



Review of the National Agreement on Closing the Gap

Priority Reform 1: Partnerships and shared decision-making

Information paper 2

Draft report



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

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Publication enquiries:

Phone 03 9653 2244 | Email publications@pc.gov.au

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Key points

-  **Priority Reform 1 aims to build and strengthen structures that enable shared decision-making.**
 - Partnerships are the main vehicle in the Agreement to achieve shared decision-making, but too often governments are viewing partnerships (and associated meetings) as the outcome, rather than using them to achieve 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 during times of crisis, such as the COVID-19 pandemic, or where Aboriginal and Torres Strait Islander groups have pushed governments to 'come to the table'. But this is rarely observed more widely than emergency situations.
-  **Engagement occurs too late in the decision-making process and is often seen as tokenistic, which can entrench distrust.**
 - 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.
-  **Without governments demonstrating a clear theory of change towards shared decision-making (with defined measures of progress), action and efforts will be ad hoc.**
-  **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, rather than a partnership with clear actions and measures to reduce incarceration.
 - 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.
-  **For meaningful progress to be made on Priority Reform 1, governments need to trust that by relinquishing some control over decisions they are enabling better outcomes for Aboriginal and Torres Strait Islander people, and therefore going to get better outcomes for their investment over the long-term. Priority Reform 3 is needed to support this shift in mindset.**

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).

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. The commitments in Priority Reform 1 are not intended to replace these arrangements, but rather build on and strengthen them.

Partnerships as a means to achieving shared decision-making

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 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 – disadvantage that was due to successive government policies since colonisation that sought to control the lives of Aboriginal and Torres Strait Islander people (information paper 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 Wurrumarrba AO in FNPANU 2023, p. 15)

Early partnerships sought to change how governments engaged and worked with Aboriginal and Torres Strait Islander people. Structures like the Aboriginal and Torres Strait Islander Commission (ATSIC) (1990–2005), the National Congress of Australia’s First Peoples (2010–2019), and the Northern Territory Aboriginal Health Forum (established in 1998), among others, provided an opportunity to collaborate and share decision-making with government on issues which affected Aboriginal and Torres Strait Islander people. 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 priorities of communities, they did not translate into lasting changes in the ways governments work. 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.

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 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 (clause 38) 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.

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.

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 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 could be seen as a way of distinguishing the new approach to partnerships from previous approaches, which often did little to bridge mistrust and fell short of embedding shared decision-making. 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 2023, 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 2022, 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 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 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. This can be difficult to identify at the outset through a written agreement, but may be observed and strengthened as the partnership evolves.

Parties to the Agreement have recognised that strong partnerships must also include some critical elements which are more easily identifiable, including that they are accountable and representative, that they are supported by a formal agreement, and that they involve shared decision-making (table 1).

The inclusion of shared decision-making as a partnership element, where decisions are shared between government and Aboriginal and Torres Strait Islander people, creates a unique and somewhat circular dynamic whereby shared decision-making is both the end goal of Priority Reform 1 and a necessary element of a strong partnership. This dynamic is also reflected in the Agreement through the interrelationships between the Priority Reforms. For instance, in order to achieve shared decision-making, governments must be better partners, but in order to do so they need to transform to become more culturally safe.

Table 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	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	i. by consensus, where the voices of Aboriginal and Torres Strait Islander parties hold as much weight as governments’
ii. up to three levels of government, where government representatives have negotiating and decision-making authority relevant to the partnership context	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	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. other parties as agreed by the Aboriginal and Torres Strait Islander representatives and governments.	iii. is made public and easily accessible	iii. where Aboriginal and Torres Strait Islander representatives can speak without fear of reprisals or repercussions
	iv. is protected in state, territory and national legislation where appropriate.	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.

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) (table 2). These partnerships have been established and are at varying stages of progress. For the purpose of this review, the Productivity Commission has focused on the Justice Policy Partnership as there is not yet substantial progress on the other policy partnerships.

Table 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's Attorney-General's Department	<ul style="list-style-type: none"> • Agreement to Implement • Work plan • Meeting summaries #1-6 • 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	<ul style="list-style-type: none"> • Agreement to Implement • Work plan • Meeting summaries #1-2
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	<ul style="list-style-type: none"> • Agreement to Implement • Meeting summary #
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	\$11 million. Unspecified timeframe.	Australian Government Department of Infrastructure, Transport, Regional Development, Communications and the Arts	N/A

Sources: Attorney-General's Department (2023); Department of Education (2023); Department of Health and Aged Care (2023); NIAA (2023a, 2023b, 2023c, 2023d, 2023e).

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 2021a, 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 2021a, p. 2).

The *Agreement to Implement the Justice Policy Partnership* was formally endorsed by members in September 2021 (box 2) (JPP Secretariat 2021b, p. 1). The first workplan was released in January 2022 (Attorney-General's Department 2022). It outlines 11 targeted actions covering reports (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 (JPP Secretariat 2022d, pp. 1–2). The annual report, published in February 2023, reported that only 2 of the 11 actions have been 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 (JPP Secretariat 2022a, p. 8).



Box 2 – 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 2021a).

The Agreement to Implement is public and accessible (the Agreement, clause 32 b 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.

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

The Commission has heard views on the JPP from a number of Aboriginal and Torres Strait Islander organisations, independent members and government representatives through roundtables, visits and

submissions. Views on the effectiveness of the JPP are varied. Some members expressed support for the process, noting that it was still in its infancy but that a number of priority areas have been agreed, including bail, policing, minimum age of criminal responsibility and youth justice. However, several concerns have been consistently raised.

Insufficient time and funding are a significant constraint to better participation

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

- \$2.4 million to NATSILS to engage in the JPP
- \$2.2 million to Aboriginal and Torres Strait Islander Legal Services (ATSILS) to enhance data and analytics capability to inform the JPP and build organisational capability in line with Priority Reform 2 of the National Agreement
- \$1.7 million to the Australian Government Attorney-General's Department for secretariat and policy work
- \$1.3 million to the National Indigenous Australians Agency for policy work (JPP Secretariat 2022a, p. 16).

Funding to NATSILS was delayed by nearly a year which caused delays in their recruitment for JPP-specific roles (commencing Feb 2022) and meant progress against some of the actions in the work plan were slowed. This limited NATSILS' ability to support independent members in their engagement (JPP Secretariat 2022a, p. 10).

The Commission has also heard that time and resourcing have been barriers to participation for some Aboriginal and Torres Strait Islander representatives. Small organisations and independent members do not have the teams or organisational capacity of governments – or even larger peaks – which places a higher burden on them to participate. One independent representative spoke about being given lengthy documents to review with short turnaround times, and attending long meetings that largely focused on updates rather than on actions to improve outcomes for Aboriginal and Torres Strait Islander people. This detracted 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). Some government representatives and peak members also said they felt time and resource pressures, indicating it may be a more systemic or structural issue.

Adequate representation of Aboriginal and Torres Strait Islander people has been difficult to achieve

A key element of shared decision-making is understanding and respecting lived experiences of Aboriginal and Torres Strait Islander people (clause 32c to v). However, at its establishment, the JPP only had one Aboriginal representative with lived experience of incarceration, and this representative subsequently left the JPP due to the resourcing burden imposed on them (Deadly Connections, pers. comm., 2 May 2023). Another independent representative, who was appointed the Northern Territory's first Aboriginal judge while on the JPP, also left shortly after, in September 2022, due to competing priorities (Torre 2022).

The departure of independent members, in addition to difficulty attending meetings by independent members has made it challenging to achieve quorum, and therefore to make decisions. Quorum was established in December 2022 for the first time since meeting 3 (March 2022), which enabled general business matters to proceed and decision-making to occur (JPP Secretariat 2022c, p. 1).

There have been ongoing issues with achieving quorum at JPP meetings, which has slowed progress and impacted decision-making at meetings. (SA Government, sub. 28, p. 6)

The Commission has heard concerns that with a limited number of independent representatives, the agenda is being driven by better resourced Aboriginal and Torres Strait Islander organisations, whose perspectives do not always reflect those of smaller organisations (that focus on more discrete policy issues, regions or

communities). There are also concerns that there may be insufficient representation of states and territories, with some jurisdictions failing to have any Aboriginal or Torres Strait Islander representation at all.

Accountability is an unresolved issue

Meeting notes from the JPP indicate that there has been considerable discussion around accountability of governments and the need to create more levers to hold governments to account, for meeting the 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. (JPP Secretariat 2022b, p. 2)

Several Aboriginal and Torres Strait Islander organisations highlighted that less than one month after the Joint Council agreed to establish the JPP (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 (Office of the Chief Minister 2021). Similar changes to bail laws have occurred in Queensland in February 2023, with the expansion of offences and the criminalisation of breaches in bail for children (Queensland Government 2023). In commenting on the changes made in Queensland, the Aboriginal and Torres Strait Islander Legal Service said:

... We are disappointed by the short timeframe which has been provided for consultation. As the Queensland government would be well aware, the proposed measures will disproportionately affect Aboriginal and Torres Strait Islander children who are already grossly overrepresented in the criminal justice system. Such is particularly disheartening in a context of Closing the Gap and Treaty ... (2023, p. 1)

Public criticism by many Aboriginal and Torres Strait Islander organisations and advocates stated this would disproportionately affect Aboriginal and Torres Strait Islander children (Smit 2021). These new sentencing and bail laws were repeatedly raised in the Commission's visits as an example of governments failing to change the way they work, and acting in ways that are inconsistent with what they agreed to under the Agreement without any consequences.

Jurisdictional initiatives that seemingly run counter to achieving the SEO targets underpinning the JPP raised questions from its members about the scope, logic and mandate of the JPP. For instance, if incarceration rates are largely driven by state and territory policies on policing and crime, then how can a national forum impact change within each jurisdiction? There is also widespread recognition that justice outcomes are closely related to outcomes in other sectors like housing and disability, which are largely outside the JPP's remit. This was highlighted more than three decades ago in the 1991 Royal Commission into Aboriginal Deaths in Custody (RCIADIC), which noted:

... the more fundamental causes for the over-representation of Aboriginal people in custody are not to be found in the criminal justice system but in those factors which bring Aboriginal people into conflict with the criminal justice system in the first place. ... the most significant contributing factor is the disadvantaged and unequal position in which Aboriginal people find themselves in the society - socially, economically and culturally. ... The report examines the position of Aboriginal people in relation to health, housing, education, employment and income; it discusses the land needs of Aboriginal people. It shows how the attitudes of the dominant non-Aboriginal society,

racism both overt and hidden and institutional racism, adversely affect Aboriginal people. It shows how some laws bear unequally upon Aboriginal people. (1991, p. 15)

Another concern raised during engagements for this review was that government representatives on the JPP do not have the power to make changes to, or enact new policies, as this is ultimately the responsibility of ministers and their respective governments. This has contributed to a perception that the JPP operates largely as a forum for discussion, with little impact on policy.

Missing from the current framework of the JPP is a clear program logic that draws out what levers the JPP has (or requires) to enact change – and how performance of the JPP will be assessed and actions enforced by all parties.

Overall analysis

At this stage, it is unclear if, and how, the JPP will contribute to substantial policy changes to reduce adult and youth incarceration. Despite being the longest standing policy partnership, there has been little public progress made on the JPP. The 2023 work plan has not been published, however in June 2023, the Joint Council provided in principle approval for the strategic framework which ‘will guide the actions of the JPP’ (Joint Council on Closing the Gap 2023, p. 1). There is a perception from many that the JPP acts more like a forum instead of an action-oriented partnership, leading to questions around the scope and its role.

That is not to say that a forum, or similar mechanism, is unwarranted. The Commission has heard that there is significant, ongoing mistrust from Aboriginal and Torres Strait Islander communities towards the justice system, which is also publicly well documented (House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs 2011, p. 196). There could be value in providing a national space for truth-telling which discusses the historic and ongoing harms caused by the justice system. In Victoria, Yoorrook Justice Commission plays this critical role in building trust and changing the relationship between government and Aboriginal and Torres Strait Islander people (more on the truth-telling process in Australia is discussed in both information paper 4 and information paper 7). However, discussions alone are not sufficient and if they continually fail to drive government actions, this can further erode trust and reduce the value for organisations to engage in these forums.

The preliminary question that has to be asked of any policy or partnership approach, is whether the actions and governance mechanisms are able to deliver on their objectives. In the case of the JPP, can a national partnership which limits shared decision-making to solely developing recommendations, with limited resourcing and without sufficient accountability, deliver on the changes needed to reduce the over-representation of Aboriginal and Torres Strait Islander youth and adults who are imprisoned.

While it is still early for the majority of other policy partnerships, perceptions about their effectiveness appear more positive. Aboriginal community-controlled organisations (ACCOs) working in other policy spaces have noted the value in having access to a policy forum which brings governments to the table. The CEO of SNAICC – National Voice for our Children, Catherine Liddle noted their work with the Department of Education (Australian Government) through the early childhood care and development policy partnership, has been able to map the different initiatives being rolled out across all levels of government to enable community and peak body representatives to see where service and program gaps might exist (Liddle 2022, p. 41).

SNAICC also noted that the terms of reference of the policy partnership allows them to bring other government agencies to the table to explore how further gains can be achieved through a whole-of-government approach:

... [the terms of reference] ... means that we will have the Department of Social Services in the room and that we can have the Attorney-General's Department in the room, who are also

responsible for addressing child sexual abuse. It means we can bring Health into the room as well. Also we can have working groups underneath it so that when we can identify that, yes, we are talking about early education and care right now but in actual fact that conversation cannot be disparate because our children do not exist wholly in the Department of Education or wholly in the Department of Social Services or wholly in Infrastructure. (Liddle 2022, p. 41)

The Commission is seeking information as to whether the JPP, in addition to the other policy partnerships, are currently structured in the most efficient and effective way to share decision-making to deliver their intended goals.



Information request 1

Effectiveness of policy partnerships

The Commission is seeking further information on the effectiveness of the structure and governance arrangements for the Justice Policy Partnership and other policy partnerships established under the National Agreement on Closing the Gap.

- Are adequate support structures (such as resourcing and sufficient timeframes to provide views) in place to enable the participation of Aboriginal and Torres Strait Islander people and organisations? What else would help to support participation?
- How do policy partnerships build accountability into their structure and governance?
- Are the policy partnerships the right mechanism to address change across the five sectors? Are there other mechanisms that would be more effective?

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 on Closing the Gap 2021, 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 documentation 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.

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 community 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, the Coalition of Aboriginal Peaks (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 (Tamworth Regional Council 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 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 3). 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), Local Government Association Northern Territory (LGANT) and the NT Government endorsed Maningrida for a place-based partnership and community data location (NT Government 2022, p. 31).
- 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 2023b, p. 16).

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

- In Doomadgee in Queensland, a local decision-making body, Goonawoona 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 (Goonawoona Jungai, pers. comm., 4 July 2023).
- In Western Australia, Binari-binyja yarrowoo (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 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. The partnership parties have produced an outcomes document, had the first senior officers meeting and are in the process of developing a framework agreement which will set out the rules and engagement processes for the partnership (BBY, pers. comm., 3 July 2023).



Box 3 – 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 partner with 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. However, this money was initially proposed to be allocated through a service agreement. Goonawoona Jungai was reluctant to accept funding through such an arrangement, as they considered it to be inconsistent with a true partnership approach. After an iterative process, Goonawoona Jungai signed a cooperation agreement with the Queensland Government and received their first tranche of funding in May 2023 (Goonawoona Jungai, pers. comm., 4 July 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 to support the establishment of the place-based partnership and community data project in Maningrida (NT Government 2022, p. 31).
- For other places, funding to support the development of the partnerships is still being negotiated, like in East Kimberley (BBY, pers. comm., 3 July 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, work is underway by the Partnership Forum to scope and endorse a project proposal which will be part of the 2024-25 state budget submission (Victorian Government 2023b, p. 16).

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 will undertake a **stocktake of partnership arrangements** already in place within their own jurisdictions and provide a report to the Joint Council (clause 36 a). Most jurisdictions have completed the stocktake to varying degrees of public accessibility. 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 2022, 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 36 b). Only three jurisdictions have published reviews of their partnerships.

The Queensland, Victorian and Australian Government are the only jurisdictions so far to have undertaken and published their reviews of the partnerships listed in their stocktakes. 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 2022). 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. Victoria

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.

5 Barriers and enablers of stronger partnerships

There are some positive signs of governments working in partnership ...

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 (PC 2023, p. 5). A number of partnerships were cited as positive examples of change, including the development process for the Queensland Government’s Gurra Gurra Framework and the Australian Government’s Connected Beginnings Program (information paper 4 and information paper 3 respectively).

Governments appear more likely to work in genuine partnership when legislation mandates shared decision-making (such as the legislative instruments underpinning the Treaty process in Victoria, box 5), or where there are compelling drivers in the form of crises like the COVID-19 pandemic. The Commission was told that during the COVID-19 pandemic, some governments were willing to work in partnership with ACCOs and recognised their expertise and inroads to communities to respond quickly and effectively (box 4). However, the Commission also heard that despite the successful response, it 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.



Box 4 – 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 to the high burden of disease and inadequate infrastructure and services in Aboriginal and Torres Strait Islander communities (Department of Health 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 (Aboriginal and Torres Strait Islander Advisory Group on COVID-19 2020, p. 1). Collaboration between Aboriginal community-controlled health organisations (ACCHOs) and the Department of Health was in large part



Box 4 – Shared decision-making in response to the COVID-19 crisis

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 (Aboriginal and Torres Strait Islander Advisory Group on COVID-19 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 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. (Department of Health 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 Services. 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 Aboriginal Health and Community Services 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



Box 4 – Shared decision-making in response to the COVID-19 crisis

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).

In other instances, 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 or incentivised governments to ‘come to the table’. This was achieved either through established Native Title or offers 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 (WA Government 2017). Similarly, the Anindilyakwa Land Council signed a local decision-making agreement with the Northern Territory Government in 2018 (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.

... but shared decision-making is still rarely achieved

At its core, shared decision-making requires governments to relinquish some power and authority to make decisions. The establishment of a partnership, while an important step, does not mean shared decision-making is guaranteed. The examples above 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. (Aboriginal Family Legal Services Western Australia, sub. 7, p. 6)

Some organisations that the Commission engaged with said that governments were still reluctant to relinquish any control or shift the balance of power around policy decisions, funding and/or the key performance indicators they consider to represent value to the community, which makes shared decision-making and community-control virtually impossible (PC 2023, p. 6).

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)

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 in these spaces can influence government decisions, or at least better hold governments to account for these decisions.

The adequacy in how far decision-making power is shifted through partnerships should also reflect a need for governments to acknowledge the history of policy development in certain areas. In the justice policy space, Aboriginal and Torres Strait Islander people have experienced a legacy of breached trust, and potentially it is an area where more needs to be done for governments to build trust at the decision-making table. This could be supported by, for example, ensuring that government representatives at the table have sufficient decision-making authority.

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’ (box 5).



Box 5 – What rebalancing of power can look like – Victoria’s Treaty process

Treaty is seen as the embodiment of Aboriginal self-determination – it provides 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.

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.



Box 5 – What rebalancing of power can look like – Victoria’s Treaty process

- **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.

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).

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 (PC 2023, p. 6). Governments' ability to engage in a culturally safe and impactful manner is a key transformation element under Priority Reform 3 (information paper 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* 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 sunset 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 sunset. The Northern Territory's replacement measures were not legislated until a few weeks before the sunset. 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. (Northern Land Council 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, government departments claimed that they did not fit with their processes, rules or risk profiles (PC 2023, p. 6). 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 (PC 2023, p. 6). 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 in information paper 3, governments often overlook the value that engagement with Aboriginal and Torres Strait Islander people can bring, including learning from their cultural knowledge, skills, expertise, and proven ability to deliver better outcomes for Aboriginal and Torres Strait Islander people.

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. (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’ (PC 2023, p. 6).

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 (PC 2023, p. 6). 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 (PC 2023, p. 6).

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. (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 is required to support Aboriginal and Torres Strait Islander people to be partners with governments. 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).

Despite this, many organisations and individuals noted that the lack of time and resourcing was impeding their ability to participate in partnerships (PC 2023, p. 3). Without adequate resourcing, Aboriginal and Torres Strait

Islander partners are constrained in their ability to participate on equal footing with governments, including by obtaining independent policy advice and engaging with all relevant groups within affected communities.

Resourcing for partnerships was a concern for some Aboriginal and Torres Strait Islander organisations. The Commission heard that Aboriginal and Torres Strait Islander people want to set the priorities and provide input into decisions that affect them, but that they need funding to support this (PC 2023, p. 7). 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 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 1, 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.

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 the partnerships established under the Agreement. Greater transparency on this would inform an assessment of the adequacy of funding.

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.

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, as distinct from discrete communities)
- 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 LGBTQI+ community
- Torres Strait Islander people (PC 2023, pp. 11–12).

We heard that grassroots organisations and unincorporated groups need to be represented at the decision-making table. 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. This ultimately leads to programs not succeeding.

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’ (PC 2023, p. 7). 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 (PC 2023, p. 8).

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 information paper 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 (PC 2023, p. 6). 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 sharing decision-making.

There may be various reasons for the lack of shared decision-making, including risk aversion on the part of government staff, short timeframes for policy and program development, high workloads, lack of cultural safety and differing expectations about what partnerships means in practice. The ad hoc nature with which shared decision-making 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. 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.

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.

There may also be a reluctance by governments to relinquish control over policy and funding decisions. 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 32(c)(vi)). However, this clause need not be seen as precluding *all* 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 to the community, 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 needs, 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 (information paper 3). Previous experience has demonstrated that this is possible. The case study of Treaty within Victoria also highlights that where there is leadership and commitment, changes can be enacted to support a rebalancing of decision-making around funding.

For meaningful progress to be made on Priority Reform 1, governments need to trust that by relinquishing some control 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.

A key first step would be for governments to clearly explain the logic of how they intend to deliver on the outcomes committed to under Priority Reform 1, including how performance will be assessed. An equally complex challenge is how to maintain accountability for shared decision-making when there are behavioural barriers and/or an imbalance of power between the partners to an agreement. Options for further embedding responsibility and strengthening accountability for implementing the Priority Reforms across governments are discussed in information paper 7.

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