports highlight the benefits generated from ACCOs bringing new approaches to child protection systems, and the effects of these approaches on the experiences of families involved in delegated authority programs.

A project manager of a rural trial site of delegated authority in Victoria, noted the program 'makes such a difference to families to have Aboriginal case managers or even just an Aboriginal presence in the room for that cultural connection' (Deadly Story 2017). They also noted that case management can take a strengths-based approach, which focuses on what is working well within families, and how these strengths could be applied in areas that need improving.

A strength of the Queensland experience has been described by QATSICPP as 'significant change … in the consideration of families at the centre of practice and as strong partners, rather than just as participants in the process' (QATSICPP 2021, p. 9). This process has also helped build trust with Aboriginal and Torres Strait Islander families, which is important given reported break down in trust in government. As Central Queensland Indigenous Development noted:

> Because we are working with family members and we are reconnecting, they can see that we've got the best interests of their child and they're more willing, and we are a trusted service to try and encourage them to engage in our other programs. (SNAICC and UTS 2022, p. 94)

REFOCUS also said:

> REFOCUS has found that healing is in relationships, not programs. As more trusting relationships are developed between families and organisations, families gain a sense of empowerment and self-determination and, as a result, healing occurs. (as cited in SNAICC and UTS 2023, p. 99)

ACCOs with delegated authority have also shown how they can use their existing connection to family, community, culture and Country to keep children and young people connected and in contact with their families, communities and cultures (SNAICC and UTS 2022, p. 92; VACCA 2022, p. 73). For example:

- in Victoria's ACAC program, more children were reunified with their parents than children managed by the department. Between January and June 2021, 83% of Aboriginal and Torres Strait Islander children in the

ACAC program were reunified with parents or family compared with 64% managed by the Victorian Department of Families, Fairness and Housing (DFFH) child protection (Yoorrook Justice Commission 2023d, p. 198)
- a 2019 evaluation of the Nugel program in Victoria, further reported that the reunification rate for VACCA (22%) was higher than for DFFH (5%) (based on the actual reunification rates from 2017–2019, from an indicative sample of 100 children) (VACCA 2022, p. 72)
- in the REFOCUS program in Queensland, 17 children were reunified with their parents. REFOCUS reported none of these reunifications would have taken place without delegated authority (SNAICC and UTS 2023, pp. 98–99).

In practice, delegated authority is falling short of realising self-determination

While these developments in sharing decision-making power with ACCOs demonstrate promising commitments by governments to Priority Reforms 1 and 2 in the Agreement, there are concerns around the limits to which power is shared within current arrangements. This was articulated by the Family Matters Campaign which noted that while reforms in Victoria and Queensland are 'welcome' progress:

> … the very framing of this authority as 'delegated' further implies a valid authority on behalf of settler-colonial governments that they are able to delegate, rather than recognition of the inherent rights of Aboriginal and Torres Strait Islander peoples and a true commitment to transfer power from the state to Aboriginal and Torres Strait Islander communities. Further, such framing also suggests that this 'delegation' can be revoked by governments at their discretion, making the recognition and exercise of these rights extremely precarious … [This progress] must not be conflated with an achievement of full self-determination. ACCOs do not have control over the systems and the laws that are delegated to them and face ongoing difficulties in securing funding to run these programs. (SNAICC and UTS 2022, p. 92)

The experience of ACCOs involved in delegated authority programs has varied in the level of decision-making power that is shared. In Queensland, for example, the Secretary can limit delegation to one or more functions on a case-by-case basis. This can be limited, for example, to decisions on finding kin (*Child Protection Act 1999* (Qld)). The Victorian Aboriginal Legal Service further noted that ACCOs have not been authorised to exercise the full range of functions and powers the Secretary has in performing the same role. This relates to functions and powers that:

- could arguably be transferred to ACCOs but the Secretary has not exercised the relevant discretion to transfer, such as for some protective intervention powers
- the current legislative framework arguably does not enable to be transferred to ACCOs because the relevant provisions do not 'confer on the Secretary' 'specified functions' or 'specified powers', for example mandatory reporting from a third party to the Secretary, or because the relevant provisions are not 'in relation to a protection order' as is required by section 18 (VALS 2022c, pp. 58–62).

ACCOs have also reported that delegations often occur too late in the process, once families and children have already experienced harm. This limitation was acknowledged by the Victorian Aboriginal Children and Young People Alliance, which stated:

> The limitation of [Aboriginal Children in Aboriginal Care] is that it operates within existing legislation, implementing orders made by courts through colonial decision-making processes, restricted by timelines and processes that many Aboriginal people reject. (sub. 100, p. 2)

Central Queensland Indigenous Development have also observed that, even under a delegated authority program, the Queensland department at times is still making decisions on whether Aboriginal and Torres

Strait Islander children can participate in cultural programs and activities, and regional offices are making decisions that do not always work for ACCOs.

> We're constantly having to remind and raise awareness on what delegation of authority means, and that that delegation sits with us and we make those contact decisions. That's one of the barriers, that sometimes there's contacts that are happening that we're not aware of. Then our staff are under the pump to try and get a formalized connection plan in place so that we are covered, and we know what contacts are occurring. (SNAICC and UTS 2022, p. 95)

The other important dimension that limits the extent of self-determination is that even where power is fully transferred by governments under delegated authority, ACCOs are still being asked to undertake these roles within a statutory system that is causing significant harms to Aboriginal and Torres Strait Islander children and their families. As the Yoorrook for Justice Report noted from their transcript of hearings:

> [DFFH] Acting Associate Secretary … agreed that Victoria's rate of removing First Peoples children is shameful, and that the current system violates First Peoples' human rights. (Yoorrook Justice Commission 2023d, p. 108)

This speaks to the need for progress across all Priority Reforms to achieve the form of systemic change required to improve outcomes in child protection – that is, to address the drivers of child removals as opposed to simply the consequences once a child has been removed (SNAICC and UTS 2023, p. 84). The Commission heard that systemic change in the child protection system is needed. For example, in relation to decisions on child removals, more is required than cultural capability training within government agencies. These agencies need to address unconscious bias and promote Aboriginal-led solutions that enable earlier interventions, and that ensure children are kept away from the child protection system. Without progress on Priority Reform 3 in particular, which requires governments to transform mainstream organisations and systems, delegated authority will simply 'lift and shift' responsibilities for child protection to ACCOs. This will limit the benefits that ACCOs can have on outcomes, particularly given the continuing significant role that mainstream government agencies have in the child protection system. As the Victorian Aboriginal Legal Service noted:

> While changes like section 18 of the Children, Youth and Families Act gesture in the direction of self-determination in the child protection system, they fall far short of what is needed to genuinely empower the Aboriginal Community to take responsibility for the care of Aboriginal children. Proper recognition of the right to self-determination would be transformative, but it would require a reckoning with the way that the Victorian Government's past attempts at enabling self-determination have been inadequate. (VALS 2022c, pp. 56–57)

This view was supported by Djirra:

> Aboriginal self-determination does not mean simply delegating existing powers or responsibilities. The current system fails Aboriginal and Torres Strait Islander children, and this failure is being transferred from government to ACCOs. (Djirra 2023, p. 20)

QATSICPP found that the biggest barrier to the success of delegated authority in Queensland was:

> … systems not changing to accommodate the shifts in thinking and processes that [delegated authority] has brought. This included the failure to address systems barriers as they arose, the powerful need of departments to keep the status quo, and the requirement of CCOs to be brave and take on changes internally and in their relationships with the department whilst challenging old ways that may not work in supporting change. (QATSICPP 2021, p. 14)

Constraints caused by ACCOs having to work within a mainstream child protection system has created tensions for some ACCOs within their communities. Despite these constraints, participants still highlight the

positive impacts on self-determination of existing delegated authority arrangements, particularly from ACCOs that can make more culturally safe assessments in managing child protection orders. This was expressed to the Yoorrook Commission by the director of family services at Njernda Aboriginal Corporation:

> … certain people within community … say, 'We shouldn't be entering into section 18 because we are going to be forming part of the government structure that started Stolen Generation and we are going to continue working in that space.' … I have a different view of whether we should be going into that … when child protection goes in and removes, child protection, they'll remove my kids, they don't know why, it's probably just a white thing. But when an Aboriginal agency goes in and says to them … 'We're hearing that there are some issues with the child and the care of the child. We are looking at that risk to determine whether there is sufficient risk to remove that child.' (Yoorrook Justice Commission 2023b, p. 170)

Some concerns have also been raised that certain voices were not engaged with in the process of developing delegated authority arrangements. For example, the Victorian Aboriginal Legal Service (2023) noted:

> As an Aboriginal legal service, that represents Aboriginal families and children in the child protection system, we have a unique experience and expertise. We wanted to contribute this experience and expertise to the proposed legislation, but we have been blocked from doing so on the multiple occasions that the Government has proposed this legislation over several Parliaments. … It is impossible to 'properly design' a child protection system for Aboriginal children without involving the Aboriginal legal services who represent them and who have the legal expertise required to understand the impact of legislation on children and parents in practice.

The Commission also heard that there was limited engagement in advance of delegated authority being implemented in Queensland and instead, that the Queensland Government told the sector what decisions had been made.

A lack of genuine engagement and shared decision-making limits self-determination and risks poorer outcomes in the design and delivery of programs. For example, it has been argued that the requirement for the CEO or principal officer of the ACCO given delegated authority to be an Aboriginal and Torres Strait Islander person could limit some ACCOs from participating in the program, and reduce their authority to appoint a CEO they feel best meets their priorities and needs. Djirra, also identified concerns that they felt were not adequately considered in the recent expansion of ACAC in Victoria:

> Under section 18 powers, generalist ACCOs (e.g. Aboriginal co-operatives) that provide multiple programs; such as, men's behaviour change programs, cultural strengthening programs, convening Aboriginal Family Led Decision making meetings and health services, will also take on the role of child protection services. Djirra has identified a number of issues that may arise as a result of the increased responsibilities and roles that some ACCOs will now hold with section 18 powers, particularly in regional locations. These include:
>
> - Perceived, or actual, conflicts of interest; and
> - Lack of safety and anonymity for Aboriginal and Torres Strait Islander women; meaning that women will be less likely to disclose family violence and seek out assistance for safety. (Djirra 2023, pp. 18–19)

Transformation of the child protection system is vital, but it is not being prioritised

Limited transformation within the existing child protection system has led to calls for 'the law itself … to change and not just who exercises it' (VALS 2023), in order to improve outcomes. The need for delegated authority to operate within an Aboriginal and Torres Strait Islander-specific child protection system is

heightened by the impact that mainstream child protection systems continue to have on children and families. This is both from the slow pace of reform in governments authorising ACCOs to take responsibility within the child protection system, and the limited transformation of mainstream systems.

On the latter, the Yoorrook for Justice Report highlighted the systemic racism that is found in the child protection system in Victoria 'plus the unconscious bias and overt racism of some non-Aboriginal child protection staff affects risk assessments and decisions about First Peoples children's futures' (Yoorrook Justice Commission 2023d, p. 152). A 2023 report by KPMG into the Queensland Department of Children found that institutional racism continues to impact the lives of families and communities that the department services. According to the report:

> Within [the Department], there were reports that some Aboriginal and Torres Strait Islander employees do not feel culturally safe within the organisation (i.e. not respected, culture not valued). … The workforce needs to further develop cultural competency. (KPMG, cited in McKenna 2023)

The mainstream system is also built on decades of failed government policy, which creates anxiety and distrust for some Aboriginal and Torres Strait Islander families in their dealings with the child protection system, particularly those with experiences of intergenerational trauma relating to child removal.

> Aboriginal parents may behave in ways that obscure signs of safety or strengths within a family, or cause Child Protection practitioners to view them as uncooperative and see this as further evidence of their problematic parenting, which may precipitate Court action and a removal decision. Parents' fear and distrust of Child Protection also makes it difficult for Child Protection practitioners to develop and sustain supportive relationships with parents as the basis for a protective intervention without a Court order. (Wise and Brewster 2022, p. 5)

The lack of transformation in the child protection system is further heightened by its interactions with other mainstream systems which have harmful effects on vulnerable Aboriginal and Torres Strait Islander children and families. For instance, there are disproportionate numbers of Aboriginal and Torres Strait Islander children that 'crossover' between the child protection and criminal legal systems. According to the Victorian Aboriginal Legal Service:

> Many Aboriginal children also end up in the criminal legal system, as children or adults, because the child protection system allows risk factors like substance use or mental health issues to go unaddressed. … VALS has long had major concerns about the treatment of so-called 'crossover children' – children who are involved in both the child protection and youth justice systems. This is arguably the most vulnerable group of children in Victoria, and the interaction of these two systems should be carefully tailored to provide individualised support to protect children's development and improve their life chances. At present, this is not the case in Victoria, and children in need of protection are treated inappropriately by both child protection and youth justice actors (including police). (VALS 2022c, p. 67)

Delegated authority, as it is currently administered is not set up to address systemic issues that are leading to real harms for Aboriginal and Torres Strait Islander children that are exposed to the mainstream child protection, family safety and criminal legal systems. ACCOs are thus expected to find solutions within the mainstream child protection system, with limited levers to affect the transformation of frontline institutions that is required to reduce harms.

VACCA and the Victorian Aboriginal Children and Young People's Alliance have also noted that there are no incentives for non-Indigenous NGOs to support the transfer of an Aboriginal child's case-management under ACAC; such that they face barriers from some, which:

> … displays a colonial mindset – one that is contrary to the principle of self-determination and is further reinforced by DFFH initiating a project on 'Building ACCOs' Aspirations', situating the problem within ACCOs and their capabilities viewed as deficits rather than holding the rest of the sector accountable. (SNAICC and UTS 2022, p. 79)

A key success factor identified by participants in Queensland's delegated authority regime was for a healthy relationship to be built with ACCOs by the government department in charge of child protection (SNAICC and UTS 2023, p. 98). In particular, a relationship where there is trust and faith in the department's leadership of ACCOs ability to 'drive change'. It was noted this required 'a deep shift in thinking and the ability to relinquish power and to trust the wisdom of First Nations organisations to lead in this space' (QATSICPP 2021, p. 11). One participant noted this involved the department recognising that ACCOs would fundamentally approach the work in a different way:

> We do not want to see what is happening to just be in black hands that they are doing things the same way as the department would? This is where we need to do this differently letting people do something that is their own path – this will take a lot of faith – it will be a stop start process and that there will be learnings along the way – as long as we mitigate the risk for children and families then we must be able to test out - what we end up with could be very different from what we have. (QATSICPP 2021, p. 11)

The limited transformation that is occurring within delegated authority regimes, in line with the commitment under Priority Reform 3, further highlights the limits to which governments are recognising the rights to self-determination. That is, they are not giving agency to Aboriginal and Torres Strait Islander people over the child protection system – a system that is having a significant impact on lives of Aboriginal and Torres Strait Islander children. This should include agency over the role of early intervention and prevention, to that of frontline statutory services and the judicial system to ensure that it is able to better reflect the understanding of causation of abuse and neglect, trauma and priorities of Aboriginal and Torres Strait Islander people, including through direct control by Aboriginal and Torres Strait Islander organisations. This view was summarised in the NSW independent review of Aboriginal children and young people in out-of-home care:

> … no improved child protection system can meet the needs of Aboriginal and Torres Strait Islander children unless 'it is planned, developed, managed, implemented and reviewed by Aboriginal people themselves'. (Davis 2019, p. 86)

The Commission has heard that a self-determining Aboriginal and Torres Strait Islander child protection system would likely have a greater focus on earlier intervention, and Aboriginal and Torres Strait Islander-led, solutions, which keep children strong and out of the child protection system. There is evidence that these programs have positive outcomes on children – and can prove more effective than other approaches. For example, a 2022 evaluation of three diversionary programs developed and delivered by ACCOs in Victoria found 'a strong case for the effectiveness' of two of these programs in diverting Aboriginal children from child protection investigation, with a diversion success rate ranging from 63-78%, equating to a $2 to $5 return on every $1 invested. The third program did not demonstrate the same diversion success 'due to redesign and delayed implementation … [but] … pre-conditions for long-term diversion outcomes included in the program logic were evident, as were core components linked to program effectiveness' (Wise and Brewster 2022, p. 7).

Limits to how ACCOs have been strengthened to undertake their additional responsibilities

Through delegated authority governments provide funding for ACCOs to undertake their statutory functions but they should also equip ACCOs to support earlier interventions and culturally appropriate services for more meaningful impacts. This is a variation of the shifting and lifting approach referred to above – not only

that ACCOs work within a mainstream child protection system, but that they are also limited in the types of services they can deliver due to funding constraints. This has been a criticism of delegated authority arrangements in Canada.

> The funding of delegated authorities based on costs of statutory intervention with limited scope for preventative family support activities has been recognised as a significant weakness of delegation in Canada. In Queensland there is an opportunity to begin with a stronger model that places delegated authority within the context of child and family wellbeing services that are holistic and strongly prevention focussed. (SNAICC 2013, p. 17)

Both the Victorian and Queensland program have experienced challenges with resourcing. The implementation of delegated authority in Queensland has been hampered by insufficient resourcing for ACCOs, including resourcing to support increased costs, staffing to change practice, legal advice and organisational changes (QATSICPP 2021, p. 15). The Yoorrook Justice Commission stated:

> The ACAC program and the transfer of care to ACCOs' programs have shown that Aboriginal children fare better when their care is overseen by ACCOs. However, these programs are under-resourced and the number of Aboriginal children in out of home care under these arrangements remains too low. (Yoorrook Justice Commission 2023d, p. 200)

Resourcing could become even more of a barrier as the programs are expanded.

> To address this, ACCOs need the workforce and resources to scale up. This becomes more urgent as ACAC organisations also take on the role of the State in investigating child protection cases. While investment has occurred in recent State budgets, if ACCOs are to become simultaneous investigator, case manager and carer, significant resources will need to flow to ensure the sector does not take on the State's broken child protection system without the resources to deliver better outcomes. (Yoorrook Justice Commission 2023d, p. 200)

Development of delegated authority has involved the expansion of trial sites, but there is criticism that this has not provided certainty on the commitments of government to self-determination. Also, it has been argued that governments, rather than ACCOs, making decisions on setting targets on the number of children in trials (and the associated funding involved), does not recognise ACCOs expertise and limits the number of children that benefit.

> … participation in child protection decision-making is not optional or 'trial dependent', and … Aboriginal and Torres Strait Islander peoples can, through an appropriately supported transition process, develop the necessary organisational capacity to perform statutory functions. (SNAICC 2013, p. 18)

> While funding for the ACAC program as a whole is ongoing, we note that the quantum of funding for each ACCO is not guaranteed, as it is driven by DFFH targets for the number of children to be authorised to ACCOs in each region. These targets create limitations on the numbers of children that ACCOs can nominate for authorisation under ACAC, rather than being able to set their own targets (as the experts in their local communities) and be resourced accordingly. (SNAICC and UTS 2022, p. 79)

When implementing delegated authority, governments should recognise not just the need for additional resources that reflect the additional responsibilities being taken on by ACCOs, but also that ACCOs and their CEOs have far less 'back office' resources than government departments and their secretaries.

ACCOs are able to develop a better understanding of child protection needs, and can foster better relationships than government organisations

ACCOs need access to timely and local-level data to 'set their own agenda, design programs that work for them, and measure their own successes' (DSS 2022c, p. 29). But as SNAICC noted, there are gaps in children protection data:

> Currently there are limited structures and supports at local and regional levels that enable communities to access and use data relating to outcomes for Aboriginal and Torres Strait Islander people. Initiatives are needed to support local communities' ownership of their own data and capacity to guide policy and program responses based on administrative, evaluation and outcomes data. This is critical to shifting power in how data is used and responded to from its traditional place as the exclusive domain of government to an approach based on self-determination. (SNAICC and UTS 2022, pp. 116–117)

The *Safe and Supported: Aboriginal and Torres Strait Islander First Action Plan 2023–2026*, which commits governments to implementing delegated authority, also includes an action to 'build Aboriginal and Torres Strait Islander infrastructure for sovereignty of data and improve the Aboriginal and Torres Strait Islander evidence base' (DSS 2022c, p. 7).

Noting the data limitations ACCOs face, ACCOs with delegated authority have access to data that is available to child protection agencies to undertake their role. There are also cases where ACCOs have built their own data systems to support their delegated authority functions:

> CQID have built their own local data systems, facilitating better informed decision making in accordance with the principles of data sovereignty. As a result, CQID have successfully connected children with their family in instances where the [department] has been unable or unwilling to make these connections for several years. (SNAICC and UTS 2022, p. 92)

The quality of information captured by ACCOs highlight the limits of the SEO 12 target itself to reflect the priorities and aspirations of Aboriginal and Torres Strait Islander people. The target is focused on overrepresentation, focusing on the gap between Aboriginal and Torres Strait Islander and non-Indigenous children. This contrasts with the holistic focus of ACCOs on strengthening a child's connection to kin, culture and Country.

8.4 Aboriginal and Torres Strait Islander families and households are safe

Policy context of socio-economic outcome 13

Family violence is a key concern for many Aboriginal and Torres Strait Islander people

Violence against women is a national crisis in Australia with one in four women over 15 years of age experiencing violence from an intimate partner – for Aboriginal and Torres Strait Islander women this rate is three in five women (based on 2016 data) (DSS 2022b, p. 39, 2023, p. 30). For many decades, Aboriginal and Torres Strait Islander women have sought dedicated policy action to address the violence that they and their children experience, with no effective policy response from governments. Since the 1990s, Aboriginal and Torres Strait Islander women have advocated solutions and sought understanding of how family safety

is considered outside of a western context (for example Atkinson 1990; Huggins 2003; Langton et al. 2020; Lucashenko and Best 1995).

In 2020, the Australian Human Rights Commission, published the landmark *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (Wiyi Yani U Thangani project), which was initiated by Aboriginal and Torres Strait Islander Social Justice Commissioner June Oscar AO. The project team engaged with 2,294 Aboriginal and Torres Strait Islander women and girls to hear about their communities' strengths, challenges, aspirations and solutions (AHRC 2020c, p. 18). Recommendations from the report centred on a need for '… structural reforms to address cross-cutting systemic issues of marginalisation, trauma and intersectional discrimination, and to fundamentally shift how Australian Governments engage with First Nations women and girls' (AHRC 2020b, p. 10). A central aim of the report was to 'look beyond the cycles of crisis that have come to characterise Aboriginal and Torres Strait Islander lives, and to define our women and girls in their own image, determined by them.' (AHRC 2020c, p. 11). As part of stage three of the Wiyi Yani U Thangani project, a First Nations women's safety policy forum was held in 2022, which brought together Aboriginal and Torres Strait Islander community members, practitioners, researchers, experts and government to discuss how to address violence perpetrated against Aboriginal and Torres Strait Islander women and children (AHRC 2022d, p. 8). This forum devised key recommendations to inform the Australian Government's approach to family violence in Aboriginal and Torres Strait Islander communities.

A Senate Committee inquiry into missing and murdered First Nations women and children is also underway and will be finalised by 30 June 2024 (SSCLCA 2023). The inquiry has been supported by high levels of engagement through submissions from Aboriginal and Torres Strait Islander people and organisations, and received significant media attention, including an ABC Four Corners report (Brennan et al. 2022).

There are significant issues with data on family safety in Aboriginal and Torres Strait Islander communities

Socio-economic outcome 13 (SEO 13) of the Agreement is about Aboriginal and Torres Strait Islander families and households being safe in their homes and communities. However, there are significant problems measuring this outcome, and family violence more broadly. Data reporting experiences of family violence is often an inaccurate picture of prevalence and incidence, due to significant underreporting. (ABS 2013). Underreporting is an even greater issue for Aboriginal and Torres Strait Islander communities:

> It is well documented that more than 90% of the violence our women experience goes unreported. Barriers to reporting including, poor police responses and fear of child removal, have a significant impact on reporting rates and it is therefore likely that these numbers are much higher (Djirra, sub. 82, p. 8)

As such, prevalence as a measure for experiences of violence can represent either an increase in police activity in addressing incidences of domestic, family and sexual violence, or changes in how confident women are to report violence to police.

The data that is currently published under the Annual Data Compilation Report and the Closing the Gap Dashboard for SEO 13 is limited to two measures. The only national data reported for the SEO 13 target is the baseline 2018-19 data from the National Aboriginal and Torres Strait Islander Health Survey (NATSIHS), which measured the proportion of Aboriginal and Torres Strait Islander females 15 years and older who 'experienced domestic physical or threatened physical harm' (which was 8.4% in 2018-19) (PC 2023d, p. 68). This is the basis for the target for SEO 13, which aims to reduce this proportion by at least 50% by 2031, as progress towards zero. However, concerns have been raised about the reliability of this data due to the collection methods used, which were not considered to be an appropriately safe way to collect violence data (ABS, sub. 1, p. 6). As a result of these concerns, the survey has not been repeated.

The other measure which is reported on is the proportion of Aboriginal and Torres Strait Islander women reporting whether family violence is common in their communities, which is derived from the 2017 National Community Attitudes towards Violence Against Women Survey. Of the 48 Aboriginal and Torres Strait Islander women across Australia who were asked this question, 45 reported it is common (94%). However, due to this small sample size these results cannot be used to draw reliable conclusions nationally (PC 2023d, p. 68).

The limited data that is currently reported under SEO 13, present significant challenges to measure the true experiences of violence in the community, and to assess whether policies are making a difference. Further issues in the data landscape in family violence policy are covered in the discussion on Priority Reform 4 below.

Why has an Aboriginal and Torres Strait Islander Action Plan for family, domestic and sexual violence been introduced?

Aboriginal and Torres Strait Islander women and children have highlighted that the factors contributing to, and the experiences of, family, domestic and sexual violence are unique in Aboriginal and Torres Strait Islander communities and therefore require different responses. Despite this, there was previously no dedicated national policy response. Instead, the priorities of Aboriginal and Torres Strait Islander communities were subsumed under the *National Plan to Reduce Violence against Women and their Children 2010-2022* (National Plan) (DSS 2010). This plan had a limited focus on the unique experiences and needs of Aboriginal and Torres Strait Islander people. Aboriginal and Torres Strait Islander people have expressed that having their needs incorporated under the mainstream National Plan results in inadequate investment and development of impactful policies (AHRC 2022d, p. 15).

> Previous National Plans have not centred our voices and needs and the needs of our children. They have failed to reduce family violence against Aboriginal and Torres Strait Islander women. … In this report Change the Record and the National Family Violence Prevention Legal Services Forum (the Forum) expand on our call for a genuinely self-determined National Plan to implement community-led responses to violence against Aboriginal and Torres Strait Islander women and children. We call on the Australian government to respect and follow the expertise and leadership of First Nations women and communities and guarantee the resources and decision-making power required to end violence against Aboriginal and Torres Strait Islander women and children (Change the Record 2021, p. 3).

As part of the engagement on the subsequent National Plan to End Violence against Women and Children 2022–2032 (National Plan), the Australian Government hosted a National Summit on Women's Safety, where again Aboriginal and Torres Strait Islander women advocated strongly for a standalone plan to be developed for their communities. As a result, the Australian Government committed to a dedicated action plan in September 2021 (Haydar 2021). However, Change the Record have said that an action plan which sits under the mainstream National Plan would not be sufficient in recognising the need for a specialised policy approach:

> … the draft plan does not satisfy our call for a stand-alone plan developed independent of government, by Aboriginal and Torres Strait Islander women for Aboriginal and Torres Strait Islander women. (Change the Record 2022b, p. 8)

Aboriginal and Torres Strait Islander Action Plan 2023-2025

The Aboriginal and Torres Strait Islander Action Plan 2023–2025 (The Action Plan) was released in August 2023 and exists under the National Plan released in October 2022 (DSS 2023). The Action Plan was agreed to by the Australian, state and territory governments, and defines a national effort that will intersect with all initiatives being implemented by jurisdictions that are aimed at reducing all family, domestic and sexual violence against Aboriginal and Torres Strait Islander women (DSS 2023, p. 44).

The Action Plan seeks to embed the Priority Reforms set out in the Agreement, and makes reference to them throughout (DSS 2023). Furthermore, the Action Plan has been developed through a partnership between the Aboriginal and Torres Strait Islander Advisory Council on family, domestic and sexual violence (Advisory Council) and the Australian Government Department of Social Services (DSS), which is in line with the new approach prescribed by the Agreement (clause 18).

Key features of the Action Plan

The Action Plan is framed around five Reform Areas listed in table 8.1. These areas, although similar to Priority Reforms, are not identical, but the Action Plan references the Agreement and how the Reform Areas link to the Priority Reforms.

Table 8.1 – Reform Areas in the Action Plan and their alignment with the Priority Reforms in the Agreement

Reform Area	Summary from Action Plan	Relevant Priority Reforms as identified in the Action Plan
Reform Area 1: Voice, self-determination and agency	Shared decision-making in genuine partnership with government. Community-led solutions including primary prevention, early intervention, response and recovery services. Aboriginal and Torres Strait Islander people are front and centre of the design and delivery.	Priority Reform 1 Priority Reform 2
Reform Area 2: Strength, resilience and therapeutic healing	Primary prevention, early intervention, response and recovery services are trauma-informed, healing-focused, culturally safe, place-based and kinship centred. Cultural knowledge and practices are developed by and for Aboriginal and Torres Strait Islander peoples to address the impacts of intergenerational trauma. Health and wellbeing are prioritised	Priority Reform 2
Reform Area 3: Reform institutions and systems	Whole-of-government responses to eliminate systemic biases and structural racism are embedded across the family, domestic and sexual violence service system. Build capacity in the workforce.	Priority Reform 2 Priority Reform 3
Reform Area 4: Evidence and data eco-systems – understanding our stories	A local, culturally informed data and evidence eco-system is created and managed by Aboriginal and Torres Strait Islander peoples	Priority Reform 4
Reform Area 5: Inclusion and intersectionality	Diverse experiences are acknowledged including women, girls, men, boys, Elders, Stolen Generations, people living remotely, people with disability, and LGBTIQA+ Sistergirl and Brotherboy communities.	

Source: DSS 2023, pp. 46–47.

Has the design and implementation of the Action Plan reflected the four Priority Reform areas?

Priority Reform 1: Shared decision-making and partnerships

Priority Reform 1 of the Agreement is covered under 'Reform Area 1: Voice, self-determination and agency'. It also guided the design approach of the Action Plan. The partnership between DSS and the Advisory Council is a key element in how the Action Plan was developed to 'ensure the voices and perspectives of Aboriginal and Torres Strait Islander peoples are at the centre of all efforts to end family violence against Aboriginal and Torres Strait Islander peoples' (DSS 2022a). The Advisory Council was originally established to provide expert guidance and advice on the development of the mainstream National Plan, however after the Australian Government committed to the dedicated Action Plan, their remit was subsequently extended (DSS 2022b, p. 5).

This shift towards sharing decision-making over policy design with Aboriginal and Torres Strait Islander people highlights some progress towards the Australian Government's commitment to implementing Priority Reform 1. DSS noted that:

> The Advisory Council was engaged to lead the development of the Action Plan. Working in partnership with the Advisory Council took specific staffing, funding, other resources, and time to develop and maintain positive relationships, and facilitate joint endorsement of the Action Plan (DSS, sub. 74, p. 6).

Beyond these public statements, no formal, signed partnership agreement has been released that details the nature of, or extent to which, responsibilities were shared under this partnership (which DSS referred to as being formalised) (DSS sub. 74, attachment C, p. 2).

Fundamentally, the limits to shared decision-making were established by the Government from the start, when they decided to prioritise the delivery of the Action Plan over what many Aboriginal and Torres Strait Islander people were seeking, which was a standalone national plan. The Commission heard from sector participants that this effectively meant that Aboriginal and Torres Strait Islander people's knowledges and solutions would be required to 'plug' into non-Indigenous frameworks (defined within the mainstream plan), which themselves need to be reformed to better work for Aboriginal and Torres Strait Islander people.

Signs that certain voices were not heard in developing the Action Plan

The Commission heard concerns about the openness and transparency of the selection process for the Advisory Council. For example, Change the Record, in their submission to the draft National Plan noted the limits of an approach to develop an Action Plan that is:

> … to be 'led by the government-appointed Aboriginal and Torres Strait Islander Advisory Council on family, domestic and sexual violence (the draft Plan, p 41). A self-determined plan can't be achieved by the government deciding who is at the table and what reforms are to be considered. (Change the Record 2022c, p. 2)

Shared decision-making and self-determination are limited when certain groups of Aboriginal and Torres Strait Islander people do not feel represented in the process – and therefore its outcomes.

The Advisory Council was established as a multidisciplinary group of advisors with on the ground community experience from across the health, community services, legal services, children and family services, and university sectors (Ruston 2021). However, it is not clear why some key representative groups and voices were not included. One such voice was the National Family Violence Prevention Legal Services Forum (NFVPLS Forum) – the Commission understands that while some individual members were also members of the

NFVPLS Forum, they were not representing the NFVPLS Forum. The NFVPLS Forum are 'the National Peak Body for Family Violence Prevention Services (FVPLS) around Australia that provide culturally safe and holistic services to First Nations people affected by family violence – predominantly women and their children' (NFVPLS Forum 2023). The NFVPLS Forum is also a member of the Coalition of Peaks, which is a signatory to the Agreement and a partner with government in its implementation. In 2022, the NIAA provided the NFVPLS Forum with a three year grant of $3.3 million to undertake 'strategic activities' under its safety and wellbeing program, this followed a decision by the previous Government to cease funding to the NFVPLS Forum Secretariat in 2021 (Australian Government 2023b).

The exclusion of NFVPLS from the Advisory Council was raised by Djirra, a Victorian ACCO focused on family violence healing and prevention (and a member of the NFVPLS Forum), who stated:

> It remains unclear why the NFVPLS, the only national body working exclusively in family violence with First Nations women and children, was excluded. This is a missed opportunity for government to utilise the expertise of NFVPLS members who work at the frontline with Aboriginal women in urban, rural and remote locations across the country. (sub. 82, p. 4)

Although the Commission heard positive feedback that the partnership between the Advisory Council and DSS appeared to facilitate a culture of shared decision-making, the exclusion of some voices is cause for concern among some Aboriginal and Torres Strait Islander organisations. This may indicate that further work in how governments engage, which is a key transformation element under Priority Reform 3, may need to occur before Priority Reform 1 can be fully reached.

Priority Reform 2: Building the community-controlled sector

Priority Reform 2 of the Agreement cuts across many of the Action Plan's Reform Areas (Reform Area 1, Reform Area 2, Reform Area 3). The Action Plan acknowledges that without building the Aboriginal and Torres Strait Islander family violence sector, the actions in the Plan cannot be successfully implemented (DSS 2023, p. 44). It also acknowledges that the family violence sector needs significant investment in their workforce and capacity, which is a key element of Priority Reform 2 where, '[actions] must be accessible, strength-based and empower the sector to continue to evolve, strengthening their capacity and capability' (DSS 2023, p. 53).

Although the Action Plan discusses building the sector broadly, there are no concrete actions that highlight the mechanisms and policies which will achieve this, beyond developing a Peak Body. For example, a key goal of Priority Reform 2 is to transfer service provision from non-Indigenous organisations to ACCOs. This is an acknowledgement by governments that ACCOs achieve better outcomes for Aboriginal and Torres Strait Islander people (clause 43). However, the Action Plan does not provide details of how this will be done.

Funding commitments do not align with significant demand for services

Despite the Action Plan's acknowledgment that the family violence sector needs significant investment – something that Aboriginal and Torres Strait Islander organisations have strongly advocated for – the Action Plan focuses on maintaining existing funding for key family, domestic and sexual violence services. It states that governments should:

> Maintain existing funding base for critical family violence service provision, including funding programs under the third and fourth action plans under the National Plan to Reduce Violence against Women and their Children 2010–2022, with potential for monitoring and reporting frameworks co-designed with community. (DSS 2023, p. 60)

> Maintain existing funding base to the Family Violence Prevention Legal Services, which provides services for Aboriginal and Torres Strait Islander families, predominately women and children, experiencing family, domestic and sexual violence. (DSS 2023, p. 60)

The ambition in the Action Plan to maintain existing funding in the sector contradicts advice provided before and after the Action Plan was released by key sector members (box 8.4). It further contradicts government commitments under Priority Reform 2, which is for ACCOs to have 'a dedicated, reliable and consistent funding model designed to suit the types of services required by communities, responsive to the needs of those receiving the services, and is developed in consultation with the relevant Peak body' (clause 45d).

Box 8.4 – Calls for more funding for family violence legal services

One of the key priority actions of the Wiyi Yani U Thangani Project report was to ' … increase investment year on year, commensurate with need and indexed, to Family Violence and Prevention Legal Services (FVPLS) and to Aboriginal Legal Services (ALS) as culturally safe, trauma informed specialist supports and legal representation' (AHRC 2020c, p. 102). In the NFVPLS Forum's submission to the Wiyi Yani U Thangani Project they stated that:

> … FVPLS services are consistently working beyond their capacity … there is considerable unmet need amongst Aboriginal and Torres Strait Islander communities, particularly for areas that are currently not serviced by FVPLSs. In 2016, some National FVPLS Forum members reported being forced to turn away approximately 30-40% of people seeking assistance due to under-resourcing. (NFVPLS Forum 2018, p. 9)

Djirra's submission to the Commission highlighted the impacts of limited and unreliable funding.

> The NFVPLS Forum members are chronically under-resourced, and increased demand has not been met with increased funding. Lack of indexation results in decreased funding year upon year, compounding funding reductions over time. … FVPLSs require approximately $40 million in additional annual funding to provide essential services to First Nations people affected by family violence across the country. The lack of ongoing funding from governments sees Djirra regularly face funding cliffs. This means it is more challenging to plan, teams are destabilised, clients' trust is eroded, and knowledge lost with increased staff turnover compromises our ability to measure actions. This also limits Djirra's ability to meet our strategic plan and service delivery targets. Short term and uncertain funding arrangements impact our capacity to offer employment stability to the Aboriginal and Torres Strait Islander women in our workforce. This uncertainty can result in systemic workforce issues that impact the livelihoods of our workforce and their families. (sub. 82, p. 5)

Aboriginal Family Legal Service also submitted that there has been minimal real growth in the funding for Aboriginal and Torres Strait Islander family legal services, and the impact of this as they are expected to provide more services:

> In regard to funding arrangements, we note that core recurrent funding provided to agencies such as [Aboriginal Family Legal Service] through State and Commonwealth Government agencies rarely includes considerations for CPI and inflation, and rarely covers the full cost of providing our services. This leaves service providers in a tenuous situation where we are required to find money from some other source to ensure we can continue to operate our service at the same levels and standards we have for the last decade. For the FVPLS units across Australia, this funding uncertainty is complicated by the uncertainty around our transition to the National Legal Assistance Partnership, which leaves us unsure of which agency will

Box 8.4 – Calls for more funding for family violence legal services

> administer our next funding agreement from 2025. It is impossible to effectively negotiate funding agreements that cover the full cost of providing services and meet our service and client needs when we don't know which funding body we should be negotiating with. (sub. 36, p. 5)

The Law Council of Australia also emphasised their continued advocacy to governments that they should:

> … appropriately fund Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services, including in regional, rural and remote areas, commensurate with high unmet legal needs across local populations in the criminal, civil and family contexts. (sub. 83, attachment, p. 18)

It is not clear how and why the Action Plan seeks to maintain the existing funding base for key family violence and family violence prevention legal services. Without publicly available information, it alludes to a greater tension around how shared decision-making can be achieved, and the role and scope of engagement, when governments make decisions over funding.

The Action Plan noted that the Australian Government will support community-controlled organisations through Australian Government administered grants that will cover a range of areas such as 'building workforce capacity, establishing or expanding primary prevention initiatives, meeting existing demand and innovation to meet emerging issues'. However as highlighted in chapter 3, grant funding without shifting how decision-making power is shared is unlikely to satisfy the Agreement's goal of having community-control over the design and delivery of services to reflect the priorities of Aboriginal and Torres Strait Islander communities.

While the Action Plan is meant to reflect national efforts, it currently only highlights funding decisions made by the Australian Government. Moreover, while it is also designed to guide future jurisdictional funding and delivery decisions, it is currently unclear how other jurisdictions will make such decisions – including whether they will be made in partnership with Aboriginal and Torres Strait Islander communities and community-controlled organisations.

There is little indication on how program delivery will shift to ACCOs

The Action Plan acknowledges the importance of clause 55, which requires governments to increase the proportion of services delivered by Aboriginal and Torres Strait Islander organisations (DSS 2023, p. 61). It is encouraging that the Action Plan further commits governments to develop services that are tailored to, and delivered by Aboriginal and Torres Strait Islander people. For example, in implementing a capital works grants program to fund the building, renovation or purchase of new emergency accommodation, it noted that the grants round would:

> … focus on increasing access to appropriate emergency accommodation for Aboriginal and Torres Strait Islander women and children, women and children from culturally and linguistically diverse backgrounds and women and children with disability. (DSS 2023, p. 60)

Other activities include increasing 'prevention services, programs and campaigns for Aboriginal and Torres Strait Islander children, including on-Country learning through mapping and funding' and supports for families impacted by violence or the child protection system 'through the establishment of trauma-aware, place-based healing programs' (DSS 2023, p. 54). While these actions are listed within Reform Area 3 (dealing with 'reforming institutions and systems'), the lack of integration between these actions and other actions that speak to the development and delivery of service systems, leaves it up to governments to decide

which will be done in partnership, which will be 'lifted and shifted' to ACCOs, and which will remain with a mainstream provider.

The plan proposes the development of a new Aboriginal and Torres Strait Islander peak body to strengthen the ACCO sector

The Action Plan proposes to establish a new peak body to develop and strengthen the Aboriginal and Torres Strait Islander family violence sector (DSS 2023, p. 50). Having a peak body, which represents community-controlled organisations that deliver common services, is aligned with the strong community-controlled sector elements within the Agreement (clause 45c).

While many participants supported having a peak body, perspectives on the establishment of a new peak body varied. No to Violence, 'the largest peak body in Australia for organisations and individuals who work with men to end family violence', strongly supported this proposal:

> Our network of First Nations members unanimously supported the prioritisation of the establishment of an Aboriginal and Torres Strait Islander family, domestic and sexual violence peak body at national and state levels. This is an essential step in building the architecture of a system that can create meaningful change for Aboriginal and Torres Strait Islander people. (NTV 2023, p. 2)

The National Aboriginal Community Controlled Health Organisation (NACCHO), in its submission to developing the Action Plan, noted the defunding in 2020 by the then Australian government of the NFVPLS Forum as a peak body and supported the re-establishment of a peak body for the sector:

> NACCHO strongly supports re-establishment of an Aboriginal and Torres Strait Islander family, domestic and sexual violence peak body as a critical step to strengthening the sector. … The re-establishment of a peak body is welcome and will help ensure the voices of Aboriginal and Torres Strait Islander people and communities are represented, and that there are coordinated responses and sector input into government policy and funding approaches. (NACCHO 2022b, p. 12)

Change the Record expressed concerns about the establishment of a new peak body, given that NFVPLS, in their view, exists as the most appropriate peak body to represent the sector:

> … we were concerned to find that … [the Action Plan's] … two key features were the creation of a new First Nations family violence peak body and Commissioner, as these had not featured in the demands of the community campaign we had been a part of. This was a matter of concern discussed at the Wiyi Yani U Thangani First Nations Women's Safety Policy Forum in September 2022, in which we participated. Our concerns were raised with DSS and NIAA. In our view the National FVPLS Forum, the established peak body for First Nations Community Controlled FVPLS, is the most appropriate body to undertake the work of the peak under this plan. (sub. 66, pp. 6–7)

Similarly, Djirra did not agree with the proposal to establish a new peak body which would replace the existing role of the NFVPLS Forum (Djirra sub. 82, p. 4). Djirra made the case that NFVPLS members:

- have over 25 years' experience working exclusively with Aboriginal and Torres Strait Islander people who experience family violence (98% women and children)
- are predominately standalone, self-determined ACCO's (with a small number auspiced by mainstream services and other ACCOs)
- provide holistic, culturally safe, legal and non-legal services to First Nations people
- provide diverse and unique prevention, early intervention, tertiary and recovery programs
- employ high numbers of Aboriginal and Torres Strait Islander women, and
- are led by a network of First Nations women CEOs. (sub. 82, p. 4)

There is no public information outlining why the NFVPLS Forum was not considered by DSS and the Advisory Council to be a suitable peak to represent organisations in the family violence sector. It may be that a new peak body is considered necessary, for example, to expand the scope of the sector's representation to include men's services. However, even if this where the case, it would be a concern that existing peak organisations are not part of this decision nor supported to expand their focus if so desired. This calls into question the extent to which governments are valuing the knowledges and expertise of Aboriginal and Torres Strait Islander organisations in this process, and the way governments can choose how (and with whom) they share decision-making power.

Priority Reform 3: Transforming government organisations

The development of an Action Plan that seeks to better reflect the priorities of Aboriginal and Torres Strait Islander people, could itself be considered a step towards transforming government organisations and systems, in line with Priority Reform 3 of the Agreement. However, the fact that the Action Plan sits within a mainstream National Plan, is likely to constrain how far it can push for government transformation within the mainstream systems and institutions that also require change.

Furthermore, concerns raised about the engagement process in developing the Action Plan highlight that in some respects, governments continue to operate within business-as-usual approaches.

A transformation of government approaches is needed to address family violence impacting Aboriginal and Torres Strait Islander communities

Australian governments have previously entirely subsumed the approach to family violence of Aboriginal and Torres Strait Islander communities into mainstream policies. This approach equated the experiences, causes, and solutions of experiences of violence to those of non-Indigenous communities. Aboriginal and Torres Strait Islander peoples have made clear that solutions designed by and for non-Indigenous communities will not be effective in addressing the levels of Aboriginal and Torres Strait Islander women and children experiencing violence (Change the Record 2021b, p. 6).

The Action Plan is a first step in governments accepting that previous policies have failed to address family violence in Aboriginal and Torres Strait Islander communities, and that meaningful policy for Aboriginal and Torres Strait Islander people needs to be designed with Aboriginal and Torres Strait Islander people.

The failure of previous policies to meet the priorities of Aboriginal and Torres Strait Islander communities and other diverse groups was not only spoken about by Aboriginal and Torres Strait Islander women, it was also a finding in the evaluation of the previous National Plan to Reduce Violence Against Women and Their Children (2010–2022).

> There is a need for greater tailoring to ensure that the needs of Aboriginal and Torres Strait Islander women and children are adequately met, not seen as an add-on. The Commonwealth Government, in developing the new National Plan, should consider developing and implementing a dedicated tailored plan for Aboriginal and Torres Strait Islander women and children. This would need to be accompanied by sustainable longer-term funding to enable meaningful engagement and co-design of local solutions. (KPMG 2022b, pp. xvi–xvii)

The development of a dedicated Action Plan highlights a level of transformation for governments, demonstrating that they are willing to approach the problem differently to meet the priorities of Aboriginal and Torres Strait Islander people. Central to this has been the inclusion of Aboriginal and Torres Strait Islander people in the development of the plan through the aforementioned partnership which acknowledges that DSS itself does not hold the knowledges and experiences to successfully approach the problem.

While this demonstrates a level of government transformation, as previously mentioned, sector members were nevertheless disappointed that the Action Plan exists within a mainstream National Plan, which they see as inhibiting the creation of a truly self-determined plan.

> The proposed Aboriginal and Torres Strait Islander Action Plan is not a sufficient or self-determined response. … . Safety and equality for First Nations women will not be achieved through a government determined process that is a subset of the mainstream Plan. (Djirra 2022, p. 2)

Community members have advocated for a standalone plan, where Aboriginal and Torres Strait Islander perspectives and approaches to defining the factors that may lead to family, domestic and sexual violence within Aboriginal and Torres Strait Islander communities, and designing solutions, are not simply a subsection of a mainstream plan. Aboriginal and Torres Strait Islander women and children interact with many different systems, particularly within mainstream institutions, when they experience family violence. The Action Plan, however, does not set out how these systems, such as the justice and child protection systems, are to be transformed to reduce experiences of racism and discrimination for Aboriginal and Torres Strait Islander people.

Despite calls to prioritise a standalone plan, the Australian Government chose to first establish the Action Plan, which focusses on interim measures while the First Nations National Plan is being developed. A standalone First Nations National Plan, was then subsequently-announced and is anticipated to be released in 2024 (DSS 2023, p. 20). Antoinette Braybrook, the CEO of Djirra, emphasised the importance of the upcoming standalone plan as a meaningful measurement of progress.

> What we need most is a standalone national plan. Meaningful change for our women will come from a self-determined, Aboriginal-led standalone plan, not one that is an add on to a mainstream approach … While today's release represents progress, we await the standalone plan to bring real change. (as cited in Knowles 2023)

Engagement for the development of the Action Plan appears selective

Engagement is a key element both under Priority Reform 1 and Priority Reform 3. The former focuses on the impact of meaningful engagement to shared decision-making (discussed earlier), while the latter relates generally to the need for government to better engage to create policy that reflects the priorities of Aboriginal and Torres Strait Islander people. The Action Plan noted that despite efforts to 'consult widely, they do not represent all Aboriginal and Torres Strait Islander voices and experiences' (DSS 2023, p. 21). This was echoed by concerns raised with the Commission that engagement for the development of the Action Plan was selective, and several Aboriginal and Torres Strait Islander organisations felt they were not adequately engaged.

Development of the Action Plan included face to face engagements with 'over 1,800 people including Aboriginal and Torres Strait Islander community members, Aboriginal community-controlled organisations and the broader Indigenous sector, victim-survivors, Elders, people with disability, and LGBTIQA+ Sistergirl and Brotherboy community' (DSS 2023, p. 21). An engagement survey was also developed, which received hundreds of responses from sector participants. However, the survey results and submissions have not been made public, which makes it difficult for the public to ascertain whether, and how, input from these engagements were reflected in the development of the Action Plan. Djirra told the Commission that although they provided an in-depth submission and input to drafts of the Action Plan, they did not feel as though their feedback was addressed fulsomely in the final Action Plan (Djirra, sub. 82, p. 4).

Similarly, the Commission heard concerns raised about the engagement strategy for the Action Plan, particularly on the timeliness and timeframes provided to organisations to respond to drafts of the Action Plan.

There were also concerns raised that participants were being engaged on decisions that the Australian Government had already committed to in the Budget. For example, actions listed in the Action Plan as 'Immediate' had already been allocated funds in the May 2023-24 Australian Government budget, which was determined before the draft of the Action Plan was released to organisations for feedback. Therefore, it appears that external engagements (outside of the partnership between DSS and the Advisory Council) were not necessarily used to determine priorities but to justify pre-determined decisions.

DSS's Women's Safety Group explained that engagement was potentially constrained due to timing considerations in an:

> … effort to implement tangible funding to communities in a timely way, which would require the completion of an Action Plan. The timeframe reflected the intent of the Action Plan to address immediate safety needs, knowing there would be further engagement planned for the development of a standalone First Nations National Plan as the longer term policy platform. In light of this, the Action Plan was to be released in August 2023, 10 months from the release of the National Plan to End Violence against Women and Children in October 2022. The engagement could not take the whole 10 months as the timeframe also incorporated internal government processes for endorsement and state and territory relations. (pers. comm., 14 December 2023)

This lack of meaningful engagement on an important policy which affects Aboriginal and Torres Strait Islander people echoes what the Commission has heard from many ACCOs across the country on their experiences with unsatisfactory engagement approaches (PC 2023g, p. 13). It also speaks to the limits in transformation governments have undertaken to value the expertise and knowledges of Aboriginal and Torres Strait Islander community-controlled organisations.

System level transformation is not explained

Although the Action Plan commits to transforming systems, it is limited in defining tangible actions that will lead to systemic change, particularly to institutions that play a critical role in family violence policy, namely the justice and child protection systems. There are also limited actions which interrogate the racism and unconscious bias that is experienced by Aboriginal and Torres Strait Islander people when they interact with these systems. To align with the goals of Priority Reform 3, the Action Plan should have an explicit theory of change for how these systems will be reformed to address institutionalised racism, unconscious bias and cultural safety.

The Action Plan highlights the importance of reforming institutions which interact with family violence:

> As several decades of research and reporting has repeatedly demonstrated, access to family, domestic and sexual violence services is not experienced equally or consistently by Aboriginal and Torres Strait Islander peoples and many services are not tailored to address systemic and institutional patterns of violence or provide cultural safety and accessibility for specific groups of people, particularly in remote and very remote communities. In addition, governments need to improve police responses and provide culturally appropriate services to Aboriginal and Torres Strait Islander women and children who are affected by family violence. (DSS 2023, p. 59)

This is consistent with the research and advocacy of Aboriginal and Torres Strait Islander people and researchers who highlight the importance in reforming the justice and child protection systems to bridge the significant mistrust in mainstream support services and governments due to historical and cultural factors (Law Council of Australia, sub. 83, p. 31). For example, the fear of children being removed by the child protection system is a leading contributing factor to the underreporting of family violence:

> In our frontline work we have found that one of the biggest deterrents preventing Aboriginal and Torres Strait Islander women from reporting family violence is the fear of child protection

> intervention and losing one's children. Family violence is a primary driver of the disproportionate and escalating rates of Aboriginal and Torres Strait Islander child removal. However, FVPLS clients frequently report being discouraged by child protection workers (either implicitly or overtly) from seeking legal advice. (NFVPLS Forum 2018, p. 7)

Second, unsafe police responses have led to a significant number of Aboriginal and Torres Strait Islander women being misidentified as perpetrators, thus reducing their likelihood to contact police for help (AHRC 2022b; Djirra sub. 82, attachment 1; Nancarrow et al. 2020; NFVPLS Forum 2021; VALS 2022b).

> Djirra works with many women who have called police to seek help for family violence and are then misidentified by police as the primary aggressor rather than supported for their safety as a victim of the violence. Djirra is concerned that poor and unsafe police responses reinforce stereotyping and result in the misidentification of Aboriginal and Torres Strait Islander women. This issue is particularly complex in regional areas, as the more familiar relationships between police and community members increase the likelihood of misidentification and creates an additional reporting barrier. (Djirra, sub. 82, attachment 1, p. 12)

Change the Record's *Pathways to Safety Report* highlighted that a key priority for the Action Plan should be to reduce the criminalisation of Aboriginal and Torres Strait Islander women, as the number of Aboriginal and Torres Strait Islander women in jail is increasing due to a range of factors:

> … including harsher bail laws which disproportionately affect Aboriginal and Torres Strait Islander women who are incarcerated for minor offences, misidentification and increased police presence in remote and regional communities. (Change the Record 2021b, p. 11)

The Action Plan does not have a significant focus on reforming these institutions which are consistently failing Aboriginal and Torres Strait Islander people. However, actions aimed at fostering change in the police include:

- Seek to explore the scope of the Aboriginal and Torres Strait Islander Police Liaison Officer role to improve safety at family, domestic and sexual violence events. (DSS 2023, p. 61)
- Explore the potential for national policing principles as part of an Indigenous Family Violence Policing Partnership on violence against Aboriginal and Torres Strait Islander women and children. (DSS 2023, p. 62)

Both of these actions lack a specified timeframe for completion or the transformative change that is needed to reform the relationship between Aboriginal and Torres Strait Islander people and police, to encourage reporting and improve outcomes. Victoria Aboriginal Legal Service highlighted the limited progress that the Action Plan makes to systems reform:

> While the development of a dedicated Aboriginal and Torres Strait Islander Action Plan is a welcome development, the Draft Plan still inadequately recognises the way that policing and justice system responses to violence too often harm, rather than help, victim-survivors. Victim-survivors of domestic violence, and particularly Aboriginal women, are too often sent to prison because of a lack of domestic violence support and homelessness services, disproportionate enforcement of offences like public intoxication, and misidentification of victim-survivors as perpetrators. (VALS 2022b, p. 1)

Broadly speaking, of the nine actions relating to reforming institutions and systems that interact with those experiencing family violence, none were allocated new funding in the most recent Australian Government budget, with the majority (seven) slated to start implementation after the end of the lifecycle of the Action Plan (DSS 2023). This could indicate that governments are not prioritising the critical element of reforming institutions in this Action Plan, particularly as states and territories, who have direct responsibility over key

systems, make limited commitments in the Action Plan to transformation of its institutions to improve family safety outcomes.

Priority Reform 4: Shared access to data and information at a regional level

The Action Plan commits to the goal of shared access to data and information at a regional level – which aligns with the outcome of Priority Reform 4 (DSS 2023, p. 65). Many of the actions listed in the Action Plan are focused on building capacity of Aboriginal and Torres Strait Islander people to collect and use data (clause 72d) as well as data development which is a key commitment under the SEO 13. Finally, the Action Plan acknowledges Indigenous data sovereignty as a guiding principle for data activities under the Action Plan (DSS 2023, p. 65).

Indigenous data sovereignty as a guiding principle of the Action Plan

The Action Plan places Indigenous data sovereignty as a key guiding principle for how data arrangements are governed.

> The Action Plan acknowledges the principles of Indigenous data sovereignty, recognising that shifting ownership of family violence data collected about Aboriginal and Torres Strait Islander peoples to the Aboriginal and Torres Strait Islander organisations that deliver family violence services will contribute to better safety outcomes for Aboriginal and Torres Strait Islander families. (DSS 2023, p. 65)

In essence, Indigenous data sovereignty is about the ability of Indigenous people to exercise agency over data as a tool to achieve their social, economic, political and cultural aims (Indigenous data sovereignty is further explored chapter 5). Therefore, the inclusion of Indigenous data sovereignty as a guiding principle of the Action Plan is a recognition by governments that Aboriginal and Torres Strait Islander people have the right to own and develop data that relates to their experiences with family violence – causes and solutions.

Indigenous data sovereignty was included as it was clear from consultation and research in developing the Action Plan that it is a key tenet of self-determination (DSS 2023, p. 65). This is in line with many Aboriginal and Torres Strait Islander organisations' views that Indigenous data sovereignty is essential to any impactful policy approach to family violence. For example, the NFVPLS Forum's recommendation in their submission to the *National Plan to reduce Violence against Women and their Children*, was that the National Plan should 'Support Aboriginal and Torres Strait Islander data sovereignty'. Their rationale for why this should be a guiding principle was that government creation and ownership of data can create several issues, including that it:

- removes a community's ability to define what success looks like for them and diminishes the right to self-determination
- limits the ability of Aboriginal and Torres Strait Islander communities to access relevant data that is collected
- has a focus on deficit, disadvantage and difference to justify the introduction of Government policies that have historically had negative impacts
- fails to recognise broader social, cultural and political drivers (NFVPLS Forum 2021, p. 9).

Djirra, similarly highlighted the importance of Indigenous data sovereignty in operationalising self-determination:

> Data sovereignty is essential to self-determination; despite this, investment from government has been scarce. It is critical that ACCOs like Djirra be adequately resourced to safely collect, analyse and evaluate our own data using Aboriginal ways of knowing and doing. (Djirra sub. 82, p. 7)

The Wiyi Yani U Thangani First Nations Women's Safety Policy Forum also identified investment into Indigenous data sovereignty and data governance as a key system enabler for achieving the objective of

ending family violence (AHRC 2022d, p. 34). As such, the inclusion of Indigenous data sovereignty as a key guiding principle of the Action Plan appears a positive sign in recognition of the priorities of Aboriginal and Torres Strait Islander people and organisations in pursuit of Priority Reform 4 of the Agreement. In saying this, it is not always clear how the guiding principle is applied across the various activities in the Action Plan that relate to data development and capacity building.

Current issues with the data relating to SEO 13

As mentioned earlier, there are several issues with the headline data for the SEO 13 target. One issue is that the appropriateness of the national data from the NATSIHS has been questioned by an expert advisory panel on violence (the Harm Panel). This panel advised the ABS that information was not collected appropriately due to: privacy concerns, risk of harm, absence of Aboriginal and Torres Strait Islander interviewers, insufficient post survey support, and respondent burden (ABS sub. 1, p. 6). As a result of this, the 'physical harm' part of the NATSIHS has not been conducted again, and there is no new data to track the progress of the target 13 (PC 2023d, p. 68).

Another issues is that many organisations question whether the focus on 'experiences of violence' will lead to the changes required to achieve the outcomes of 'family safety'. For example, in NACCHO's submission to the Action Plan, they questioned the validity of focusing solely on the headline target in SEO 13 when assessing progress on outcomes in this space.

> NACCHO does not support the Action Plan's singular focus on Target 13. We believe the focus on a single target will not achieve the structural reforms required to make meaningful change in this space. Nor does a focus on one Target reflect the complexity and multiplicity of factors that influence family, domestic and sexual violence, both of Aboriginal and Torres Strait Islander victim/survivors and perpetrators – from the ongoing impacts of colonisation, intergenerational trauma, interaction with the justice system and access to emergency and long-term, affordable housing. This is a complex issue that sits across multiple Targets and requires an integrated and holistic policy and program response if we are to make meaningful progress toward reducing violence against women and children (NACCHO 2023, p. 3).

Data development is a key action

Given issues around the quality of the data to monitor what is driving problems in family safety, there is significant data development work needed to better understand these drivers and potential solutions. This is a key focus of several actions in the Plan (box 8.5). However, it should be noted that this work is likely to add to the existing data development activities that are yet to be completed under the Agreement. The Commission has highlighted that this work will likely require strengthened resourcing and capability building embedded within the governance of the Agreement – including a new standalone body to progress this work (chapter 6).

These actions align with clause 70 of the Agreement, in that it allows communities to obtain a comprehensive picture of what is happening in their communities with respect to family safety, as well as the priorities for data development under SEO 13. In saying this, there is no mention within these actions of how they specifically will address key principles of Indigenous data sovereignty.

The ABS told the Commission that they are working with other agencies under the guidance of DSS to develop 'fit-for-purpose' information that is collected safely and that is meaningful to Aboriginal and Torres Strait Islander people (ABS sub. 1, p. 6). DSS's Women's Safety Group informed the Commission that:

> DSS had provided $31.6 million to the ABS to conduct ethical and reliable data collection on family violence in Aboriginal and Torres Strait Islander communities. However, the ABS informed the department it was not the most appropriate organisation to conduct such a sensitive data

collection and recommended an Indigenous-led approach be considered. The Australian Government subsequently decided to redirect ABS funds to data development activities to be led by an Aboriginal and Torres Strait Islander organisation. (pers. comm., 14 December 2023).

Box 8.5 – Data development actions identified in the Action Plan

- Continue existing data development and harmonisation efforts to measure progress on Closing the Gap Target 13. Harmonisation efforts will ensure that gender-based violence experienced by people with disability is measured to strengthen the evidence base.
- Drive and develop the evidence base with a focus on addressing gaps and understanding what works to reduce violence in the Australian context. This includes identifying gaps in knowledge and understanding what works to reduce violence in Aboriginal and Torres Strait Islander communities.
- Initiate large-scale research projects on primary prevention of family, domestic and sexual violence, including technology abuse against Aboriginal and Torres Strait Islander peoples. These projects will aim to translate research and evidence in practice. They will be owned, designed and led by Aboriginal and Torres Strait Islander researchers to support data sovereignty.
- Build on existing commitments toward developing nationally consistent data from existing administrative information sources on violence experienced by Aboriginal and Torres Strait Islander peoples.
- Commence a foundational data review relating to missing and murdered Aboriginal and Torres Strait Islander women and children across Australia. Outcomes from this data review should be disaggregated to communities at the regional level to promote timely and accessible reporting.
- Jurisdictions explore ways to track family, domestic and sexual violence related offenses to identify hotspots.
- Promote research that focuses on the prevalence and nature of family, domestic and sexual violence to build greater understanding of violence prevention, response services, disability screening tools and the barriers facing Aboriginal and Torres Strait Islander women and children living with disability.
- Promote research that focuses on the prevalence and nature of family, domestic and sexual violence, to build greater understanding of violence prevention, response services and the barriers facing Aboriginal and Torres Strait Islander LGBTIQA+ Sistergirl and Brotherboy peoples.

Source: DSS 2023, pp. 66–67, 71.

Building capacity for Aboriginal and Torres Strait Islander people and organisations to collect and use data

There are two actions that are focused on building capacity of Aboriginal and Torres Strait Islander people and organisations to collect and use data in the Action Plan. This is a key government commitment under Priority Reform 4 (clause 72d). The stated actions are that:

- evaluation activities work in partnership with Aboriginal and Torres Strait Islander services to improve client experience and organisational capabilities, and to build on best practice based on Aboriginal and Torres Strait Islander measures of success and those that contribute to system wide reform
- current evaluation tools are reviewed to develop a suite of tools, in partnership with Aboriginal and Torres Strait Islander service providers, and develop resources to build capacity of Aboriginal and Torres Strait Islander agencies to undertake evaluations (DSS 2023, p. 66).

These actions align with a recommendation made by Change the Record for the National Plan to End Violence Against women and their children, to:

> Resource Aboriginal community-controlled organisations to collect, own and analyse their own data to inform solutions to violence and disadvantage, and evaluate what strategies and programs work for us. (Change the Record 2021b, p. 8)

Djirra also supported a focus on capacity building under Priority Reform 4:

> Specialist organisations hold a rich array of data; if we are to provide meaningful insight into achieving outcomes, investment must be forthcoming to build our capacity to monitor and evaluate our programs with a view to continuous improvement. (Djirra, sub. 82, p. 7)

While these actions could create opportunities for community-controlled organisations to collect and evaluate their own data, these actions are not explicit on how ACCOs will lead the governance of these evaluations, which is a key goal of Indigenous data sovereignty.

8.5 Conclusion

This chapter has not sought to make conclusions on the efficacy of government actions in these socio-economic areas. The implementation of these reforms, and the choice of governments to move away from past approaches where decision-making power was not shared, is promising. Nevertheless, some clear gaps have been identified as to the extent to which these reforms reflect each governments' commitment to implementing the four Priority Reforms in the Agreement. These could provide lessons for other jurisdictions to consider when implementing these initiatives.

Aboriginal and Torres Strait Islander people have called for reforms to the child protection, youth justice and family, domestic and sexual violence systems for decades. At the heart of these calls is for Aboriginal and Torres Strait Islander people to be able to exercise their right to determine the best approach to dealing with urgent priorities facing Aboriginal and Torres Strait Islander communities.

Some governments have taken promising steps towards moving the pendulum towards enabling greater self-determination. This has included actions by state and territory governments to implement delegated authority in child protection, raising the MACR, and co-developing an Aboriginal and Torres Strait Islander Action Plan for family, domestic and sexual violence (in partnership with an Aboriginal and Torres Strait Islander advisory group). However, in the Commission's assessment of how these policies have incorporated the Agreement's four Priority Reforms, governments' approach to self-determination has not been well defined. As noted in the independent review of Aboriginal children and young people in out-of-home care in New South Wales:

> Recognition … [by governments] … of the right to self-determination can be viewed on a spectrum from 'strong form' to 'weak form'. Strong form recognition involves autonomous arrangements, which are usually the type of autonomy exercised in countries that recognise Aboriginal sovereignty, such as some Native American tribes (including Salt River in Arizona), who have been empowered to develop a comprehensive early intervention, wraparound service for child welfare and child protection of Native American children. The other end of the spectrum is 'weak' form recognition, which is a form of recognition that does not require the state to act. … In light of the spectrum of recognition under self-determination, it is important for law and policymakers be specific about its content. Inconsistent uses of the term can create competing expectations of what it can achieve. (Davis 2019, pp. 80–81)

The development and implementation of these reforms have revealed a piecemeal approach to how governments are meeting their commitments under the Agreement. In the case of delegated authority and the Action Plan, this is demonstrated by governments seeking to promote self-determination by focusing on reforms to targeted programs and services for Aboriginal and Torres Strait Islander people, without engaging on systemic reforms to the mainstream system that arguably has a more significant impact. Raising the MACR is an example of a reform to mainstream systems that significantly impacts Aboriginal and Torres Strait Islander people, but again, where governments have set the limits on the extent to which Aboriginal and Torres Strait Islander people have been able to determine the pace and direction of reform. For example, we observed the NT Government raise the MACR, while simultaneously undermining the SEO target and Priority Reforms, by implementing other legislative reforms that serve to increase incarceration of Aboriginal and Torres Strait Islander young people.

On shared decision-making, the design and implementation of these three reforms has demonstrated governments willingness to partner with Aboriginal and Torres Strait Islander people in decision-making. For example, delegated authority directly legislates power sharing arrangements between governments and ACCOs on certain child protection matters. In the development of both delegated authority and the Action Plan, governments have also formalised partnerships with Aboriginal and Torres Strait Islander organisations to lead policy design. For example, the Queensland Government partnering with QATSICPP to develop a 10-year blueprint for implementing delegated authority, and the Australian Government Department of Social Services partnering with the Aboriginal and Torres Strait Islander Advisory Council on family, domestic and sexual violence to develop the Action Plan. However, the Commission has heard that across these three reforms, key voices were excluded or diminished during the development and implementation of these initiatives, and that governments have largely retained power over key decisions. For example, in the development of the Action Plan, the limits to shared decision-making were established from the start, when the Australian Government decided to deliver the Action Plan prior to delivering what many Aboriginal and Torres Strait Islander people were seeking, which was a standalone national plan.

Funding and resourcing remain key issues in each sector. Despite an acknowledgement of the need to transfer services to Aboriginal and Torres Strait Islander community-controlled organisations, this commitment has been blunted by the level of investment committed and by the extent to which organisations are able to control how best to manage funds to meet their communities' priorities. This chapter has found that too often services are simply being 'lifted and shifted' to ACCOs, without considering the value that this transfer could bring, in terms of new approaches that capture the knowledges and expertise of ACCOs. The Action Plan, for example seeks to maintain the existing funding base in key service areas, despite acknowledging that additional investment is needed. In the cases of delegated authority and raising the MACR, which involves reforms to statutory systems, it is not clear governments have invested in wrap-around services to a sufficient extent that would allow ACCOs to potentially have greater impact on outcomes.

As flagged earlier, the potential benefits of these reforms are held back by the lack of systemic and structural reform to mainstream child protection, youth justice and family, domestic and sexual violence systems. In particular, it is not clear from these reforms how changes to Aboriginal and Torres Strait Islander programs and services feed back to inform necessary changes to mainstream institutions and systems. Across these three SEOs, this is particularly the case for frontline agencies and institutions that have significant roles in determining interactions and outcomes for many Aboriginal and Torres Strait Islander people. This was highlighted in the case of delegated authority, where the scope of decision-making power shared by governments is often limited, and is constrained by ACCOs still having to operate within the mainstream child protection framework and legal system. The Commission heard that despite the success of ACCO-led child protection decisions under delegated authority, child protection systems have not been reformed to learn

from, and incorporate, these more successful ways of working. This appears to be a key failure to implement Priority Reform 3 across each of the three SEOs discussed in this chapter.

Finally, there have been some promising commitments to improving data across the three SEOs. For example, Indigenous data sovereignty is a key guiding principle for how data arrangements are governed under the Action Plan. Nevertheless, there are still gaps in terms of data collection, availability and sharing, and progress in many areas is slow. This is particularly the case in capturing information that is meaningful to the priorities of Aboriginal and Torres Strait Islander communities across the three SEOs.

Review of the National Agreement on Closing the Gap

What we heard

Chapter 9

9.1 What this chapter is about

This chapter is about what the Commission heard during its engagements. The Commission engaged with Aboriginal and Torres Strait Islander people, organisations and communities, government agencies and non-government organisations (NGOs) to inform its review of the National Agreement on Closing the Gap (the Agreement). Successful engagement, in particular with Aboriginal and Torres Strait Islander people, was critical to ensure the effectiveness of the review.

The Commission published *Review paper 1: Engagement approach* in July 2022 (PC 2022d). It set out how we would engage over the course of the review and includes four principles of engagement. We undertook that engagement would be:

- **fair** and **inclusive** of all people. We include those who may not often engage or be able to. Everyone who wants to contribute can do so and we hear them
- **transparent** and **open** in how we provide information and make decisions
- **ongoing**, where engagement informs every stage of the review
- **reciprocal** with our information. At a minimum, we give feedback to Aboriginal and Torres Strait Islander people and their representatives are provided feedback on how their input has been understood and informed decisions.

As part of our commitment to these engagement principles, we published *Review paper 3: What we have heard to date – first phase of engagement* in February 2023 (PC 2023g). It aimed to reflect what we had heard from participants in 2022, and sought feedback on whether we had understood participants correctly.

This chapter builds on *Review Paper 3*, and brings together everything we heard from engagement during the course of the review.

It does not represent the Commission's views, but rather summarises what Aboriginal and Torres Strait Islander people and organisations, non-government organisations (NGOs) and government agencies told the Commission during meetings throughout the review.

We met with Aboriginal and/or Torres Strait Islander organisations (including community-controlled organisations, peaks, councils and regional authorities, service providers and other organisations), government agencies and NGOs. Many of the meetings with Aboriginal and Torres Strait Islander organisations were part of visits by the Commission to locations across Australia. Meetings with government agencies and NGOs were mostly conducted online. The chapter also reflects discussions at seven virtual roundtables.

This chapter does not identify individual people or organisations who provided particular feedback or information to the Commission, but rather mentions the type of organisation that provided the feedback, such as a government organisation or an Aboriginal and Torres Strait Islander community-controlled organisation (ACCO). It uses the word peaks or peak organisations to refer to Aboriginal and Torres Strait Islander organisations that represent multiple ACCOs, usually from particular service sectors and/or for particular states and territories or nationally.

The Commission also received public submissions, which are not included in this chapter but are available on the Commission's website.

A list of all meetings and roundtables held and submissions received is in appendix A.

9.2 Overall feedback on implementation of the Agreement

There is a lot of support for the Agreement …

We heard that there is appetite for change within government, and people want the Agreement to work. One Aboriginal and Torres Strait Islander community-controlled organisation (ACCO) said they want to 'do it right' under the Agreement and not see it fail. Other ACCOs said that the Agreement has been a great step forward, and crucial for systems and policy change. It has given one ACCO a level of access to government that it did not previously have, and has pushed governments to be more innovative in the ways that they engage. ACCOs also told us that while community awareness of the National Agreement may be low, there is widespread support for the Priority Reforms as the key levers for change.

Several Aboriginal and Torres Strait Islander organisations noted that the Agreement was a powerful document that can be a useful tool for discussions with governments, but it is not always being put to maximum use and progress implementing the Agreement is mixed. A significant number of organisations recounted instances where they used the Agreement to remind bureaucrats of their obligations to engage and listen on policy, program and service implementation in the midst of processes where they were 'consulted after the fact'. A number explained that this was a tool they previously did not have at their disposal, but this also highlighted that the Priority Reforms are not yet embedded in practice across governments.

One organisation said that it had used the Agreement strategically as a tool to remind governments of their obligations and need to reform engagement to but that it will be a long process to get governments to understand the changes required.

Some government representatives said that while there is a way to go with transparency and accountability of actions under the implementation plans, they want genuine implementation of the Agreement. A mainstream NGO observed that Closing the Gap is now part of its strategic conversations about the direction of the organisation.

… but this is not universal

There were, however, some concerns raised about the Agreement from some Aboriginal and Torres Strait Islander organisations. Several thought the siloed sector focus was an issue with the Closing the Gap architecture and did not reflect the interdependency of the socio-economic outcomes. An ACCO observed that the Agreement is an imperfect framework for supporting Aboriginal and Torres Strait Islander people with disability. The Agreement does not include a socio-economic outcome area related to disability, and so nothing changes for Aboriginal and Torres Strait Islander people with disability.

One organisation thought the 'pillars' (Priority Reforms) under Closing the Gap were confused, and others said the Agreement stopped at the State border and did not capture regional views or foster accountability for core issues for each region. Another said that while the intent of the National Agreement is good, the way it has been administered at the jurisdictional level has worked against its outcomes in some places.

Another Aboriginal and Torres Strait Islander organisation thought the Closing the Gap framework was not useful. We also heard from some groups that Closing the Gap employed deficit-based lenses and language. For example, some ACCOs said that the framing of 'Closing the Gap' does not make space for the mindset of asking Aboriginal and Torres Strait Islander people 'what is needed to enable your community to thrive and live longer?'

A local government said that it is important to move from a deficit model to excellence – to think beyond children attending school to excelling at school, but that a focus on excellence needs funding and resources. The local government also observed that there is little awareness of the Agreement in the majority of local governments, and no communication about the Agreement from either the Australian Local Government Association or the state government.

Responsibility across and within departments can be unclear

Some Aboriginal and Torres Strait Islander organisations said there is a lack of clarity and accountability about which agencies and which levels of government are responsible for actions under Closing the Gap. We also heard that decisions about implementing actions under Closing the Gap were not being driven down within departments. A government agency noted that the responsibility and accountabilities of 'lead' agencies on Closing the Gap initiatives need to be clarified, and mechanisms are needed to ensure that senior department executives understand and engage with the initiatives in their Implementation Plans.

We heard that in one jurisdiction, Joint Council meetings allow peak groups to speak at the table with ministers and get a response. But we also heard that the meetings to date have been more about government providing updates and seeking endorsement rather than forums enabling decision making to be shared. Representatives of several ACCOs spoke about their ongoing relationships and engagement with ministers, which was sometimes useful in achieving change and sometimes yielded little – these relationships and contacts sometimes existed regardless of the Agreement. One peak body said there are individual actors in government who are really pushing the change. The peak's engagement with government had been turbulent but they were able to raise issues with the minister, who was then holding the department accountable for how it engages with the peak body.

Aboriginal and Torres Strait Islander organisations and government representatives highlighted the importance of different parts of government working together. Lack of coordination was noted across what are clearly related areas (for example, alcohol and other drugs, health and mental health).

With regard to funding programs, we heard that government agencies should be looking more at the links between sectors, such as housing and employment or health. Siloed funding means that opportunities that could be mutually and positively reinforcing are being missed. One example is where separate funding blocks are going to childcare and to language programs in the same location, missing opportunities to explore language initiatives in childcare settings. An ACCO expressed frustration that it sometimes feels like it is acting like a dating service, as it often finds itself introducing government agencies – or even units of the within the same agency – to each other.

An ACCO in a remote area told how a lack of internet services impacts delivery of services. Regional services continue to receive funding and have adequate internet access but the accessibility difficulties in remote communities are not considered. In their community the state government connected fast NBN internet to the school but without telling anyone else in the community. They pointed this out as a clear example of government agencies not working together or considering the needs of ACCOs.

Implementation has not moved beyond business-as-usual

The primary concern about the Agreement is that implementation has not moved beyond business-as-usual. We heard that government progress was slow, and some Aboriginal and Torres Strait Islander organisations and one non-Indigenous NGO said the Agreement has not led to actions that will bring about change. As a result, some Aboriginal and Torres Strait Islander organisations felt they needed to continually advocate for government to fulfill its obligations under the Agreement. One Aboriginal and Torres Strait Islander

organisation said they thought the National Agreement on Closing the Gap has had no positive impacts on service delivery on the ground.

Reflecting the slow implementation, some peak bodies noted that Implementation Plans produced so far have contained few new actions. One ACCO looked at the Implementation Plans and found they offered nothing that would help ACCOs in their field to grow.

A key concern was the lack of time for Aboriginal and Torres Strait Islander organisations to meaningfully contribute to the development of, or respond to, government-developed Implementation Plans. Organisations in some jurisdictions told us that they abstained from providing feedback on the plans because they appeared to be already decided. Some government parties acknowledged that the first Implementation Plans were rushed and not as useful as they could be and that they intend to make the next ones more detailed, with clearer actions and delivery timeframes. But we also heard that one jurisdiction has developed a framework for assessing the alignment of proposed policy initiatives with Priority Reforms.

One Aboriginal and Torres Strait Islander organisation noted that decision making is a slow process, which requires time to share information and for the community to discuss and respond. Some Aboriginal and Torres Strait Islander organisations said that they have declined requests to participate in consultations where they would have had inadequate time to discuss the issues with their communities. An Aboriginal local government council shared that governments do not talk to ‘grass roots’ communities.

There is a congested policy landscape which can create confusion about the role of the Agreement

Some organisations raised concerns about a congested policy landscape – there are many related policies, agreements, and decision-making structures in place, and it is not always clear how these fit with the Agreement, its Priority Reforms and the Commission’s review. In particular, some considered that there is a lack of clarity about how the Agreement fits with processes to facilitate Treaty negotiations (in Victoria, Queensland, the Northern Territory and the ACT), representative bodies (such as the First People’s Assembly of Victoria and the First Nations Voice in South Australia) and a risk that one mechanism will trump the other, when in fact governments must meet their obligations under both. The same was observed of local decision-making initiatives (including in the Northern Territory and New South Wales), and other regional structures, such as Empowered Communities.

However, one Aboriginal and Torres Strait Islander organisation said that work on established Closing the Gap initiatives is continuing to advance alongside Treaty, and that the State Government is taking notice of the Closing the Gap targets and looking at how the Priority Reforms can help to achieve them. This organisation said it is important to demonstrate to ACCOs that Treaty will increase their involvement in decision-making compared to how government has traditionally worked. A notable change in the way that government is working is that ministers are now asking the organisation’s position on many issues.

9.3 Priority Reform 1 – Formal partnerships and shared decision-making

There are some positive signs of governments working in partnership …

We heard from some Aboriginal and Torres Strait Islander organisations that in certain instances governments are taking small steps to change the business-as-usual approach to relationships and engagement with Aboriginal and Torres Strait Islander people and organisations. Several Aboriginal and Torres Strait Islander organisations commented that some state agencies appear to be more willing to partner, trial new approaches and engage in shared decision making than others. This is especially true when there is supporting legislation, established Native Title or during a crisis like the COVID-19 pandemic, which incentivises government to share decision making and shifts the balance of power.

Some Aboriginal and Torres Strait Islander organisations pointed out that successful engagement and shared decision-making occurred where the Aboriginal and Torres Strait Islander party or parties had pushed governments to 'come to the table', thereby changing the dynamic of top-down, government-led initiatives. And a mainstream NGO said that with good partnerships, the value of the relationship and the trust built cannot be quantified or measured but translates to outcomes on the ground.

… but commitment to the partnership elements and shared decision making varies substantially in practice

We heard that government still has a long way to go to change the way it works with communities and ACCOs. One organisation said that the government was still trying to understand what shared decision-making actually means, while another said there is a risk that different definitions and objectives could arise across different governments. Other organisations stated that governments are still reluctant to relinquish any control or shift the balance of power, which makes shared decision-making and community control virtually impossible.

Despite some positive steps, we were told that progress is incremental and not where it needs to be. Aboriginal and Torres Strait Islander organisations and one non-Indigenous organisation said that different levels of government are making different efforts to engage. This can also be true for different agencies within the same jurisdiction. One representative body described a positive relationship with government, describing it as a partnership, but noted that one agency in the jurisdiction is still focusing on barriers and finding reasons why the requested changes will not work.

Although governments state commitments to co-designing programs, some Aboriginal and Torres Strait Islander organisations said that opportunities for co-design still depended on context, or felt tokenistic or non-existent in practice. Several organisations said that government wanted to engage in co-design but began every conversation by either managing expectations around budget or saying there was a cap on funding regardless of what the need was in the community. Some Aboriginal and Torres Strait Islander organisations stated that, on occasion, co-design began after government had prepared a proposed approach to what they assumed the issue to be with very little time for organisations to engage before a decision was made. This is the opposite of the approach sought by Aboriginal and Torres Strait Islander organisations, who stressed the importance of being involved every step of the way.

There were concerns by one representative body that there were no guidelines for engagement with Aboriginal communities and that renewables leases on land would be rushed through without Aboriginal and

Torres Strait Islander people being involved in the decision. Another organisation said there were no Aboriginal or Torres Strait Islander perspectives accounted for in the National Plan to End Violence Against Women and Girls, or the causes of violence recognised by the Plan. Several Aboriginal and Torres Strait Islander organisations stated that when there is a political agenda (such as law and order), any commitments related to Priority Reform 1 are completely forgotten.

One peak body said that government is retaining decision-making authority on policy, and engaging too late, or not enough, with Aboriginal and Torres Strait Islander people. This was echoed by a number of organisations who said that governments provide unrealistic timeframes for community engagement on policies, Implementation Plans and strategies, and do not put the time into investing in relationships with Aboriginal and Torres Strait Islander communities. Several Aboriginal and Torres Strait Islander organisations stated that governments' or mainstream NGOs' efforts to partner with ACCOs were often a 'box ticking' exercise. We also heard that some relationships were 'not true partnerships', and ACCOs were not allowed to be part of decision making around policy or funding.

Some Aboriginal and Torres Strait Islander organisations said that when they wanted to bring in new, culturally appropriate Aboriginal and Torres Strait Islander decision-making models, government departments said that it did not fit with their processes, rules or risk profile. This is driving perceptions that Aboriginal and Torres Strait Islander organisations need to fit 'square pegs into round holes' with government, undermining the sense of true partnership. Many ACCOs highlighted that when it came to funding for programs, money is given with stipulations on how it can be spent, with little flexibility. This was a particular issue in remote areas, where the context is quite different, and community-led models have demonstrated success.

Policy partnerships are having a mixed impact

There was concern that some government actions since the commencement of the Agreement appear to contradict the intent of Priority Reform 1 and it is not clear if or how governments will be held accountable for these actions. An example highlighted in two jurisdictions was the introduction of justice reforms that increase custodial mandates for children and young people (such as reversal of presumptions for bail). This increase in incarceration of children and young people was predicted and advocated against by ACCOs – despite both those jurisdictions signing the Justice Policy Partnership which specifically aims to reduce the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system. One peak said that government announcements on bail and juvenile detention centres were made without any engagement with the Justice Policy Partnership or Aboriginal and Torres Strait Islander organisations. They said that justice is more than policing and locking people up, and that there needs to be a change in the way government approaches justice and tackles crime.

Another peak said there is a disconnect between policy and funding, and service on the ground. They said that family violence is shoehorned into the Justice Policy Partnership and not considered under safety for families (target 13 in the Agreement). They said there were lots of agencies involved and a whole of government approach was needed.

However, there was support for some of the other policy partnerships. One ACCO said that a policy partnership it participates in creates a place to have coordinated discussions, and lessens the burden on ACCOs who regularly bear the impact of lack of coordination between government agencies. However, the Commission heard several accounts of formal partnerships under the Agreement where governments are still behaving in a way that is inconsistent with partnership, such as drafting documents ahead of meetings and redrafting documents written by Aboriginal and Torres Strait Islander people. Governments said the right words about partnership but the actions do not align with the principles of shared decision-making in the Agreement.

In relation to the housing policy partnership, one ACCO said that there is a long way to go towards community ownership around what partnerships look like. They see the policy partnership as the highest decision-making forum. But their leaders are frustrated. They observed the need to regularly remind governments what the Agreement says, and that agencies cannot deviate from its obligations.

A mainstream NGO mentioned that although the Agreement specifically talks about building 'formal partnerships', it emphasises and places value on informal partnerships, and only uses formal partnerships where it is appropriate and desirable for the ACCO or community they are working with. It said that if you go 'all in' and try to develop formal partnerships straight off the bat, it can alienate people. Rather, it is more important to make trust and cultural understanding the bedrock of a partnership, as this will be a more appropriate and culturally safe approach.

Partnerships do not always reflect shared expectations

Resourcing for partnerships was a concern for some Aboriginal and Torres Strait Islander organisations. We were told that Aboriginal and Torres Strait Islander people want to set the priorities and provide input but they need funding support for this to happen. Some peak bodies stated that they needed government to provide adequate resourcing of ACCOs to participate in partnerships with government, given that the government requirements for partnership involved regular meetings that strained the peak bodies' ability to undertake their core business. One stated that they keep reiterating to Government that if they want them to come to the table then government need to resource them accordingly. Another mentioned being asked by government to review of legislation, but had to do it after hours and on the weekend, because they could not take time away from their core job. An ACCO spoke of the high transactional costs involved in the Closing the Gap work. They see little reward from investing their limited resources in strategic discussions with governments to improve things. A number of ACCOs repeated this, saying that the time-cost was high when meetings felt oriented towards maintaining the status quo or hearing updates from government, rather than co-creation of solutions.

One organisation voiced concerns that shared decision making was not fully possible if government 'still holds all the purse strings', instead advocating for shared investment to bring about shared decision making. Some organisations highlighted the inherent power imbalance and conflict present in a relationship when the government partner to an agreement or arrangement provides operational funding for the other partner. Several organisations stated that governments have unrealistic expectations about the cost and resourcing it takes to provide services across a region and often choose partners that have less culturally informed programs but cheaper proposals.

We also heard that governments appear to cherry pick what issues they consult on and when that consultation will occur. This leads to partnering on already decided solutions, rather than reaching joint agreement with the community about what their priorities actually are and how they might address them.

A mainstream NGO said that they are on a steering committee that includes Aboriginal representatives. They observed that all the government representatives on the committee are non-Indigenous despite the fact there are very capable Aboriginal and Torres Strait Islander employees across departments. There are people with lived experience and specialist expertise who exist, but they are often not in key decision-making roles.

Expectations of the various parties to a partnership can differ. For example, we heard that mainstream health service providers want Aboriginal community-controlled health services to do the 'hard yakka' of talking with communities but give nothing back. Another Aboriginal community-controlled health service said they were simply solving problems for the hospital rather than working in partnership. One Aboriginal and Torres Strait Islander organisation is experiencing this as a gap between policy decision-making and implementation, with government wanting to make the decisions while expecting local organisations to implement them.

Concerns that some voices and communities are not being heard

Many Aboriginal and Torres Strait Islander organisations told us that some voices are not being heard or need stronger representation through peak groups and/or community organisations, in particular the voices of:

- people in remote regions that are far away from key decision makers
- children and young people
- women, as often only men have a 'seat at the table'
- Stolen Generations survivors and descendants
- people with disability
- members of the Aboriginal and Torres Strait Islander LGBTQIA+ community.

One ACCO expressed concern that there is not a policy partnership for the disability sector. They noted that without a constant presence in policy forms, the disability sector can be actively pushed to the side, or sometimes just forgotten.

We were told that there needs to be space for grass roots organisations and unincorporated groups to have their voices heard. Some Aboriginal and Torres Strait Islander organisations also told us that regional representation is needed to ensure regional priorities are being heard, and that both state and regional bodies are needed for shared decision making. Several organisations highlighted that the organisations that governments choose to work with can sometimes be seen as 'creatures of government' by the community they claim to represent. This can lead to fractures in communities, or to national bodies being empowered at the expense of regional or state bodies. A mainstream NGO said that governments need to be better at listening to community, so that service delivery can be truly community informed and delivered.

We heard from some Aboriginal and Torres Strait Islander organisations that the more that governments gravitate towards engaging with peak bodies in their jurisdiction, the less their voices are able to be heard. At the same time, peak bodies told us that they are at risk of burnout from the demands of processes relating to the National Agreement on Closing the Gap, for which they are underfunded. This was echoed by a smaller organisation, which said contributing to partnerships can create a significant burden for the individuals and organisations involved. We also heard that peak bodies do not exist for all sectors or in all states or territories. For example, there is currently no state or federal peak body for Aboriginal community-controlled schools. An ACCO said it is hard from an advocacy standpoint when they do not have a seat at the table, as it seems that government organisations are reluctant to engage with individual schools.

9.4 Priority Reform 2 – Building the community-controlled sector

In many places, we heard that Aboriginal and Torres Strait Islander people value ACCOs serving their communities. Among the many examples we heard, Aboriginal people in one community told us how much more comfortable they were attending the local Aboriginal medical service, compared to the nearest public hospital where sometimes they encountered racism or were not treated as well. They told the story of a family member who went to the hospital several times, but each time was sent away with little testing or treatment. Whereas the doctor at the local Aboriginal medical service arranged tests and he was diagnosed with cancer. They wondered if he had had a correct diagnosis earlier whether he might have still been alive.

Funding models do not fit ACCO models and priorities

A consistent message we heard from ACCOs in relation to building the community-controlled sector was the need for more control over funding and capacity building to deliver their services.

We heard that ACCOs were expected to fit the way government works, rather than the other way around. We heard that some government agencies come to ACCOs with an operating model already in mind, and that it can be very hard if an ACCO does not fit this operating model – as they miss out on funds. Aboriginal people in one community said that funding from governments is mainly directed at projects tailored to government priorities and perspectives, and does not address the grass roots community issues in the area. Aboriginal people in another community mentioned the need for cultural programs in the school, improved housing and financial support for transport and accommodation to obtain health treatment in larger towns and cities and had raised these issues but they were not currently funded by government. They said 'government stops funding good programs'.

We heard that requirements are not always compatible with the types of programs ACCOs deliver. This particularly affects ACCOs that provide wrap-around services or trauma-informed services that involve spending a lot of time with individual clients or families. At the core of this issue is a view that governments do not recognise that the scope of particular issues is different for Aboriginal and Torres Strait Islander people. ACCOs spoke about how governments do not understand that they work holistically and with families, because governments were only accustomed to supporting individuals – but this does not work with Aboriginal and Torres Strait Islander communities where solutions depend on working with the whole family. When services are delivered to Aboriginal and Torres Strait Islander communities in a mainstream frame, they may be unfit for purpose and sometimes cause more harm. For example, we were told that in the child protection sector, survivor-led organisations can deliver models of care that focus on healing, cultural connection and family relationships, but they are not resourced to do this work. As another example, we heard that mainstream feminist approaches to domestic and family violence fail to take account of causes emanating from intergenerational trauma and disempowerment.

Many Aboriginal and Torres Strait Islander organisations said that the funding they receive does not cover the full cost of providing services, such as funding for transportation costs to deliver health services and remote service delivery. In an environment of rising costs, government funding is less and less adequate, and ACCOs are having to make hard decisions about which services to provide. We also heard that government funding often does not cover investment in infrastructure and capital works that are needed to effectively deliver – or improve – services.

There was a clearly articulated need for ongoing funding arrangements and longer term grants to improve continuity in program and service delivery by ACCOs. We heard examples of very short funding (including 12-month grants) for the delivery of essential services, such as health services.

Government funding and reporting requirements are unnecessarily onerous

Government agencies and mainstream NGOs noted that ACCOs face cumbersome reporting burdens – often comparatively greater than the requirements placed on non-Indigenous mainstream providers. An ACCO told us the reporting burden is high for the relatively small funding they receive – and they needed to do more work to justify funding in comparison to mainstream service providers. One ACCO told us they have little visibility of funding opportunities, and the funding that is available often comes with short-notice and onerous reporting requirements.

ACCOs said that the reporting burden on funding is high for the comparatively small funding they receive and they are not told how this information is used. A number of ACCOs expressed frustration that governments continue to require Aboriginal community-controlled organisations to do more work to justify funding for Aboriginal and Torres Strait Islander clients in comparison to mainstream service providers. One ACCO said their government-specified key performance indicators and deliverables do not align with the National Agreement, and they regularly remind and educate government that their requests are not aligned with the Priority Reforms. They said this process is resource intensive and is not sustainable in the long term within existing funding arrangements.

Government funding was said to come with conditions, or 'hoops' to jump through, which can present a barrier to obtaining funding. One Aboriginal and Torres Strait Islander organisation said it was easier to deal with a major bank than to seek government funding. An ACCO said that the status quo continues to be a transactional approach where ACCOs are required to work to a pre-determined budget and key performance indicators (KPIs) identified by government, which undermines their capacity to define the factors that communities regard as most value, and design and provide effective services that target those. Some ACCOs said they were spending a lot of time getting contracts right – educating funders about appropriate key performance indicators that align with the needs of Aboriginal and Torres Strait Islander clients. One organisation simply put it as government KPIs being 'unfit for purpose'.

Several Aboriginal and Torres Strait Islander organisations said they are now saying no to programs and funding if they do not fit with their priorities and models of care. If they can find other funding sources, they are avoiding government funding with its paperwork and strings attached, or being more strategic about which grants they select to avoid too many small grants that can end up costing more to apply for and report against than the funds they receive. We also heard that 'lifting and shifting' a mainstream service – that is not meeting the needs of Aboriginal and Torres Strait Islander communities – to ACCOs to deliver simply shifts the risk onto the ACCO.

Challenges in building and sustaining the workforce to support strong sectors

Aboriginal and Torres Strait Islander organisations and ACCOs raised concerns with us regarding building their workforces and retaining staff. For example, an Aboriginal and Torres Strait Islander organisation suggested that community members without formal teaching qualifications should be able to teach languages in schools, given they are often the only people with the knowledge and capacity to pass on these languages.

ACCOs are spending a lot of resources on developing Aboriginal and Torres Strait Islander staff but have difficulty retaining them when government salaries and benefits are better. Several Aboriginal and Torres Strait Islander organisations told us about the inequity of government or non-local workers being provided with free or subsidised housing and better benefits than local workers. This was highlighted during meetings in the Torres Strait, where Commonwealth and State government services employ local workers who are then not available for ACCOs to employ. Another ACCO highlighted the absence of career pathways for Aboriginal people in their area,

Sometimes funding is provided for specific positions that do not match the needs of the organisation – for an administrative position, for example, when a qualified counsellor was needed for one Aboriginal health and wrap-around service provider.

Some ACCOs said that they have a high turnover of staff because of burnout, including from high workload, lack of support and difficulties accessing professional development. Working with clients experiencing trauma can place an additional pressure on staff.

One Aboriginal and Torres Strait Islander organisation spoke of a 'workforce crisis', with medical procedures being cancelled because of the lack of doctors and nurses. We heard in one jurisdiction that there was a shortage of health care professionals in remote areas. In other jurisdictions, ACCOs told us they cannot offer competitive wages, often losing staff to private companies or government.

Mainstream NGOs spoke about importance of capacity building for ACCOs. One mainstream NGO said that its long-established goal is to transition its current services to ACCOs, so it saw itself as having some responsibility for capacity building of Aboriginal-led services. It noted that Priority Reform 2 does not just require devolution of services, but active support of ACCOs to build them to be ready for that transition, so it established a partnership support service to provide capacity-building services to ACCOs to take on the transfer of services. The NGO said that governments can set unrealistic timeframes for service transition, and need to acknowledge that it can take two to three years for an ACCO to engage skilled staff to properly stand up as a service provider and take on a newly transitioned service.

Funding is shifting but the processes do not serve all ACCOs

Aboriginal and Torres Strait Islander organisations told us that some funding is being redirected from mainstream organisations to ACCOs, and that the Agreement has allowed some peak organisations to grow with more funding. But we also heard frustration that a significant amount of funding is going to mainstream rather than Aboriginal and Torres Strait Islander service providers.

Aboriginal and Torres Strait Islander services in one jurisdiction told us that government was trying to direct more of its procurement of certain services to ACCOs and providing assistance for ACCO capacity development. However, one service provider noted that the timing of this assistance meant that smaller ACCOs may have been disadvantaged in the process, given they would have had to split their time and limited resources between applying for assistance for capacity building and writing tenders to provide services, while larger, more established ACCOs could simply do the latter.

One ACCO said it was able to negotiate with the Government to ensure that the terms and conditions under which it provided contracted services suited the needs of their community and was cost effective for the organisation. However, the power to negotiate the right terms has sometimes come from the fact that there are no other providers that government could turn to. Another ACCO said that having Aboriginal and Torres Strait Islander people in senior roles in both ACCOs and government agencies has resulted in an improvement in the way the government works and the ability of ACCOs to influence mainstream policies. They said that ACCOs have led this change and now there are ACCO staff on the boards of mainstream organisations.

We heard from some Aboriginal service providers that some governments are starting to assume that ACCOs immediately have the capability to take on and effectively deliver government services and as a result, governments are shifting towards sharing risk and service delivery. But some other Aboriginal and Torres Strait Islander service providers said that governments were still reluctant to transfer control to ACCOs.

An ACCO noted that services were transferred from governments, but assets were not transferred along with them. This ACCO told us that it is running services in old facilities that were designed for a different purpose. And the ACCO cannot see the maintenance or repair budgets of the places where they operate those services, despite constantly asking for them. There is poor responsiveness from government and so much red tape to get even a light bulb changed. They see it as a problem with the system itself. The government department is in charge of services at its own facilities as well as repairs to facilities used by the ACCO, but the government funds go to the facilities it uses. The ACCO stated that the Agreement has not changed anything.

We heard that significant costs are imposed on ACCOs by government funding requirements. We heard that there is limited support and information available to assist small ACCOs and start-ups to navigate funding

processes and this detracts from the resources and time that they have available to deliver services to the community. One Aboriginal medical service said there was a lack of feedback from government on unsuccessful grant applications and questioned whether Aboriginal service providers were receiving genuine consideration in grant processes.

Mainstream NGOs also suggested many ways in which the transfer of service delivery to ACCOs could improve.

- Governments need to approach ACCOs ahead of mainstream providers – mainstream NGOs should only be providers of last resort
- Governments need to take responsibility for establishing scaffolding and working closely with ACCOs while formalising funding agreements. They said government employees get caught up in bureaucratic processes and struggle to do things differently or to think deeply about what they are doing to actually drive outcomes.
- Governments need to be better at listening so that services can be informed and delivered by the community. They need to be truly a community creation, not dictated by government.
- Governments should not assume that ACCOs in the same community will partner with each other.
- Governments should require all mainstream NGOs to build relationships with Aboriginal and Torres Strait Islander people.

Competition for funding and resources can undermine collaboration

Some ACCOs expressed the desire to work with other ACCOs and we heard about some consortiums or partnerships of ACCOs that are highly successful. However, other Aboriginal and Torres Strait Islander organisations told us that having to compete with each other for ACCO-specific funding was reducing the ways in which ACCOs work with each other. There are concerns that local ACCOs now need to compete for funding with ACCOs that are from outside the area, despite having stronger community credibility and language capability. We heard that in remote areas people would prefer local ACCOs be funded rather than interstate fly-in, fly-out services.

We also heard that in some sectors or places, government itself is acting as a competitor – for example, in running a dental clinic, and that government organisations are also competing with ACCOs – not just for funding, but for resources such as staff and accommodation. We also heard an example where a government department took over delivery of a program that an Aboriginal and Torres Strait Islander organisation had developed and trialled. An ACCO provided an example where a government agency sought tenders from ACCOs to provide services but then cancelled the tender process after bids had been submitted and retained the funds to provide the services itself.

Concerns were raised that NGOs are not providing services with the same cultural awareness and safety. A view was expressed that mainstream service providers have been able to grow and become more financially sustainable while delivering programs that do not appear to be improving community outcomes. The child protection sector was highlighted as an example of a sector that is dominated by mainstream providers who lack cultural capability. An Aboriginal and Torres Strait Islander organisation suggested that a policy was needed that required NGOs to involve ACCOs in the services they deliver to ensure cultural safety. Another Aboriginal and Torres Strait Islander organisation said that Priority Reform 2 must not detract from accountability of mainstream service providers to deliver better and culturally safe services for Aboriginal and Torres Strait Islander people.

We heard from one ACCO that some NGOs are unwilling to step aside to allow ACCOs to deliver culturally appropriate services due to a focus on financial sustainability, which treats Aboriginal people as ‘commodities’. One Aboriginal and Torres Strait Islander organisation noted that the government’s approach

was to give funding to large NGOs to then engage with ACCOs, rather than the other way around, and another said that everything goes to the local NGO, even though ACCOs should be prioritised.

Monitoring and evaluation needs to support effective programs

We heard a concern that government funding decisions lack proper scrutiny and rigorous evaluation. This makes it difficult to identify effective programs and build the evidence base to scale them. Some Aboriginal and Torres Strait Islander organisations said they wanted to commission an external evaluation of certain programs but were unsuccessful in seeking government funding to support this. We also heard that the 'evidence hurdle' for ACCOs to receive program funding can be higher than for mainstream service deliverers.

9.5 Priority Reform 3 – Transforming government organisations

The transformation of government is proving to be challenging

Many Aboriginal and Torres Strait Islander organisations highlighted the need for system-wide change and emphasised the importance of embedding culture into government. Some suggested that governments still need to decide what they are trying to achieve to transform and how to achieve it. We heard that some jurisdictions are doing better at this than others. One ACCO highlighted differences between state and territory governments in their approach to the Agreement. They said some jurisdictions are well resourced and are making progress, whereas others are either not engaged.

We heard that there is often ignorance within government about the implications of the Agreement and organisations' obligations under Priority Reform 3 beyond agencies or teams that are focused on Aboriginal and Torres Strait Islander matters. We heard from government representatives in two jurisdictions that there is progress being made on how Closing the Gap considerations can be integrated with Cabinet and Budget processes.

Several Aboriginal and Torres Strait Islander organisations and government representatives told us that awareness of Priority Reform 3 (and the Agreement more broadly) is variable across the public sector and is often concentrated towards the top of the organisational hierarchy; however, further down the hierarchy, in regional offices, and at the service delivery level, awareness – and change – is often inconsistent or non-existent. One ACCO highlighted that governments only understand and create hierarchical models, but these models do not reflect the cultural ways of working of Aboriginal and Torres Strait Islander people. We also heard that even where positive legislative changes have been made, behaviours at the service level can be slow to adjust, or legislation can be misinterpreted (child protection services and policing were given as examples by some Aboriginal and Torres Strait Islander organisations).

An ACCO observed that there is no reflective practice by governments – when a government is corrected on an issue, it does not consider the structural or operational changes that might need to be integrated into the whole system as a result, or what the correction means in terms of the same issue elsewhere. It said that to enact effective change, mindsets need to shift and embed change for future generations. Mindsets can shift with social impact strategies They stated that governments need to commit to change as cultural safety and truth telling are an ongoing process. They said that government need to fix their realities and racism – fix themselves first – they cannot fix things with the blinkers on. They argued that truth-telling needs to happen in government and needs to involve public servants coming out and physically experiencing life in

community. Another ACCO said that government agencies rarely come to meet them to understand the context in which they operate, so do not get the chance to learn what success looks like. They said this has further hindered their opportunities to gain further support and buy-in from the government.

One ACCO observed government investing so much into enforcement of social problems (such as security guards and dogs to move people out of town) but not putting the same resourcing into yarning with mob about the causes of social issues and the community's perspective on how to address those. Another ACCO described how it repeatedly explains local needs (such as housing, funds for expanding services or better facilities) to visiting ministers and government agencies. Aboriginal people in another community reported success in lobbying government agencies for additional funding for services that had previously been underfunded.

Many organisations told us that changes tend to be made only when they are driven by particular people in, and outside of, government. This leaves the process of transformation heavily reliant on individuals and subject to key personnel risk. Similarly, a lack of change was cited by some due to certain personnel remaining in government agency positions. A number of organisations expressed the need for structures embedded in agencies and the public service that reduced reliance on personalities for change.

An ACCO observed that change is a long slow process. But it is slower for governments because they have no focus on change management and it is hard for them to relinquish control. There is a lot of resistance, and central agencies are not providing guidance, creating consequences and driving the necessary changes.

Both government and non-government organisations noted that politicians and public servants have a crucial role in the transformation of government organisations. One ACCO questioned why Aboriginal and Torres Strait Islander people are not leading things. Several ACCOs described observed that governments have been talking about transformation for decades but have not yet shifted from a deficit discourse and mindset. Another ACCO made the point that it should not be left to Aboriginal and Torres Strait Islander people within government to progress change. Related to this, it was suggested by some Aboriginal and Torres Strait Islander organisations that public servants' employment contracts should reflect their obligations under the Agreement. We heard that this is happening in at least one jurisdiction.

Institutional racism was raised as a continuing problem

A range of organisations spoke of the need for government agencies to address institutional and systemic racism. At the same time, one peak ACCO commented that it is hard to work with government agencies on Priority Reform 3 when government employees are reluctant to acknowledge or talk about racism. Another organisation relayed an instance where an allegation of racism at a government agency was investigated but their perception was that this was only done so that the agency could be seen to be doing something, with no meaningful follow-up actions taken.

Some specific areas of government service delivery were singled out.

- Aboriginal and Torres Strait Islander people and organisations in multiple jurisdictions spoke of racism by police. This included specific mention of targeting of Aboriginal and Torres Strait Islander children. Government representatives in one jurisdiction singled out the justice sector more broadly as an area where progress is slow.
- Some Aboriginal and Torres Strait Islander organisations told us that health is another area in which racism is an ongoing problem. We heard that racism and culturally unsafe practices are a barrier to Aboriginal and Torres Strait Islander people accessing and receiving quality care in mainstream services but also that it is hampering the ability of those services to recruit and retain Aboriginal and Torres Strait Islander staff. One ACCO highlighted the racism that Aboriginal and Torres Strait Islander women

experienced in mainstream hospitals and associated services during pregnancy and childbirth, leaving them feeling unsafe and avoiding those services.
- Other Aboriginal and Torres Strait Islander organisations mentioned racism in schools, and ineffective efforts to address the problem.
- A non-Indigenous organisation pointed to the absence of change in child protection policies and advocated for a complete paradigm shift, arguing that the overrepresentation of Aboriginal and Torres Strait Islander children in the child protection system is due to racism inherent in the system's foundations.

Many government agencies are rolling out training in cultural awareness, or capability, or competence, or safety. We heard that such training is largely ineffective and on its own will not address racism. One organisation went as far as saying that such training was a waste of money. Instead of more cultural training, key decision makers need to understand what is required of them to act upon their responsibility under Closing the Gap – it should be core competency. Another organisation stated governments need to commit to change and address racism, as cultural safety and truth telling is an ongoing process.

Concerns that governments do not recognise the value of culture

Some Aboriginal and Torres Strait Islander organisations claimed that governments do not understand or recognise the value of culture. For example, one organisation we spoke with pointed out that in contrast to government they make staffing decisions so that they can appropriately service people where avoidance relationships are involved. Other organisations said that mainstream services do not recognise that connection to Country and kin are critical to recovering from trauma and mental health more broadly.

We were told that some governments do not appreciate how Aboriginal and Torres Strait Islander culture varies from place to place. This has implications for what governments do directly but also for who they fund: as noted earlier, an ACCO from one area does not necessarily have the capability to deliver services in another area.

The importance of culture was discussed in relation to land management, corrections, education, domestic violence and health (including mental health). People spoke with us about the value of culture in itself as well as the flow on effects of valuing culture. For example, we were told that meeting children's cultural needs can improve school attendance and achievement, incorporating Aboriginal and Torres Strait Islander perspectives on causality could improve approaches to domestic and family violence, and culturally informed maternity care can improve health outcomes for women and babies. Another organisation shared the disconnect between what families and community value when caring for their children and families, and what the department requires them to report on.

The importance of culture was frequently mentioned in relation to child protection. We were told that government models of child protection are based on western understandings that in some ways do not align with Aboriginal and Torres Strait Islander understandings and approaches, particularly in relation to the role of the whole family. One ACCO told us about how they had success with a culturally appropriate family-led decision-making model but the relevant government department stated that it did not fit into their process. Another ACCO told us how after decades working in child protection where the most successful results have come from working with the whole family, they are still told not to forget that the child is the (sole) focus. In another jurisdiction, an ACCO complimented their child protection agency's decision to employ an in-house cultural advisor.

We also heard that embedding culture requires self-determination – the transfer of power and resources so that Aboriginal and Torres Strait Islander people have full control over decisions and can make them in accordance with culture.

One Aboriginal and Torres Strait Islander body cited the Victorian Treaty Authority Act and the establishment of the state's Treaty Authority as a potential game-changer. They said that the Treaty process represents a significant step towards transforming government, and in developing forms of government that preference Aboriginal lore, laws and cultural authority.

Government approaches to engagement are often seen as tokenistic and underdone

Some organisations we met with noted some improved practices by government in relation to engagement, including consultation happening earlier than in the past.

A larger number of organisations noted various ways in which they regarded governments' practices in relation to engagement to be deficient. We heard from multiple organisations that when engagement does happen it is often unclear how the information provided by Aboriginal and Torres Strait Islander people has been used and whether it has had any impact on government decisions.

Many ACCOs indicated that they are happy to look at ways of working together if governments were willing to listen. Governments' response during the COVID-19 pandemic was an example of better practice, as governments actively sought guidance from ACCOs to better manage the emerging health issues.

The most frequently cited issue in relation to engagement was that governments do not allow sufficient time for engaging on policy proposals, particularly given Aboriginal and Torres Strait Islander organisations' desire or requirement to properly engage with community (this is discussed in relation to Priority Reform 1 above).

One non-Indigenous organisation noted that governments continue to underestimate the nature of investment and the time it takes to genuinely engage with community to see real change.

9.6 Priority Reform 4 – Shared access to data and information at a regional level

Data is important, but there are gaps and quality issues

Many review participants emphasised the importance of data, especially for service planning, advocating for funding, and allocating funding across different regions.

However, sometimes, the data and information that participants considered valuable in assessing need and service delivery are not collected. For example, several organisations noted a lack of program evaluations, particularly independent evaluations.

Several organisations also pointed to a lack of expenditure reporting and service mapping in their location or policy area. But a peak body in one jurisdiction observed that the treasury had done some good work on expenditure on Aboriginal and Torres Strait Islander people. When the peak body asked for a breakdown of that expenditure, the treasury was forthcoming with the information.

Even where data are available, we were told that there are issues with the quality. For example, we heard that:

- government data is sometimes inaccurate – one reason for this was that sampling may exclude certain groups of people or communities
- data is not sufficiently disaggregated by geography, type of service or groups of people with different characteristics

- data on the same topic held by different organisations or information systems is not aggregated or collected in a consistent way
- data across different topics is not linked, which makes it difficult to get a holistic picture
- the way in which indicators are conceptualised or specified does not suit the community or does not align with their values.

We heard that the data collected is not always of value to Aboriginal and Torres Strait Islander organisations, communities and people. Several Aboriginal and Torres Strait Islander organisations noted that governments should seek to understand what data communities and Aboriginal and Torres Strait Islander organisations need, and how governments might be able to provide it.

We heard several examples where Aboriginal and Torres Strait Islander organisations had had the opportunity to shape the data collected by government – for example by working with government to set KPIs for programs.

In addition to poor quality data, we also heard that data is sometimes not appropriately contextualised or translated into meaningful messages. For example, one Aboriginal and Torres Strait Islander organisation pointed to the need for data to be placed in its regional context, because similar numbers for different regions could mean very different things. Another said that governments are still struggling to measure data that is valuable to community and relinquishing control of the narrative around the data

One organisation from a remote area shared its concerns about how data across different geographical areas is used, as the aggregation hides what is happening locally. We were told by ACCOs in several jurisdictions that they get deidentified and receive regional data rather than localised data, which can impact service delivery and funding arrangements.

Another ACCO highlighted that government agencies report in their own favour and do not confront difficult issues when it comes to forming the narrative of data. But when it comes to reporting about the status of communities, governments do not use the same favourable lens. For example, they report on instances of crime in a community but do not report the lack of services or resources in that community.

Some people can access data and information, but many cannot

Some organisations said they were able to obtain the data they needed, either by requesting it from government or undertaking their own data projects. Several participants pointed to data sharing initiatives with government that made or intended to make data more readily accessible.

However, many others said that getting access to government data is difficult. Police, justice and health data were highlighted as hard to access.

Some Aboriginal and Torres Strait Islander organisations observed that knowing someone with access is often key to getting data. Reasons given for why governments are not sharing data included that governments do not trust community organisations with data, and that government officials are risk averse.

Indigenous Data Sovereignty is not always recognised

In general, organisations we engaged with considered that there is a lack of recognition of Indigenous Data Sovereignty. They noted that data is often taken from Aboriginal and Torres Strait Islander people, with no feedback or ability to obtain the data for their own analysis, or no improvement in community services.

Several organisations told us what data sovereignty means to them, stating that data sovereignty was not about consent but holding power over your own story, who accesses your story and what your story will be used for. Story telling is the heart of data sovereignty but is often a one-way vacuum. One ACCO told us that

data sovereignty does not exist in practice, due to the pressures of maintaining relationships with schools, local councils and relevant government departments.

Some observed that Aboriginal and Torres Strait Islander people and organisations are not leading, or sometimes even involved in, data and research projects about them. This meant that they cannot influence what is studied to ensure that the projects are beneficial to them.

One Aboriginal and Torres Strait Islander organisation said that primary health networks are trying to access ACCOs' data, but ACCOs do not want to provide the data. Another said that it often submits data to its peak body, but does not know how it is used. Another ACCO said that governments want to collect data, but do not want to share it with anybody else.

Some Aboriginal and Torres Strait Islander organisations told us that they do not have sufficient capability or resourcing to undertake data activities (such as data collection or data linkage), and do not feel supported to increase their capability. Those that do collect their own data said that it often does not match official data, and that governments and other mainstream organisations sometimes do not believe their data. One organisation said that the type of data that Traditional Owners want to convey do not align with governments' ideas about what is needed for an evidence base.

Progress on community data projects has been slow

We also heard that progress on many of the community data projects has been slow. The reasons given for this varied across jurisdictions, and included changes in personnel at the relevant government agency and the need to first complete other related work.

One Aboriginal and Torres Strait Islander organisation also told us that the selection of the location of the community data project in their jurisdiction was not community driven.

9.7 Socio-economic outcomes

In accordance with our proposed approach for the review (PC 2023a), our engagements up until the publication of the draft report in July 2023 largely focused on understanding progress against the Priority Reforms. However, while they were not the main focus of the discussions, many participants shared their perspectives on the Agreement's socio-economic outcomes (SEOs).

More holistic policy responses are needed to progress the SEOs

We heard that policies targeting specific outcomes often neglect the important interdependencies between the SEOs. For example, many participants identified that better housing outcomes would lead to improvements in other domains such as mental and physical wellbeing, education, employment and family violence. Others noted that mental health issues and housing are not given adequate consideration as factors that contribute to people entering the criminal justice system. Several participants also stated that insecure housing, alcohol and other drug use, as well as undiagnosed brain injuries and other mental health issues, can increase the risk of family violence. We also heard that environmental health is a primary concern across many communities – but it is not being seen as part of health, so it is taking a long time to get change.

In relation to housing, we heard that the Agreement has not driven much change on the ground in the ACCO housing sector and that ACCOs' involvement in reforms to mainstream social housing has been an afterthought. ACCOs have not been involved in the design and implementation of these important reforms.

Siloed and inconsistent policy responses both within and across jurisdictions were highlighted as inhibiting progress against the SEOs. One participant noted the lack of a coordinated approach to addressing family violence between the relevant Commonwealth departments and agencies. Another organisation pointed out that the Commonwealth and respective State jurisdiction are yet to prepare a joint strategy for improving Aboriginal employment outcomes. The introduction of justice laws that increase custodial mandates (previously discussed under Priority Reform 1) was seen by several organisations as a stark example of jurisdictions enacting new policies that contradict their commitments to the SEOs, in this case the adult criminal justice outcome (SEO 10) and the youth criminal justice outcome (SEO 11).

Participants also raised the issue that governments do not focus enough of their effort on prevention and early intervention. For example, participants stated that in the criminal justice system there was insufficient effort on youth diversionary programs or post release support services which help reduce recidivism. Similar issues were also raised for the health, family violence and child protection SEOs.

A greater focus on disability is needed

Several ACCOs expressed concern that disability has not received enough attention as a factor affecting outcomes for Aboriginal and Torres Strait Islander people. One noted that Closing the Gap has a strong focus on health and questioned what that means for the disability sector, particularly as data understates the prevalence of disability. The ACCO raised concerns about the variable understanding of disability within governments, and their lack of commitment to long-term goals, especially when senior people leave and are replaced with people who need to be educated from the beginning. It also noted that many First Nations leaders do not have a background in disability.

An ACCO observed how effectively the early childhood sector's national peak has managed to negotiate with government and uses the Agreement as leverage with government. It noted that similar outcomes are harder to achieve in the disability sector, because disability is a cross-sectoral issue and is not seen as a priority.

In relation to the justice system, we heard that there is an overrepresentation of Aboriginal and Torres Strait Islander people (including children) with disability before the courts and in prison and detention. Several organisations told us that the justice system fails to assess, understand, and meet the needs of Aboriginal and Torres Strait Islander people with disabilities, noting that prisons continue harmful practices such as seclusion (forced isolation) and removal of disability support aids (such as communication aids) which can lead to severe harm and psychological distress.

There are some concerns about how the SEOs are measured

A common concern regarding the SEOs was that some targets do not reflect an understanding of the type of effort needed to support better outcomes. For example, several Aboriginal and Torres Strait Islander organisations suggested that in addition to a target to increase the number of students completing Year 12 or an equivalent qualification, measures should also account for education quality, teaching standards and the importance of an Aboriginal and Torres Strait Islander curriculum (including classes in language).

There can also be tension between the intended objectives of the SEOs and their targets. We heard that progress towards increasing Native Title (Target 15a) does not necessarily lead to maintaining an economic relationship with the land (one aspect of SEO 15). This is because Prescribed Body Corporates or Native Title groups cannot use land granted under a Native Title decision to secure finance which would allow them to develop the land. Moreover, Native Title settlements can be detrimental to social and emotional wellbeing due to the trauma exposed during the process. One organisation shared the struggle of coming up with a

reasonable target given the huge disparity in approaches to water allocations for Aboriginal organisations in different jurisdictions.

Other themes that we heard with respect to SEOs and their targets included:

- The existing set of SEOs leave out or do not direct attention to important related areas. These include adult education and literacy, disability, alcohol and other drugs, and homelessness.
- National level targets can become or be seen as irrelevant in certain locations. Some participants suggested that the targets should be set at a regional level to reflect and drive effort towards local priorities. As an example, *Target 15a: By 2030, a 15 per cent increase in Australia's landmass* subject to Aboriginal and Torres Strait Islander people's legal rights or interests, was seen as having limited value in the Kimberley as more than 90 per cent of its land is already under native title. In contrast, another participant contended that reducing family violence to zero was an unachievable and utopian target.
- One participant proposed that interim targets should be established. Specifically, it was suggested that interim targets for the two criminal justice outcomes (SEOs 11 and 12) that are no more than 18 months apart would allow for a better understanding of progress towards the 2031 outcome.

The data does not tell the whole story

There were also concerns that the SEO data may provide an inaccurate picture of some outcomes. Specific areas that were raised included:

- issues with how data is collected. Examples provided by participants included educational attendance data being vastly different from the attendance rates observed by teachers and incorrect recording of home addresses resulting in homelessness being captured in reporting of overcrowding
- issues with the scope or representativeness of the measures. Examples included the family violence measure (SEO 13) not including sexual or other forms of violence and youth justice data (SEO 11) not capturing 'paper arrests' especially in regional areas.
- issues with aggregating and harmonising data from different agencies and /or disparate systems. This was raised primarily in relation to health data and family violence data
- underreporting of the prevalence of disability.

In addition, multiple participants highlighted that progress data remains unavailable for some targets such as *Target 17: By 2026, Aboriginal and Torres Strait Islander people have equal levels of digital inclusion*, while outdated data in areas such as family violence obscures an understanding of the true level of need.

A peak body stated that one of the key things in reporting is the way that the narrative around the data is developed and *who* has the authority to provide this narrative. This said that in annual reports, agencies will often try to report data in a way that is favourable to government or does not confront more difficult issues.

9.8 Perspectives on embedding accountability and responsibility

Accountability is absent

We heard repeatedly that accountability is lacking, and that governments need to look inwards and hold themselves to account. For example, one Aboriginal and Torres Strait Islander body said there is no accountability for government inaction and nothing shifts governments from business-as-usual. Communities

are exhausted from repeated engagements that do not result in any progress. They said they had read so many reports with recommendations, yet despite them all, nothing changes.

Another ACCO spoke of working together with other ACCOs to make decisions for the community, which involves ACCOs being accountable to one another - but that accountability makes people nervous.

The independent mechanism is sorely needed

Many Aboriginal and Torres Strait Islander organisations emphasised the importance of robust accountability mechanisms. One ACCO described the independent mechanism as a really key part of the Agreement, adding that it is critical to have an independent mechanism at the federal level, because that is the only way for there to be proper accountability on the Australian Government.

An Aboriginal and Torres Strait Islander organisation said that there is no accountability for government inaction despite the reports and recommendations about Aboriginal and Torres Strait Islander people over many years. They stated that existing, related accountability frameworks do not have meaningful measures of success.

An Aboriginal and Torres Strait Islander body said that, with new supportive ministers, there are opportunities to challenge what government is doing and to question government agencies. A lot of work goes into these opportunities, and they are an important mechanism to hold government to account. If questions are taken on notice, the body follows up the government.

Several government representatives spoke about their jurisdiction's slow progress towards establishing an independent mechanism. In contrast, we heard that the New Zealand Government has established a body, Te Arawhiti, to oversee Māori-Government relationships, and this has created a database of progress on 10,000 Treaty commitments and promises.

9.9 Feedback on the draft report

This section is based on what we heard during meetings following the release of the draft report in July 2023. Engagement since the draft report comprised 49 meetings, including 15 with Aboriginal and Torres Strait Islander organisations, and 30 with government agencies and representatives. The Commission also held three virtual roundtable discussions since publication of the draft report – two with Aboriginal and Torres Strait Islander organisations and one with government agencies and statutory office holders.

Whereas the majority of meetings held before July 2023 were with Aboriginal and Torres Strait Islander people and organisations, more of the meetings held since then were with government organisations. As well as being an opportunity for general feedback on the findings and recommendations in the draft report, some meetings were held to seek specific information to assist in developing and refining recommendations.

Where recommendations relate to government policies and processes, it was necessary to test their feasibility with government agencies, hence the larger number of meetings with government agencies in this phase than in earlier phases. During those meetings, government organisations told the Commission about the initiatives they are undertaking to implement the Agreement, and made observations about the barriers they face in doing so. The Commission's views about the effectiveness, or otherwise, of the actions that governments drew to our attention are contained in chapters 2 to 8.

There was some criticism of the draft report

Representatives from several governments considered that the draft report was overly negative about the performance of governments and should have included more positive examples. They asked the

Commission to strike a balance that acknowledges that governments are trying. They suggested that showcasing improvements would signal to other government agencies that they should continue what they are doing, and would elevate initiatives that could then be adopted across other jurisdictions.

One government characterised the draft report as presenting deficit thinking – a strong emphasis on what is not being done rather than what is being done. They felt that there was a missed opportunity to reflect that jurisdictions are on a journey, and for some this is a longer journey. They argued that showcasing what is being done helps to maintain momentum and the resilience to continue the journey and deliver a ten-year plan. Another queried if the report was comparing approaches across jurisdictions. They noted that jurisdictions and communities are very different, and that change can only be done at the pace of the community with whom you are working. Another commented that the draft report did not cover Torres Strait Islander people.

One government official said that the recommendations should be more transformative and specific so that governments can apply them, and another government agency asked for more guidance on how partnerships are structured and what needs to happen to make partnerships work.

One Aboriginal and Torres Strait Islander organisation had concerns about the draft report, including that it:

- did not recognise government funding models developed over recent years that had improved allocation of funding, such as the provision of funding through Empowered Communities.
- made recommendations that were too focused on governments' internal processes and is premised on governments changing, which they will never do
- reinforced a service delivery framework and paradigm, rather than a community development perspective
- reduces Indigenous people's role to holding governments to account, which will not bring change
- did not interrogate the concepts underlying the Agreement and whether the Agreement is the right tool to close the gap.

The same Aboriginal and Torres Strait Islander organisation said the Commission should have waited until the Voice referendum was over and asked the question afterwards – how can we best complement what Indigenous communities and organisations are trying to do and how can we best fit into the sort of world they are striving for? They said the draft report was framed in a way that was not consistent with the policy voice of Indigenous people, and that when Aboriginal and Torres Strait Islander people complain that government is not listening, the Commission's report is exhibit number one.

The same Aboriginal and Torres Strait Islander organisation said that when the Agreement was being developed, they had provided feedback that it was very focused on services and very top down – governments talking to each other and to the Coalition of Peaks. (One government official, an Aboriginal person with experience in Indigenous organisations, asked if the Commission was writing the review for the Coalition of Peaks, rather than having a holistic look at the issues.) Because of this, the organisation proposed a theory of change – that giving people opportunities and responsibility will build capability, and this will close the gap. In a similar vein, a government representative said there has not been a strong focus in the Review on the economic aspects of closing the gap – that economic development and empowerment can provide a basis for other improvements.

Most feedback on the draft report was positive

Almost all ACCOs we spoke to after publication of the draft report expressed support for its findings and analysis. A peak body thanked the Commission for 'going hard' and shining a light on important issues. They said that the report was a good representation of the key issues.

A range of state, territory and Australian government organisations and representatives also supported the recommendations in the draft report and said that they are exploring how they can address them. One

government said that the report was fair and expected, and consistent with other recent reports. They stated that the report gave a good shake up and challenged governments, which need to do better and change the way they do business. They said that many people were talking about how it was a great report on the reality of government, that it resonated with them and provided a timely wake up call for those who have not grappled with the work that is needed to get to where they need to go.

Some governments officials thought the draft report identified positive reforms, and one said that is the report showed what the indicators in the Closing the Gap dashboard are saying.

Appendices

A. Meetings, visits and submissions

The Commission has actively encouraged public participation in this review. This appendix outlines the engagement process undertaken and lists the organisations and individuals that have participated in this review.

- Following the receipt of the terms of reference on 7 April 2022, a circular was sent to identified interested parties.
- The Commission released its engagement approach on 6 July 2022 (PC 2022d). Review paper 2 was released on 27 October 2022 (PC 2022e) and set out our proposed approach and invited participants to engage with us and to make a submission to the review. Review paper 3 was published on 9 February 2023 setting out what we had heard so far in meetings during 2022 (PC 2023g).
- The Commission received 32 submissions before the release of the draft report in July 2023, and 69 submissions following the draft report (table A.1). The Commission also received a total of 6 brief comments. The submissions and brief comments are available online at www.pc.gov.au/inquiries/completed/closing-the-gap-review.
- Many meetings with Aboriginal and Torres Strait Islander organisations were part of in person visits by the Commission across all states and territories. Meetings with government agencies, not-for-profit organisations and some peak organisations were mostly conducted online (tables A.2 and A.3).

The Commission would like to thank everyone who participated in this review.

Table A.1 – Submissions

Participants	Submission no.
Aboriginal Family Legal Service	036
Aboriginal Family Legal Service WA	007
Aboriginal Health Council of Western Australia (AHCWA) and AHCWA Social Services Committee	022
Aboriginal Peak Organisations of the Northern Territory (APO NT)	010, 069
AbSec	088
Allies for Children and First Nations NGO Alliance	081
Altman, Jon	051
Arthur, Bill	026, 040
Australian Bureau of Statistics	001
Australian Capital Territory Government	044
Australian Council of TESOL Associations	011
Australian Education Union Federal Office	003
Australian Indigenous Governance Institute (AIGI)	052
Australian Institute of Health and Welfare	057
Australians for Native Title and Reconciliation (ANTAR)	014, 042
Binarri-binyja yarrawoo Aboriginal Corporation	091
Brigg, Morgan and Brown, Prudence	041
Cape York Partnership	093
Cavanagh, Caroline	050
Central Australian Aboriginal Congress Aboriginal Corporation	013
Change the Record	066
Children's Ground	072
Coalition of Peaks	025, 031, 058
Community First Development	009
David, Annika	027
Department of Social Services (Australian Government)	074
Dharriwaa Elders Group	053
Digital Media Research Centre	038
Dillon, Michael	005, 037
Djirra	082
Empowered Communities	089
Evans, Greg	033
Federation of Victorian Traditional Owner Corporations	024
First Languages Australia	079

Participants	Submission no.
First Nations Digital Inclusion Advisory Group	061
First Peoples Disability Network	095
Government of South Australia	028
Headspace National Youth Mental Health Foundation	018
Humanists Victoria	049
Indigenous Business Australia	029
Indigenous Education Consultative Meeting	063
Institute for Urban Indigenous Health (IUIH) Network	062
Justice Policy Partnership (JPP)	092
Kimberley Aboriginal Law & Cultural Centre (KALACC)	023, 039
Kinaway Chamber of Commerce	021
Kingston, Madeleine	101
Kowa Collaboration	080
Law Council of Australia	083
Local Government Association of the Northern Territory	059
Lowitja Institute	015, 085
Maiam nayri Wingara Executive Members	073
National Close the Gap Campaign	017, 071
National Health Leadership Forum (NHLF)	019, 084
National Indigenous Australians Agency (NIAA)	030, 060
National Native Title Council	035
National Network of Incarcerated and Formerly Incarcerated Women and Girls	047
New South Wales Government	032
Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council (NPYWC)	055
Ngaweeyan Maar-oo	065
Northern Territory Government	070
NSW Coalition of Aboriginal Peak Organisations (NSW CAPO) and NSW Government	099
NSW CAPO	077
Office of the National Data Commissioner	078
Public Health Association of Australia (PHAA)	016, 068
Queensland Aboriginal and Islander Health Council (QAIHC)	097
Queensland Aboriginal and Torres Strait Islander Child Protection Peak Limited	012
Queensland Family and Child Commission	008
Queensland Human Rights Commission	045
Queensland Indigenous Family Violence Legal Service (QIFVLS)	087

Participants	Submission no.
Queensland Nurses and Midwives' Union (QNMU)	004, 046
Quilty, Richard	034
Royal Australian and New Zealand College of Psychiatrists	002
SNAICC (Secretariat of National Aboriginal and Islander Child Care)	096
Society of Hospital Pharmacists of Australia (SHPA)	048
South Australian Government	054
Tasmanian Government	090
Torres Shire Council	006
TRILEC (Translational Research in Indigenous Language Ecologies Collective) at the Australian National University	020
Universities Australia	086
Victorian Aboriginal Child Care Agency (VACCA)	075
Victorian Aboriginal Children and Young People's Alliance (VACYPA)	100
Victorian Aboriginal Community Controlled Health Organisation (VACCHO)	067
Victorian Aboriginal Legal Service (VALS)	076
Victorian Government	098
Walter, Maggie and Lovett, Ray	094
Western Australian Government	043
Western Victoria Primary Health Network	056
Yothu Yindi Foundation	064

Table A.2 – Meetings and visits

Participants
54 reasons
Aarnja
Aboriginal Affairs NSW
Aboriginal and Torres Strait Islander Advisory Council on family, domestic and sexual violence
Aboriginal and Torres Strait Islander Elected Body (ATSIEB)
Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd (ATSILS)
Aboriginal and Torres Strait Islander Social Justice
Aboriginal Drug and Alcohol Council (ADAC)
Aboriginal Education Consultative Group
Aboriginal Family Legal Services WA
Aboriginal Family Support Services (AFSS)
Aboriginal Health and Medical Research Council of NSW (AH&MRC)
Aboriginal Health Council of South Australia Ltd (AHCSA)
Aboriginal Health Council of Western Australia (AHCWA)
Aboriginal Housing Victoria (AHV)
Aboriginal Land Council of Tasmania
Aboriginal Medical Services Alliance Northern Territory (AMSANT)
Aboriginal Medical Services Redfern
Aboriginal Peak Organisations Northern Territory (APO NT)
Anglicare
Anindilyakwa Land Council (ALC)
Attorney-General's Department (Australian Government)
Attorney-General's Department (South Australia)
Australian Bureau of Statistics (ABS)
Australian Capital Territory Government Partnership Working Group Representative
Australian Education Research Organisation (AERO)
Australian Government Department of Finance
Australian Government Department of Foreign Affairs and Trade
Australian Government Department of Health and Aged Care
Australian Government Department of the Prime Minister and Cabinet
Australian Government Department of Social Services
Australian Government Department of Social Services (Women's Safety Group)

Participants
Australian Indigenous Doctors Association (AIDA)
Australian Institute of Health and Welfare (AIHW)
Australian Local Government Association (ALGA)
Benevolent Society
Binarri-binyja yarawoo Aboriginal Corporation
BlaQ Aboriginal Corporation
Bourke Tribal Council and Maranguka
Brewarrina Local Aboriginal Land Council (LALC)
Brewarrina Shire Council
Broome Regional Aboriginal Medical Service (BRAMS)
Bundiyarra Aboriginal Community
Burney, Linda, Minister for Indigenous Australians
BushMob
Cape York Institute
Ceduna Aboriginal Corporation
Ceduna Drug and Alcohol Day Centre – Stepping Stones
Central Australian Aboriginal Congress (CAAC)
Change the Record
Children's Health Queensland
Children's Ground
Coalition of Aboriginal and Torres Strait Islander Peak Organisations (Coalition of Peaks)
Coffey, Norman
Community Services Directorate of ACT Government
Congress of Aboriginal and Torres Strait Islander Nurses and Midwives
Coota Girls Aboriginal Corporation, Kinchela Boys Home Aboriginal Corporation (KBHC)
Curtis, Julia
Danila Dilba Health Service
Data and Reporting Working Group Secretariat
Deadly Connections Community & Justice
Defence South Australia
Djirra
Empowered Communities
Far West Community Partnerships Ceduna

Participants
Federation of Victorian Traditional Owner Corporations (FVTOC)
First Languages Australia
First Nations Media Australia (FNMA)
First Peoples Disability Network (FPDN)
First Peoples' Assembly of Victoria
Frail, Janelle
Garnduwa Amboorny Wirnan Aboriginal Corporation
Gayaa Dhuwi Proud Spirit Australia (GDPSA)
Gelganyem Limited
Geraldton Regional Aboriginal Medical Services
Gill, Neeraj
Goonawoona Jungai
Government of South Australia
Greater Western Aboriginal Health Service
Groote Eylandt Bickerton Island Primary College Aboriginal Corporation (GEBIPCAC)
Gumatj Aboriginal Corporation Ltd
Gunditj Mirring Traditional Owners Aboriginal Corporation
Healing Foundation
Indigenous Allied Health Australia
Indigenous Education Consultative Meeting (IECM)
Institute of Urban Indigenous Health (IUIH)
Justice Policy Partnership Secretariat (NT)
Kimberley Land Council
Koorie Youth Council (KYC)
Kurbingui Youth and Family Development
Larrakia Nation Aboriginal Corporation
Laynhapuy Homelands Aboriginal Corporation
Lena Passi Women's Shelter Association
Life Without Barriers
Literacy for Life Foundation
Lowitja Institute
Minjerribah Moorgumpin Elders in Council Aboriginal Corporation
Mission Australia

Participants
Miwatj Health Aboriginal Corporation
Mura Kosker Sorority
National Aboriginal and Torres Strait Islander Legal Service (NATSILS)
National Association of Aboriginal and Torres Strait Islander Health Workers and Practitioners (NAATSIHWP)
National Disability Insurance Scheme (NDIS) Review
National Family Violence Prevention Services (NFVPLS)
National Health Leadership Forum (NHLF)
National Indigenous Australians Agency (NIAA)
National Native Title Council
New South Wales Aboriginal Land Council
New South Wales Child, Family and Community Peak Aboriginal Corporation (AbSec)
New South Wales Coalition of Aboriginal Peak Organisations (NSW CAPO)
New South Wales Department of Communities and Justice
New South Wales Government
New South Wales Government Partnership Working Group Representative
New South Wales Police Force
New South Wales Treasury
New Zealand Government
Ngaanyatjarra, Pitjantjatjara and Yankunytjatjara (NPY) Women's Council
North Australian Aboriginal Justice Agency (NAAJA)
North Queensland Land Council
Northern Aboriginal & Torres Strait Islander Health Alliance (NATSIHA)
Northern Territory Government
Northern Territory Government Partnership Working Group Representative
Northern Territory Government Regional Network Group
Nunkuwarrin Yunti of SA Inc.
Nyamba Buru Yawuru Limited
Nyoongar Outreach Services
Office of Data and Analytics (SA)
Office of the Children's Commissioner Northern Territory
Office of the Commissioner for Public Sector Employment (SA)
Office of the National Data Commissioner
Poche Centre for Indigenous Health

Participants
PwC Indigenous Consulting
Queensland Aboriginal and Islander Health Council
Queensland Aboriginal and Islander Health Council (QAIHC)
Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP)
Queensland Aboriginal and Torres Strait Islander Coalition (QATSIC)
Queensland Department of Environment and Science
Queensland Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships
Queensland Family and Child Commission (QFCC)
Queensland Government
Queensland Government Partnership Working Group Representative
Queensland Health
Queensland Health: Central West Hospital and Health Service
Queensland Health: Metro North
Queensland Human Rights Commission (QHRC)
Queensland Indigenous Family Violence Legal Service (QIFVLS)
Red Cross Men's meeting group Ceduna
Relationships Australia
Remote Area Aboriginal & Torres Strait Islander Child Care - Advisory Association Inc (RAATSICC)
Salvation Army
SEARMS Community Housing Aboriginal Corporation
Services Australia
Sisters Inside Inc
SNAICC (Secretariat of National Aboriginal and Islander Child Care)
South Australia Department of Environment and Water
South Australia Department of Health
South Australia Department of Human Services
South Australia Department of Infrastructure and Water
South Australia Department of Treasury and Finance
South Australia Government Aboriginal Affairs and Reconciliation
South Australia Government Partnership Working Group Representative
South Australia Housing Authority
South Australia Police
South Australian Aboriginal Community Controlled Organisation Network (SAACON)

Participants
South Australian Tourism Commission
South East Tasmanian Aboriginal Corporation
South West Aboriginal Land and Sea Council (SWALSC)
Stradbroke Island Community Forums
Straddie Adventures
Sydney Region Aboriginal Corporation
Tasmania Department of Justice
Tasmania Department of Premier and Cabinet
Tasmania Government Partnership Working Group Representative
Tasmanian Aboriginal Centre (TAC)
Tasmanian Aboriginal Legal Service (TALS)
Tauondi Aboriginal College
Telethon Kids Institute
The Murri School
Toombs, Maree
Torres Shire Council
Torres Strait Island Regional Council (TSIRC)
Torres Strait Regional Authority (TSRA)
Tullawon Health
Victorian Aboriginal Children and Young People's Alliance
Victorian Aboriginal Community Controlled Health Organisation (VACCHO)
Victorian Aboriginal Heritage Council
Victorian Aboriginal Legal Services
Victoria Department of Premier and Cabinet
Victoria Government
Victoria Government Partnership Working Group representative
Walter, Professor Maggie
Wellington Aboriginal Corporation Health Service (WACHS)
West Kimberley Futures Empowered Communities
Western Australia Department of Communities
Western Australia Department of Justice
Western Australia Department of Premier and Cabinet
Western Australia Government Partnership Working Group Representative

Participants
Winnunga Nimmityjah Aboriginal Health and Community Services (Winnunga)
Wunan Foundation
Wunan Health
Wungening Aboriginal Corporation
Yadu Health Aboriginal Corporation
Yamatji Marlpa Aboriginal Corporation (YMAC)
Yarrabah Aboriginal Shire Council
Yawoorroong Miriuwung Gajerrong Yirrgeb Noong Dawang Aboriginal Corporation
Yilli Rreung Housing Aboriginal Corporation
Yoorrook Justice Commission
Yorganop Association
Yorgum Healing Services
Yothu Yindi Foundation
Yulu-Burri-Ba

Table A.3 – Roundtables

Participants
22 November 2022 – Justice, family violence prevention, legal support, youth justice, and justice reinvestment
Aboriginal Legal Rights Movement
Change the Record
Curtin University
First Peoples Disability Network (FPDN)
Just Reinvest NSW
Lena Passi Women's Shelter
National Aboriginal and Torres Strait Islander Legal Services (NATSILS)
National Aboriginal Community Controlled Health Organisation (NACCHO)
North Australian Aboriginal Justice Agency (NAAJA)
Red Cross
Tasmanian Aboriginal Legal Service (TALS)
Wirringa Baiya Aboriginal Women's Legal Centre
10 February 2023 – Health
Aboriginal Health Council Western Australia (AHCWA)
Indigenous Allied Health Australia (IAHA)
National Aboriginal Community Controlled Health Organisation (NACCHO)
National Association of Aboriginal and Torres Strait Islander Health Workers and Practitioners (NAATSIHWP)
Queensland Aboriginal and Islander Health Council (QAIHC)
Torres Strait Regional Authority (TSRA)
16 February 2023 – Child health services, family services, education, out of home care, disability, early childhood care and development
Coolabaroo
Institute for Urban Indigenous Health (IUIH) Network
Nikinpa Aboriginal Child & Family Centre
Queensland, the Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP)
SNAICC (Secretariat of National Aboriginal and Islander Child Care)
Victorian Aboriginal Child Care Agency (VACCA)

Participants
3 April 2023 – Housing
Aboriginal Housing Northern Territory
Aboriginal Housing Victoria
Community Housing Central Australia
National Aboriginal and Torres Strait Islander Housing Authority (NATSIHA)
Nganampa Health Council
Noongar Mia Mia
South Australian Aboriginal Community Controlled Organisation Network (SAACCON)
Torres Strait Regional Authority (TSRA)
Yilli Rreung Housing Aboriginal Corporation
26 September 2023 – Indigenous Data Sovereignty
Aboriginal Peak Organisations NT (APO NT)
Anindilyakwa Land Council
Aurora Foundation
Danila Dilba
Far West Community Partnerships
First Peoples Disability Network (FPDN)
Healing Foundation
Institute of Urban Indigenous Health (IUIH)
Kowa Collaboration
Lowitja Institute
Maranguka
Maiam nayri Wingara
National Health Leadership Forum (NHLF)
NSW Aboriginal Land Council (NSW ALC)
NSW Coalition of Aboriginal Peak Organisations (NSW CAPO)
Queensland Aboriginal and Islander Health Council (QAIHC)
Queensland Family and Child Commission
SNAICC (Secretariat of National Aboriginal and Islander Child Care)
Tullawon Health Service
University of Tasmania
Victorian Aboriginal Community Controlled Health Organisation (VACCHO)
Western Sydney University

Participants
30 October 2023 – Accountability (Aboriginal and Torres Strait Islander organisations)
Aboriginal Health Council of WA
Aboriginal Peak Organisations NT (APO NT)
Coalition of Peaks
First Languages Australia
First Peoples' Assembly of Victoria
First People's Disability Network
Healing Foundation
Indigenous Allied Health Australia
Lowitja Institute
National Aboriginal and Torres Strait Islander Housing Association
National Aboriginal Community Controlled Health Organisation (NACCHO)
National Health Leadership Forum
NSW Aboriginal Legal Service
NSW Coalition of Aboriginal Peak Organisations (NSW CAPO)
Queensland Aboriginal and Torres Strait Islander Coalition (QATSIC)
South Australian Aboriginal Community Controlled Organisation Network (SAACCON)
31 October 2023 – Accountability (Government organisations and statutory office holders)
ACT Government
Australia and New Zealand School of Government (ANZSOG)
Australian Government Department of the Prime Minister and Cabinet
Australian Local Government Association (ALGA)
Commissioner for Children and Young People Western Australia
Department of Premier and Cabinet Tasmania
Department of Premier and Cabinet Victoria
Department of Premier and Cabinet Western Australia
Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts (Qld)
National Indigenous Australians Agency (NIAA)
Queensland Aboriginal Child and Family Commissioner
SA Government
Torres Shire Council

B. Implementation of the transformation elements

The detail of each department's transformation strategy (in line with action 3.1 above) will vary based on the nature of the work they do (for example, the transformation of an agency focused on service delivery would likely differ from one with responsibilities for policy development). But governments have committed to every government organisation implementing six transformation elements, and these could be expected to form components of an overall strategy:

- identify and eliminate racism
- embed and practice meaningful cultural safety
- deliver services in partnership with Aboriginal and Torres Strait Islander organisations, communities and people
- increase accountability through transparent funding allocations
- support Aboriginal and Torres Strait Islander cultures
- improve engagement with Aboriginal and Torres Strait Islander people.

There are strong interdependencies between the transformation elements – for example, embedding and practicing meaningful cultural safety will likely contribute to identifying and eliminating racism. And as noted earlier, the identification and elimination of racism is a foundational requirement for transforming the ways of working of government organisations. Governments are pursuing implementation of these elements in piecemeal ways, as discussed in the following sections.

B.1 Identify and eliminate racism

Under this transformation element, governments have made a commitment to:

> Identify and call out institutional racism, discrimination and unconscious bias in order to address these experiences. Undertake system-focused efforts to address disproportionate outcomes and overrepresentation of Aboriginal and Torres Strait Islander people by addressing features of systems that cultivate institutionalised racism. (clause 59a)

Many Aboriginal and Torres Strait Islander organisations the Commission met with discussed the continuing, unabated presence and effects of racism, particularly institutional racism. Institutional racism was also raised in submissions (Aboriginal Family Services WA sub. 7, p. 7; ANTAR, sub. 42, p. 17; APO NT, sub. 10, p. 4; Australian Council of TESOL Associations, sub. 11, pp. 15–16; IUIH, sub. 62, p. 22; National Health Leadership Forum, sub. 19, p. 7; Victorian Traditional Owner Corporations, sub. 24, p. 4; Western Victoria PHN, sub. 56, p. 3).

Change the Record submitted that 'while the Agreement's preamble notes very early on that our people face ongoing institutional racism, we have not observed serious efforts by our governments to change those institutions' (sub. 66, p. 3). In particular, Change the Record said that 'police forces have repeatedly shown

that they are either not equipped or not prepared to effectively discipline racism by their officers and leadership, despite external and internal investigations having made findings of widespread, systemic discrimination'[13] (sub. 66, p. 9).

A number of Royal Commissions over three decades have identified institutional racism as contributing to worse treatment and outcomes for Aboriginal and Torres Strait Islander people, including those into Aboriginal and Torres Strait Islander deaths in custody (RCIADIC 1991a), the protection and detention of children in the Northern Territory (RCPDCNT 2017) and institutional responses to child sexual abuse (RCIRCSA 2017).

Despite this, many government organisations remain reluctant to discuss racism. The Commission heard from one ACCO that 'it is hard to work with government agencies on Priority Reform 3 when government employees are reluctant to acknowledge or talk about racism.' But constructive conversations are necessary for identifying and implementing effective solutions: to implement this transformation element, people within government organisations and Aboriginal and Torres Strait Islander people need a shared understanding of the scope of the problem of institutional racism both within agencies and across governments, and the concerted evidence-based actions to address what has been identified.

Failure to confront institutional racism can have the unintended effect of reinforcing its presence. As noted in research undertaken on racism in the Australian Public Service (APS), 'the denial of racism makes it 'absent', while its 'presence' is evident in the lived experience of everyday and structural racisms' (Bargallie 2020, p. 271).

Institutional racism can be one of the most intractable aspects of organisational culture or systems – whether in the form of prejudice or policies and practices that tend to produce worse outcomes for Aboriginal and Torres Strait Islander people (for whatever reason). Institutional racism is the most insidious form of racism. It is difficult to quantify and those who practice it generally deny its existence (Blagg et al. 2005, p. 7). This may be because:

> Institutional racism changes over time. Once people understand the facts they can see very clearly how Aboriginal people were continually subject to racism of the institutional type during the protection and assimilation periods … But gradually the special legislation discriminatory of Aboriginal people were removed. Now institutional racism is of a more subtle kind, not always obvious even to those involved. (RCIADIC 1991c, p. 160)

Governments need to make the ongoing presence of institutional racism obvious and address it. This entails modifying government systems – internal organisational policies and practices, policy development processes, implementation approaches, and so on – so that they meet the needs and circumstances of Aboriginal and Torres Strait Islander people. Without doing so risks failure in the embedding of all the other elements of Priority Reform 3.

What is institutional racism?

According to a paper published by the Lowitija Institute, 'institutional racism' and 'systemic racism' are both terms that describe the 'requirements, conditions, practices, policies or processes that maintain and reproduce avoidable and unfair inequalities across ethnic/racial groups' (Paradies et al. 2008, p. vi). This understanding of institutional racism – which is similar to other definitions in use – reflects a change over

[13] The 2022 inquiry into Queensland Police Service responses to domestic and family violence found that 'racism is a significant problem within the Queensland Police Service. It manifests in discriminatory behaviours directed towards First Nations employees, employees from other cultural backgrounds and members of the community. Such behaviours are a breach of their human rights' (Richards 2022, p. 235). In July 2023, the Queensland Human Rights Commission commenced a 4 year review of diversity and inclusion in the Queensland Police Service (QHRC 2023).

time, 'away from issues of individual prejudice and discrimination to a consideration of broader state processes and social and economic structures' (Blagg et al. 2005, p. 32 citing; Bourne 2001)

Institutional racism and interpersonal racism work together so they must be interrogated and disrupted simultaneously (Bargallie 2020, p. 258), but if people's use of 'institutional racism' blurs the lines between the two, this can be a barrier to improving outcomes for Aboriginal and Torres Strait Islander people. It can create challenges for identifying solutions or even having constructive conversations about the presence of institutional racism. As noted by the Queensland Aboriginal and Islander Health Council (QAIHC), 'such conversations must be de-stigmatised in order to objectively understand how inequalities may be unconsciously perpetuated by institutions intended to support minority groups' (2020, p. 9).

The Royal Commission into Aboriginal Deaths in Custody (Royal Commission) made clear distinctions between interpersonal experiences of racism as prejudice and systemic or institutional racism.

> When [Aboriginal and Torres Strait Islander] people say they lived with racism every day they are not meaning to say that all day every day they met non-Aboriginal people who insulted them and called them names (some of the time, of course, they did), but that every day the system of inequality put them down. They are talking about the laws, the systems that were put in place pursuant to the laws which operate every day whether the people who operate the system are well meaning and helpful or personally racist. (1991c, p. 160)

The Royal Commission also described what it would look like if an institution was clearly engaging in institutional racism: 'an institution, having significant dealings with Aboriginal people, which has rules, practices, habits which systematically discriminate[14] against or in some way disadvantage Aboriginal people' (1991c, p. 161). As an example of institutional racism, the Royal Commission noted that the Alice Springs Hospital did not employ a single Aboriginal person in its reception area, despite half of the hospital's patients being Aboriginal: 'It is easy to understand how a person from a remote community would feel coming into a large modern hospital; how much more so not to see an Aboriginal face or hear an Aboriginal tongue' (RCIADIC 1991c, pp. 160–161).

The report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families – *Bringing them Home* – clearly described how indirect discrimination can arise and impact Aboriginal and Torres Strait Islander people, and is worth quoting at length.

> Implicit in the design of any service are assumptions about the nature and needs of the anticipated clients. Typically a service will be designed with the majority or dominant ethnic group in mind. This is particularly true for generalist or 'mainstream' services as contrasted with specialist services. In Australia the dominant ethnic group (Anglo-Australians) has a very different demographic profile from Indigenous Australians. Most Anglo-Australians live in urban areas or visit cities regularly and with ease, earn a salary, speak English and have had a high school education. A very high proportion of Indigenous Australians, in contrast, lives in rural or remote areas, rarely travels to cities, is dependent on social security, speaks English as a second or third language and does not read it fluently, and has not had a high school education. It will always be the case that a service designed to address the needs of the majority of Anglo-Australians will fail to cater to the needs of a certain proportion of the members of that group. However, it will fail to cater to the needs of a substantially higher proportion of Indigenous Australians.

[14] Based on this quote's context, 'discriminate' should be read as encompassing direct and indirect discrimination.

> In practice such a service would be racially discriminatory because access to and effective use of it would be denied to a significantly higher proportion of Indigenous Australians. This is indirect discrimination. (HREOC 1997, pp. 277–278)

A major aspect of addressing institutional racism in accordance with the Agreement is ensuring that policies are developed and delivered in a way that responds to the specific needs and priorities of Aboriginal and Torres Strait Islander people. Crucially, this requires developing and delivering services that are free from racism and unconscious bias, which 'can be regarded as the social stereotypes that affect our understanding, influencing our actions and decisions of others in an unconscious way' (Leon 2023, p. 57 citing; Navarro 2019). Understood this way, unconscious bias in relation to race may be difficult to distinguish from racism, and can impact policy development and delivery. Racism and unconscious bias continue to be a problem. For example:

- the consultation report that informed Queensland's First Nations Health Equity reforms (box 4.5) noted that Aboriginal and Torres Strait Islander patients (and workers) 'still experience racism and discrimination across the public health system in large numbers' (QAIHC 2021, p. 7)
- the Yoorook Justice Commission has found that 'the unconscious bias and overt racism of some non-Aboriginal child protection staff affects risk assessments and decisions about First Peoples children's futures' (Yoorrook Justice Commission 2023d, p. 152)
- the CEO of the National Aboriginal Community Controlled Health Organisation has noted that assessments in the National Disability Insurance Scheme require subjective judgements from public servants, 'which means that non-Aboriginal staff make judgments based on their own experiences and background, which may include unconscious bias and institutional racism. This can perpetuate racism, and often ignores the impacts of intergenerational trauma on the social and emotional wellbeing of Aboriginal and Torres Strait Islander people' (Turner 2022, p. 28).

Governments have focused on employing more Aboriginal and Torres Strait Islander people but this is insufficient to achieve structural changes

The most common actions cited in governments' implementation plans with respect to identifying and eliminating racism are workforce strategies to increase public sector employment of Aboriginal and Torres Strait Islander people. Increasing the number of Aboriginal and Torres Strait Islander people employed in government organisations can contribute to the development of internal and government policy that better meets the priorities and needs of Aboriginal and Torres Strait Islander people, but this is not a given. Within any government organisation, the potential for Aboriginal and Torres Strait Islander people's lived experience and expertise to drive policy and practice will be bound by existing systems, power hierarchies and ways of working. Moreover, it is not the job of Aboriginal and Torres Strait Islander people to eliminate racism or unconscious bias. Implicitly adding this to their job description will not deliver the transformation of government organisations and could even make the public sector a less attractive place to work for Aboriginal and Torres Strait Islander people. Bargallie (2020, p. 268), notes that:

> The cultural labour performed by Indigenous employees adds an extra burden. Indigenous employees are expected to routinely perform as 'native informants' and provide cultural advice — advice which, if not trivialised and ridiculed, is 'tone policed' with accusations that they are too emotional when speaking on Indigenous matters. This is amid racist marginalisation and a barrage of ignorant and offensive assumptions about what Indigeneity means or what the 'real Aborigine' looks like.

In organisations where racism is widespread and unaddressed, employment targets risk placing employees in unsafe working environments. Taking the APS as an example, it will be difficult to address high attrition

rates without addressing the fact that Aboriginal and Torres Strait Islander employees report higher rates of discrimination than any other cultural group (APSC 2023c, p. 181).

Nevertheless, the Agreement says that 'feedback from the engagements included that more Aboriginal and Torres Strait Islander people should be employed in mainstream institutions and agencies, including through more identified positions, more Aboriginal and Torres Strait Islander people in senior positions, and appointments to boards' (clause 59a). And governments indicated that they value growing their Aboriginal and Torres Strait Islander employee representation. The WA Government submitted that 'Aboriginal employment aspirations are not only necessary but are able to drive change internally that will lead to holistic and wide-ranging transformation of the entirety of the public sector' (sub. 43, p. 4). Similarly, it is part of the objective of the *Commonwealth Aboriginal and Torres Strait Islander Workforce Strategy 2020–24* to ensure that the public sector workforce is capable of responding to the needs of the Australian community (Australian Government 2020, p. 11). And the ACT Government previously noted that employing Aboriginal and Torres Strait Islander people 'not only helps to shape policies to improve outcomes through access to lived experience, [but] the wider [ACT public service] benefits through increased understanding of the world's oldest living culture' (2022h, p. 53).

There are efforts under way in every jurisdiction to increase public sector employment of Aboriginal and Torres Strait Islander people, and most governments have targets to raise rates of employment of Aboriginal and Torres Strait Islander people. For example, the Australian Government has a target for 5% of APS employees to be Aboriginal and Torres Strait Islander by 2030 (APSC 2022, p. 24). This appears to subsume previous, similar targets that have not been or will not be met.[15] In 2021, 3.7% of the NSW Public Service and 130 of its senior leaders identified as Aboriginal, exceeding 2025 targets (NSW PSC 2022, pp. 5, 7).

Jurisdiction-level targets for Aboriginal and Torres Strait Islander employment are also in place for:

- Victoria, with a target of 2% (VPSC 2017, p. 2)
- Queensland, with a target of 3% (Qld DATSIP 2016, p. 8)
- Western Australia, with a target of 3.7% (WA PSC 2020, p. 4)
- Tasmania, with a target of 3.5% (Tasmanian Government 2023a, p. 39)
- the Northern Territory, with a target of 16% overall and 10% in senior positions (NT OCPE 2021, p. 10).

The SA Government told the Commission that though the state did not have an official employment target, by focussing on retention and professional development opportunities 'in the last three or four years … we have seen year-on-year increases' in the number of Aboriginal and Torres Strait Islander employees (SA Government, pers. comm., 17 July 2023). The state's Office of the Commissioner for Public Sector Employment is working with agencies to identify a new target for 2024 (SA Government, pers. comm., 17 July 2023).

Seniority and the competition for talent

The seniority of Aboriginal and Torres Strait Islander people within government will affect their ability to contribute to organisational transformation and improve outcomes for the community. In 2011, reporting on the implementation of recommendations from an inquiry into discriminatory practices in Western Australia's public housing system, the state's Equal Opportunity Commission suggested that 'the most effective means

[15] The *Commonwealth Aboriginal and Torres Strait Islander Workforce Strategy 2020-24* included 'stretch targets' for Aboriginal and Torres Strait Islander people to make up 5% of staff at APS 4 to APS 6 levels by 2022, and 5% of Executive Level 1 and 2 staff by 2024 (Australian Government 2020, p. 14). As at, 30 June 2023, for employees where their Indigenous status was recorded, Aboriginal and Torres Strait Islander people made up 4.8% of staff at APS 4 to APS 6 levels, and 1.9% of Executive Level 1 and 2 staff (APSC 2023a, tbl. 83).

to deal with many of the issues raised in [the inquiry] is for more Aboriginal people to be recruited and or promoted into more senior positions within the Department' (WA EOC 2011, p. 13).

Governments are making efforts to employ more Aboriginal and Torres Strait Islander people in more senior positions. For example, the SA Government told the Commission that:

> We have been fairly successful in terms of entry level roles, attracting Aboriginal job seekers into the public sector. What we are looking at into the future is 'What's the career pathway for those employees?' We are great at bringing them in but we also want to retain them and see them progress their careers. That's why we are looking at how we can improve our professional development opportunities for them, how we mentor Aboriginal employees, as well as any other supports, particularly around cultural safety. … It is recognised that further work is needed to support employees to progress into senior leadership roles (e.g. OCPSE will roll out the Aboriginal Leadership Program in 2023), and promote culturally inclusive and safe workplaces that attract and retain Aboriginal employees. (pers. comm., 17 July 2023)

A review of the Australian Government's previous Aboriginal and Torres Strait Islander employment strategy 'generally agreed that the focus should shift from recruitment related activities … to developing capability and increasing representation in senior roles' (Inside Policy 2019, p. 8) and the updated strategy included a target of 3% of senior executive service (SES) roles in the APS being filled by Aboriginal and Torres Strait Islander people by 2024, which is not on track to be met (APSC 2022, p. 24; Australian Government 2020, p. 14). The 3% target has since been superseded by 'SES100', an initiative that aims to ensure there are 100 First Nations SES staff in the APS by 2024-25. SES100 is a 'pillar of action' for the Australian Public Service Commission (APSC) (NIAA, sub. 60, attachment B, p. 1).[16]

There is currently intense competition for appropriately skilled and experienced Aboriginal and Torres Strait Islander workers, and this will create challenges for government organisations seeking to grow their own Aboriginal and Torres Strait Islander workforce. In this environment, individual government organisations may need to think carefully about what they can do to be a more attractive workplace for Aboriginal and Torres Strait Islander people. The APSC has noted that 'in a tight labour market with strong competition from all sectors for First Nations talent, career development and advancement offerings are vital in attracting and retaining First Nations employees' (2022, p. 30). But whatever actions are taken by individual government organisations, the fixed supply of workers in the short to medium term means that growing the Aboriginal and Torres Strait Islander workforce largely resembles a 'zero sum game': if one government organisation grows its Aboriginal and Torres Strait Islander workforce those workers are likely creating a vacancy elsewhere.

This could also result in drawing staff away from ACCOs. QIFVLS submitted that 'quite often community-controlled organisations are competing with the deeper resources of government agencies for staff/human resources' (sub. 87, p. 5) and the Commission heard that ACCOs in the Torres Strait in particular have difficulty retaining Aboriginal and Torres Strait Islander staff who could secure other jobs with better pay and benefits. The APSC plans to work 'in partnership with the Community-Controlled Sector to grow the public sector talent pipeline' (NIAA, sub. 60 attachment B, p. 2), but building the public sector talent pipeline from the existing workforce in the community-controlled sector could work against the Agreement's commitment to building the community-controlled sector. QIFVLS submitted that this scenario 'emphasises the necessity of meeting the sector-strengthening elements' (sub. 87, p. 5).

[16] There may be no material difference between the ambition of the SES employment target in the *Commonwealth Aboriginal and Torres Strait Islander Workforce Strategy 2020-24* (Australian Government 2020) and the SES100 target. The number of SES staff in the APS was 2,737 in 2020, 2861 in 2021 and 3,010 in 2022 (see table 6 of APSC 2021, 2023b, 2023b). If the number of SES staff continues to grow at a similar rate, 3% of the cohort will equate to around 100 staff.

Secondments of government staff into Aboriginal and Torres Strait Islander organisations and vice versa may be a way of embedding Aboriginal and Torres Strait Islander culture, perspectives and knowledges within government without permanently drawing down on the human capital of those organisations. The Jawun Program seconds government and private sector employees into Indigenous organisations and participants – partner organisations and secondees – have said that the program 'resulted in two-way understanding and skills transfer between Indigenous and non-Indigenous Australians' (KPMG 2022c, p. 12). The evaluation of the Jawun program found that secondees who share their experiences 'often become advocates for Indigenous issues post-secondment, creating a "ripple effect" within their home organisations' (KPMG 2022c, p. 12). The Jawun network is recognised as a valuable enabler of Indigenous leaders and senior corporate people working side by side and strengthening capacity through two-way learning. For Empowered Communities (a network of First Nations leaders and communities), Jawun has played a critical role 'strengthening the capability of Indigenous organisations and individual leaders' (Empowered Communities 2015, p. 104). For government employees, it can build a practical understanding and experience of working in Aboriginal and Torres Strait Island communities. It can also contribute to a necessary shifting in mindset from government being a 'fixer of problems' to an 'enabler of communities developing their own solutions' (Empowered Communities 2015, p. 41; QPC 2017a, pp. 134–135).

The practice of working in partnership and shared decision-making can also lead to knowledge and skill transfer for the public sector. Commenting on the role of policy partnerships and the Justice Policy Partnership in particular, QIFVLS submitted that it presents an 'opportunity for relationship building and can enable a genuine exchange of ideas such that government agencies and community-controlled organisations can enrich each other respectively' (sub. 87, p. 5).

Efforts to increase Aboriginal and Torres Strait Islander employment will be undermined by racism, lack of cultural safety and unconscious bias

Government parties' commitment to embed and practice meaningful cultural safety (box B.1) takes on greater importance as they seek to employ more Aboriginal and Torres Strait Islander people. The absence of cultural safety, and the presence of racism, will discourage Aboriginal and Torres Strait Islander people from joining and staying in the public sector. A cultural safety audit of the Victorian Department of Environment, Land, Water and Planning found that only 12% of its Aboriginal staff felt that their working environment was culturally safe, and 36% had experienced racism in the previous 12 months (Victorian DELWP 2019, p. 10). In 2022, 16% of First Nations respondents to the APS Employee Census indicated they had experienced harassment or bullying in the previous 12 months, compared with 10% for all respondents (APSC 2022, p. 23). Research into the experience of Aboriginal and Torres Strait Islander people working in the APS found that Aboriginal and Torres Strait Islander employees experience stereotyping and being pigeonholed into particular career choices, and 'negative attitudes and perceptions can prevent equitable capability assessments such as development and promotional opportunities' (Leon 2022, p. 909).

Efforts to increase Aboriginal and Torres Strait Islander employment in the public sector need to address these sorts of experiences and the specific needs of Aboriginal and Torres Strait Islander people. The SA Government told the Commission that its Department for Child Protection 'recognises the need for tailored engagement and retention strategies that support Aboriginal employees, particularly given the context of child protection service delivery where the impacts of intergenerational trauma and the experience of disadvantage are strongly felt' (pers. comm., 17 July 2023). A mid-term review of the New South Wales public sector Aboriginal employment strategy highlighted areas of success but also that the state's public service could 'do better by focusing on a smaller number of strategic actions which will drive the biggest impact' (NSW PSC 2022, p. 3). The refreshed strategy, informed by the mid-term review, noted that:

> Consultation with Aboriginal employees and senior leaders has confirmed the need to intensify efforts to breaking down barriers to progression and ensuring a culturally safe work environment where racism is not tolerated. (NSW PSC 2022, p. 3)

Beyond the potential for experiences of racism and a lack of cultural safety, employment in government organisations could have other negative effects for Aboriginal and Torres Strait Islander people. Working in government, particularly in service delivery, has the potential to create internal conflicts for Aboriginal and Torres Strait Islander people. In the context of public housing policy and delivery, the Western Australian Equal Opportunity Commission noted that:

> … a number of past and current Aboriginal Departmental staff gave oral submissions and they identified some key issues affecting them as Aboriginal staff. Firstly in their roles, many felt they were frequently in conflict with their own people when enforcing Departmental policy. The majority of these Aboriginal staff expressed that as they were employed at relatively junior levels they felt they did not have the capacity to have any influence if they believed an incorrect decision had been made. (2011, p. 12)

Acknowledging that unconscious bias exists will be essential for governments to address the prevalence of racism and to sustainably grow the number of Aboriginal and Torres Strait Islander employees. In over 11,000 implicit association tests (a test of unconscious bias) completed by Australians, around 75% indicated an implicit bias against Indigenous Australians (Shirodkar 2019, p. 4). In 2020, about 1,500 APS employees completed an implicit association test and nearly half of the respondents held at least a slight preference for 'Caucasian Australian' over 'Aboriginal Australian' (Leon 2023, p. 135).[17] Failing to address unconscious bias in the workplace will adversely impact how Aboriginal and Torres Strait Islander employees experience inclusion in the public service (Leon 2022, p. 910), which is a real concern for the retention of talent and reputation as a safe workplace.

Unconscious biases can infiltrate organisations in multiple ways but strategies to address unconscious bias are concentrated in recruitment, selection, and promoting employees. The Victorian Public Sector Commission's executive performance management framework recognises that unconscious bias can impede mangers' ability to objectively evaluate employees' performance, resulting in their performance being rated higher or lower than they deserve (VPSC 2022, p. 21).

Many organisations provide training to improve employee self-awareness and reduce the impact of unconscious bias. For example:

- the WA Government provides resources to hiring managers which includes advice on different types of unconscious bias and how they can manifest during recruitment processes (Government of Western Australia 2023)
- the NSW Department of Premier and Cabinet provides worked examples of how recruiters can unconsciously favour job candidates who have similar characteristics to the hiring manager or the person who occupied the position previously. It also addresses the need for inclusive wording in job

[17] Additional research may be required to understand the role of unconscious bias. In 2016, about 2,100 APS employees participated in a randomised controlled trial of a hypothetical recruitment process. In this trial, job candidates identifying as Indigenous were more likely to be shortlisted compared with when those same candidates did not identify as Indigenous (DPMC 2017, p. 14). More recently, research of career progression in the APS has found that women have been more likely or as likely to get promoted compared with men, staff with a disability were often less likely to be promoted than others, and people from a non-English speaking background were less likely to be promoted into senior positions than others (Breunig et al. 2023, p. 1).

advertisements and awareness (in the assessment of applications) that candidates may subconsciously undervalue their skill sets if they belong to negatively stereotyped groups (NSW DPC 2016).

If governments are to be successful in attracting, recruiting and retaining Aboriginal and Torres Strait Islander employees, significant attention will be required to identify and address unconscious bias.

There is little strategy or evidence of 'system-focussed' approaches to addressing institutional racism

This transformation element specifically calls on government organisations to undertake 'system-focussed efforts to address disproportionate outcomes and over-representation of Aboriginal and Torres Strait Islander people by addressing features of systems that cultivate institutional racism' (clause 59a). The Agreement also includes a related commitment, that governments will work in partnership with Aboriginal and Torres Strait Islander people 'to ensure government mainstream institutions and agencies are free of institutionalised racism and promote cultural safety in line with the transformation elements at Clause 59' (clause 60).

All jurisdictions, with the exception of South Australia are yet to implement systemic approaches to identify and eliminate racism (table B.1). For the most part, governments have committed to developing anti-racism strategies but have not yet done so, and in some cases have not met the timelines originally proposed. Given the state of these initiatives, there is much work to be done to address and eliminate racism.

Table B.1 – What are governments doing to identify and eliminate institutional racism?

Australian Government

The Australian Human Rights Commission (AHRC) released a concept paper for a national anti-racism framework in 2021 (AHRC 2021a), and a scoping report in 2022, which was informed by engagement and public submissions (AHRC 2022c). The AHRC has been allocated four years of funding to develop a national anti-racism strategy (NIAA n.d.), but it is unclear when it will be finalised. An approach to market for 'comprehensive consultations with First Nations peoples' closed in September 2023 (AusTender 2023).

New South Wales

The NSW Government submitted that the focus in its first implementation plan was on measuring experiences of racism, with its second implementation plan 'establishing actions to address individual and structural racism within government' (sub. 32, p. 17).

Victoria

Victoria's Anti-Racism Taskforce was formed in June 2021, and it was anticipated that it would contribute to a whole-of-government anti-racism strategy that would be launched in mid-2022 (Victorian Government 2022b, p. 26). As at June 2023, the Department of Families, Fairness and Housing was 'continuing to refine the draft Strategy in consultation with the Taskforce' (Victorian Government 2023c, p. 27). The Victorian Aboriginal Legal Service (VALS) submitted that it has engaged with the taskforce but 'despite following up on several occasions, there have been no updates to stakeholders regarding progress or timeframes for finalising this work' (sub. 76, p. 13).

Queensland

Queensland's efforts to date in relation to racism have been concentrated in the health sector (through the First Nations Health Equity Reforms, box 4.5). The government's Reconciliation Action Plan for 2023- 2025 says that Queensland will implement anti-racism strategies by 2025 to support the reframing of the State's relationship with Aboriginal and Torres Strait Islander people (Queensland Government 2023b, p. 18).

South Australia

South Australia's whole-of-government *Anti-Racism Strategy 2023–2028* (OCPSE 2023b) and associated action plan (OCPSE 2023a) were published in November 2023. The strategy's vision is to eliminate racism in the South Australian public sector – internally and through the work it does – including interpersonal, internalised and structural or institutional racism (OCPSE 2023b).

The SA Government submitted that the strategy and action plans were developed through extensive consultation with Aboriginal and multicultural communities and that the strategy 'takes proactive steps to identify and oppose racism by changing policies, behaviours, and beliefs that perpetuate racists ideas and actions' (sub. 54, p. 8). For example, the associated action plan includes an action to develop and pilot a race equity appraisal tool for the public sector, which will be used to inform consideration of race equity when making new laws and government decisions (OCPSE 2023a, p. 9). South Australia said in its submission that the strategy is aligned with the approach of the Australian Human Rights Commission in developing the national anti-racism framework (sub. 54, p. 8).

Western Australia

The WA Government's first implementation plan noted the 'development and implementation of departmental anti-discrimination and anti-harassment policies that aim to reduce incidence of racism and promote equality' (WA Government 2021, p. 120) but progress on these policies is not known. The only action on the 'key focus area' of 'eliminating racism and promoting respect for Aboriginal people' in the state's second implementation plan is a $1.1 million allocation to Reconciliation WA 'to support is work to establish its position as a professional peak organisation and progress the reconciliation movement in WA' (WA DPC 2023b, p. 34).

Tasmania

The Tasmanian Government's first implementation plan noted that it would 'develop and establish a range of initiatives to directly address and eliminate racism within and across the State Service' (Tasmanian Government 2022, p. 10). Progress on developing these initiatives is not known – Tasmania has not released a second implementation plan and the state's first annual report does not mention racism (Tasmanian Government 2023a).

Australian Capital Territory

The ACT Public Service Framework for Addressing Systemic Racism has been under development since 2020 and was originally expected to be finalised in 2021 (ACT Government 2021, p. 19, 2022a, p. 23).

Northern Territory

The NT Government is undertaking a review of 'various pieces of legislation to resolve areas within them that are found to be unfair, biased, discriminatory or have an imbalanced detrimental effect on, in particular, Aboriginal people' (NT Government 2022b, p. 47). Whole-of-government and justice-specific anti-racism strategies, originally scheduled for implementation from 2022, have not yet been released (LGANT et al. 2021, p. 29).

ALGA

ALGA's implementation plan does not mention plans to address institutional racism but notes that several individual councils have initiatives underway to eliminate racism and promote cultural safety (ALGA 2022b, p. 9). For example, the Inner West Council (NSW) has committed in its Community Strategic Plan to develop an anti-racism strategy and an accompanying action plan, and the cities of Melville and Cockburn (WA) partnered to deliver a 'let's talk about racism' workshop for their staff members (ALGA 2022a, pp. 15–16).

B.2 Embed and practice meaningful cultural safety

This transformation element requires governments to embed high-quality, meaningful approaches to promoting cultural safety. As the Lowitja Institute submitted, 'embedding cultural safety at the whole-of-government level is an overarching change and is essential to ensuring that changes within government organisations are not isolated activities' (Lowitja Institute, sub. 85, p. 13).

The concept of cultural safety is not new (box B.1) and it is defined in the Agreement, with an emphasis on recognising Aboriginal and Torres Strait Islander people's strength in their identity as a critical protective factor, and the fact that the presence or absence of cultural safety is based on people's experiences, particularly the experience of service recipients.

> Cultural safety is about overcoming the power imbalances of places, people and policies that occur between the majority non-Indigenous position and the minority Aboriginal and Torres Strait Islander person so that there is no assault, challenge or denial of the Aboriginal and Torres Strait Islander person's identity, of who they are and what they need. Cultural safety is met through actions from the majority position which recognise, respect, and nurture the unique cultural identity of Aboriginal and Torres Strait Islander people. Only the Aboriginal and Torres Strait Islander person who is [the] recipient of a service or interaction can determine whether it is culturally safe. (chapter 12 of the Agreement)

Cultural safety is essential in ensuring that policies, programmes, and service delivery reflect and are appropriate to the needs of Aboriginal and Torres Strait Islander people (APSC 2019, p. 1).

Cultural safety is also a right. Government organisations are legally required to provide safe workplaces under work health and safety laws, and cultural safety is an element of psychological health (e.g., South Australian Work Health and Safety Act 2012, OCPSE 2022, p. 2). As an example, the Victorian Department of Health's cultural safety framework highlights that cultural safety is a fundamental human right (Victorian DoH 2019).

There is a proliferation of government cultural capability frameworks but the practical impact of these frameworks is generally unclear. For example, cultural safety and capability frameworks in Victoria and Queensland outline a series of actions that could support employees to enhance cultural capability by participating in a process of continuous learning (Victorian DoH 2019; Queensland Health 2010). The effectiveness of these and other frameworks will come down to how they are reinforced in the design and evaluation of policy and service delivery systems.

Box B.1 – Cultural safety

The concept of cultural safety originated in the 1980s in New Zealand (AHRC 2018a, p. 3), and in the 1990s was defined in an Australian context as 'an environment which is safe for people; where there is no assault, challenge or denial of their identity, of who they are and what they need. It is about shared respect, shared meaning, shared knowledge and experience, of learning together with dignity, and truly listening' (Eckermann et al. 1994, cited in Williams 1999, p. 213). Taking this further, SNAICC notes that cultural safety 'is the positive recognition and celebration of cultures (DPMC 2023a, p. 7). It also sits on a continuum, with cultural awareness (understanding difference) being the first step, cultural sensitivity

Box B.1 – Cultural safety

(where self-exploration occurs) being the next step and the final outcome being cultural competence and cultural safety (NATSIHWA 2017, p. 5).

A culturally safe environment requires an openness to diversity, which 'refers to the degree of receptivity to perceived dissimilarity' and a willingness 'to consider new ideas and arguments' (Hartel 2004, p. 190). However, for many organisations, diversity is reduced to recruiting people from diverse backgrounds and assimilating them into a dominant, existing culture (Hartel 2004, p. 192). Organisations that do this perpetuate invisibility and a lack of cultural safety. One form of invisibility is the denial or erasure of cultural diversity in a workplace (Bhattacharyya and Berdahl 2023, p. 1073), which can manifest in a number of ways. For example, while references to Aboriginal and Torres Strait Islander people, communities and organisations are common (including in this report), they are labels that generalise over the diversity of First Nations that existed before and after colonisation. Reducing 'Aboriginal and Torres Strait Islander' to an acronym takes this further, and is widely regarded as offensive (see, for example, Australian Indigenous HealthInfoNet 2022, p. 2). Other examples of invisibility and a lack of cultural safety at work include not having formal avenues for reporting experiences of racism and denying employees the opportunity to use their cultural knowledges in performing their roles.

In a survey of over 1,000 Aboriginal and Torres Strait Islander workers, over a quarter reported that their workplace was culturally unsafe. (Brown et al. 2020, p. 11). And almost two-thirds had experienced 'identity strain', which 'refers to the strain employees feel when they themselves, or others, view their identity as not meeting the norms or expectations of the dominant culture in the workplace' (Brown et al. 2020, p. 12).

To cope with these experiences, Aboriginal and Torres Strait Islander people may develop ways to 'code switch' between Indigenous ways of being and mainstream ways of being, where Indigenous staff feel compelled to assimilate but 'consequently feeling like they let part of themselves go' (Steel and Heritage 2020, pp. 252–253). These sorts of experiences are inconsistent with cultural safety, where there is 'no assault, challenge or denial' of Aboriginal and Torres Strait Islander people's identity (chapter 12 of the Agreement).

Experiences of racism are only one way that a lack of cultural safety can manifest. Culturally safe workplaces have appropriate mechanisms for employees to report experiences of racism and empower employees to speak out when they experience racism and legitimise concerns when they are raised. Aboriginal and Torres Strait Islander people experience a lack of cultural safety when their concerns are ignored or dismissed on the grounds that the person responsible for racist sentiments is not a bad person or did not have ill intent (Gair et al. 2015, pp. 41–42).

Training is widely used but on its own cannot deliver cultural safety

In its description of this transformation element, the Agreement states that 'feedback from the engagements included making cultural awareness training courses ongoing for all boards and staff' (clause 59b), and such training is the most common way that governments are addressing this transformation element. For example:

- the Australian Government allocated $1.6 million for the Australian Institute for Teaching and School Leadership to undertake a project investigating how teachers and education leaders in schools can be

better supported to improve their Aboriginal and Torres Strait Islander cultural competency (Australian Government 2021, p. 18)
- all executives and staff at Victoria's Department of Families, Fairness and Housing as well as the Department of Health have had access to training designed and delivered in partnership with the Koorie Heritage Trust (Victorian Government 2021, p. 78)
- Aboriginal Affairs NSW is working with the NSW Coalition of Aboriginal Peak Organisations (NSW CAPO) to develop minimum standards for cultural capability training across the public sector. For early childhood education, Aboriginal Affairs NSW will work in partnership with the NSW Aboriginal Education Consultative Group to deliver a new Connecting to Country professional learning program. From 2024, it will roll out the implementation and ongoing evaluation of this program (NSW Government and NSW CAPO 2021, p. 28).

Addressing institutional racism and building cultural safety will require more than offering or requiring employees to undertake training. When training imparts knowledge it can be an important part of truth-telling but when it engages participants in critical reflection it can lead to 'cultural humility' which is an important step towards becoming a culturally safe employee (Gray et al. 2020, p. 280). National Aboriginal Community Controlled Health Organization (NACCHO) has previously noted that good practice cultural safety training 'is not simply about imparting knowledge, but engaging participants in critical self-reflection regarding personal and organisational values and practices' (2011, p. 29). ANTAR submitted that cultural capability 'must be accompanied by deeper and more reflective shifts in individual and collective worldview' (sub. 42, pp. 16–17).

Embedding cultural safety needs to be supported by organisations' leadership because employees internalise and perpetuate patterns of behaviour to which they are commonly exposed (Gladman et al. 2015, p. 2). It is important for executive leaders to be at the forefront of embedding cultural safety, to ensure that all employees gain the skills to implement cultural safety principles in their day-to-day work (NATSIHWA 2017, p. 5). Mentoring, a more resource-intensive form of leadership, can also play a role. Participants in a study of attitudes among people working in Aboriginal health noted that through mentoring (by culturally capable employees with experience working in Aboriginal health) they were able to develop skills and confidence to take knowledge from training and adapt their own work practices to engage with Aboriginal and Torres Strait Islander people in a culturally safe way (Wilson et al. 2015, p. 11).

But leadership does not exclusively emerge from people who are more senior in organisational hierarchies – employee resource groups, commonly referred to as 'staff networks groups' can also a play a role. Staff network groups, historically used to increase social and networking opportunities for people from underrepresented groups, can fulfil strategically important knowledge gaps for organisations 'by creating greater understanding and connections with customers and communities' (Shore et al. 2018, p. 180). For example, the chairs of the Aboriginal and Torres Strait Islander staff network at the Australian Government Department of Health and Aged Care are integral members of the department's Closing the Gap Steering Committee (box 4.2). At Relationships Australia, the Indigenous network (RAIN) was initially created to provide a space for staff to network and share concerns, resources or successes but has since grown into three strategically important arms:

- an executive group who advise state and territory CEOs on best practice models and culturally appropriate policy development
- an Aboriginal practitioner caucus
- a non-Aboriginal caucus for practitioners wanting to contribute to national projects or gain an insight into culturally appropriate practices (Tasmania RA 2019).

The Relationships Australia Walking Together plan on a page was developed by the RAIN executive group and sets out actions 'to achieve a culturally safe organisational space and practice for our Aboriginal clients and colleagues' (Tasmania RA 2019). To avoid creating a cultural load or time commitment burden it is

important that the value proposition of such groups is recognised so that expectations about participation are clear for participants and their supervisors.

Measuring the impact of training and other initiatives is essential

Review participants have indicated mixed views on cultural safety training. The Commission heard that such training is largely ineffective and on its own will not address racism, and one organisation went as far as saying that such training was a waste of money. When employees complete training it allows their employers to tick a box but does nothing to guarantee cultural safety into the future, within the organisation or for the people its operations effect. Other participants were more positive. Ngaweeyan Maar-oo submitted that consideration should be given to requiring all public health staff to attend regular cultural safety training (sub. 65, p. 4). In Victoria, the *Aboriginal Health and Wellbeing Partnership Action Plan* – jointly produced by VACCHO, the Victorian Government and the mainstream health sector – already includes such a requirement (AHWPF 2023, p. 8). VACCHO submitted that cultural safety training should be mandatory, and ongoing, for all public sector employees (sub. 67, p. 4).

Based on research into racism in the Australian Public Service, Bargallie (2020, pp. 252–253) noted that:

> There was general consensus from all participants that APS agencies need to commit to providing training that moves beyond the traditional cultural competency models: "There's still consultants out there running cultural awareness training that still say to the participants, 'Whatever you do when you're talking to an Aboriginal or Torres Strait Islander person, do not look them in the eye'"… The type of training this participant refers to pathologises Indigenous peoples, drawing on a historical anthropological perspective that traps contemporary Indigenous peoples in some romanticised past … Cultural awareness training is simplistic and fails to address racialised power dynamics and all the structures, policies and practices that perpetuate them. Traditional models of cultural awareness training rolled out over the past twenty to thirty years in Australia have done little to challenge the prevailing deficit stereotypes ascribed to Indigenous people… Little evidence exists that cultural competency training has altered behaviours, actions or attitudes towards Indigenous Australians, particularly in the workplace (Fredericks and Bargallie 2016, p. 5).

In moving towards a more culturally safe public service, it is essential that governments measure the efficacy of what they are doing. This includes evaluating the cultural safety of policies, procedures and practices used within organisations (Hunter et al. 2022, p. 50). In agreement with the Commission's draft report, the Lowitja Institute submitted:

> … practicing cultural safety is not the same as undertaking periodic 'cultural awareness' sessions or celebrating days of significance to Aboriginal and Torres Strait Islander peoples – transforming government organisations and embedding meaningful cultural safety requires deep analysis, significant commitment and ongoing monitoring and evaluation. (sub. 85, p. 14)

Despite the wide desire to adopt training, there is a paucity of high-quality evidence on the effectiveness of cultural safety training. Much of the research is focused on the effect of training on improving the delivery of health care and is overwhelmingly descriptive, as distinct from research that employs a credible identification strategy so that the effect of the training can be understood. There are few evaluation studies that are methodologically strong (Bainbridge et al. 2015, p. 2).

Research on cultural safety training programs in Australia has found a positive relationship between attending training and a change in knowledge, attitudes, and beliefs at an individual level (Hunter et al. 2021, p. 24; Jongen et al. 2018, p. 3). But overall, there is an absence of research on how training leads to behavioural change (Jongen et al. 2018, p. 59). And cultural safety training in isolation may have a

counterproductive effect for some employees. A study on healthcare workers in South Australia found that cultural awareness training without any follow-up support or strategies can itself be immobilising, with non-Indigenous staff not knowing how to adapt their behaviour, having a fear of being perceived as racist, or finding it too hard within their particular role (Wilson et al. 2015, p. 11).

Training efficacy is often measured from training participants' perspectives, but a more worthwhile approach would involve measuring the experience of Aboriginal and Torres Strait Islander people who work in or work with government organisations (Brumpton et al. 2022, p. 436). Work undertaken for the Australian Commission on Safety and Quality in Health Care on cultural safety in hospital and clinical healthcare settings recommended that evaluation of cultural safety includes tracking and reporting on Aboriginal and Torres Strait Islander people's concerns, patient outcomes, and patient experiences (Hunter et al. 2022, p. 47). Similar measurement could occur for other services as well. There are indications that measuring the experience of Aboriginal and Torres Strait Islander customers is being done by some government organisations. At Services Australia, for example:

- customer satisfaction and feedback data that speak to the strength of relationships with the community are one of the measures of success for the Bespoke Centre Redesign Model (box B.2)
- an Organisational Assessment Tool is being developed under the Disability Sector Strengthening Plan (SSP), which 'will provide an evidence-informed tool for organisations in the disability sector to assess their cultural safety and responsiveness' (DSS, sub. 74, p. 17)
- at an organisational level, the Lowitja Institute, for example has developed a Cultural Safety Audit Tool for Organisations which is designed to assess an organisations commitment to and level of cultural safety by focussing on areas that are essential in supporting a culturally safe environment, including leadership, governance and engagement (Lowitja Institute, sub. 85, p. 14).

Box B.2 – Services Australia Bespoke Service Centre Redesign Model

The theory of change for this initiative includes a problem statement which notes that 'service centres in small communities, with a high proportion of Aboriginal and Torres Strait Islander customers accessing services face to face, have different requirements than communities in larger regional and urban areas.' Specifically, it noted that the historical approach to service centre design meant that all customers in the centre could see everyone else in the centre and hear their business, and that customers would avoid the service when cultural requirements could not be observed (DSS, pers. comm., 22 June 2023).

Under this initiative, identified Service Centres will be redesigned based on community engagement 'tailored to respect unique local community structures and practices' (DSS, sub. 74 attachment A, p. 6). The Australian Government Department of Social Services submitted that 'opportunities exist for all government service delivery agencies with face-to-face service delivery pathways to embed this approach to improve the design of service centres to enhance service delivery to First Nations clients and customers (DSS, sub. 74 attachment A, p. 6).

The Fitzroy Crossing Service Centre redesign was informed by engagement with local community representatives and about 40 customers who represented multiple family groups in the community. In addition to changes to the physical environment, service experience options like video chat were added so that customers can speak to staff from outside the community where this is needed to observe cultural requirements. Feedback from the Fitzroy Crossing Service Centre redesign was that 'Words can't explain how deadly the office is' (DSS, pers. comm., 22 June 2023).

B.3 Deliver services in partnership with Aboriginal and Torres Strait Islander organisations, communities and people

This transformation element commits government organisations to developing 'genuine relationships … [with] … Aboriginal and Torres Strait Islander people, organisations and/or businesses to enhance the quality and cultural safety of mainstream service delivery' (clause 59c). This is consistent with the objectives of Priority Reforms 1 and 2, which seek to establish better service systems (and outcomes) for Aboriginal and Torres Strait Islander people by delivering government services through formal partnerships, including with a strengthened Aboriginal and Torres Strait Islander community-controlled sector. However, this transformation element applies more broadly, including to services that may not be delivered through formal partnerships or provided by ACCOs.

The Commission has previously estimated that mainstream services accounted for 82% of direct government expenditure on Aboriginal and Torres Strait Islander people in 2015-16, with Indigenous-specific services accounting for the remaining 18% (SCRGSP 2017, p. 9) so it is crucial that governments ensure mainstream services meet the priorities and needs of Aboriginal and Torres Strait Islander people. In some cases, this will be achieved by delivering services in partnership with Aboriginal and Torres Strait Islander people, organisations or businesses.

Government progress on this transformation element is in its infancy. Relevant actions to deliver services in partnership are largely focussed on discrete policy priority areas that have been established through Priority Reform 1 (box B.3). As with many of the actions governments are pursuing, it is unclear how effective these are in practice in achieving the partnership ambition.

Box B.3 – Examples of government efforts to deliver services in partnership

- Queensland Government's second implementation plan included a commitment to support Specialist Mental Health Community Support Services for Aboriginal and Torres Strait Islander people experiencing moderate to severe mental illness. These services use a culture-based wrap around service model delivered by the Aboriginal and Torres Strait Islander community-controlled health sector in collaboration with Hospital and Health Services (Queensland Government 2023a, p. 43).
- According to the midterm evaluation of the New South Wales Aboriginal Health Plan 2013–23, about three quarters of the state's local health districts reported formal partnerships with Aboriginal and Torres Strait Islander community-controlled health service organisations. A number of partnerships support program delivery in areas including maternal and child health, dental health, mental health, drug and alcohol misuse, women's health, post-hospital discharge care, and healthcare access and continuity (Centre for Epidemiology and Evidence and Centre for Aboriginal Health 2019, p. 19).
- Service partnership arrangements are also found in the provision of throughcare services in correctional facilities (aimed at addressing the cycle of re-offending). The NSW Government has committed to engaging with Aboriginal communities to design a culturally appropriate model for support, including a throughcare strategy for Aboriginal people while in and after release from prison (NSW Government 2022c, p. 96). Throughcare programs delivered by ACCOs are already available in some jurisdictions.

There are few systematic actions that seek to ensure all mainstream organisations develop stronger relationships with Aboriginal and Torres Strait Islander people to assess how best to deliver services to Aboriginal and Torres Strait Islander people. This may suggest a lack of understanding or a preparedness to do what is required to develop trusted partnerships with Aboriginal and Torres Strait Islander people, organisations, and/or businesses. As part of the *ACT Aboriginal and Torres Strait Islander Agreement 2019–2028* (ACT Agreement), the ACT Government committed to five 'Relationship Principles', which are aimed at 'strengthening the relationships between the community, service partners and the ACT Government including to improve the experience of Aboriginal and Torres Strait Islander peoples using services' (ACT Government 2021, p. 6). While these principles are meant to broadly apply across all government service sectors, it is not clear how ACT Government organisations are required to apply these principles in deciding how and when to partner with Aboriginal and Torres Strait Islander organisations to deliver services.

Implementing this transformation element arguably will require that government organisations fully value Aboriginal and Torres Strait Islander expertise and experience but it is clear this is not happening consistently (chapter 3). The Commission heard of numerous instances where ACCOs provided government organisations with information on what works but were ignored.

There are multiple ways that government organisations could do more to draw on Aboriginal and Torres Strait Islander perspectives, expertise and experiences to improve service delivery. For example, evaluations of mainstream services could better centre Aboriginal and Torres Strait Islander perspectives. Embedding Aboriginal and Torres Strait Islander leadership within program design is another example. The Commission's study on the Aboriginal and Torres Strait Islander visual arts and crafts sector provided examples of where Aboriginal and Torres Strait Islander community-controlled art centres collaborated with aged care and correctional facilities to provide critical wrap around services to improve outcomes in mainstream service provision (box B.4).

Box B.4 – Culture-based services provided by ACCOs can complement mainstream services

Keeping Elders strong and transmitting knowledges

The National Ageing Research Institute found several examples of Aboriginal and Torres Strait Islander community-controlled art centres collaborating with aged care and health facilities to provide art programs and other supports to residents. The value of these partnerships go beyond the service provided – they help maintain Aboriginal and Torres Strait Islander Elders' connection to their families and Country, and promote intergenerational learning (NARI 2021, p. 3).

In the Kungkarrangkalpa (Seven Sisters) Aged Care facility, located in the central desert region of Western Australia, the Warakurna Arts Centre provides a painting program for residents. Jane Menzies, the manager of the Warakurna Arts centre, noted that the painting program benefits both the aged care residents and the wider community:

> Intergenerational learning was really important, and just enabling these artists to share their stories with their children and their children's children. … [granddaughters, cousins, nieces or nephews, and sons] … come here and they work here and they also help with the artists as well so there is that exchange. … For a lot of these older people, they don't have the

Box B.4 – Culture-based services provided by ACCOs can complement mainstream services

opportunities to share those stories, they might be in aged care, they may not see their family very often. (cited in Morris 2016)

Improving community reintegration of ex-offenders

The Torch is a Victoria-based program that provides First Nations offenders and ex-offenders with materials and support to learn more about their language group, culture and Country. It 'supports the development of self-esteem, confidence and resilience, through cultural strengthening and artistic expression' (The Torch 2023). In a survey of the participants in the Torch's In-Community program, 92% said that it had helped them stay out of the justice system (EMS Consultants 2019, p. 4). Among people who had been participating in the program for over 12 months, only 11% had returned to prison. For context, nearly 40% of adults released from prison in Victoria return to prison with a new sentence within two years (SCRGSP 2023b, tbl. CA.4).

B.4 Increase accountability through transparent funding allocations

Implementing this transformation element would address longstanding problems with transparency about the amount of funding that governments allocate to dedicated Aboriginal and Torres Strait Islander policies and programs, and what that funding achieves (box B.5).

Box B.5 – Lack of transparency on the level and quality of funding are longstanding issues

Nearly 20 years ago, the Council of Australian Governments agreed to a national framework of principles for delivering services to Aboriginal and Torres Strait Islander people. Part of the framework sought to establish transparency and accountability, including through:

- Strengthening the accountability of governments for the effectiveness of their programmes and services through regular performance review, evaluation and reporting.
- Ensuring the accountability of organisations for the government funds that they administer on behalf of [Indigenous] people. (COAG 2004, pp. 1–2)

Issues with transparency on the level and quality of funding have persisted.

The evidence is clear – the existing strategies are costly and do not deliver sustained change to the wellbeing and prospects of the majority of Aboriginal people in either the cities or the regions. … The objectivity of these assessments has been hampered by the fact that the Board has been unable to gain from Government an accurate picture of the objectives, costs and outcomes of the existing programs. (Sanderson et al. 2011, p. 1)

Box B.5 – Lack of transparency on the level and quality of funding are longstanding issues

> The [2017 Royal Commission into the Protection and Detention of Children in the Northern Territory] found that expenditure on children and family services is not rigorously tracked, monitored or evaluated to ensure that it is appropriately distributed and directed. It identified a need for greater coordination and transparency of government funding decisions. (PC 2020a, p. 3)
>
> Evaluation of policies and programs and local outcomes have been undertaken in an ad hoc way, constrained by the parameters of a particular program or activity, such that there is no overarching logic that provides a picture of the impact that government is having in Aboriginal and Torres Strait Islander peoples' lives. (AIATSIS 2019, p. 4)

Governments have had difficulties preparing the expenditure reviews committed to under clause 113 of the Agreement. Governments committed to 'review and identify current spending on Aboriginal and Torres Strait Islander programs and services to identify reprioritisation opportunities to Aboriginal and Torres Strait Islander organisations, particularly community-controlled organisations' (clause 113).

These difficulties – discussed in detail in chapter 3 – attest to the ongoing inadequacy of government organisations' systems for recording funding allocations in relation to dedicated Aboriginal and Torres Strait Islander service delivery. The completed expenditure reviews have only captured a limited range of information and there are still significant information gaps. These information gaps can be attributed to systemic inadequacies in how funding is being recorded and categorised. South Australia's expenditure review noted that 'the systems that are operated by government agencies do not currently have the functionality to automatically extract the required data' (SA Government 2023a, p. 8) and Western Australia's review noted that 'the process of compiling this review has identified data limitations that impact the accuracy, granularity, and comparability of results' (WA Treasury 2023, p. 9). In addition to South Australia and Western Australia, only New South Wales and the ACT have published expenditure reviews as at December 2023 (ACT Government 2022b; New South Wales Treasury 2022b).

The Agreement states that regarding this transformation element:

> Feedback from the engagements included requiring key performance indicators in funding arrangements. Other suggestions included for Auditors-General to include in their audits of mainstream agencies information about expenditure and the quality of service delivery to Aboriginal and Torres Strait Islander people. (clause 59d)

That is, it was recognised in the engagements for the Agreement that information on how much money is spent is not enough – it has to be complemented by information on outcomes achieved. This was reinforced in the Commission's engagement for the review and has repeatedly been raised with other government organisations. For example, as part of its engagement with Aboriginal communities when developing its second implementation plan, the NSW Government was told that of '$140 million [that was allocated] to Indigenous education, not one report has been made on how funding was spent and the outcomes' (NSW Government 2022c, p. 42).

There are some initiatives under way that could create stronger links between spending and outcomes. For example, the ACT's guidance on its Commissioning for Outcomes reform noted that approaches to market

and contractual arrangements will include specified outcomes informed by community input, and reporting requirements 'for outcomes rather than outputs' (ACT Government 2022e, p. 23). (Commissioning reforms are discussed in more detail in chapter 3). AbSec submitted that 'it is positive about the work NSW Treasury has done to develop a First Nations Outcome Budgeting approach' (sub. 88, p. 5). This approach 'supports the government to make investment decisions that are outcome focused, aligned with communities' aspirations and well informed by regular performance updates through outcome and business planning processes' (NSW Treasury 2022).

Evaluation is a necessary complement to the use of outcomes or key performance indicators in funding arrangements: there is little point including outcomes or key performance indicators in funding agreements if there is no effort made to look back and understand whether they have been achieved.

The need for more high-quality evaluation is noted in chapter 7 but there are some encouraging examples of how governments are approaching evaluation. Core aspects of the Agreement will be evaluated – for example, the Coalition of Peaks is working with all governments to develop evaluation methodologies for the sector strengthening plans and the policy partnerships (Australian Government 2023a, p. 126). Evaluation is less frequently an afterthought than it used to be, and often foreshadows the active participation of Aboriginal and Torres Strait Islander people – for example, the VACCHO has been funded to develop a Research and Evaluation Framework, which is 'foundational to the development of the [Department of Health's] Aboriginal Policy, Funding Accountability Framework' (Victorian Government 2022b, p. 42). In New South Wales, government clusters are now required to produce a forward plan for prioritising evaluation of Aboriginal-specific programs (NSW Government 2022c, p. 17). As with all government commitments there needs to be ongoing scrutiny as to whether they are delivered.

In its May 2023 Budget, the Australian Government allocated $10 million for establishing the Australian Centre for Evaluation (ACE) within the Department of Treasury to improve the 'volume, quality, and impact' of evaluations across the APS (Leigh 2023a). It is not clear whether or how the new centre will improve the volume, quality or impact of evaluations relating to policies and programs impacting Aboriginal and Torres Strait Islander people, but its creation is an opportunity to embed the Commission's *Indigenous Evaluation Strategy*, which provides principles-based guidance that governments can use when selecting, planning, conducting and using evaluations of policies and programs affecting Aboriginal and Torres Strait Islander people. This includes guidance on the governance arrangements needed to strengthen accountability and centre Aboriginal and Torres Strait Islander people, perspectives, priorities and knowledges. The Strategy's monitoring and reporting arrangements also embed incentives for agencies to improve the quality of evaluations, to learn from, share and use evaluation findings to inform and improve policy decisions (PC 2020c, p. 29).

B.5 Support for Aboriginal and Torres Strait Islander cultures

The 1989 *National Aboriginal Health Strategy* stated that health is 'not just the physical well-being of the individual but the social, emotional and cultural wellbeing of the whole community' (NAHSWP 1989, p. x). Thirty years later, Lovett et al. (2020a, p. 8) noted that 'culture is gaining increased research and policy attention as a determinant of wellbeing, following advocacy by Aboriginal and Torres Strait Islander peoples and communities.' And in the Agreement, the parties 'acknowledge that strong Aboriginal and Torres Strait Islander cultures are fundamental to improved life outcomes for Aboriginal and Torres Strait Islander people' and 'agree to implement all activities under this Agreement in a way that takes full account of, promotes, and does not diminish in any way, the cultures of Aboriginal and Torres Strait Islander people' (clauses 20 and 21).

'Culture' is often associated with the arts and creative sector, and examples of funding for arts and creative expression can be found in governments' implementation plans, but a broader definition is more appropriate in the context of the Agreement. Mayi Kuwayu, the National Study of Aboriginal and Torres Strait Islander Wellbeing, has noted that 'for Aboriginal and Torres Strait Islander peoples, culture includes Dreaming and other spiritual beliefs, Country, community, languages and art, including dance and music' (2019, p. 3). Importantly, the right to culture is a right collectively held by First Nations in Australia (National Native Title Council, sub. 35, pp. 1, 3). Culture also underpins success for the Priority Reforms. For example, culture will underpin the success of Priority Reform 2 because 'Aboriginal and Torres Strait Islander values, customary law and governance systems often underpin ACCO success' (Associate Professor Morgan Brigg and Dr Prudence Brown, sub. 41, p. 2).

The Commission heard from Aboriginal and Torres Strait Islander people that the Agreement should better reflect the centrality of culture (chapter 9). The importance of culture was discussed in relation to land management, corrections, education, domestic violence and health (including mental health). People spoke with us about the value of culture in itself as well as the flow on effects of valuing culture. For example, we were told that meeting children's cultural needs can improve school attendance and achievement, incorporating Aboriginal and Torres Strait Islander perspectives on causality could improve approaches to domestic and family violence, and culturally informed maternity care can improve health outcomes for women and babies.

We also heard concerns about there being 'very few, if any, tangible policies and programs around implementing support for culture' (KALACC, sub. 23, p. 9).

This transformation element calls for truth-telling

Regardless of whether funding is directed to the arts and creative sector, or culture more broadly, this will not directly address the core of this transformation element: truth-telling. The Agreement requires that:

> … government organisations identify their history with Aboriginal and Torres Strait Islander people and facilitate truth-telling to enable reconciliation and active, ongoing healing. Feedback from the engagements included government organisations building relationships with local Aboriginal and Torres Strait Islander community-controlled organisations to enable them to understand and reflect the history and culture of local communities. (clause 59e)

Truth-telling has been described as a process that 'seeks to ensure the stories and histories of Aboriginal and Torres Strait Islander people are preserved, understood and acknowledged, thus informing and driving structural reform' (Vines 2022, p. 2). These stories and histories are not only about colonisation. Aboriginal people engaged as part of the development of Western Australia's Aboriginal Empowerment Strategy identified 'the richness, value and diversity of Aboriginal cultures, both before colonisation and into the future' as one aspect of truth-telling (Government of Western Australia 2021, p. 40). However, the telling and recording of stories about colonisation has a particular role in the context of reconciliation and active, ongoing healing. The NT Government has previously said that its Treaty pathway will be underpinned by truth-telling, and noted that:

> Truth-telling is a process where we collectively confront the pain, trauma and injustices visited on Aboriginal Territorians through colonisation. It is also about understanding how these impacts shape the lives of people and systems today, and why there is a need for change, healing and genuine reconciliation. (NT Government 2022)

Similarly, Children's Ground submitted that:

> It will take a whole-of-system approach to eliminate institutional racism and this can only be achieved by people who have an in-depth understanding of the history, intergenerational trauma and stressors and context that many First Nations people live with daily. Key tasks of reviewing

> systems, policies, programs, etc can be asked of people, but institutional racism will continue until people understand and truth telling is prominent and prevalent within governments, services, organisations and across the Australian population. (sub. 72, p. 17)

Expressions of culture through arts and crafts can play a role in truth-telling. At a 2018 truth-telling symposium, the Bangarra Dance Theatre's production of *Dark Emu* (Pascoe 2014) was noted as demonstrating 'the capacity of the arts to raise awareness of past injustices' (Reconciliation Australia and The Healing Foundation 2018, p. 8). In 2022, funding was allocated for Western Australia's Carrolup Centre for truth-telling, which will house artworks created by children of the Stolen Generation (WA Government 2022b). And Queensland's 10-year roadmap for arts, culture and creativity noted that:

> First Nations arts and cultural expression are an intrinsic part of Queensland's culture and identity. They play a fundamental role in cultural maintenance, economic empowerment, community connectedness, truth telling and wellbeing among First Nations communities. (Queensland Government 2020, p. 16)

However, providing funding for arts and crafts is not sufficient for addressing this transformation element, and governments' implementation plans and annual reports identify few actions that will meaningfully progress truth-telling. The NSW Government has acknowledged this, noting that in its first implementation plan 'there was not a strong focus on truth-telling about organisational history and ongoing relationships with local Aboriginal community organisations to build understanding of the history and culture of local communities' (NSW Government 2022a, p. 23). The Australian Government's second implementation plan indicated that 'government organisations and institutions will be supported to identify their history with First Nations peoples and facilitate truth-telling' (2023a, p. 26), but it is not clear what this looks like in practice and the initiative had no funding attached to it.

Aboriginal and Torres Strait Islander people have long called for a comprehensive process of truth-telling at the local, state and national level, and government organisations need to actively facilitate truth-telling to understand the historic and ongoing impacts of their policies and practices. Doing so is a necessary precursor to identifying and addressing institutional racism, a core aspect of Priority Reform 3.

The Australian Government and six of the eight states and territories are pursuing jurisdiction-level truth-telling (Victoria, Queensland, South Australia, Tasmania, the ACT and the Northern Territory). These initiatives have the potential to address this transformation element, but government organisations need the will and resources to engage with the truth-telling initiatives appropriately.

- Victoria is the most advanced jurisdiction, having established the Yoorrook Justice Commission in 2021. The Commission was due to finalise its truth-telling and healing inquiry in 2024 but was granted an extension after the Victorian Government failed to meet deadlines for providing documents and answers to questions, citing the scope of the information request as a reason for the delay (Yoorrook Justice Commission 2023c, p. 322).
- In Queensland, the *Path to Treaty Act 2023* (Qld) provides the legislative framework to establish a First Nations Treaty Institute and a Truth-telling and Healing Inquiry (Enoch 2023a). In the 2021-22 Budget, the government established a $300 million Path to Treaty Fund, including a $10 million annual allocation for the First Nations Treaty Institute (Queensland Government 2021a).
- In 2022, the Tasmanian Government established an Aboriginal Advisory Group to work with the government on designing a process for truth-telling and Treaty that is led by Aboriginal people. The Advisory Group has been allocated only $500,000 to support this process (Tasmanian Government, sub. 90, p. 3).

Truth-telling at the local government level is also important. The *2021 State of Reconciliation in Australia Report* noted that many of the people Reconciliation Australia spoke to 'highlighted the role of local

government in truth-telling and historical acceptance' (Reconciliation Australia 2021, p. 31). Research partly funded by Reconciliation Australia has found a crucial principle for effective truth-telling is the embedding of truth-telling in a local context (Barolsky et al. 2023, p. 133). The Research made evident the power of truth-telling as an immersive process where non-Indigenous people engage with First Nations communities to form both a cognitive and emotional understanding of history in a local context (Barolsky et al. 2023, pp. 132–133). Community-level truth-telling can take multiple forms such as memorials or commemorative events, repatriation, renaming of places, public artwork and healing sites (Barolsky and Berger 2023, p. 3).

Workshops run by Reconciliation Australia indicated 'an enormous appetite' among participating councils for playing an active role in truth-telling but also that 'there is a need to develop further understanding and capacity regarding how councils can best support truth-telling, and what resources they might need to do that' (Reconciliation Australia 2019, p. 25). At the same time, 'limited, inadequate or non-existent resourcing were identified as significant barriers for local councils in undertaking Truth-telling activities' (Reconciliation Australia 2019, p. 19).

Because of the resourcing constraints facing many local governments, coordination and learning from one another in relation to how to appropriately undertake truth-telling will be necessary. ALGA can play a role in this, and has previously noted its work promoting local governments' reconciliation action plans. (ALGA 2022a, p. 10). State and territory governments have a role to play as well, because local governments are within their jurisdiction (box 4.8).

While resource constraints are real, this will always be available as a reason not to act. To progress truth-telling, what is most important is that individual local governments engage with local Aboriginal and Torres Strait Islander populations. This is not necessarily a costly exercise, and much can be done within existing resources to develop stronger relationships and to build trust with Aboriginal and Torres Strait Islander people and communities.

B.6 Improve engagement with Aboriginal and Torres Strait Islander people

There are costs to getting engagement wrong

Where governments fail to genuinely engage with Aboriginal and Torres Strait Islander people on policy and programs, this has significant costs. It means the policy or program does not benefit from the knowledges and practices that have been sustained for tens of thousands of years. It may also mean that policies and programs can be at best ineffective in meeting the diverse priorities and needs of Aboriginal and Torres Strait Islander people, and at worst, harmful to the very people they are intended to serve. Both entail significant human costs.

There are also costs in the approach that governments take to engagement. The Commission has repeatedly heard about the trade-offs that leaders and staff of Aboriginal and Torres Strait Islander organisations face when governments seek to engage with them: time spent speaking with politicians and public servants is time spent not providing services to Aboriginal and Torres Strait Islander people and communities. (Engagement is discussed in more detail in chapter 2.)

There are also psychological harms for participants engaging in processes that are not culturally safe, respectful, or genuine, or where input is disregarded without explanation. For example, the South Australian Aboriginal Community Controlled Organisation Network pointed to engagement shortfalls in the development of the South Australian Government's Aboriginal Housing Strategy 2021–2031.

> Despite the impact of COVID-19 restrictions at the time, the engagement was scheduled for completion in under five months, following an extension on the original timeframe. … The strategy outlines the community stakeholders consulted and acknowledges their 'assistance'. … the views expressed in the consultation have not been made publicly available. This lack of transparency is inconsistent with the established criteria for self-determination and obligations under the [Agreement and the United Nations Declaration on the Rights of Indigenous Peoples]. In the absence of full transparency, there can be no indication that adequate weight was given to the views expressed. (SAACCON 2022, p. 8)

Transforming the way governments attribute value to engagement and the implications from that engagement is essential. This relies on the cultural change needed in government organisations. As discussed in chapter 2, it also requires governments to move away from a tacit proposition that 'government knows best'. This shift in paradigm can in turn become an enabler to valuable and valued engagement.

Governments can improve the value of engagements (or reduce its costs on participants) by: engaging early in the policy development process rather than consulting on solutions already devised by governments alone; building reciprocity into engagement processes (so that people understand how their information has been used and how it has contributed to decision-making); supporting organisations to engage within their communities (for example, through better resourcing of partnerships); partnering with local interpreters to improve inclusion and access; and ensuring that they coordinate with other agencies so participants do not have to repeat their stories.

Several jurisdictions – Victoria, South Australia and the ACT – have also established, or are proposing to establish, representative bodies such as a Voice to Parliament or an elected body. These bodies have various powers and functions such as legislated powers to make representations to government, to share in decision-making, and to hold governments accountable as an 'independent umpire' on matters concerning Aboriginal and Torres Strait Islander people (for example through engagement hearings in South Australia or the Yoorrook Justice Commission in Victoria).

Government approaches to engagement are often seen as tokenistic and underdone

Within their implementation plans, governments have identified engagement approaches and frameworks that seek to embed better engagement elements within specific decision-making and policy development processes (the ways in which engagement approaches fail to adequately embed shared decision-making is discussed in chapter 2). For example, the Australian Government is developing a *Commonwealth Engagement and Partnership Framework* (Australian Government 2022, p. 21), which could provide guidance and supporting materials to enable strong partnerships and ensure that the commitment to shared decision-making is genuine and begins early in the policy development process (addressing Priority Reforms 1 and 3). Cabinet and Budget processes have been modified in some jurisdictions to require, encourage or record how they have been informed by engagement with Aboriginal and Torres Strait Islander people. Some actions seek to transform engagement by improving cultural capability of staff or recruiting Aboriginal and Torres Strait Islander people. Other initiatives seek to improve access to existing avenues of engagement. For example, the ACT Government indicated that it is:

> [Creating] … opportunities for Aboriginal and Torres Strait Islander people to participate in the ACT Policing Community Forums to exchange information and enhance relationships to provide an opportunity for Aboriginal and Torres Strait Islander people to be heard and for actions to be developed in response to Aboriginal and Torres Strait Islander community feedback. (2021, p. 19)

These sorts of initiatives may improve engagement but they do not address all aspects of what has been committed to in the Agreement. Governments have made a commitment to:

> Ensure when governments are undertaking significant changes to policy and programs that primarily impact on Aboriginal and Torres Strait Islander people, they engage fully and transparently. Engagements should be done in a way where Aboriginal and Torres Strait Islander people: have a leadership role in the design and conduct of engagements; know the purpose and fully understand what is being proposed; know what feedback is provided and how that is being taken account of by governments in making decisions; and are able to assess whether the engagements have been fair, transparent and open. The engagements on the National Agreement, led by the Coalition of Peaks in partnership with Government parties, demonstrated the benefit of this approach. (clause 59f)

It is clear that this is not happening consistently. The Commission has heard from Aboriginal and Torres Strait Islander organisations that engagement, if it happens, is still being done too late in the policy development process or not often enough. Where there has been a change in the approach to engagement, it has often been due to Aboriginal and Torres Strait Islander people pushing for governments to come to the table (chapter 9). The Aboriginal Health Council of Western Australia (AHCWA) and AHCWA Social Services Committee (sub. 22, p. 2) noted that even in the context of processes within the Agreement, governments failed to respect timelines and deliverables and expected the Coalition of Peaks to make up for lost time through reduced consultation and engagement.

Engagement is more than consulting on predetermined solutions. It should be used at the early phases of scoping 'problems' and in the co-creation of solutions. Ongoing engagement can be used to test assumptions and jointly design policies and programs based on the lived experience and perspectives of service users and providers, experts, and the community. In general, it should be commensurate with the impact that a policy or program is expected to have, or the shortfall in experience or capacity that exists within governments to understand the priorities or knowledges of people who might be affected. Engagement in the context of partnerships and shared decision-making is discussed in more detail in chapter 2.

Ongoing engagement can also play an important role ensuring that policies and programs are working as intended. For example, the Aboriginal Children's Forum (ACF) provides input and accountability in relation to Wungurilwil Gapgapduir, the Aboriginal Children and Families Agreement in Victoria. The Agreement notes that the ACF 'is an important governance platform to ensure that Aboriginal Elders, leaders and communities, are equal partners with government and the [child and family services] sector in determining the future of child and family services' (Victorian DHHS 2018, p. 21). And Muriel Bamblett, the CEO of the Victorian Aboriginal Child Care Agency, noted that 'the ACF continues to have the difficult conversations necessary to address over representation of our children' (ACF 2021, p. 3).

The Agreement includes a specific commitment regarding engagement before, during and after emergencies

In addition to full and transparent engagement on changes to policy and programs in general, the Agreement specifically commits governments to:

> engaging with Aboriginal and Torres Strait Islander representatives before, during, and after emergencies such as natural disasters and pandemics to make sure that:
>
> a. government decisions take account of the impact of those decisions on Aboriginal and Torres Strait Islander people

b. Aboriginal and Torres Strait Islander people are not disproportionately affected and can recover as quickly as other Australians from social and economic impacts. (clause 64)

The Royal Commission into National Natural Disaster Arrangements observed that state, territory and national policies and guidelines have been developed to support engagement and collaboration with Aboriginal and Torres Strait Islander communities in bushfire and land management (RCNNDA 2020, p. 396). It also observed that the extent of the implementation of these guidelines is not always clear, and that Aboriginal and Torres Strait Islander perspectives are not always considered in planning and decision-making processes (RCNNDA 2020, pp. 393, 396).

The Commission has heard about government organisations not operating in line with the Agreement in the aftermath of natural disasters. For example, Aboriginal Family Legal Services (AFLS) submitted that a hub set up following flooding at the beginning of 2023 'was culturally unsafe and ill equipped to meet the needs of the Aboriginal community' (sub. 36, p. 4). AFLS recounted that there was 'a futile lack of adequate Aboriginal representation in the emergency supports' and some staff members lacked awareness of local Aboriginal communities and the ability to communicate with Aboriginal people seeking assistance (sub. 36, p. 4).

Governments have told the Commission about work done with Aboriginal and Torres Strait Islander people around natural disasters, including in relation to fires (Victorian Department of Premier and Cabinet, pers. comm., 6 July 2023) and flooding (SA Government, sub. 54, p. 10). These examples reaffirm that governments can fulfill their roles better by drawing on the knowledge and strengths of Aboriginal and Torres Strait Islander people. And as noted by the Deputy CEO of the Kimberley Land Council, in relation to natural disasters:

> While our people have had the impacts of disaster thrust upon us and are often disproportionately impacted, we are also the people with some of the best solutions. We have seen that by gaining rights through native title Aboriginal people have been empowered to be leading land managers for our region. I wanted to talk a little bit about one of the things we do through Indigenous fire management, a practice our people have been undertaking for thousands of years, to reduce fuel loads in the landscape, which reduces the intensity of late-season wildfires, which we have seen happen across our region. That in turn reduces carbon emissions and at the same time protects our communities, assets and the environment and maintains habitat for animals and plants. (Parriman 2023, p. 22)

The knowledges and strengths of Aboriginal and Torres Strait Islander people, organisations and communities were evident during the design and implementation of responses to the COVID-19 pandemic. Many Aboriginal and Torres Strait Islander people, Elders and organisations were vital in leading the emergency response, as they already had a presence in these communities. Aboriginal and Torres Strait Islander people and organisations know their communities best, have the trust of people they engage with, and the knowledge of how Aboriginal and Torres Strait Islander people would best respond to COVID-19 safety measures in rapidly changing circumstances. Chapter 2 discusses government and Aboriginal community-controlled health organisations working in partnership to respond to COVID-19.

It is not clear that all governments have learned the lessons from the experience of COVID-19 (and other emergencies). The Deputy CEO of the Kimberley Land Council has noted that Priority Reform 3:

> … commits government to engaging with Aboriginal people before, during and after disasters, but we're not seeing that translate; we're seeing us being pulled in at the very last minute, as a bit of an afterthought. I think there just needs to be some structural reform to how we engage collectively as Aboriginal organisations but then more broadly with non-Indigenous agencies as well. (Parriman 2023, p. 25)

The importance of this commitment will increase as climate change continues

The importance of structural reform to ensure appropriate engagement before, during and after emergencies will increase as a result of climate change. Regardless of Australian or global efforts to abate emissions from this point forward, climate change due to previous emissions is expected to increase the frequency and severity of natural disasters including flooding and fire (PC 2023a, pp. 3, 9). The potential impact of these changes on Aboriginal and Torres Strait Islander people was raised by the Australian Human Rights Commission at least 15 years ago (Baird 2008). More recently, researchers used demographic data and climate projections to quantify the risk faced by Aboriginal and non-Aboriginal populations in New South Wales and found that Aboriginal populations 'were disproportionately exposed to a range of climate extremes in heat, rainfall and drought, and this disproportionate exposure was predicted to increase with climate change over the coming decades' (Standen et al. 2022, p. 1). Annika David, a Torres Strait Islander woman, submitted that 'Aboriginal and Torres Strait Islander people will be the first people to be affected by climate change and we have contributed to it the least' (sub. 27, p. 4).

The Torres Strait will be particularly impacted by climate change – the Fifth Assessment Report of the Intergovernmental Panel on Climate Change noted that 'Torres Strait Island communities and livelihoods are vulnerable to major impacts from even small sea level rises' (Reisinger et al. 2014, p. 1405). The 2008 Native Title Report noted that 'if predictions of climate change impacts occur, it poses such great threats to the very existence of the Islands that the government must seriously consider what the impact will be on the Islanders' lives, and provide leadership so that cultural destruction is avoided' (ATSISJC 2008, p. 231). In 2022, the United Nations Human Rights Committee found that by failing to adequately protect them from climate change, the Australian Government had violated the rights of eight Torres Strait Islander people and their children (the 'Torres Strait 8') to 'enjoy their culture and be free from arbitrary interferences with their private life, family and home' (OHCHR 2022). In June 2023, hearings began in a Federal Court case brought by Uncle Paul Kabai and Uncle Pabai Pabai against the Australian Government in which they argue that the Australian Government has a duty of care to Torres Strait Islander people, to ensure they are not harmed by climate change (FCA 2023).

The United Nations Human Rights Committee's decision called on the Australian Government to 'engage in meaningful consultations with the [Torres Strait 8's] communities in order to conduct needs assessments' (UNHRC 2022, p. 16). However, this is not the only reason for governments to engage with Aboriginal and Torres Strait Islander people in the context of climate change. Relatively recently, governments and government organisations have begun to value Aboriginal and Torres Strait Islander knowledges and expertise in relation to land and sea management (box B.6) but continued investment is needed to build and maintain relationships. Patrick O'Leary, CEO of Country Needs People, told the Commission that:

> It makes sense for the core federal government agency for land and sea management, the Environment Department, to have the staff capacity to engage with and support Indigenous land and sea management organisations and sustain genuine practical working relationships around supporting them, because it's very challenging work. Unfortunately this staff capability [within] the Environment Department has been dramatically reduced over the last decade and now needs rebuilding if we are genuine about working to support success by Traditional Owners in land and sea management. We need to recall the model we had that worked and rebuild that. (pers. comm., 14 June 2023).

Box B.6 – Aboriginal and Torres Strait Islander expertise in land and sea management

Budj Bim rangers – two-way learning and partnerships

For decades, the Budj Bim rangers have managed the Gunditjmara homelands and waters of south-western Victoria with sustained funding from the Working on Country and Indigenous Protected Areas programs (Putnis et al. 2021, pp. 44–45). Senior leaders have sought to build robust partnerships – including through formal agreements – that weave Aboriginal knowledge, values and aspirations with the science and land management expertise of other agencies and researchers to achieve positive results. This has included:

- The United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage Listing for the Budj Bim Cultural Landscape, one of the world's most extensive and oldest aquaculture systems, in 2019
- working with government agency partners to protect world heritage listed aquaculture channels, some that were first constructed at least 6,600 years ago, during the 2019 fires.

Banbai rangers – building practical relationships on the ground

The Banbai rangers look after Country in the Wattleridge and Tarriwa Kurrukun Indigenous Protected Areas in New South Wales (Putnis et al. 2021, pp. 76–77). This includes the Kukra rock art site, which has been estimated to be approximately 40,000 to 50,000 years old. Over time, Banbai rangers have built productive relationships with researchers and other land managers. This was showcased during the 2019–2020 bushfire season, when the Banbai rangers fought alongside the Rural Fire Service, NSW National Parks and Wildlife Service and other property owners to save Country, property, assets and lives.

Public perceptions and conversations have also subsequently changed in the region and across the nation, with agencies and landowners reaching out to the Banbai rangers to conduct traditional fire management activities. There are also plans for the Banbai rangers to collaborate with other land managers and partners to lead an early season burn to protect wetlands of international importance (which have been designated as Ramsar sites under the Ramsar Convention on Wetlands) and associated communities within Little Llangothlin Nature Reserve.

West Arnhem Land Fire Abatement (WALFA) project

The WALFA project is a partnership between Aboriginal ranger groups, industry and governments, established in 2006, to develop an innovative technique of abating greenhouse gases produced in wildfires through a combination of traditional and modern fire management techniques (Putnis et al. 2021, pp. 35–36). To date, this project has abated more than 1.7 million tonnes of greenhouse gases, with excess abatement marketed through the Aboriginal-owned, not-for-profit company Arnhem Land Fire Abatememt (NT) Limited.

These fire management methods have contributed to decreases in the total area burnt across all project areas, and ecological research also suggests they are likely to be favourable for biodiversity (Ansell et al. 2020 cited by; ICIN 2020, p. 20).

C. The Agreement's outcomes and targets

	Outcome statement	Targets
Priority Reform 1 *Formal partnerships and shared decision-making*	Aboriginal and Torres Strait Islander people are empowered to share decision-making authority with governments to accelerate policy and place-based progress on Closing the Gap through formal partnership arrangements.	There will be formal partnership arrangements to support Closing the Gap in place between Aboriginal and Torres Strait Islander people and governments in place in each state and territory enshrining agreed joint decision-making roles and responsibilities and where Aboriginal and Torres Strait Islander people have chosen their own representatives.
Priority Reform 2 *Building the community-controlled sector*	There is a strong and sustainable Aboriginal and Torres Strait Islander community-controlled sector delivering high-quality services to meet the needs of Aboriginal and Torres Strait Islander people across the country.	Increase the amount of government funding for Aboriginal and Torres Strait Islander programs and services going through Aboriginal and Torres Strait Islander community-controlled organisations.
Priority Reform 3 *Transforming government organisations*	Governments, their organisations and their institutions are accountable for Closing the Gap and are culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people, including through the services they fund.	Decrease in the proportion of Aboriginal and Torres Strait Islander people who have experiences of racism.
Priority Reform 4 *Shared access to data and information at a regional level*	Aboriginal and Torres Strait Islander people 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, their priorities and drive their own development.	Increase the number of regional data projects to support Aboriginal and Torres Strait Islander communities to make decisions about Closing the Gap and their development.
SEO 1 *Long and healthy lives*	Aboriginal and Torres Strait Islander people enjoy long and healthy lives.	Close the gap in life expectancy within a generation, by 2031.

	Outcome statement	Targets
SEO 2 *Born healthy and strong*	Aboriginal and Torres Strait Islander children are born healthy and strong.	By 2031, increase the proportion of Aboriginal and Torres Strait Islander babies with a healthy birthweight to 91%.
SEO 3 *Early childhood education*	Aboriginal and Torres Strait Islander children are engaged in high-quality, culturally appropriate early childhood education in their early years.	By 2025, increase the proportion of Aboriginal and Torres Strait Islander children enrolled in year-before-fulltime-schooling early childhood education to 95%.
SEO 4 *Children thriving*	Aboriginal and Torres Strait Islander children thrive in their early years.	By 2031, increase the proportion of Aboriginal and Torres Strait Islander children assessed as developmentally on track in all five domains of the Australian Early Development Census (AEDC) to 55%.
SEO 5 *Student learning potential*	Aboriginal and Torres Strait Islander students achieve their full learning potential.	By 2031, increase the proportion of Aboriginal and Torres Strait Islander people (age 20-24) attaining year 12 or equivalent qualification to 96%.
SEO 6 *Further education pathways*	Aboriginal and Torres Strait Islander students reach their full potential through further education pathways.	By 2031, increase the proportion of Aboriginal and Torres Strait Islander people aged 25-34 years who have completed a tertiary qualification (Certificate III and above) to 70%.
SEO 7 *Youth engagement*	Aboriginal and Torres Strait Islander youth are engaged in employment or education.	By 2031, increase the proportion of Aboriginal and Torres Strait Islander youth (15-24 years) who are in employment, education or training to 67%.
SEO 8 *Economic participation and development*	Strong economic participation and development of Aboriginal and Torres Strait Islander people and communities.	By 2031, increase the proportion of Aboriginal and Torres Strait Islander people aged 25-64 who are employed to 62%.
SEO 9 *Housing*	Aboriginal and Torres Strait Islander people secure appropriate, affordable housing that is aligned with their priorities and need.	a. By 2031, increase the proportion of Aboriginal and Torres Strait Islander people living in appropriately sized (not overcrowded) housing to 88%. b. By 2031, all Aboriginal and Torres Strait Islander households: i. within discrete Aboriginal and Torres Strait Islander communities receive essential services that meet or exceed the relevant jurisdictional standard ii. in or near to a town receive essential services that meet or exceed the same standard as applies generally within the town (including if the

	Outcome statement	Targets
		household might be classified for other purposes as a part of a discrete settlement such as a 'town camp' or 'town based reserve').
SEO 10 *Criminal justice*	Aboriginal and Torres Strait Islander people are not overrepresented in the criminal justice system.	By 2031, reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15%.
SEO 11 *Youth justice*	Aboriginal and Torres Strait Islander young people are not overrepresented in the criminal justice system.	By 2031, reduce the rate of Aboriginal and Torres Strait Islander young people (10-17 years) in detention by at least 30%.
SEO 12 *Child protection*	Aboriginal and Torres Strait Islander children are not overrepresented in the child protection system.	By 2031, reduce the rate of over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45%.
SEO 13 *Family safety*	Aboriginal and Torres Strait Islander families and households are safe.	By 2031, the rate of all forms of family violence and abuse against Aboriginal and Torres Strait Islander women and children is reduced at least by 50%, as progress towards zero.
SEO 14 *Social and emotional wellbeing*	Aboriginal and Torres Strait Islander people enjoy high levels of social and emotional wellbeing.	Significant and sustained reduction in suicide of Aboriginal and Torres Strait Islander people towards zero.
SEO 15 *Land and waters*	Aboriginal and Torres Strait Islander people maintain a distinctive cultural, spiritual, physical and economic relationship with their land and waters.	a. By 2030, a 15% increase in Australia's landmass subject to Aboriginal and Torres Strait Islander people's legal rights or interests. b. By 2030, a 15% increase in areas covered by Aboriginal and Torres Strait Islander people's legal rights or interests in the sea.
SEO 16 *Cultures and languages*	Aboriginal and Torres Strait Islander cultures and languages are strong, supported and flourishing.	By 2031, there is a sustained increase in number and strength of Aboriginal and Torres Strait Islander languages being spoken.
SEO 17 *Access to information*	Aboriginal and Torres Strait Islander people have access to information and services enabling participation in informed decision-making regarding their own lives.	By 2026, Aboriginal and Torres Strait Islander people have equal levels of digital inclusion.

Source: Closing the Gap information repository.

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