Aboriginal Legal Service (NSW/ACT) Limited

Productivity Commission Closing the Gap Review 2026.

The annexed submission is informed by the experiences of the clients and communities we serve, and the expertise of our staff.

Please contact if you would like to discuss this submission further.

Yours faithfullv.

Sharif Deen
Acting CEO
Aboriginal Legal Service (NSW/ACT) Limited

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Productivity Commission Closing the Gap Review 2026

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About the ALS

The Aboriginal Legal Service (NSW/ACT) Limited (**ALS**) is a proud Aboriginal Community-Controlled Organisation (**ACCO**) and the primary legal assistance provider for Aboriginal and Torres Strait Islander adults and children in NSW and the ACT. Our vision is to achieve social justice and equity for Aboriginal and Torres Strait Islander people, families and communities.

More than 350 ALS staff members based at offices in 20 communities support Aboriginal and Torres Strait Islander people through the provision of high quality and culturally safe legal assistance, including court representation in criminal law, children's care and protection law, and family law. We also deliver holistic, wrap-around programs including bail advocacy and support, family violence prevention, and child and family advocacy and support. We provide a Visiting Legal Service for Aboriginal children in youth prisons, represent the families of Aboriginal people who have died in custody and police operations in the NSW Coroner's Court, and deliver a variety of discrete civil law services including tenants' advocacy, support with navigating fines and penalty notice systems, and workplace sexual harassment, discrimination and employment law.

The ALS is the Justice Peak on the NSW Coalition of Aboriginal Peak Organisations (**NSW CAPO**) and a key partner in implementing the National Agreement on Closing the Gap at a jurisdictional level. As a community-controlled Aboriginal and Torres Strait Islander Legal Service (**ATSILS**), we represent community interests in our advocacy for the transformation of systems which impact the lives of Aboriginal and Torres Strait Islander people.

This submission is informed by the experiences of the clients and communities we serve, and the expertise of our staff.

Introduction

ALS welcomes the opportunity to make a submission to the Productivity Commission's Review of Closing the Gap 2026. As the Justice Peak on NSW Coalition of Aboriginal Peak Organisations (**NSW CAPO**) and primary legal services provider for Aboriginal people in NSW and ACT ALS works in direct partnership with NSW Government to lead delivery of Closing the Gap (**CTG**) activities across the following socio-economic outcome (**SEO**) areas:

- SEO10: Aboriginal and Torres Strait Islander adults are not over-represented in the criminal justice system
- SEO11: Aboriginal and Torres Strait Islander young people are not over-represented in the criminal justice system
- SEO13: Aboriginal children and householders are safe.

ALS also work in partnership with the NSW Child, Family and Community Peak Aboriginal Corporation (**AbSec**) and the NSW Government on initiatives relating to SEO 12: Aboriginal and Torres Strait Islander Children are not over-represented in the criminal justice system.

The signing of the National Agreement on Closing the Gap (**the National Agreement**) in 2020 committed governments to a fundamentally new way of working with Aboriginal communities and organisations across Australia. Through the Priority Reforms, the National Agreement acknowledges what Aboriginal communities have long known to be true – long-term outcomes for Aboriginal people will not be achieved through piecemeal, programmatic changes alone. Rather, lasting change requires a complete reimagining of the relationship between Aboriginal communities and government. Such a

transformation takes time and requires commitment beyond the lifecycle of any single policy framework or parliamentary term.

Since the Commission's previous Closing the Gap Review was published in 2024, the ALS, on behalf of NSW CAPO, has partnered with NSW Government to successfully deliver initiatives aimed at improving justice and child protection outcomes for Aboriginal people in NSW. We have also had new opportunities to ensure the voices of our clients and Aboriginal communities across NSW are represented in government-led forums, policy development, and departmental strategic frameworks.

We acknowledge the good will and commitment across many government staff and teams to embrace new ways of working, build partnerships with, and meaningfully invest in, Aboriginal-community controlled organisations (ACCOs). However, despite these growing partnerships and examples of good practice, meaningful progress has been hampered by a lack of readiness and commitment from NSW Government to genuinely commit to the practice of transformation, embed the Priority Reforms from the top-down, and actively redistribute power back to Aboriginal communities.

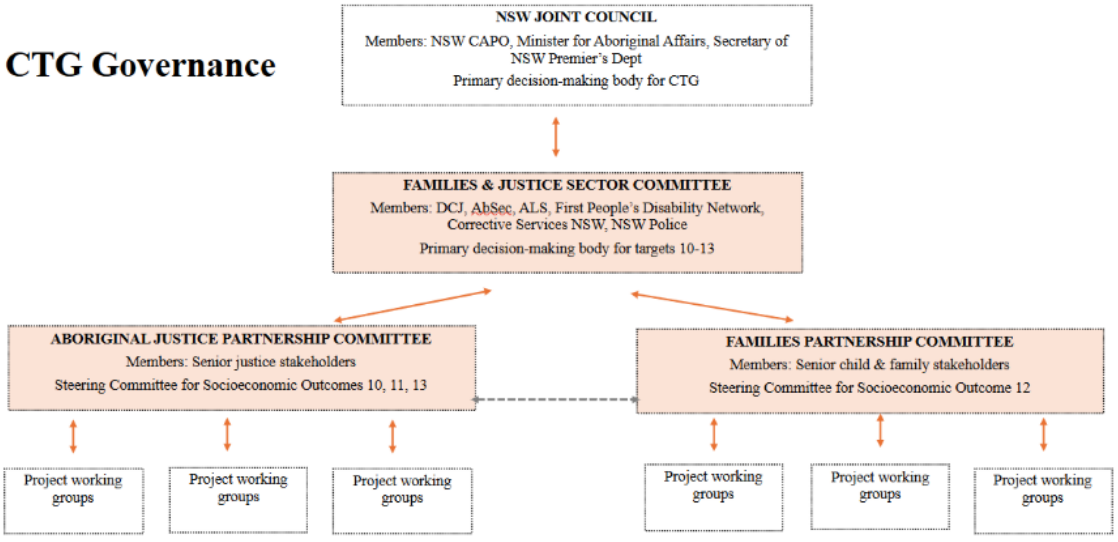
As a result, the number and proportion of Aboriginal adults in the NSW prisons is at an all-time high, Aboriginal children continue to be incarcerated and removed from their families at disproportionate rates and Aboriginal women and children continue to be disproportionately harmed by domestic and family violence. [1],[2].

We urge governments to engage reflexively with the outcomes of this and previous reviews, to listen to and act on the advice of Aboriginal people and organisations, and to demonstrate true and genuine leadership to delivering on commitments made under the National Agreement.

Governance of the National Agreement

Establishing effective relationships

The below diagram depicts the current Closing the Gap governance for the families and justice sectors in NSW.



[1] NSW Bureau of Crime Statistics and Research, *NSW Closing the Gap quarterly update March 2026*, (Statistical Report, August 2026)
[2] Productivity Commission, *'Socio-economic outcome area12 - Aboriginal and Torres Strait Islander children are not overrepresented in the child protection system'* (Closing the Gap Dashboard, 29 July 2026);

The ALS co-chairs the Aboriginal Justice Partnership Committee (**AJPC**) which is the primary steering committee for SEO outcomes 10, 11 and 13. With AbSec and the NSW Department of Communities and Justice (**DJC**), ALS also support co-chairing arrangements of the Families and Justice Sector Committee (**FJSC**) which is the primary decision-making body for CTG SEOs 10 -13.

In their 2025 Audit of the Governance of the National Agreement on Closing the Gap in NSW, the NSW Audit Office found that governance arrangements are not working effectively and that '*there are formal shared governance bodies that include senior representatives from the NSW Government and NSW CAPO, but this governance structure does not ensure accountability for the delivery of National Agreement initiatives.*[3]

Specific to justice, over the past 12 months the NSW CAPO and NSW Government co-chairs and co-secretariat have invested significant time into strengthening partnerships and exploring new ways of working more effectively together. The parties have renewed the Terms of Reference for each committee with a joint vision to ensure governance arrangements are fit-for-purpose and foster an environment of active problem solving rather than passive participation.

At an operational level this has been positive however it is yet to see how it will generate change on a broader scale. Until NSW Government transforms its policies and processes from the top-down it is unlikely that CTG governance bodies will ever be effective in achieving their intended purpose.

Barriers to shared decision-making

In our experience, CTG governance has often been ineffective in enabling genuine shared-decision making as decisions made in partnership and endorsed by governance committees can, and often have been, overridden at Agency Executive, Ministerial or Cabinet level. When such decisions are made without regard for shared-decision making commitments or the expertise of Aboriginal and Torres Strait Islander people and organisations it undermines the authority of governance bodies along with any trust that may have been established between ACCO and government partners at an operational level.

Government has failed to do the necessary internal transformation under Priority Reform 3 to recognise and respect processes that put into effect government's own commitment to partnership and shared decision making under Priority Reform 1. In the absence of real shared decision-making authority, governance operate as overly bureaucratic 'tick and flick' exercise rather than as an opportunity to embed Aboriginal ways of working, facilitate genuine shared-decision making, and remain accountable to Aboriginal communities for delivering on commitments under the National Agreement. As a result, it effectively becomes an additional government process that gathers joint endorsements but do not fundamentally change how decisions are made and how power is distributed.

This experience reflects findings from the Jumbunna Institute for Indigenous Education and Research's 2025 Independent Review of Closing the Gap, which found that '*Legislative, policy and budgetary control and ministerial directives all reinforce this concentration of power. Shifting this is not just a matter of policy or process, it requires a cultural and structural transformation. It requires rethinking deeply embedded philosophies of governance and the way authority and power is organised to make*

[3] NSW Audit Office, Governance of the National Agreement on Closing the Gap in NSW (Performance Audit, 29 May 2025) 2

room for shared authority, collective leadership, and negotiated decision-making with Aboriginal and Torres Strait Islander communities.'[4]

To meaningfully embed and translate the Priority Reforms into practice, CTG governance bodies must be recognised as legitimate decision-makers across government. This will not be achieved without internal and top-down transformation that addresses the incompatibility of existing Agency Review processes prior to Treasury and Expenditure Review Committee and Cabinet processes with shared-decision making commitments.

Further work should also be done to build understanding across both ACCOs and government of respective ways of working and to determine what is possible within the constraints of existing structures. For example, building ACCO's understanding of Cabinet processes and senior government official's awareness of shared-decision making commitments made under the National Agreement would enable CTG governance bodies to engage in more pragmatic and informed decision-making and advocacy.

Resourcing partnership participation

Further hindering shared-decision making are resourcing disparities between government and ACCOs that result in the membership of governance bodies being disproportionately weighted towards government. This makes it more difficult for ACCOs to resist or collectively challenge decisions that are not being made in the best interest of the communities that they serve.

In 2024, NSW CAPO delivered a preliminary report on partnership funding relevant to Priority Reform 1. The report details several characteristics of successful partnership funding models, including that:

- Funding is secure and aligned with the length of the partnership
- Funding is sufficiently flexible to cover a range of costs
- Funding is sufficient and flexible to cover a range of participants
- Aboriginal people and governments are jointly responsible for funding distribution decisions
- There is a low administrative burden for funding applicants and recipients[5]

Over two years on from the report's publication funding for NSW CAPO members to participate in CTG governance remains short-term, inflexible, and insufficient to advocate for and adequately represent the interests of Aboriginal communities in such forums. ALS co-chairs both the AJPC and FJSC and are co-secretariat for the AJPC. Despite this, ALS partnership funding is only sufficient to resource 2 roles and is provided via short-term contracts, even though governance arrangements will need to be in place for the life of the National Agreement.

Inequities in funding and resourcing is compounded by ongoing systemic failures of government agencies. In NSW, despite the known and acknowledged barriers presented by failures of government to facilitate timely negotiation and execution of funding agreements, it took Premiers Department 11 months to negotiate and execute the 2025-28 NSW CTG partnership funding agreement. Funding appropriated on 1 July 2025 was not disbursed until late June 2026. CAPO organisations were expected to carry the significant financial and audit risk of continuing to employ staff and undertake work associated with the funding without a funding agreement executed and in place.

Additionally, 'standard' conditions that Agencies at Commonwealth and Jurisdictional level have the effect of undermining and diluting self-determination of Aboriginal Community Controlled Organisations. Conditions relating to governance control and composition that are presented as a

[4] Jumbunna Institute for Indigenous Education and Research, Closing the Gap: Independent Aboriginal and Torres Strait Islander Led Review (Report, June 2025) 50
[5] NSW Coalition of Aboriginal Peak Organisations (NSW CAPO), Priority Reform 1.3: Report of Preliminary Findings (January 2024) 21

requirement for any organisation to receive government funding in practice diminish self-determination and community control. Conditions that require agency approval for expenditure in practice interfere with operational independence and effectiveness.

Accountability to communities

As touched on above, current CTG governance structures lack any meaningful accountability to Aboriginal communities. In NSW, activities under the 2022-2024 Closing the Gap Implementation Plan were informed by NSW CAPO led statewide consultations held with Aboriginal communities across NSW in 2021 and 2022. This ensured that resourced activities were aligned to community priorities however as the Commission's previous review found, the Implementation Plan provided limited detail as to how the initiatives would collectively enable the transformation the National Agreement calls for. As predicted, the absence of any clear strategy has made it impossible for Aboriginal communities to use these plans to hold governments accountable.[6]

The 2023-2024 NSW Closing the Gap Annual Report lists the status of several justice specific initiatives from the 2022-2024 Implementation Plan as 'delayed' or 'not started' but provides no detail of when, if, how, and by whom, these will be progressed.[7] The subsequent 2025-2028 NSW Closing the Gap Implementation Plan was not informed by community input and includes ongoing and funded initiatives only, which for justice related SEOs is exclusively continuations of previous funded projects and programs. Activities from the previous Implementation Plan that were not progressed have been removed and there is little explanation as to how those that have been included will collectively achieve the scale and pace of change that is needed to embed the Priority Reforms.

Shared decision-making through formal partnership

Since the Productivity Commission's 2024 review, the ALS has had some success in building partnerships with NSW government teams to deliver on discreet projects and initiatives, though several barriers to genuine shared-decision making through formal partnerships still remain. Successful partnerships require time, adequate resourcing, and a joint commitment to adopting new ways of working. Under the National Agreement, Peaks and ACCOs are not funded to engage in this process of building partnerships outside of project specific contexts. Where contracts are in place to work in formal partnerships, power imbalances remain as government has retained the primary position of contract manager and budgetary processes have not yet transformed to meet the objectives of the National Agreement.

Resourcing partnerships for success

In 2024, ALS successfully delivered two partnership projects under the NSW Closing the Gap implementation Plan in 2022-2024 - Therapeutic Pathways for Children Project, which produced the jointly published Therapeutic Pathways for Children Report,[8] and the Aboriginal Throughcare Strategy

[6] Productivity Commission, Review of the National Agreement on Closing the Gap (Study Report, January 2024) 4
[7] NSW Government, NSW Closing the Gap Annual Report 2023-2024, NSW Closing the Gap Annual Report 2023-2024, (Report, 2024) 55-57
[8] See NSW Department of Communities and Justice, 'Justice system' (Web page, 2024); Aboriginal Legal Service (NSW/ACT) Limited, 'Therapeutic Pathways for Children' (Web Page, 2025)

Project, which produced a draft Aboriginal Throughcare Strategy that will be finalised in the current project phase.

Following the conclusion of these projects, NSW Government and ALS, on behalf of NSW CAPO, submitted joint budget bids through NSW Treasury's CTG budget portfolio. Both projects received funding to implement key service delivery initiatives, building on the first phase of their success. This has resulted in new opportunities for ALS to work in formal partnership with Corrective Services NSW and Youth Justice NSW, for the first time under CTG.

Beyond funded CTG initiatives, project level partnerships have also been built overtime and without dedicated resourcing to progress activities relevant to SEOs 13 and SEO 12. This has required ALS and other Peak organisations to allocate significant in-kind resourcing toward build partnerships with government, as well as a strong commitment from individual government teams to work in partnership with ACCOs without formal contracts in place.

Since March 2025, the ALS has, mostly unfunded, been co-leading the development of the NSW Aboriginal Domestic, Family and Sexual Violence Plan with NSW Government (**DFSV Plan**) as a priority activity to achieve SEO 13. In July 2026, ALS received non CTG funding to work in partnership to deliver and begin implementation of the DFSV Plan.

In May 2025, NSW Government also entered into a landmark tripartite partnership agreement with ALS and AbSec, which will deliver the Child Protection and Assessment Project (**CPAP**) and the Family is Culture (FIC) Project (**FIC Project**).[9] The partnership was born out of a 2023 Aboriginal Child Safety and Wellbeing Reform Forum co-hosted by the NSW Minister for Families and Communities and AbSec. It is the result of persistent advocacy from Peak organisations and the dedication of individual government staff. However, whilst the CPAP and FIC Projects are priority initiatives under the 2025-2028 Closing the Gap Implementation Plan, they do not receive any CTG funding.

These various partnerships, now all formalised, have been built outside of project timeframes and without formal contracts in place. Significant time has been invested from all parties to determine shared language and ways of working, and to build the conditions required to successfully practice shared-decision making. The partnerships have moved slowly *'at the pace of trust'*, allowing for slow shifts in thinking to occur before the more tangible aspects of work can begin. These examples are the exception however, as discreet project delivery resourcing and timeframes do not usually allow for such readiness building to occur or for partnership work to continue beyond project timeframes. As a result, Peaks are required to reallocate resourcing away from core business, for this relational work to take place and to begin creating the conditions for sustainable and genuine partnerships with government.

In 2024, ALS commissioned Yulang Indigenous Evaluation to undertake process evaluations of the Therapeutic Pathways for Children and Aboriginal Throughcare Strategy Projects. The evaluations reflected these experiences, and recommended governments invest time and money into developing relationships with ACCOs, stating that *'what is currently a contractual relationship needs time and money to become a partnership'.*

[9] NSW Government, 'Landmark partnership with Aboriginal peak bodies to keep children safe' (Ministerial Release, 30 May 2025)

Conversely, when government parties are not adequately resourced to deliver initiatives in partnership, shared decision-making and government accountability are also significantly undermined. In this scenario, ACCOs are held solely accountable for project delivery but government can still exercise power and decision-making authority over final outputs and decisions, even when they lack in-depth knowledge of the work.

This is particularly challenging when government partners holds dual roles as project partners and contract managers. Whilst this duality creates a power imbalance whether or not both parties are resourced, without dedicated staffing government partners do not feel invested in the work and therefore view ACCOs as wholly responsible for implementation. As a result, government partners adopt a managerial position over the ACCO, rather than one of a genuine and equal partner.

This was the case for the Aboriginal Justice Partnership Project (**AJP Project**) which was funded as a key activity on the NSW Closing the Gap Implementation Plan 2022-2024 as a foundational initiative to implement the priority reforms of National Agreement across the NSW justice sector. An independent process evaluation of the project found that '*The relationship between DCJ and ALS for the AJP Project is a contractual relationship with ALS reporting to DCJ, not a partnership to together achieve project objectives and deliverables. DCJ did not commit the resources required to work in partnership – it saw its role as being the contract manager.'*

Constraints of funding and contracting arrangements

Funding decisions that are misaligned with commitments under the National Agreement further exacerbate power imbalances and impede opportunities for genuine, shared decision-making. In their Independent Review of Closing the Gap, the Jumbanna Institute provided NSW Treasury's Cross-portfolio Closing the Gap budget submission process as a successful example of 'shared priority setting and collaboration in action'.[10] The 2025/2026 and 2026/2027 CTG budget portfolio processes have allowed NSW CAPO and NSW Government to successfully collaborate on budget bids, resulting in significant new investment for partnership initiatives and a shift in the way funding is sought, however they have not been without their challenges.

After partnering on initial CTG budget bids, NSW CAPO organisations are largely kept out of NSW Treasury processes and Agency review processes prior to final Expenditure Review Committee and/or Cabinet decision making. ALS were notified of the outcomes of both the 2024/2025 and 2025/2026 budget bids less than 2 weeks before the implementation period was due to begin. This has significant implications for job security, staff retention and continuity of initiatives. It also impacts project delivery as the first several months of allocated project timeframes are spent negotiating contracts and undertaking lengthy procurement processes, before recruitment can even begin. Government agencies practice of dating commencement of funding agreements at the start of the financial year rather than date of execution of agreements compromises success of projects. Projects are effectively losing 6-12 months of productivity because they are not able to commence on 1 July of the Financial Year and are not guaranteed the ability to extend project or contract timelines based on time lost due

[10] Jumbunna Institute for Indigenous Education and Research, Closing the Gap Independent Aboriginal and Torres Strait Islander-led Review (2025) 59

to contract negotiation and execution. These are known issues that were raised during the Productivity Commission's first review of Closing the Gap. It is an example of jurisdictions being aware of and acknowledging an identified barrier yet doing little to transform how they operate.

In NSW criteria for CTG budget proposals are dictated by NSW Government rather than determined through shared-decision making. In the 2026/2026 CTG budget process, these criteria limited Sector proposals to applying for funding extensions only and prevented partners from seeking resourcing to expand the scope of existing programs or implement any new activities. With so many limitations imposed, Sector Committees are restricted to putting forward only project-based or programmatic initiatives, rather than transformational proposals and Peaks are forced to 'compete' for limited pools of funding.

Further, when ACCOs and Peaks are awarded CTG funding, a business-as-usual approach to contract management is adopted, without any effort to transform processes to align more closely with the Priority Reforms of the National Agreement. Consequently, government contracts provided to ACCOs to deliver on CTG activities contain restrictive terms and reporting requirements that do not support self-determination.

Ultimately, until budgetary, legislative and operational mechanisms are transformed, progress towards establishing successful partnerships will remain piecemeal and reliant on either discreet funded initiatives or the commitment and good will of individual, usually Aboriginal, staff within government. Whilst the significance of the partnerships established to date should not be diminished, without an urgent commitment from government to embed the Priority Reforms from the top-down across all departments, the transformative potential of the National Agreement will be severely hampered.

Opportunities for strengthening partnerships

The NSW Closing the Gap Partnership Agreement, signed by NSW Government, Local Government NSW and NSW CAPO in 2024, and associated addendum, sets a clear pathway and renewed commitment to meet this challenge. However as with the National Agreement, it is yet to be embedded across Government and knowledge of both Agreements outside of Aboriginal specific units and teams is lacking.

Youth Justice NSW's Strategic Plan provides a case study of what can be achieved by embedding the National Agreement throughout the agency's Strategies and Plans, creating accountability within each business area. The Plan has five focus areas each built around the Priority Reforms of the National Agreement and sets a clear objective to reduce the rates of Aboriginal and Torres Strait Islander young people in custody in NSW.[11]

Having the National Agreement embedded across YJNSW has set the foundations for YJNSW and ALS to work effectively and flexibly in genuine partnership to deliver a youth specific component of the Aboriginal Throughcare Strategy Project. Staff and business unit's approach are accustomed to

[11] NSW Government, Youth Justice NSW Strategic Plan 2024-2030 (Strategic Plan, March 2025)

working flexibly and differently with ACCOs and Peaks, which maximises opportunities for partnership, shared decision-making, and accountability, avoids business as usual dynamics that persist in other areas of government where the National Agreement is less engrained.

Building the community-controlled sector

Prioritising funding and supporting service transition

In NSW there has been some progress towards transitioning mainstream services to ACCOs in the youth justice and out of home care sectors. Youth Justice NSW has undertaken extensive ACCO recommissioning and commissioning which has seen a significant increase in the proportion of early intervention and youth diversion services being delivered by ACCOs. This is positive progress, although most ACCOs are still contracted to deliver prescribed service models with set criteria. Further work is still needed to embed commissioning processes that resource ACCOs to design and deliver services on their own terms.

Across the legal assistance sector, progress towards SEO 10 is worsening, yet there has been no concerted effort from NSW Government to prioritise funding for ACCO-led service delivery. Despite being the primary legal services provider for Aboriginal people in NSW, core funding for the ALS continues to be considered a Commonwealth responsibility.

The National Access to Justice Partnership Agreement (**NAJP**) commenced in June 2025, replacing the National Legal Assistance Partnership Agreement (**NLAP**) as the primary funding agreement between State and Territories for the legal assistance sectors. Whilst the agreement has seen an increase in overall funding for the ACCO legal assistance sector, nationally, it has been insufficient to account for historical funding cuts and growing demand for the delivery of core services by the ALS.

In 2023, the ALS were forced to freeze criminal law services at 13 Local Courts across NSW due to unsustainable workloads caused by inadequate funding.[12] These services remain frozen as funding under the NAJP still falls significantly short of what is required and NSW Government continue to defer to funding of the ALS as a Commonwealth responsibility, despite commitments under Priority Reform Two and SEOs 10, 11 and 12 of the National Agreement.

The incongruity between NSW Government's commitments under the National Agreement and their unwillingness to adequately resource ACCO-led legal assistance services is evident in their exclusion of the ALS from DCJ's Demand Funding Model (**DFM**), which drives funding for all NSW criminal justice services *except* the ALS.

Under the DFM, resourcing is allocated for government agencies delivering justice services, including Legal Aid NSW, to respond to a forecasted increase in service demand when there are legislative or policy changes that will increase volume in the system. As an ACCO, ALS is the only part of the publicly funded justice system not funded under this mechanism.

The implications of NSW Government's fail to appropriately resource the ALS have been evident since the introduction of bail centralisation for first appearance bail applications in 2025, which saw the opening of a new centralised Bail Division with four new virtual bail courts. At the time of writing, ALS have not received any additional resourcing to represent clients in the Bail Division, leaving Aboriginal people across NSW without access to culturally appropriate, ACCO-led legal representation during first appearance bail hearings.

This is despite NSW Government acknowledging as signatories to both the National Agreement and the NAJP that ACCOs are '*Better for Aboriginal and Torres Strait Islander people, achieve better results,*

[12] Aboriginal Legal Service (NSW/ACT) Limited 'Criminal law services frozen at 13 Local Courts' (Web page, May 2023)

employ more Aboriginal and Torres Strait Islander people and are often preferred over mainstream services'.[13]

At a time when the number of Aboriginal people in prison in NSW has reached an all-time high, there were more Aboriginal deaths in custody the last calendar year than ever recorded in NSW,[14] and the proportion of Aboriginal children in out of home care is growing[15], it is inexplicable for NSW Government to not appropriately resource ACCO led legal assistance services such as the ALS, especially in relation to state-based drivers such as in the criminal justice system and the child protection sector.

Sector Strengthening

Efforts to strengthen the ACCO justice sector in NSW have been limited to date. National Sector Strengthening Plans for the justice and domestic and family violence sectors are currently in development however it is not clear if any resourcing will be allocated for implementation following the exhaustion of the initial Sector Strengthening Joint Fund that resourced activities under the first round of National Sector Strengthening Plans.

As part of the AJP Project ALS have also developed an NSW specific Justice Sector Strengthening Plan. During consultations for the plan, Aboriginal communities and organisations spoke consistently of fragmented, short-term funding and burdensome and stringent contracting arrangements that prevent ACCOs from delivery services on their own terms.

The Plan provides a comprehensive roadmap for addressing these barriers and strengthening the ACCO legal assistance and community justice sectors in NSW. However, the AJP Project concluded on September 30, 2026, and no further time or resourcing has been allocated to progress its recommendations. Following delays in project initiation, ALS requested a 12-month project extension but this was not supported by DCJ and only a 3-month extension was granted despite the availability of existing project funds.

The Productivity Commission's 2024 review of Closing the Gap stated that NSW Government were taking a 'whole-of-government' approach to improving the way they commission ACCOs specifically.[16] ALS are aware that DCJ were leading work to develop an Aboriginal Sector Investment Strategy, though consultation with NSW CAPO members has been limited and the status of the Strategy is unknown.

Even funding awarded to ACCOs to deliver CTG initiatives lacks alignment to Priority Reform Two. CTG contracts for both service delivery and project delivery are usually limited to three years and do not incorporate time for readiness building, recruitment, phasing out or transitions to new funding contracts. Independent Aboriginal-led evaluations commissioned for the Aboriginal Throughcare Strategy and Therapeutic Pathways for Children Projects the and ALS Bail Advocacy Program each found that embedding sufficient time before and after program delivery periods would better support ACCOs to build workforce capabilities, co-design services meaningfully with communities, establish structures for data collection, undertake and finalise community-led evaluations and prepare budget bids for ongoing implementation.

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[13] National Access to Justice Partnership Agreement (November 2024), cl 74, 23; National Agreement on Closing the Gap (July 2020), cl 43 8.

[14] NSW State Coroner 'Deaths in Custody/Police Operations Report for the year 2025' (Report, April 2026) 3.

[15] Australian Productivity Commission 'Socio-economic outcome area 12 - Aboriginal and Torres Strait Islander children are not overrepresented in the child protection system' (Web Page, 2026) FigureSA12b.1

[16] Productivity Commission, Closing the Gap Review, (January 2024).

The below case study on the ALS Bail Advocacy Program provides an example of what can be achieved when ACCOs are resourced to design and deliver services on their own terms, as well as the barriers faced as a result of short-term funding and top-down government decision making.

Case study - ALS Bail Advocacy Program

Background of ALS Bail Advocacy Program

ALS's Bail Advocacy Program (**BAP**) was resourced and established as a key activity on the NSW Closing the Gap Implementation Plan 2022-2024.

BAP is delivered in two distinct streams, Women's BAP (WBAP) and Youth BAP (YBAP), each of which is delivered by a specialist and multidisciplinary team of legal and allied professionals. The program aims to reduce the number of Aboriginal women, children and young people remanded in custody in South Sydney and Newcastle as proof of concept for a state-wide framework to reduce the overall number of Aboriginal people remanded in custody. The BAP provides holistic, person-centred and culturally safe legal and non-legal advocacy and social support to increase access to bail, reduce breaches of bail, and prevent avoidable remand. The program also improves the quality of information available to bail authorities and addresses unmet social needs underlying contact with the criminal justice system.

The BAP program model was developed and designed by ALS in partnership with relevant community stakeholders from August 2023, with service delivery initiating in February 2024. This period of establishment was critical for enabling the program's success, building workforce capabilities, and establishing partnerships with key community stakeholders.

Achievements to date

A draft evaluation report has been delivered and found that the program has '*demonstrated early signs of success in reducing avoidable remand, improving legal outcomes, and strengthening Culturally safe, client-led support for Aboriginal women, children, and young people. Its flexible, trauma-informed approach, grounded in Aboriginal leadership and Community engagement has proven critical to its effectiveness, particularly in navigating the systemic barriers faced by Aboriginal people in the justice system."*

And that, *"as a proof of concept, BAP demonstrates the transformative potential of Community-led justice responses, and continued investment is essential to sustain and expand this impact across NSW."*

During operating hours in its pilot site at Mascot Police Station, YBAP doubled the police bail grant rate to 27% (vs. 13.5% baseline) and achieved a 33.3% Young Offenders Act (YOA) diversion rate, Compared to a 27.7% baseline diversion rate in a matched Newcastle comparison group without YBAP.

As of June 30, 2026, WBAP had an 83% success rate of applications made on behalf of clients for diversion under S14 of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*.

These early outcomes demonstrate the programs transformative potential to reduce the rates of Aboriginal children and women and progress NSW Government's commitments under CTG SEOs 10 and 11, if expanded to more locations.

Barriers to success

Bail centralisation, which has prevented ALS from representing Aboriginal adults during first bail applications, has presented challenges that compromise the program's intent under the Closing the Gap Implementation Plan, as have other legislative changes such as the introduction and extension of s 22C of the Bail Act 2013, which work against the aims of BAP by disproportionately impacting Aboriginal children. Even with these barriers, both YBAP and WBAP continue to achieve notable outcomes in reducing remand and increasing children and women's access to bail by providing early, holistic legal assistance and wrap around support.

Despite the program successfully serving as a proof-of-concept for a statewide services no resourcing has been allocated for the program's expansion. Whilst BAP has receiving funding to continue delivery at existing sites until June 2029 the amount allocated by NSW Treasury under the CTG budget portfolio is less than sought by the FJSC and less than required to maintain current service delivery.

Transforming Government agencies

In NSW, efforts to improve cultural safety and responsiveness within government organisations and the services they fund have been inconsistent and constrained by a lack of genuine commitment from senior decision makers. As with progress on shared-decision making, initiatives to address racism remain fragmented and are mostly limited to departmental specific strategies led by Aboriginal teams and units.

Priority Reform Three commits governments to transforming their own ways of working and removing the structural barriers that prevent real progress under the National Agreement. Yet, the burden of transformation continues to be placed back on ACCOs and individual Aboriginal units within government that do not have the tools or authority to enact systems-wide change.

Until a genuine commitment to deliver on the National Agreement is demonstrated by the Premier, the Treasurer, and all Ministers from the top down, the required government transformation will not be possible. In their Audit of the Governance of the National Agreement on Closing the Gap in NSW, the NSW Audit Office found that, '*The Premier's Department has not been effective in communicating the purpose of the National Agreement to NSW Government agencies or influencing whole of government activities. It has provided limited information about the purpose and goals of the Priority Reforms and has not produced clear guidance on how NSW Government agencies can put them into practice'.*[17]

In NSW, Aboriginal Affairs NSW Wales (**AANSW**) within the Premier's Department leads delivery of CTG and the partnership with NSW CAPO. Responsibility for CTG sits within the Reform and Innovation Directorate of AANSW. It is a directorate within AANSW which is a small agency that is siloed from parts of the Premier's Department with more influence and AANSW does not have the authority to compel action on commitments under the National Agreement or drive whole-of-government implementation of Closing the Gap.

To address this, NSW CAPO has previously told Ministers and government that the leadership, governance and coordinating responsibility of Closing the Gap should be elevated to sit with a central agency such as Premiers Department or the Cabinet Office rather than sitting as a team within a directorate of Aboriginal Affairs. Government responses to these suggestions to date was to move

[17] NSW Audit Office, Governance of the National Agreement on Closing the Gap in NSW, 3.

AANSW from DCJ to Premier's Department suggesting that it would therefore carry the required authority.

In practice this has failed to deliver the progress anticipated or needed. Instead, what we have observed is implementation of the National Agreement continues to be viewed as an Aboriginal-specific responsibility rather than a whole-of-government obligation.[18]Government and agencies including AANSW have pursued policy agendas that are claimed to be aligned to CTG but fall short of implementing the Priority Reforms.

The lack of whole-of-government, cross agency, and top-down commitment to the National Agreement on CTG in NSW has been evidenced in recent years by various legislative and policy decisions made by the NSW Premier that directly circumvent CTG principles. In April 2024, NSW Government passed temporary changes to the *Bail Act 2013* that make it harder for children already on bail for certain offences to be granted bail if charged with additional offences.[19] The changes were introduced despite warnings from NSW CAPO, ACCOs, Aboriginal communities and various experts that they would disproportionately criminalise and incarcerate Aboriginal children. Between April 2024 and December 2025, 79% of children captured by the laws were Aboriginal, and 84% of children imprisoned on remand under the laws were Aboriginal.[20] In September 2026, the laws which were due to expire in October 2026, were extended until April 2028.

Shared access to data and information

Access and use of data

Despite some small-scale efforts to increase the availability of Aboriginal and Torres Strait Islander data through reporting and data-sharing initiatives, Aboriginal communities continue to experience barriers to accessing their own data from NSW Government. This is particularly challenging for smaller ACCOs who do not have the resourcing that larger organisations have to navigate the bureaucratic hurdles required to access data and demonstrate adherence to the 'Five Safes Framework'.

Locally aggregated data is still rarely shared, with government citing that population sizes make it difficult to de-identify relevant data. This has impacted the ability of ACCOs and Aboriginal communities to monitor trends, hold governments to account, and design services that respond to local needs.

There is also limited accountability across individual government departments for data sharing, with no consistent mechanism in place to compel departments to provide data to Aboriginal communities and organisations. In the justice sector, this poses a barrier for ACCOs seeking to deliver community-led justice solutions as administrative data across education, health and child protection is essential to understanding how Aboriginal people come into contact with the criminal justice system in the first place and how this can be prevented. Where linked datasets are available, they are often not published contemporaneously which impacts their relevance and usability to community. For

[18] Ibid 25.

[19] See for example, Nick Dole, *ABC News* 'Top legal, criminal justice minds slam proposed youth bail reforms in letter to NSW Premier Chris Minn's (online, 18 March 2024).; Aboriginal Legal Service (NSW/ACT) Limited, 'Open letter to Premier Chris Minns from 60 organisations: Don't turn your back on Closing the Gap' (Web page, March 2024)

[20] See NSW Department of Communities and Justice, Statutory Review of the Bail Amendment (Extension of Limitation on Bail in Certain Circumstances) Act 2025 (Consultation Paper, April 2026); Aboriginal Legal Service (NSW/ACT) Limited, Submission to Statutory Review of s 22c of the Bail Act' (Submission, April 2026)

example, NSW Government's Human Services Dataset presently shows data up to and including 30 June 2023. [21]

There is also a lack of transparency and accessibility of data pertaining to government spending and budget allocations at a local level. This impacts the ability of local communities to identify resourcing gaps and hold governments and mainstream services to account for allocation and use of funds relating to Aboriginal people. Research by UNSW assessing publicly available information and data about Indigenous expenditure, budget allocations, and government spending in Walgett highlights the significant barriers ACCOs face to accessing locally relevant information on government budgets and expenditure, and the need for greater transparency.[22]

Collection and governance of data

Efforts to build the capability of ACCOs and Aboriginal communities to collect and govern their own data have also been constrained by short-term funding and a lack of ongoing investment in Aboriginal data capability and governance. Where work to establish ACCO-led data platforms and dashboards has been initiated, progress has been halted due to a lack of ongoing funding and dedicated human resourcing to maintain these systems.

One positive example of Aboriginal-led data collection and capability building is the Just Reinvest NSW Data Hub . The hub acts as a central repository for justice reinvestment specific data to support five Justice Reinvestment NSW sites. This is an ACCO-led initiative being progressed independently from government. Though in its early stages, it is demonstrative of what can be achieved when ACCOs are resourced and have the capabilities to access and interpret locally relevant data on their own terms.

Understanding of, and adherence to, Indigenous Data Sovereignty and Governance (**IDS&G**) across government is also inconsistent and progress remains slow.

The 2019 Family is Culture Independent Review of Aboriginal Children and Young People in Out of Home care (**FIC Review**) led by Professor Megan Williams made several recommendations to NSW Government in relation to IDS&G. Despite the FIC Review providing a clear roadmap for progressing Priority Reform Four across the child protection and out of home care sectors, progress has been extremely limited and the publicly available data that has been made available is often out of date.

In July 2026, NSW Government launched a 'Shared Access to Data for Aboriginal Communities' policy, along with an Aboriginal Data Discovery Portal and a Data Connector Service for Aboriginal Communities.[23] The ALS recognises these as important steps forward in progressing Priority Reform Four in NSW, however it is still to be seen how these tools and policies will support Aboriginal communities and organisations in practice.

Policy development and delivery

In their Independent Aboriginal and Torres Strait Islander Review into Closing the Gap (2025), the Jumbunna Institute for Indigenous Education and Research found that '*In too many instances, government retains control over key levers, while claiming to be working in partnership. This*

[21] See NSW Department of Communities and Justice, 'Data contained in the Human Services Dataset' (Web Page)
[22] Mel Flanagan and May Miller-Dawkins, Making government finances make sense for communities (Yuwaya Ngarra-li Policy Paper, May 2025).
[23] See NSW Department of Communities and Justice, NSW Shared Access to Data for Aboriginal Communities Policy; Aboriginal Data Discovery Portal; NSW Data Connector Service for Aboriginal Communities

contradiction undermines trust and reinforces the legacy of power imbalance that Priority Reform One seeks to address'.[24]

Similarly, in their 2025 Audit of Closing the Gap Governance in NSW, the NSW Audit Office found that '*There have been several examples since the signing of the National Agreement of policy decisions made without engagement with Aboriginal organisations or communities. The National Agreement states that governments will 'engage fully and transparently when undertaking significant changes to policy and programs that primarily impact on Aboriginal and Torres Strait Islander people''*[25]

The NSW Government's willingness to dispense with its responsibilities under the National Agreement and rush through harmful policy changes has been particularly pertinent in the criminal justice sector in recent years. Several decisions to introduce legislative changes that disproportionately criminalise and incarcerate Aboriginal communities have been made in response to media fuelled moral panic and political rhetoric around crime, rather than in response to any actual evidence that changing the law was necessary.

The examples of bail centralisation and changes to youth bail laws have been discussed throughout this submission. In both of these instances, ALS and NSW CAPO were informed of the planned changes as a stakeholder but not engaged as a genuine partner and shared decision-maker.

Since the National Agreement began in 2020, NSW Government has engaged with ALS more frequently and intentionally on policy decisions that impact our clients. Often, however, this has been initiated when policies design and development is already advanced, timeframes are restrictive, and opportunities for genuine co-design are limited.

Comparatively, where policy changes are considered in the ACT, ALS are more likely to be consulted early and before the policy setting has been fully determined. This reflects a recognition by the ACT Government of ALS's role as the primary provider of legal assistance to Aboriginal people in the ACT, as well as a more embedded approach to implementing the National Agreement across government.

Notably, The ACT was the first jurisdiction to officially legislate its Closing the Gap commitments, with *The Public Sector (Closing the Gap) Legislation Amendment Act 2025* coming into effect on July 1, 2026. The legislation recognises that CTG is a shared responsibility across the ACT Public Service.[26]

Contrarily, in NSW there has been a shift away from CTG as a shared responsibility, with a tendency for the NSW Government to hold up discreet funded initiatives as evidence of how they are implementing the National Agreement. Though these initiatives are important, as previously discussed, they will be insufficient to achieve systems wide progress whilst top-down policy decisions continue to be made in isolation of commitments under the National Agreement and without genuine input from Aboriginal communities, organisations and Peaks.

Enabling community-led efforts to close the gap

In NSW three place-based partnerships have been established under the National Agreement to date. Although no formal review has been undertaken our observation is that these partnerships are operating as important community-led governance structures and have been successful in identifying local priorities across all CTG SEOs and Priority Reforms.

[24] Jumbunna Institute for Indigenous Education and Research, UTS, Closing the Gap Independent Aboriginal and Torres Strait Islander Led Review (Review, June 2025) 55
[25] NSW Audit Office, Governance of the National Agreement on Closing the Gap (Audit, May 2025) 16
[26] Aboriginal and Torres Strait Islander Business Enterprise, 'ACT becomes first jurisdiction to legislate Closing the Gap commitments' (Web Page, July 2026)

However, current statewide CTG structures do not provide any avenue for these local priorities to be considered and resourced. Without a formal connection to statewide governance mechanisms, local partnerships are left without access to the funding or support required to deliver both ACCO and mainstream programs and services on their own terms. As a result, community plans have been developed but not yet translated into action.

This lack of connection to statewide structures also means that local government staff are not empowered to work outside of a business-as-usual approach, as required by the Priority Reforms. Embedding shared-decision making at a local level requires local staff that are both willing and supported by their superiors to redistribute power away from government services and back to Aboriginal communities, organisations and families.

Undertaking this work also requires readiness from both government and local Aboriginal communities and organisations to start the processes of partnership building in preparation for collective organising. Government agencies in particular have not yet undertaken the required structural transformation to build trust with Aboriginal communities and establish local partnerships. In delivering the Aboriginal Justice Partnership (**AJP Project**) the ALS partnered with Aboriginal communities across NSW communities to establish local justice partnerships. This experience informed the development of a Framework for Implementing Local Justice Partnerships. The Framework, which is annexed to this submission, outlines the conditions required for building the partnerships that would enable place based and community-led decision making under CTG.