Review of the National Agreement on Closing the Gap

Priority Reform 3: Transforming government organisations

Information paper 4
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

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

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

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Key points

- **Priority Reform 3 commits all government organisations to systemic and structural transformation to improve accountability and respond to the needs of Aboriginal and Torres Strait Islander people.**
  - This requires governments to – among other things – identify and eliminate racism, embed and practise meaningful cultural safety and improve engagement with Aboriginal and Torres Strait Islander people.

- **Government organisations are pursuing a range of actions that may contribute to transformation, but there is little evidence governments have grasped the depth and magnitude of change and self-reflection that Priority Reform 3 requires of them. Perhaps most conspicuously, they are rolling out cultural safety training and seeking to employ more Aboriginal and Torres Strait Islander staff. But by and large, these are piecemeal actions.**
  - While these types of initiatives have merit when designed and delivered well, Priority Reform 3 requires much more – it requires deep and enduring changes to the policies and processes of agencies and to the culture and incentives that determine how public sector staff and leadership act.

- **Government organisations have not demonstrated how and why their chosen actions will lead transformation committed to under Priority Reform 3.**
  - Without any explanation of the logic behind the actions government have proposed, it is unclear how these actions will make a difference, and how they will trigger the self-reflection and challenge to unconscious bias sought by Priority Reform 3.

- **Some government organisations are engaging in self-assessment to understand how current ways of working align with Priority Reform 3 and what transformation is needed. But this is not sufficient to inform an organisation-level plan for transformation.**
  - Self-assessment is necessary but leaves organisations exposed to any 'blind spots' they may have, particularly in relation to institutional racism and cultural safety. And self-assessment cannot reflect the perspectives and experiences of the Aboriginal and Torres Strait Islander people, organisations and communities that government organisations serve and work with.

- **The Agreement requires that governments are accountable for Closing the Gap, 'including through the services they fund'. Governments have not prioritised this aspect of the Agreement.**

- **Recognising that government organisations cannot be relied on to transform on their own, the Agreement requires governments to establish an independent mechanism to 'support, monitor, and report on the transformation of mainstream agencies and institutions'.**
  - There is lack of progress on the establishment of independent mechanisms. It is likely that most jurisdictions will not 'identify, develop or strengthen' a mechanism by the end of 2023, as the Agreement requires.

- **Priority Reform 3 is a critical prerequisite for the achievement of the other Priority Reforms. Without additional effort to implement it, there is a risk that the objectives of the Agreement will not be met.**

1 What is Priority Reform 3 about?

Priority Reform 3 commits governments to 'systemic and structural transformation of mainstream government organisations to improve accountability and respond to the needs of Aboriginal and Torres Strait Islander people' (clause 58).

Although transformation is not defined precisely in the National Agreement on Closing the Gap (the Agreement), it can be thought of as entailing deep and enduring changes to organisations' processes and the incentives that motivate their staff and leadership. Transformation also requires and produces changes to organisational culture: the norms of behaviour that cannot easily be shaped by formal incentive structures but directly impact how people work and their expectations of one another.

The Agreement specifically commits governments to implementing six transformation elements (table 1), including – among other things – identifying and eliminating racism, embedding and practising meaningful cultural safety and improving engagement with Aboriginal and Torres Strait Islander people. Governments are pursuing hundreds of actions that align with the six transformation elements to varying degrees and have varying relevance to the task of organisational transformation (table 2 and section 2). Two examples – one big, one small – are Queensland's First Nations Health Equity reforms (box 10) and the addition of Aboriginal and Torres Strait Islander artwork to Queensland Boating and Fisheries Patrol boats (Queensland Government 2023, p. 20): the former involves every Hospital and Health Service in Queensland developing Health Equity Strategies 'co-designed, co-owned and co-implemented' with Aboriginal and Torres Strait Islander people (Queensland Health and QAIHC 2021, p. 12), while the latter is a cosmetic change.

The commitment to transformation and implementing the transformation elements applies without exception. That is, Priority Reform 3 requires transformation in the way up to 2.4 million people in federal, state, territory and local government organisations go about their work (ABS 2022). It also applies to the services that governments fund, amounting to billions of dollars' worth of services annually (section 3). This is a major commitment that requires a commensurate response.

The Agreement recognises that government organisations cannot be expected to deliver on Priority Reform 3 without independent oversight and includes a commitment to an independent mechanism or mechanisms that will 'support, monitor, and report on the transformation of mainstream agencies and institutions'. Section 4 discusses the independent mechanism, although accountability for the Agreement as a whole is discussed in information paper 7.

Governments have also committed that when they 'change, design or deliver policies and programs that impact on the outcomes of this Agreement, they will do so in line with this Agreement' (clause 62). But there are multiple clear cases of governments not acting in line with the 'new approach' articulated in the Agreement. Changes to the *Bail Act 1980* (Qld) and related regulatory instruments in early 2023 are a clear example of this (box 1). Other examples are provided in information paper 7.

If government organisations do not transform – if Priority Reform 3 is not implemented – this will hinder the achievement of other Priority Reforms, which will hinder achieving the objective of the Agreement: 'to overcome the entrenched inequality faced by too many Aboriginal and Torres Strait Islander people so that their life outcomes are equal to all Australians' (clause 15). This is clearly appreciated in a number of submissions (APO NT, sub. 10, p. 4; Coalition of Peaks, sub. 25, p. 3, sub. 31, p. 1; FVTOC, sub. 24, p. 4; headspace, sub. 18, p. 13; NHLF, p. 19, p. 4; QNMU, sub. 4, p. 11). APO NT submitted that Priority Reform 3 'must be achieved to enable realisation of the other Priority Reforms' (sub. 10, p. 4).

> ### Box 1 – Queensland's bail law changes were not made in line with the Agreement
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> The *Strengthening Community Safety Act 2023* (Qld) reintroduced breach of bail as an offence for children (people under the age of 17). The Bill for this Act was introduced to Parliament on 21 February 2023, and a call for submissions to a Committee examination of the Bill asked for submissions to be made within three days. The Committee reported on 10 March 2023, and the Bill was passed on 16 March 2023, less than 4 weeks after its introduction.
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> The *Joint Departmental Response to Submissions* noted 15 different submissions making the point that the proposed changes to youth bail laws would 'disproportionately affect Aboriginal peoples and Torres Strait Islander peoples and contribute to overrepresentation' (QPS, QDCYJMA and QDJAG 2023, p. 64). The Minister for Police and Corrective Services acknowledged that certain provisions of the Bill 'may mean that more Aboriginal and Torres Strait Islander offenders are incarcerated for longer periods of time' (Ryan 2023, p. 3).
>
> The brief call for submissions is inconsistent with the Agreement's commitment to 'a future where policy making that impacts on Aboriginal and Torres Strait Islander people is done in full and genuine partnership' (clause 18). And the predictable disproportionate impacts of the Bill will work against achieving Outcome 11 of the Agreement – 'Aboriginal and Torres Strait Islander people are not overrepresented in the criminal justice system'.
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> Queensland's bail law changes are also discussed in information paper 2 in the context of the justice policy partnership.

Table 1 – Governments have committed to implementing the transformation elements

a. Identify and eliminate racism

Identify and call out institutional racism, discrimination and unconscious bias in order to address these experiences. Undertake system-focused efforts to address disproportionate outcomes and overrepresentation of Aboriginal and Torres Strait Islander people by addressing features of systems that cultivate institutionalised racism. The feedback from the engagements included that more Aboriginal and Torres Strait Islander people should be employed in mainstream institutions and agencies, including through more identified positions, more Aboriginal and Torres Strait Islander people in senior positions, and appointments to boards.

b. Embed and practice meaningful cultural safety

Embed high-quality, meaningful approaches to promoting cultural safety, recognising Aboriginal and Torres Strait Islander people's strength in their identity as a critical protective factor. This applies to all levels of staff within government organisations. Feedback from the engagements included making cultural awareness training courses ongoing for all boards and staff. Another strategy could be to strengthen the role of internal Aboriginal and Torres Strait Islander units in promoting and monitoring cultural safety.

c. Deliver services in partnership with Aboriginal and Torres Strait Islander organisations, communities and people

Develop genuine relationships between government organisations and Aboriginal and Torres Strait Islander people, organisations and/or businesses to enhance the quality and cultural safety of mainstream service delivery. Feedback from the engagements included supporting agreements between hospitals and local Aboriginal and Torres Strait Islander community-controlled health organisations to deliver outpatient services.

d. Increase accountability through transparent funding allocations

Improve transparency of resource allocation to, and distribution by, mainstream institutions in relation to dedicated Aboriginal and Torres Strait Islander service-delivery. Feedback from the engagements included requiring key performance indicators in funding arrangements. Other suggestions included for Auditors-General to include in their audits of mainstream agencies information about expenditure and the quality of service delivery to Aboriginal and Torres Strait Islander people.

e. Support Aboriginal and Torres Strait Islander cultures

Ensure government organisations identify their history with Aboriginal and Torres Strait Islander people and facilitate truth-telling to enable reconciliation and active, ongoing healing. Feedback from the engagements included government organisations building relationships with local Aboriginal and Torres Strait Islander community-controlled organisations to enable them to understand and reflect the history and culture of local communities.

f. Improve engagement with Aboriginal and Torres Strait Islander people

Ensure when governments are undertaking significant changes to policy and programs that primarily impact on Aboriginal and Torres Strait Islander people, they engage fully and transparently. Engagements should be done in a way where Aboriginal and Torres Strait Islander people: have a leadership role in the design and conduct of engagements; know the purpose and fully understand what is being proposed; know what feedback is provided and how that is being taken account of by governments in making decisions; and are able to assess whether the engagements have been fair, transparent and open. The engagements on the National Agreement, led by the Coalition of Peaks in partnership with Government parties, demonstrated the benefit of this approach.

Source: clause 59.

Table 2 – How are governments embedding the transformation elements?

a.   Identify and eliminate racism

There are some anti-racism or similar strategies under development (for example, the ACT Public Service Framework for Addressing Systemic Racism) and some survey work under way to investigate the experiences of Aboriginal and Torres Strait Islander staff or users of government services (for example, adding questions to the Survey of Trust in Australian Public Services). The most common actions relating to this transformation element are workforce strategies to increase public sector employment of Aboriginal and Torres Strait Islander people.

b.   Embed and practice meaningful cultural safety

Possibly the most common action across all implementation plans is the rollout of training in cultural safety, awareness, capability, or competence. The Commission heard mixed views on the value of such training.

c.   Deliver services in partnership with Aboriginal and Torres Strait Islander organisations, communities and people

Actions identified in implementation plans relating to this transformation element focus on policy areas where governments have already established partnerships with Aboriginal and Torres Strait Islander organisations, such as throughcare models of support in correctional facilities (support while in and on release from prison) and health services. Relationship building in other policy areas appears more limited.

d.   Increase accountability through transparent funding allocations

There is not much progress on this transformation element. The introduction of 'commissioning' reforms, to focus on outcomes valued by the community when funding service delivery, and increased efforts to evaluate policies and programs are welcome but additional effort is required.

e.   Support Aboriginal and Torres Strait Islander cultures

Actions that address this transformation element vary widely in their scale. There are a number of actions that could be considered 'low hanging fruit', including renaming sites or assets to their Aboriginal and Torres Strait Islander names, or the commissioning of artwork. A number of governments and government organisations have Reconciliation Action Plans that are ostensibly well within the scope of this action, but the extent of truth-telling, reconciliation and ongoing healing associated with these is unclear.

f.   Improve engagement with Aboriginal and Torres Strait Islander people

Governments' implementation plans list a large number of actions that go towards this transformation element but it is not clear how much engagement has improved. Government approaches to engagement are still often seen as tokenistic and underdone (PC 2023c, p. 13).

2   The transformation of government organisations

Governments have committed to systemic and structural transformation. The Agreement provides guidance on what transformation must include – in the form of the transformation elements (table 1) – and the Commission has reviewed the hundreds of actions cited in governments' implementation plans and annual reports to understand how they are implementing the individual transformation elements. But transformation involves more than policies and programs aligned to specific transformation elements, so the Commission has also tried to understand what government organisations are doing at a system and structural level to transform so that they can develop and deliver policy that is more accountable and responsive to the needs and priorities of Aboriginal and Torres Strait Islander people.

Transformation involves deep and considered self-reflection and asking some difficult questions of internal attitudes and practices. It requires seeking to understand questions such as:

• How do you deconstruct institutionalised racism?
• What overarching changes need to occur at the government level to ensure that changes in each individual department are not isolated activities?
• How do you change the organisational mindset, culture and compass in line with the principles of Priority Reform 3 so that they are embedded in organisations' structures, operations and decision-making?
• Should truth-telling be engaged as an initial step, as an accountability mechanism throughout the journey of change, or both?

This should culminate in whole-of-government and organisational-level plans for transformation that clearly set out the organisation's vision for transformation and how they will achieve that vision. Against this benchmark, most government organisations are not meeting their obligations under Priority Reform 3.

Overall, the actions that government organisations are pursuing under Priority Reform 3 do not appear to be part of an overarching strategy, or part of a plan to assess how deep or wide changes within organisations need to be. It is not clear that government organisations have fully grasped the scale of change required to deliver the unprecedented shift in their systems, operations and ways of working that they have committed to under Priority Reform 3.

Who identifies what transformation is required?

Transformation, and answering questions such as those set out above, requires drawing on the perspectives of Aboriginal and Torres Strait Islander people who government organisations serve and work with. Attempting transformation without doing so risks making the wrong changes. Drawing on the perspectives of Aboriginal and Torres Strait Islander people to inform and shape the transformation of government organisations would reflect the core ambitions of the Agreement, and would align with guidance on change management published by various Australian governments that stresses the importance of talking to impacted parties (box 2). Government organisations are not doing this consistently as they progress the transformation of government organisations.

> **Box 2 – A snapshot of governments' guidance on change management**
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> The WA Public Service Commission provides guidance on structural change management that notes six principles for effective change management. They are:
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> 1. a clearly defined rationale and vision of the change is understood
> 2. stakeholders are identified, appropriately consulted and informed
> 3. the system and processes developed to achieve the change are transparent
> 4. collective and collaborative leadership is empowered
> 5. there is a dedicated focus on people
> 6. the change is systematically reviewed and adapted (WA PSC 2017, p. 2).
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> The SA Office of the Commission for Public Sector Employment's *Change Management Toolkit* provides guidance on matters including: change impact assessment; change readiness assessment; articulating the vision for change; developing the case for change and change principles (to provide a framework

> ### Box 2 – A snapshot of governments' guidance on change management
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> within which to make decisions); change management plans; stakeholder engagement; embedding, evaluating and monitoring change (SAOPSE 2022).
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> Tasmania's Department of Premier and Cabinet notes four steps to consider when managing change:
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> 1. identify what the change is and who will be affected
> 2. communicate and consult with employees and stakeholders
> 3. monitor and deal with resistance
> 4. evaluate (TDPC 2023).
>
> Transformation of the New South Wales public service and the Australian Tax Office (ATO) demonstrate various aspects of the above guidance, including the importance of building a case for change, having a vision, leadership, planning, and involving impacted parties (boxes 11 and 12). This guidance also emphasises the importance of monitoring progress. As noted in section 1, the Agreement commits governments to an independent mechanism for this aspect of transformation (section 4 and information paper 7).

How are the transformation elements being implemented?

Identify and eliminate racism

This transformation element requires governments to identify and call out institutional racism, discrimination and unconscious bias. It also calls for 'system-focused efforts to address disproportionate outcomes and overrepresentation of Aboriginal and Torres Strait Islander people by addressing features of systems that cultivate institutionalised racism' (clause 59a).

What is institutional racism?

Definitions of institutional racism (box 3) usually highlight the importance of beliefs as well as outcomes, and service delivery as well as policy. Lipsky argued that:

> Most citizens encounter government through … their teachers and their children's teachers and through the policeman on the corner in the patrol car … and their actions *are* the policies provided by governments in important respects. … [The] decisions of street-level bureaucrats, the routines they establish, and the devices they invent to cope with uncertainties and work pressures, effectively *become* the public policies they carry out. (2010, pp. 3, xix–xx, xiii)

While public servants have discretion over how they deliver services, members of the public typically have little discretion in the type or quality of public services they experience, particularly those who are poor or live in remote areas. But this asymmetry is most pronounced where public servants issue sanctions – as in the criminal justice system, for example. And where public servants can exercise discretion, the culture that shapes their conduct is a matter of public interest. While it was not investigating institutional racism, the 1989 Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct in Queensland (the Fitzgerald Inquiry) made a pertinent observation regarding culture.

> The *institutional culture* of a police force is of vital importance to a community. A police force … is in effective control of the enforcement of the criminal law. Each police officer has extensive authority over all other citizens, however powerful, coupled with *wide discretions* concerning its exercise. (Fitzgerald 1989, p. 200 emphasis added)

More recently, the 2022 Independent Commission of Inquiry into Queensland Police Service responses to domestic and family violence recently found that 'racism is a significant problem within the Queensland Police Service. It manifests in discriminatory behaviours directed towards First Nations employees, employees from other cultural backgrounds and members of the community. Such behaviours are a breach of their human rights' (Richards 2022, p. 235).

Box 3 – There are multiple definitions of institutional racism

Racism and institutional racism are not defined in the Agreement and have been defined differently by different people and organisations over time. The Royal Commission into Aboriginal Deaths in Custody noted that:

> An institution, having significant dealings with Aboriginal people, which has rules, practices, habits which systematically discriminate against or in some way disadvantage Aboriginal people, is clearly engaging in institutional discrimination or racism. (1991b, p. 161)

Work done for the Lowitja Institute noted that the definition of institutional racism used in the inquiry into the racially motivated 1993 murder of Stephen Lawrence in England has been influential.

> The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people. (Bond, Singh and Kajlich 2019, p. 6 citing; Macpherson 1999, para. 6.34)

Indigenous Allied Health Australia's policy position statement on racism in health stressed the presence of disproportionate outcomes as indicating institutional racism.

> Institutional racism is evident when racist or discriminatory beliefs, values or practices have been built into the operations of social institutions in such a way as to discriminate against, control and oppress various minority groups. This includes policies and structures which are applied universally but which have a disproportionate, unjust and negative effect on a cultural group or groups. (Indigenous Allied Health Australia 2019, p. 1)

Queensland's Hospital and Health Services are required to produce strategies and key performance measures relating to actively eliminating racial discrimination and institutional racism (box 10). For the purposes of this requirement, institutional racism refers to:

> the ways in which racist beliefs, attitudes or values have arisen within, or are built into the operations and/or policies of an institution in such a way that discriminates against, controls or oppresses, directly or indirectly, a certain group of people to limit their rights, causing and/or contributing to inherited disadvantage. (Queensland Government 2021b, p. 8)

Racism and institutional racism continue to have significant impacts

Institutional racism can be one of the most intractable aspects of organisational culture. It is not always easy to identify and can be most prevalent where there are 'blinds spots' within organisations. Blagg et al. (2005, p. 7) suggested that 'Institutional racism is the most insidious form of racism because it is difficult to quantify, indeed those who practice it generally deny its existence'. This may be because:

> Institutional racism changes over time. Once people understand the facts they can see very clearly how Aboriginal people were continually subject to racism of the institutional type during the protection and assimilation periods … But gradually the special legislation discriminatory of Aboriginal people were removed. Now institutional racism is of a more subtle kind, not always obvious even to those involved. (RCIADIC 1991b, p. 160)

It may be hard to quantify but institutional racism has been identified as a factor contributing to worse treatment and outcomes for Aboriginal and Torres Strait Islander people in multiple Royal Commissions, including those into Aboriginal and Torres Strait Islander deaths in custody (RCIADIC 1991a), the protection and detention of children in the Northern Territory (RCPDCNT 2017), and institutional responses to child sexual abuse (RCIRCSA 2017).

Many Aboriginal and Torres Strait Islander organisations the Commission met with discussed the presence and effects of racism, particularly institutional racism (PC 2023c, p. 12). One peak Aboriginal and Torres Strait Islander community-controlled organisation (ACCO) told the Commission that 'it is hard to work with government agencies on Priority Reform 3 when government employees are reluctant to acknowledge or talk about racism' (PC 2023c, p. 12). This echoes Bargallie's comment, made in the context of racism in the Australian Public Service, that: 'The denial of racism makes it 'absent', while its 'presence' is evident in the lived experience of everyday and structural racisms' (Bargallie 2020, p. 271).

Institutional racism was also raised in a number of submissions.

- Aboriginal Family Legal Services WA submitted that 'In Western Australia, the criminal justice and child protection systems continue to perpetrate institutionalised racism and discrimination against Aboriginal people every day' (sub. 7, p. 7).
- APO NT submitted that 'There are certainly NT government institutions that need transformation, both in terms of being free of institutionalised racism and providing services that are culturally safe and responsive to the needs of Aboriginal people. For the NT, these include justice, child and family services, community infrastructure and housing' (sub. 10, p. 4).
- The Australian Council of TESOL Associations drew attention to the assumptions underpinning the target for socioeconomic outcome 4, which measures the proportion of Aboriginal and Torres Strait Islander children on track in the domains of the Australian Early Development Census. They argue that this 'disregards and demeans non-Western, non-English-speaking modes of childrearing and associated norms' and 'Rather than placing the onus on the schools to be "ready" for children from the community it serves, the family and the child are seen as the "problem". The Agreement's commitment to address "features of systems that cultivate institutionalised racism" (para. 59 a) requires countering these assumptions' (sub. 11, pp. 15–16).
- The National Health Leadership Forum submitted that 'Institutional racism and the multi-generational experiences of trauma and dislocation continue to have real impacts on the lives of Aboriginal and Torres Strait Islander people. This inhibits widespread improvements in health and wellbeing' (sub. 19, p. 7).
- The Federation of Victorian Traditional Owner Corporations submitted that 'Systemic racism and a lack of cultural capability, cultural safety and cultural security remain significant barriers to health equity and constructive action that addresses its causes and effects must be priority' (sub. 24, p. 4).

Offering a different perspective, Michael Dillon submitted that 'to frame structural lack of responsiveness within mainstream agencies solely as racism … may well be counter-productive and inhibit agency openness to pursuing opportunities for greater responsiveness to Indigenous interests' (sub. 5, p. 6).

Governments have focused on employing more Aboriginal and Torres Strait Islander people but this is insufficient to achieve the structural changes called for under Priority Reform 3

The most common actions relating to this transformation element are workforce strategies to increase public sector employment of Aboriginal and Torres Strait Islander people. Greater employment of Aboriginal and Torres Strait Islander people in government institutions and agencies was part of the feedback from community during the Coalition of Peaks' engagement on the Agreement (clause 59(a)).

An example of a strategy to increase public sector employment of Aboriginal and Torres Strait Islander people is the *Commonwealth Aboriginal and Torres Strait Islander Workforce Strategy 2020–24,* which includes a target for 3% of leadership positions to be filled by Aboriginal and Torres Strait Islander people by 2024. This target is not on track to be met (APSC 2022, p. 24; Australian Government 2020, p. 14).

Other jurisdictions that have also established targets as part of their employment strategies include:

- Victoria, with a target of 2% (Victorian Public Sector Commission 2017, p. 2)
- Western Australia, with a target of 3.7% (WA Public Service Commission 2020, p. 4)
- Tasmania, with a target of 3.5% (Tasmanian Government 2023, p. 39)
- the Northern Territory, with a target of 16% overall and 10% in senior positions (Office of the Commissioner for Public Employment 2021, p. 10).

These strategies seek to improve outcomes by focusing on some common areas dealing with attraction and recruitment, inclusive and culturally safe workplaces, and supporting career mobility and leadership opportunities. A mid-term review in 2021 of the *New South Wales public sector Aboriginal employment strategy* (NSW Public Service Commission 2019) highlighted areas of success but also that the state's public service could 'do better by focusing on a smaller number of strategic actions which will drive the biggest impact' (NSW Public Service Commission 2022, p. 3). In 2021, 3.7% of the NSW public service and 130 of its senior leaders identified as Aboriginal, exceeding 2025 targets (NSW Public Service Commission 2022, pp. 5, 7).

Increased employment of Aboriginal and Torres Strait Islander people in government does not directly address racism or unconscious bias (box 4) but can have positive effects on government organisations as workplaces, and can improve the design and delivery of policy. The ACT Government noted that employing Aboriginal and Torres Strait Islander people 'not only helps to shape policies to improve outcomes through access to lived experience, [but] the wider [ACT public service] benefits through increased understanding of the world's oldest living culture' (2022c, p. 53). Reporting on the implementation of recommendations from an inquiry into discriminatory practices in Western Australia's public housing system, the state's Equal Opportunity Commission suggested that 'the most effective means to deal with many of the issues raised in [the inquiry] is for more Aboriginal people to be recruited and or promoted into more senior positions within the Department' (WA EOC 2011, p. 13).

Government parties' commitment to embed and practice meaningful cultural safety takes on greater importance as they seek to employ more Aboriginal and Torres Strait Islander people. A cultural safety audit of the Victorian Department of Environment, Land, Water and Planning found that only 12% of its Aboriginal staff felt that their working environment was culturally safe, and 36% had experienced racism in the previous 12 months (VDELWP 2019, p. 10). In 2022, 16% of First Nations respondents to the Australian Public Service Employee Census indicated they had experienced harassment or bullying in the previous 12 months, compared with 10% for all respondents (APSC 2022, p. 23).

The absence of cultural safety and the presence of racism will discourage Aboriginal and Torres Strait Islander people from joining and staying in the public sector, so need to be addressed as part of any efforts to increase Aboriginal and Torres Strait Islander employment in the public sector. If they are not, such efforts will be less successful and could even do harm.

Box 4 – Unconscious bias

As with institutional racism (box 3), unconscious bias is not defined in the Agreement and has been defined differently by different people and organisations. Leon (2023, p. 57 citing; Navarro 2019) suggests that unconscious bias 'can be regarded as the social stereotypes that affect our understanding, influencing our actions and decisions of others in an unconscious way.' Understood this way, unconscious bias in relation to race may be difficult to distinguish from racism.

The CEO of the National Aboriginal Community Controlled Health Organisation (NACCHO) described the potential impact of unconscious bias in the National Disability Insurance Scheme (NDIS) assessment system in the following way.

> In the current system, assessments require subjective judgments from NDIS staff. This means that non-Aboriginal staff make judgments based on their own experiences and background, which may include unconscious bias and institutional racism. This can perpetuate racism, and often ignores the impacts of intergenerational trauma on the social and emotional wellbeing of Aboriginal and Torres Strait Islander people. It is evident from the poor uptake of the Scheme by Aboriginal and Torres Strait Islander people that a lack of cultural safety and cultural appropriateness of the NDIS are significant barriers. (Turner 2022, p. 28)

Research on unconscious bias often examines its role in employment outcomes. Such research on unconscious bias in the Australian Public Service (APS) has produced mixed results.

• In 2016, about 2,100 APS employees participated in a randomised controlled trial of a hypothetical recruitment process. In this trial, job candidates identifying as Indigenous were *more* likely to be shortlisted compared with when those same candidates did not identify as Indigenous (Commonwealth of Australia, Department of the Prime Minister and Cabinet 2017, p. 14).

• In 2020, about 1,500 APS employees completed an implicit association test (a test of unconscious bias) and nearly half of the respondents held at least a slight preference for 'Caucasian Australian' over 'Aboriginal Australian' (Leon 2023, p. 135). And analysis of 20 years of data on promotion within the APS found that people from a non-English-speaking background were less likely to be promoted (with the effect size becoming larger at higher levels) even after attempting to control for relevant factors like language proficiency and experience (Leigh 2023b, citing unpublished work by Breunig, Hansell and Win).

Beyond the potential for experiences of racism and a lack of cultural safety, employment in government organisations could have other negative effects for Aboriginal and Torres Strait Islander people. Working in government, particularly in service delivery, has the potential to create internal conflicts for Aboriginal and Torres Strait Islander people. In the context of public housing policy and delivery, the Western Australian Equal Opportunity Commission noted that:

> a number of past and current Aboriginal Departmental staff gave oral submissions and they identified some key issues affecting them as Aboriginal staff. Firstly in their roles, many felt they were frequently in conflict with their own people when enforcing Departmental policy. (2011, p. 12)

In the short term at least, increased demand for Aboriginal and Torres Strait Islander staff in government organisations may mean drawing staff away from ACCOs, which could work against the Agreement's commitment to building the community-controlled sector (information paper 3). The Commission heard that

ACCOs, particularly in the Torres Strait, already have difficulty retaining Aboriginal and Torres Strait Islander staff who could secure other jobs with better pay and benefits (information paper 3).

Secondments of government staff into Aboriginal and Torres Strait Islander organisations and vice versa may be a way of embedding Aboriginal and Torres Strait Islander culture, perspectives and knowledges within government without permanently drawing down on the human capital of those organisations. An evaluation of the Jawun program – which seconds government and private sector employees into Indigenous organisations – found that:

> Partners and secondees expressed that Jawun programs resulted in two-way understanding and skills transfer between Indigenous and non-Indigenous Australians. … Those who do share their experiences often become advocates for Indigenous issues post-secondment, creating a 'ripple effect' within their home organisations. (KPMG 2022b, p. 12)

The merits of secondments into government organisations to improve those organisations was discussed in the 2013 capability review of the ATO (box 12):

> secondments to and from other government agencies, the private sector and industry groups would provide a broader level of understanding and interaction between the ATO and its stakeholders. External stakeholders have strongly argued that the ATO would benefit from broadening its employee skill base and experience of government and business in this way. (APSC 2013, p. 12)

Systemic and structural initiatives are nascent

Although employment programs and secondments of government staff could go some way to addressing institutional racism within government organisations, they are not sufficient to achieve the structural, system-level reforms that are necessary.

Strategic or system-focused initiatives to identify and address features of systems that cultivate and maintain institutional racism appear to be in the development stage. For example:

- the NSW Government submitted that the focus in its first implementation plan was on measuring experiences of racism, with its second implementation plan 'establishing actions to address individual and structural racism within government' (sub. 32, p. 17)
- Victoria's Anti-Racism Taskforce was formed in June 2021, and it was anticipated that it would contribute to a whole-of-government anti-racism strategy that would be launched in mid-2022 (Victorian Government 2022, p. 26). As at June 2023, the Department of Families, Fairness and Housing 'is continuing to refine the draft Strategy in consultation with the Taskforce' (Victorian Government 2023a, p. 27)
- Queensland's efforts in relation to racism appear concentrated in the health sector
- South Australia's whole-of-government Anti-Racism Strategy was expected to be finalised in early 2023 (Government of South Australia 2022, p. 31)
- Western Australia's first implementation plan noted the 'Development and implementation of departmental anti-discrimination and antiharassment policies that aim to reduce incidence of racism and promote equality' (WA Government 2021, p. 120) but progress on these policies is not known
- the Tasmanian Government's first implementation plan noted that it would 'develop and establish a range of initiatives to directly address and eliminate racism within and across the State Service' (Tasmanian Government 2022, p. 10). Progress on developing these initiatives is not known – Tasmania has not released a second implementation plan and the state's first annual report does not mention racism (Tasmanian Government 2023)
- the ACT Public Service Framework for Addressing Systemic Racism has been under development since 2020 and was originally expected to be finalised in 2021 (ACT Government 2021, p. 19, 2022a, p. 23)

- the NT Government is undertaking a review of 'various pieces of legislation to resolve areas within them that are found to be unfair, bias, discriminatory or have an imbalanced detrimental effect on, in particular, Aboriginal people' (NT Government 2022b, p. 47). Whole-of-government and justice-specific anti-racism strategies, originally scheduled for implementation from 2022, have not yet been released (NT Government 2021, p. 29).

Given the state of these initiatives, there is still much work to be done to address and eliminate racism.

Embed and practice meaningful cultural safety

This transformation element requires governments to embed high-quality, meaningful approaches to promoting cultural safety (box 5), recognising Aboriginal and Torres Strait Islander people's strength in their identity as a critical protective factor.

Box 5 – Cultural safety

Cultural safety is defined in the Agreement but it is not a new concept. It originated in the 1980s in New Zealand (AHRC 2018, p. 3), and was in the 1990s defined in an Australian context as 'an environment which is safe for people; where there is no assault, challenge or denial of their identity, of who they are and what they need. It is about shared respect, shared meaning, shared knowledge and experience, of learning together with dignity, and truly listening' (Eckermann et al. 1994, cited in Williams 1999, p. 213).

The definition of cultural safety provided in the Agreement makes it clear that the presence or absence of cultural safety depends on people's experiences:

> Cultural safety is about overcoming the power imbalances of places, people and policies that occur between the majority non-Indigenous position and the minority Aboriginal and Torres Strait Islander person so that there is no assault, challenge or denial of the Aboriginal and Torres Strait Islander person's identity, of who they are and what they need. Cultural safety is met through actions from the majority position which recognise, respect, and nurture the unique cultural identity of Aboriginal and Torres Strait Islander people. Only the Aboriginal and Torres Strait Islander person who is recipient of a service or interaction can determine whether it is culturally safe. (Section 12)

Cultural safety (or a lack of it) can be embedded across all levels of an organisation and manifest in multiple ways. An openness to diversity 'refers to the degree of receptivity to perceived dissimilarity' and a willingness 'to consider new ideas and arguments' (Härtel 2004, p. 190). However, for many organisations, diversity is simply about recruiting people from diverse backgrounds and assimilating them into a dominant, existing culture (Härtel 2004, p. 192). Organisations that do this perpetuate invisibility and a lack of cultural safety.

Invisibility can be perpetuated through the terminology used in policies, mechanisms for responding to concerns, and denying the ability for employees to use their cultural knowledge in performing their roles. The use of generalising terms like 'Indigenous' and acronyms for 'Aboriginal and Torres Strait Islander' reduces First Nations peoples to a homogenous group and diminishes their ongoing connection to land and sovereignty (NSW Department of Community Services 2009, pp. 7–8). Generalising and

Box 5 – Cultural safety

homogenising terminology – often used in policies and recruitment material – can have the effect of denying cultural diversity and promoting an expectation of assimilation (Härtel 2004).

But cultural safety is more than just words. It is about feeling listened to and respected. Culturally safe workplaces have appropriate mechanisms in place for employees to report experiences of racism and empower employees to speak out when they experience racism and legitimise concerns when they are raised. Aboriginal and Torres Strait Islander people experience a lack of cultural safety when their concerns are ignored or dismissed on the grounds that the person responsible for racist sentiments is not a bad person or did not have ill intent (Gair et al. 2015, pp. 41–42).

The most conspicuous way that governments are addressing this transformation element is through the rollout of cultural safety training or similar initiatives. Across government jurisdictions, commitments to cultural safety training range from scoping studies to implementing continuous training in partnership with Aboriginal and Torres Strait Islander organisations. For example:

- the Australian Government allocated $1.6 million for the Australian Institute for Teaching and School Leadership to undertake a project investigating how teachers and education leaders in schools can be better supported to improve their Aboriginal and Torres Strait Islander cultural competency (Australian Government 2021, p. 18)
- in Victoria, all executives and staff at the Department of Families, Fairness and Housing as well as the Department of Health have had access to training designed and delivered in partnership with the Koorie Heritage Trust (Victorian Government 2021, p. 78)
- in New South Wales, Aboriginal Affairs NSW is working with the NSW Coalition of Aboriginal Peak Organisations (NSW CAPO) to develop minimum standards for cultural capability training across the public sector. For early childhood education, Aboriginal Affairs NSW will work in partnership with the NSW Aboriginal Education Consultative Group to deliver a new Connecting to Country professional learning program. From 2024, it will roll out the implementation and ongoing evaluation of this program (NSW Government 2021, p. 28).

Despite its popularity as an initiative to address institutional racism, there is a paucity of high-quality evidence on the effectiveness of cultural safety training. Much of the research is focused on the effect of training on improving the delivery of health care and is overwhelmingly descriptive. There are also few evaluation studies that are methodologically strong (Bainbridge et al. 2015, p. 2). Research on cultural safety training programs in Australia has found a positive relationship between attending training and a change in knowledge, attitudes, and beliefs at an individual level (Hunter et al. 2021, p. 24; Jongen et al. 2018, p.3) but there is an absence of research on how training leads to the behaviour change of individuals or across organisations over time (Jongen et al. 2018, p. 59). In fact, cultural safety training in isolation may have a counterproductive effect for some employees. A study on healthcare workers in South Australia found that cultural awareness training without any follow-up support or strategies can itself be immobilising with non-Indigenous staff not knowing how to adapt their behaviour, having a fear of being perceived as racist, or finding it too hard within their particular role (Wilson et al. 2015a, p. 11).

If governments are to deliver on their commitment to embed and practice meaningful cultural safety, their internal transformations will require more than knowledge building. NACCHO has previously noted that good practice cultural safety training 'is not simply about imparting knowledge, but engaging participants in critical

self-reflection regarding personal and organisational values and practices' (2011, p. 29). Training that imparts knowledge can be an important part of truth-telling, but when it engages participants in critical reflection it can lead to 'cultural humility' which is an important step towards becoming a culturally safe employee (Gray et al. 2020, p. 280).

And while training may be necessary for driving cultural change, it is not sufficient (Bainbridge et al. 2015, p. 3). Embedding cultural safety can also be supported by:

- commitment from organisations' leadership, because employees internalise and perpetuate patterns of behaviour to which they are commonly exposed (Gladman, Ryder and Walters 2015, p. 2). They engage in ongoing sensemaking processes and infer meaning from policies, procedures and practices about organisational priorities, determining behaviour that is rewarded and sanctioned (Griffin and Curcuruto 2016, p. 198)
- evaluating the cultural safety of policies, procedures and practices used within organisations (Hunter et al. 2021, p. 50)
- mentoring and employee resource groups (ERGs). Participants in a study of attitudes among people working in Aboriginal health noted that through mentoring they were able to develop skills and confidence to take knowledge from training and adapt their own work practices to engage with Aboriginal and Torres Strait Islander people in a culturally safe way (Wilson et al. 2015b, p. 11). Other research on inclusive workplace practices also highlights the strategic importance of ERGs. ERGs can take the form of internal advisory committees and can provide opportunities for peer support and can help understand how work groups are performing on cultural safety and other transformation elements (Shore, Cleveland and Sanchez 2018, p. 180).

In moving towards a more culturally safe public service, it is essential that governments do not neglect measuring the success of programs in an appropriate way. Training efficacy is most often measured from the perspective of the participants through evaluation forms, but developing a meaningful approach to cultural safety requires embedding Aboriginal and Torres Strait Islander voices in evaluation (Brumpton et al. 2022, p. 436). Work undertaken for the Australian Commission on Safety and Quality in Health Care on cultural safety in hospital and clinical healthcare settings recommended that evaluation of cultural safety includes tracking and reporting on Aboriginal and Torres Strait Islander people's concerns, patient outcomes, and patient experiences (Hunter et al. 2021, p. 47). Similar measurement should occur for other services as well.

Deliver services in partnership with Aboriginal and Torres Strait Islander organisations, communities and people

This transformation element commits government organisations to developing 'genuine relationships … [with] … Aboriginal and Torres Strait Islander people, organisations and/or businesses to enhance the quality and cultural safety of mainstream service delivery' (clause 59c). This is consistent with the objectives of Priority Reforms 1 and 2, which seek to establish better service systems (and outcomes) for Aboriginal and Torres Strait Islander people by delivering government services through formal partnerships, including with a strengthened Aboriginal and Torres Strait Islander community-controlled sector. However, this transformation element applies more broadly, including to services that may not be delivered through formal partnerships or provided by ACCOs.

The Commission has previously estimated that mainstream services accounted for 82% of direct government expenditure on Aboriginal and Torres Strait Islander people in 2015-16, with Indigenous-specific services accounting for the remaining 18% (SCRGSP 2017, p. 9). It is thus important that governments maintain focus on ensuring mainstream services meet the priorities and needs of service users, including Aboriginal

and Torres Strait Islander people. In some cases, this will be achieved by delivering services in partnership with Aboriginal and Torres Strait Islander people, organisations and/or businesses.

The response of governments to this transformation element is not well developed. Actions are largely focused on policy areas where formal partnerships exist or are being established through Priority Reform 1 (such as justice, early childhood care and development, and mental health). For example, the Queensland Government's second implementation plan included a commitment to continue to support Specialist Mental Health Community Support Services for Aboriginal and Torres Strait Islander people experiencing moderate to severe mental illness. These services use a culture-based wrap around service model delivered by the Aboriginal and Torres Strait Islander community-controlled health sector in collaboration with Hospital and Health Services (Queensland Government 2023, p. 43).

According to the mid-term evaluation of the New South Wales Aboriginal Health Plan 2013–23, about three-quarters of the state's local health districts reported formal partnerships with Aboriginal and Torres Strait Islander community-controlled health service organisations. These partnerships can support joint needs analysis, strategic planning and service coordination. A number of partnerships support program delivery in areas including maternal and child health, dental health, mental health, drug and alcohol misuse, women's health, post-hospital discharge care, and healthcare access and continuity (Centre for Epidemiology and Evidence and Centre for Aboriginal Health 2019, p. 19).

Service partnership arrangements are also found in the provision of throughcare services in correctional facilities (aimed at addressing the cycle of offending). The NSW Government has committed to engaging with Aboriginal communities to design a culturally appropriate model for support, including a throughcare strategy for Aboriginal people while in and after release from prison (NSW Government 2022c, p. 96). Throughcare programs delivered by ACCOs are already available in some jurisdictions.

As part of the *ACT Aboriginal and Torres Strait Islander Agreement 2019–2028* (ACT Agreement), the ACT Government committed to five 'Relationship Principles', which are aimed at 'strengthening the relationships between the community, service partners and the ACT Government including to improve the experience of Aboriginal and Torres Strait Islander peoples using services' (ACT Government 2021, p. 6). While these principles are meant to broadly apply across all government service sectors, it is not clear how ACT Government organisations are required to apply these principles in deciding how and when to partner with Aboriginal and Torres Strait Islander organisations to deliver services. Many of the service delivery partnerships included in action plans under the ACT Agreement are, like the actions in implementation plans, largely focused on a few priority policy areas.

Beyond these select policy areas, there are few systematic actions that seek to ensure mainstream organisations develop stronger relationships with Aboriginal and Torres Strait Islander people to assess how best to deliver services to Aboriginal and Torres Strait Islander service users. This may suggest a lack of maturity in understanding what is required to develop trusted partnerships with Aboriginal and Torres Strait Islander people, organisations, and/or businesses, or a broader failure to grasp the depth and magnitude of self-reflection that Priority Reform 3 calls for.

Implementing this transformation element arguably depends on government organisations fully valuing what Aboriginal and Torres Strait Islander organisations and/or businesses provide in enhancing the quality and cultural safety of service delivery. The Commission heard of instances where ACCOs provided government organisations with information on what works, but were ignored.

There are multiple ways that government organisations could do more to draw on Aboriginal and Torres Strait Islander perspectives and experiences to improve service delivery. For example, evaluations of mainstream services could better centre Aboriginal and Torres Strait Islander perspectives. Embedding

Aboriginal and Torres Strait Islander leadership within program design is another example. The Commission's study on the Aboriginal and Torres Strait Islander visual arts and crafts sector provided examples of where Aboriginal and Torres Strait Islander community-controlled art centres collaborated with aged care and correctional facilities to provide critical wrap-around services to improve outcomes in mainstream service provision (box 6).

Box 6 – Indigenous-led arts programs can complement mainstream services

Keeping Elders strong and transmitting knowledges

The National Ageing Research Institute found several examples of Aboriginal and Torres Strait Islander community-controlled art centres collaborating with aged care and health facilities to provide art programs and other supports to residents. The value of these partnerships go beyond the service provided – they help maintain Aboriginal and Torres Strait Islander Elders' connection to their families and Country, and promote intergenerational learning (NARI 2021, p. 3).

In the Kungkarrangkalpa (Seven Sisters) Aged Care facility, located in the central desert region of Western Australia, the Warakurna Arts Centre provides a painting program for residents. Jane Menzies, the manager of the Warakurna Arts centre, noted that the painting program benefits both the aged care residents and the wider community:

> Intergenerational learning was really important, and just enabling these artists to share their stories with their children and their children's children. … [granddaughters, cousins, nieces or nephews, and sons] … come here and they work here and they also help with the artists as well so there is that exchange. … For a lot of these older people, they don't have the opportunities to share those stories, they might be in aged care, they may not see their family very often. (cited in Morris 2016)

Improving community reintegration of ex-offenders

The Torch is a Victoria-based program that provides First Nations offenders and ex-offenders with materials and support to learn more about their language group, culture and Country. It 'supports the development of self-esteem, confidence and resilience, through cultural strengthening and artistic expression' (The Torch 2023). In a survey of the participants in the Torch's In-Community program, 92% said that it had helped them stay out of the justice system (EMS Consultants 2019, p. 4). Among people who had been participating in the program for over 12 months, only 11% had returned to prison. For context, nearly 40% of adults released from prison in Victoria return to prison with a new sentence within two years (SCRGSP 2023, tbl. CA.4).

Increase accountability through transparent funding allocations

Implementing this transformation element would address longstanding problems with transparency about the amount of funding that governments allocate to dedicated Aboriginal and Torres Strait Islander policies and programs, and what that funding achieves (box 7). This aligns with what the NSW Government heard during consultations when preparing its second implementation plan.

> We need more **transparency about the outcomes being achieved** through government-funded programs and services:

- There is currently not enough evaluation or transparency. There should be transparent evaluations of how funding has been used, whether the services are being delivered and the outcomes achieved.
- "$140 million to Indigenous education and not one report has been made [on how funding was spent and the outcomes]." (NSW Government 2022a, p. 42)

We need **more evaluation** so that communities know what is working:

- "Evaluate our programs. We don't even know what is effective, we are just throwing money at our kids …"

We need more **transparency in funding for local organisations and services.** (NSW Government 2022a, pp. 41, emphasis in original)

Box 7 – Transparency on the level and quality of funding are longstanding issues

Nearly 20 years ago, the Council of Australian Governments agreed to a national framework of principles for delivering services to Aboriginal and Torres Strait Islander people. Part of the framework sought to establish transparency and accountability, including through:

- Strengthening the accountability of governments for the effectiveness of their programmes and services through regular performance review, evaluation and reporting.
- Ensuring the accountability of organisations for the government funds that they administer on behalf of indigenous people. (COAG 2004, pp. 1–2)

However, issues with transparency on the level and quality of funding have persisted.

The evidence is clear – the existing strategies are costly and do not deliver sustained change to the well being and prospects of the majority of Aboriginal people in either the cities or the regions. … The objectivity of these assessments has been hampered by the fact that the Board has been unable to gain from Government an accurate picture of the objectives, costs and outcomes of the existing programs. (Sanderson et al. 2011, p. 1)

The [2017 Royal Commission into the Protection and Detention of Children in the Northern Territory] found that expenditure on children and family services is not rigorously tracked, monitored or evaluated to ensure that it is appropriately distributed and directed. It identified a need for greater coordination and transparency of government funding decisions. (PC 2020a, p. 3)

Evaluation of policies and programs and local outcomes have been undertaken in an ad hoc way, constrained by the parameters of a particular program or activity, such that there is no overarching logic that provides a picture of the impact that government is having in Aboriginal and Torres Strait Islander peoples' lives. (AIATSIS 2019, p. 4)

Governments' expenditure reviews – which are mostly overdue (information paper 3) – can provide valuable information on the total amount of funding governments are allocating to dedicated Aboriginal and Torres Strait Islander services and the types of organisations receiving that funding. The NSW Government noted that its interim Indigenous expenditure report would move it 'closer to a situation where every dollar spent on Aboriginal programs and services helps close the gap' (NSW Government 2022b, p. 10).

This transformation element also requires that there are clear expectations about what outcomes will be delivered at the time funding decisions are being made, and that funded activities are evaluated. The co-Chairs of the Aboriginal Advisory Council of Western Australia noted that 'innovative, systems-level reform requires a fundamental shift in the approach to program and service evaluation and data' (WA Government 2022a, p. 5).

'Commissioning' and funding reforms in some jurisdictions could – if implemented well – improve transparency about what funding aims to achieve. (These reforms are discussed in more detail in information paper 3.) The ACT's guidance on its Commissioning for Outcomes reform initiative notes that approaches to market and contractual arrangements will include specified outcomes informed by community input, and reporting requirements 'for outcomes rather than outputs' (ACT Government 2022b, p. 23). In addition:

> Each commissioned service will be required to report on outcomes developed through the commissioning cycle and embedded within the contract or service agreement. The voices of lived experience will be central to evaluating service delivery, how well the evidenced needs are being met within the community and reporting to outcomes. (ACT Government 2022b, p. 26)

> Evaluation is a necessary complement to the use of outcomes or key performance indicators in funding arrangements: there is little point including outcomes or key performance indicators in funding agreements if there is no effort made to look back and understand whether they have been achieved and the effect of the funded activity. Western Australia's State Commissioning Strategy for Community Services notes that 'Evaluation of services is inconsistent across the system and not public facing' but aims to 'Prioritise evaluation to ensure that services are delivering agreed outcomes for users' (WA Department of Finance 2022, p. 11).

The Commission's *Indigenous Evaluation Study* noted that:

> After decades of developing policies and programs designed to improve the lives of Aboriginal and Torres Strait Islander people, we still know little about their impacts, or how outcomes can be improved.

> Evaluation can answer questions about policy effectiveness, but both the quality and usefulness of evaluations of policies and programs affecting Aboriginal and Torres Strait Islander people are lacking.

> • Evaluation is often an afterthought rather than built into policy design (and this can affect data collection, evaluation design and result in evaluations that tell you very little).
> • Many evaluations focus on the wrong things (compliance rather than measuring impact, which means findings are often not useful).
> • Aboriginal and Torres Strait Islander people have minimal input into evaluation. (PC 2020b, p. 2)

The *Indigenous Evaluation Strategy* provides principles-based guidance that governments can use when selecting, planning, conducting and using evaluations of policies and programs affecting Aboriginal and Torres Strait Islander people. This included guidance on the governance arrangements needed to strengthen accountability and centre Aboriginal and Torres Strait Islander people, perspectives, priorities and knowledges. The Strategy's monitoring and reporting arrangements also embed incentives for agencies to improve the quality of evaluations, to learn from, share and use evaluation findings to inform and improve policy decisions (PC 2020b).

The Agreement 'recognises that structural change in the way Governments work with Aboriginal and Torres Strait Islander people is needed to close the gap' and this change encompasses shared decision-making 'on the design, implementation, monitoring and *evaluation* of policies and programs to improve life outcomes for Aboriginal and Torres Strait Islander people' (clauses 6-7, emphasis added).

The need for more high-quality evaluation is noted in information paper 7 but there are encouraging examples of how governments are approaching evaluation. There are indications that:

- core aspects of the Agreement will be evaluated. For example, the Coalition of Peaks is working with the National Indigenous Australians Agency (NIAA) to evaluate the community data projects (Coalition of Peaks 2022, p. 28), and with all governments to develop evaluation methodologies for the sector strengthening plans and the policy partnerships (Australian Government 2023, p. 126)
- evaluation is less frequently an afterthought than it used to be, and often foreshadows the active participation of Aboriginal and Torres Strait Islander people. For example, the Victorian Aboriginal Community Controlled Health Organisation has been funded to develop a Research and Evaluation Framework, which is 'foundational to the development of the [Department of Health's] Aboriginal Policy, Funding Accountability Framework' (Victorian Government 2022, p. 42)
- some governments are taking coordinated approaches to the conduct and use of evaluations. For example, NSW Government clusters are required to produce a forward plan for prioritising evaluation of Aboriginal-specific programs 'to support the identification of opportunities to re-prioritise or enhance' (NSW Government 2022c, p. 17).

Many of the encouraging examples in governments' implementation plans and annual reports are yet to be delivered, and there has already been slippage in the timelines of some important evaluation initiatives. It was originally anticipated that Queensland's First Nations Health Equity monitoring and evaluation framework would be released in August 2021, but this was later revised to 30 June 2023 (Queensland Government 2021c, p. 23, 2023, p. 8). Western Australia's first implementation plan, released in September 2021, indicated that an evaluation framework would be developed within 12 months 'to ensure a consistent approach to the evaluation of initiatives under the National Agreement' (WA Government 2021, p. 17). As of July 2023 neither of these evaluation frameworks had been published.

Governments' apparent appreciation of the importance of evaluation needs to be funded and prioritised. In its May 2023 Budget, the Australian Government allocated $10 million for establishing the Australian Centre for Evaluation to improve the 'volume, quality, and impact' of evaluations across the Australian public service (Leigh 2023a). But there have been no indications whether or how the new centre will improve the volume, quality or impact of evaluations relating to policies and programs impacting Aboriginal and Torres Strait Islander people.

With increased funding and new approaches being taken in the area of Aboriginal and Torres Strait Islander policy, it would be appropriate that there is also an increased effort placed on evaluation.

Support for Aboriginal and Torres Strait Islander cultures

The 1989 *National Aboriginal Health Strategy* stated that health is 'not just the physical well-being of the individual but the social, emotional and cultural wellbeing of the whole community' (National Aboriginal Health Strategy Working Party 1989, p. x). Thirty years later, Lovett et al. (2020, p. 8) noted that 'culture is gaining increased research and policy attention as a determinant of wellbeing, following advocacy by Aboriginal and Torres Strait Islander peoples and communities.' And in the Agreement, the parties 'acknowledge that strong Aboriginal and Torres Strait Islander cultures are fundamental to improved life outcomes for Aboriginal and Torres Strait Islander people' and 'agree to implement all activities under this Agreement in a way that takes full account of, promotes, and does not diminish in any way, the cultures of Aboriginal and Torres Strait Islander people' (clauses 20 and 21).

'Culture' is often associated with the arts and creative sector, and examples of funding for arts and creative expression can be found in governments' implementation plans, but a broader definition is more appropriate in the context of the Agreement. Mayi Kuwayu, the National Study of Aboriginal and Torres Strait Islander

Wellbeing, has noted that 'for Aboriginal and Torres Strait Islander peoples, culture includes Dreaming and other spiritual beliefs, Country, community, languages and art, including dance and music' (2019, p. 3).

The Commission heard from Aboriginal and Torres Strait Islander people that the Agreement should better reflect the centrality of culture.

> The importance of culture was discussed in relation to land management, corrections, education, domestic violence and health (including mental health). People spoke with us about the value of culture in itself as well as the flow on effects of valuing culture. For example, we were told that meeting children's cultural needs can improve school attendance and achievement, incorporating Aboriginal and Torres Strait Islander perspectives on causality could improve approaches to domestic and family violence, and culturally informed maternity care can improve health outcomes for women and babies. (PC 2023c, p. 12)

We also heard concerns about there being 'very few, if any, tangible policies and programs around implementing support for culture' (KALACC, sub. 23, p. 9).

This transformation element calls for truth-telling

Whatever funding is directed towards the arts and creative sector, or culture more broadly understood, this will not directly address the core of this transformation element: truth-telling. The Agreement requires that:

> government organisations identify their history with Aboriginal and Torres Strait Islander people and facilitate truth-telling to enable reconciliation and active, ongoing healing. Feedback from the engagements included government organisations building relationships with local Aboriginal and Torres Strait Islander community-controlled organisations to enable them to understand and reflect the history and culture of local communities. (clause 59e)

Truth-telling has been described as a process that 'seeks to ensure the stories and histories of Aboriginal and Torres Strait Islanders are preserved, understood and acknowledged, thus informing and driving structural reform' (Vines 2022, p. 2). These stories and histories are not only about colonisation: Aboriginal people engaged as part of the development of Western Australia's Aboriginal Empowerment Strategy identified 'the richness, value and diversity of Aboriginal cultures, both before colonisation and into the future' as one aspect of truth-telling (Government of Western Australia 2021, p. 40). However, the telling and recording of stories about colonisation has a particular role in the context of reconciliation and active, ongoing healing. The NT Government has said that its Treaty pathway will be underpinned by truth-telling, and noted that:

> Truth-telling is a process where we collectively confront the pain, trauma and injustices visited on Aboriginal Territorians through colonisation. It is also about understanding how these impacts shape the lives of people and systems today, and why there is a need for change, healing and genuine reconciliation. (NT Government 2022)

Expressions of culture through arts and crafts can play a role in this process. At a 2018 truth-telling symposium, the Bangarra Dance Theatre's production of *Dark Emu* (Pascoe 2014) was noted as demonstrating 'the capacity of the arts to raise awareness of past injustices' (Reconciliation Australia and The Healing Foundation 2018, p. 8). In 2022, funding was allocated for Western Australia's Carrolup Centre for Truth-telling, which will house artworks created by children of the Stolen Generation (WA Government 2022b). And Queensland's 10-year roadmap for arts, culture and creativity noted that:

> First Nations arts and cultural expression are an intrinsic part of Queensland's culture and identity. They play a fundamental role in cultural maintenance, economic empowerment, community connectedness, truth telling and wellbeing among First Nations communities. (Queensland Government 2020, p. 16)

Funding for arts and crafts is not sufficient for addressing this transformation element though, and governments' implementation plans and annual reports identify few actions that will meaningfully progress truth-telling. The NSW Government has acknowledged this, noting that in its first implementation plan 'there was not a strong focus on truth-telling about organisational history and ongoing relationships with local Aboriginal community organisations to build understanding of the history and culture of local communities' (NSW Government 2022b, p. 23).

Government organisations need to actively facilitate truth-telling to understand the historic and ongoing impacts of their policies and practices. Doing so can address distrust and support the development of partnerships with Aboriginal and Torres Strait Islander people (information paper 2). The Australian Government's second implementation plan indicated that 'Government organisations and institutions will be supported to identify their history with First Nations peoples and facilitate truth-telling' (2023, p. 26), but it is not clear what this looks like in practice or if any organisation and institution has started to do it.

At the jurisdictional level, the Australian Government and six of the eight states and territories are pursuing jurisdiction-level truth-telling (Victoria, Queensland, South Australia, Tasmania, the ACT and the Northern Territory). These initiatives have the potential to address this transformation element, but government organisations need the will and resources to engage with them appropriately. Earlier in 2023, the Victorian Government failed to meet deadlines for providing information to the Yoorrook Justice Commission, citing the scope of the information request as a reason for the delay (Yoorrook Justice Commission 2023, p. 322).

Truth-telling at the local government level should not be neglected. The *2021 State of Reconciliation in Australia Report* noted that many of the people Reconciliation Australia spoke to 'highlighted the role of local government in truth-telling and historical acceptance' (Reconciliation Australia 2021, p. 31). Workshops run by Reconciliation Australia to support truth-telling and reconciliation at the local level indicated 'an enormous appetite' among participating councils for playing an active role in truth-telling but also that 'there is a need to develop further understanding and capacity regarding how councils can best support truth telling, and what resources they might need to do that' (Reconciliation Australia 2019, p. 25). It was noted that 'Limited, inadequate or non-existent resourcing were identified as significant barriers for local councils in undertaking Truth-telling activities' (Reconciliation Australia 2019, p. 19).

Because of the resourcing constraints facing most local governments, coordination and learning from one another are likely to be necessary. The Australian Local Government Association (ALGA) noted its work to promote local governments' reconciliation action plans (ALGA 2022, p. 10).

Improve engagement with Aboriginal and Torres Strait Islander people

This transformation element requires that governments engage fully and transparently with Aboriginal and Torres Strait Islander people when they are 'undertaking significant changes to policy or programs that primarily impact Aboriginal and Torres Strait Islander people' (clause 59f). Governments have also committed to 'share and publish their engagement approaches that give effect to the transformation elements on engagements at clause 59(f)' (clause 63). It is clear that this is not happening consistently.

Engagement can be used to test assumptions and inform policy and program design with the lived experience and perspectives of service users and providers, experts, and the community. In general, it should be commensurate with the impact that a policy or program is expected to have, or the deficit in experience or capacity that exists within governments to understand the priorities or knowledges of people who might be affected. And as discussed in information paper 2, meaningful engagement by governments with Aboriginal and Torres Strait Islander people is a key enabler in establishing strong partnerships and instrumental to achieving lasting progress against Priority Reform 1.

Ongoing engagement can also play an important role ensuring policies and programs are working as intended. For example, the Aboriginal Children's Forum (ACF) provides input and accountability in relation to Wungurilwil Gapgapduir, the Aboriginal Children and Families Agreement in Victoria. The Agreement notes that the ACF 'is an important governance platform to ensure that Aboriginal Elders, leaders and communities, are equal partners with government and the [child and family services] sector in determining the future of child and family services' (Victorian Department of Health and Human Services 2018, p. 21). And Muriel Bamblett, the CEO of the Victorian Aboriginal Child Care Agency, noted that 'The ACF continues to have the difficult conversations necessary to address over representation of our children' (ACF 2021, p. 3).

Government approaches to engagement are often seen as tokenistic and underdone

Throughout Australia, the Commission heard that engagement approaches are still often tokenistic and underdone (PC 2023c, p. 13), with governments failing to sufficiently share decision-making authority (information paper 2). For example, the South Australian Aboriginal Community Controlled Organisation Network noted some engagement shortfalls in the development of the South Australian Government's Aboriginal Housing Strategy 2021–2031.

> Despite the impact of COVID-19 restrictions at the time, the engagement was scheduled for completion in under five months, following an extension on the original timeframe. … The strategy outlines the community stakeholders consulted and acknowledges their 'assistance'. … the views expressed in the consultation have not been made publicly available. This lack of transparency is inconsistent with the established criteria for self-determination and obligations under the [Agreement and the United Nations Declaration on the Rights of Indigenous Peoples]. In the absence of full transparency, there can be no indication that adequate weight was given to the views expressed. (SAACCON 2022, p. 8)

The Aboriginal Health Council of Western Australia (AHCWA) and AHCWA Social Services Committee (sub. 22, p. 2) noted that even in the context of processes within the Agreement, governments failed to respect timelines and deliverables and expected the Coalition of Peaks to make up for lost time through reduced consultation and engagement.

Where governments fail to genuinely engage with Aboriginal and Torres Strait Islander people on policy and programs, this has significant costs. It means the policy or program does not benefit from the knowledges and practices that have been sustained for tens of thousands of years. It may also mean that policies and programs are ineffective in meeting the diverse priorities and needs of Aboriginal and Torres Strait Islander people.

There are also costs in the approach that governments take to engagement. The Commission has repeatedly heard about the trade-offs that leaders and staff of Aboriginal and Torres Strait Islander organisations face when governments seek to engage with them: time spent speaking with politicians and public servants is time spent not providing services to Aboriginal and Torres Strait Islander people and communities. There are also psychological harms for participants engaging in processes that are not culturally safe, respectful, or genuine, or amount to little or no action or progress.

Governments can improve the value of engagements (or reduce its costs on participants) by: ensuring that they coordinate with other agencies so participants do not have to repeat their stories; supporting organisations to engage within their communities (for example, through better resourcing of partnerships); partnering with local interpreters to improve inclusion and access; engaging early in the policy development process; and building reciprocity into engagement processes (so that people understand how their information has been used and how it has contributed to decision-making).

Governments practice full and transparent engagement at the margins

Within their implementation plans, governments have identified engagement approaches and frameworks that seek to embed better engagement elements within specific decision-making and policy development processes (the ways in which engagement approaches fail to adequately embed shared decision-making is discussed in information paper 2). Some of these actions seek to transform engagements by improving cultural capability of staff or recruiting Aboriginal and Torres Strait Islander people. Other initiatives seek to improve access to existing avenues of engagement. For example, the ACT Government indicated that it is:

> [Creating] … opportunities for Aboriginal and Torres Strait Islander people to participate in the ACT Policing Community Forums to exchange information and enhance relationships to provide an opportunity for Aboriginal and Torres Strait Islander people to be heard and for actions to be developed in response to Aboriginal and Torres Strait Islander community feedback. (2021, p. 19)

These sorts of initiatives may improve engagement outcomes but they do not address all aspects of how engagement should occur. The Agreement requires that:

> Engagements … be done in a way where Aboriginal and Torres Strait Islander people: have a leadership role in the design and conduct of engagements; know the purpose and fully understand what is being proposed; know what feedback is provided and how that is being taken account of by governments in making decisions; and are able to assess whether the engagements have been fair, transparent and open. (clause 59f)

Governments have cited some engagement strategies that seek to implement this transformation element more fully. For example, the Australian Government is developing a *Commonwealth Engagement and Partnership Framework* (Australian Government 2022, p. 21), which could provide guidance and supporting materials to enable strong partnerships and ensure that the commitment to shared decision-making is genuine and begins early in the policy development process (addressing Priority Reforms 1 and 3). The Australian Government has also committed to strengthening Budget and Cabinet frameworks to elevate consideration of impacts on Aboriginal and Torres Strait Islander people in all new policies (including by implementing a First Nations Impact Assessments Framework). If applied well, this may embed meaningful engagement at key stages of the policy development process.

Several jurisdictions have also established, or are proposing to establish, representative bodies that can make representations to governments, parliament and the executive.

The Agreement includes a specific commitment regarding engagement before, during and after emergencies

In addition to full and transparent engagement on changes to policy and programs in general, the Agreement specifically commits governments to:

> engaging with Aboriginal and Torres Strait Islander representatives before, during, and after emergencies such as natural disasters and pandemics to make sure that:
>
> a. government decisions take account of the impact of those decisions on Aboriginal and Torres Strait Islander people
> b. Aboriginal and Torres Strait Islander people are not disproportionately affected and can recover as quickly as other Australians from social and economic impacts. (clause 64)

The Royal Commission into National Natural Disaster Arrangements noted that state, territory and national policies and guidelines have been developed to support engagement and collaboration with Aboriginal and Torres Strait Islander communities in bushfire and land management (RCNNDA 2020, p. 393). For example, Aboriginal culture and healing is one of the five overarching priorities in Bushfire Recovery Victoria's

Recovery Framework, and there are four 'community recovery outcomes' to address this priority – valuing and respecting culture; addressing trauma and supporting healing; promoting cultural safety; and promoting participation and ownership. Government organisations are encouraged to pursue community strengthening and engagement to support the priority of Aboriginal culture and healing (Bushfire Recovery Victoria 2020, pp. 8, 16). The Northern Territory is pursuing structural change through the Community Resilience and Engagement Command and the Department of the Chief Minister and Cabinet's Security and Emergency Recovery Team (NT Government 2022b, pp. 50, 51)

The Royal Commission into National Natural Disaster Arrangements also observed that the extent of the implementation of these guidelines is not always clear, and that Aboriginal and Torres Strait Islander perspectives are not always considered in planning and decision-making processes (RCNNDA 2020, pp. 393, 396). The Commission has heard about government organisations not operating in line with the Agreement in the aftermath of natural disasters, but also heard of instances of good practice. In the ACT, the Aboriginal and Torres Strait Islander Elected Body noted that 'An outstanding example of a directorate working with the Traditional Custodians and demonstrating cultural integrity was through the preservation of culturally significant sites during the fires in Namadgi National Park' in 2020 (2020, p. 17). The Victorian Government told the Commission that:

> In the early stage of recovery efforts, Aboriginal communities in Gippsland rapidly mobilised to form a community-led Bushfire Recovery Aboriginal Reference Group (Reference Group). This group has ensured Aboriginal needs and priorities are considered in statewide bushfire recovery efforts, including through Bushfire Recovery Victoria's (BRV) Advisory Council. The Reference Group priorities informed BRV's Bushfire Recovery Framework and State Plan. The Victorian Government will continue to support the important role of Aboriginal people in the recovery process, as well as rely on Aboriginal knowledge and expertise in bushfire prevention and management. (Victorian Department of Premier and Cabinet, pers. comm., 6 July 2023)

This example reaffirms that governments can fulfill their roles better by drawing on the knowledge and strengths of Aboriginal and Torres Strait Islander people. As noted by the Deputy CEO of the Kimberley Land Council, in relation to natural disasters:

> While our people have had the impacts of disaster thrust upon us and are often disproportionately impacted, we are also the people with some of the best solutions. We have seen that by gaining rights through native title Aboriginal people have been empowered to be leading land managers for our region. I wanted to talk a little bit about one of the things we do through Indigenous fire management, a practice our people have been undertaking for thousands of years, to reduce fuel loads in the landscape, which reduces the intensity of late-season wildfires, which we have seen happen across our region. That in turn reduces carbon emissions and at the same time protects our communities, assets and the environment and maintains habitat for animals and plants. (Sarah Parriman 2023, p. 22)

The strengths of Aboriginal and Torres Strait Islander people, organisations and communities were evident during the COVID-19 pandemic. Many Aboriginal and Torres Strait Islander health organisations were vital in leading the emergency response, as they already had a presence in these communities, and could use their pre-existing relationships to coordinate community responses to rapidly changing circumstances. Information paper 2 discusses government and Aboriginal community-controlled health organisations working in partnership to respond to COVID-19.

It is not clear that all governments have fully internalised the experience of COVID-19 (and other emergencies). The Deputy CEO of the Kimberly Land Council has noted that Priority Reform 3:

commits government to engaging with Aboriginal people before, during and after disasters, but we're not seeing that translate; we're seeing us being pulled in at the very last minute, as a bit of an afterthought. I think there just needs to be some structural reform to how we engage collectively as Aboriginal organisations but then more broadly with non-Indigenous agencies as well. (Sarah Parriman 2023, p. 25)

The importance of structural reform to ensure appropriate engagement before, during and after emergencies will increase as a result of climate change. Regardless of Australian or global efforts to abate emissions from this point forward, climate change due to previous emissions is expected to increase the frequency and severity of natural disasters including flooding and fire (PC 2023a, pp. 3, 9). The potential impact of these changes on Aboriginal and Torres Strait Islander people was raised by the Australian Human Rights Commission at least 15 years ago (Baird 2008). More recently, researchers used demographic data and climate projections to quantify the risk faced by Aboriginal and non-Aboriginal populations in New South Wales and found that Aboriginal populations 'were disproportionately exposed to a range of climate extremes in heat, rainfall and drought, and this disproportionate exposure was predicted to increase with climate change over the coming decades' (Standen et al. 2022, p. 1). Annika David, a Torres Strait Islander woman, submitted that 'Aboriginal and Torres Strait Islander people will be the first people to be affected by climate change and we have contributed to it the least' (sub. 27, p. 4).

The Torres Strait will be particularly impacted by climate change – the Fifth Assessment Report of the Intergovernmental Panel on Climate Change noted that 'Torres Strait island communities and livelihoods are vulnerable to major impacts from even small sea level rises' (Reisinger et al. 2014, p. 1405). The 2008 Native Title Report noted that 'if predictions of climate change impacts occur, it poses such great threats to the very existence of the Islands that the government must seriously consider what the impact will be on the Islanders' lives, and provide leadership so that cultural destruction is avoided' (Aboriginal and Torres Strait Islander Social Justice Commissioner 2008, p. 231). In 2022, the United Nations Human Rights Committee found that by failing to adequately protect them from climate change the Australian Government had violated the rights of eight Torres Strait Islander people and their children (the 'Torres Strait 8') to 'enjoy their culture and be free from arbitrary interferences with their private life, family and home' (United Nations Human Rights Committee 2022a). In June 2023, hearings began in a Federal Court case brought by Uncle Paul Kabai and Uncle Pabai Pabai against the Australian Government in which they argue that the Australian Government has a duty of care to Torres Strait Islander people, to ensure they are not harmed by climate change (Federal Court of Australia 2023).

The United Nations Human Rights Committee's decision called on the Australian Government to 'engage in meaningful consultations with the [Torres Strait 8's] communities in order to conduct needs assessments' (United Nations Human Rights Committee 2022b, p. 16). However, this is not the only reason for governments to engage with Aboriginal and Torres Strait Islander people in the context of climate change. Relatively recently, governments and government organisations have begun to value Aboriginal and Torres Strait Islander knowledge and expertise in relation to land and sea management (box 8) but continued investment is needed to build and maintain relationships. Patrick O'Leary, CEO of Country Needs People, told the Commission that:

It makes sense for the core federal government agency for land and sea management, the Environment Department, to have the staff capacity to engage with and support Indigenous land and sea management organisations and sustain genuine practical working relationships around supporting them, because it's very challenging work. Unfortunately this staff capability with the Environment Department has been dramatically reduced over the last decade and now needs rebuilding if we are genuine about working to support success by traditional owners in land and sea management. We need to recall the model we had that worked and rebuild that. (pers. comm., 14 June 2023).

Box 8 – Aboriginal and Torres Strait Islander expertise in land and sea management

Budj Bim rangers – two-way learning and partnerships

For decades, the Budj Bim rangers have managed the Gunditjmara homelands and waters of south-western Victoria with sustained funding from the Working on Country and Indigenous Protected Areas programs (Putnis et al. 2021, pp. 44–45). Senior leaders have sought to build robust partnerships – including through formal agreements – that weave Aboriginal knowledge, values and aspirations with the science and land management expertise of other agencies and researchers to achieve positive results. This has included:

- UNESCO World Heritage Listing for the Budj Bim Cultural Landscape, one of the world's most extensive and oldest aquaculture systems, in 2019.
- working with government agency partners to protect world heritage listed aquaculture channels, some that were first constructed at least 6,600 years ago, during the 2019 fires.

Banbai rangers – building practical relationships on the ground

The Banbai rangers look after Country in the Wattleridge and Tarriwa Kurrukun Indigenous Protected Areas in New South Wales (Putnis et al. 2021, pp. 76–77). This includes the Kukra rock art site, which has been estimated to be approximately 40,000 to 50,000 years old. Over time, Banbai rangers have built productive relationships with researchers and other land managers. This was showcased during the 2019–2020 bushfire season, when the Banbai rangers fought alongside the Rural Fire Service, NSW National Parks and Wildlife Service and other property owners to save Country, property, assets and lives.

Public perceptions and conversations have also subsequently changed in the region and across the nation, with agencies and landowners reaching out to the Banbai rangers to conduct traditional fire management activities. There are also plans for the Banbai rangers to collaborate with other land managers and partners to lead an early season burn to protect wetlands of international importance (which have been designated as Ramsar sites under the Ramsar Convention on Wetlands) and associated communities within Little Llangothlin Nature Reserve.

West Arnhem Land Fire Abatement (WALFA) project

The WALFA project is a partnership between Aboriginal ranger groups, industry and governments, established in 2006, to develop an innovative technique of abating greenhouse gases produced in wildfires through a combination of traditional and modern fire management techniques (Putnis et al. 2021, pp. 35–36). To date, this project has abated more than 1.7 million tonnes of greenhouse gases, with excess abatement marketed through the Aboriginal-owned, not-for-profit company Arnhem Land Fire Abatememt (NT) Limited.

These fire management methods have contributed to decreases in the total area burnt across all project areas, and ecological research also suggests they are likely to be favourable for biodiversity (Ansell et al. 2020 cited by; Indigenous Carbon Industry Network 2020, p. 20).

Transformation is about more than implementing the individual transformation elements

The sort of actions discussed above may improve accountability and better ensure that government organisations respond to the needs of Aboriginal and Torres Strait Islander people, if they are designed and delivered well. But the transformation that is called for under Priority Reform 3 requires much more than piecemeal actions. It requires deep and enduring changes to the policies and processes of agencies and to the culture and incentives that determine how public sector staff and leadership act. The QNMU, for example, noted that one of the actions from Queensland's first implementation plan:

> calls on all government departments to implement and update their Cultural Capability Plans, a highly achievable action. While this action is designed to impact on the incidence of racism within agencies, achieving this underlying outcome will require significant change at all levels across all agencies as well as mechanisms for measuring the effectiveness of these changes. (sub. 4, p. 5)

Priority Reform 3 requires system-level structural change, supported by whole-of-government and agency plans that set out what actions will be taken to achieve transformation. Actions need to specifically address the way agencies interact with Aboriginal and Torres Strait Islander people, for example through service delivery and public engagement. They also need to address how internal government policy-making processes are undertaken. Based on publicly available information, there is an absence of such plans across all governments, which the Commission is interpreting as an indicator that they do not exist.

Additional information was provided by governments in response to information requests from the Commission. This additional information has not substantively changed the Commission's assessment that there has been limited progress on Priority Reform 3, though in some cases it revealed some progress that was not documented in Closing the Gap implementation plans, annual reports or other public-facing material (box 9).

Box 9 – Implementing Priority Reform 3 at the Department of Social Services

In 2023 the Department of Social Services (DSS) created a dedicated Director role for implementing the Priority Reforms and undertook a stocktake of activities within the social services portfolio contributing to Priority Reform 3. This identified 86 activities at different stages of implementation, with each activity classified as being in one of three phases – emerge, establish or embed.

- 'Emerge' is the phase where solutions to problems/challenges/opportunities are explored and developed. It is where partnerships with Aboriginal and Torres Strait Islander people, communities and organisations are formed and processes to enable shared decision making consistent with the Agreement are established.
- 'Establish' is the phase where solutions are tested and implemented. Governance arrangements that promote the equal participation and representation of Aboriginal and Torres Strait Islander people are enacted supporting self-determination, and review, research and evaluation processes are factored in.
- 'Embed' is the phase where lessons learnt transition from projects, trials and initiatives into sustainable, structural, systems and process changes that support genuine organisational transformation.

Box 9 – Implementing Priority Reform 3 at the Department of Social Services

Each of the 86 activities has a documented theory of change (or one is being developed). These theories of change identify the problem to be addressed, the actions being taken to realise change (including risks and enablers to realising the change) and what success looks like and how it will be measured.

One of these activities was the Services Australia Bespoke Service Centre Redesign Model. The theory of change for this activity includes a problem statement which notes that 'Service centres in small communities, with a high proportion of Aboriginal and Torres Strait Islander customers accessing services face to face, have different requirements than communities in larger regional and urban areas'. Specifically, it noted that the historical approach to service centre design meant that all customers in the centre could see everyone else in the centre and hear their business, and that customers would avoid the service when cultural requirements could not be observed.

The Fitzroy Crossing Service Centre was redesigned, informed by engagement with local community representatives and about 40 customers who represented multiple family groups in the community. In addition to changes to the physical environment, service experience options like video chat were added so that customers can speak to staff from outside the community where this is needed to observe cultural requirements. The theory of change for the Bespoke Service Centre Redesign Model describes strong relationships with the community as one of its measures of success, and will use customer satisfaction and feedback data to inform this. Feedback from the Fitzroy Crossing Service Centre redesign was that 'Words can't explain how deadly the office is'.

Informed by work under way throughout the social services portfolio, the department intends to undertake work that will identify the barriers and enablers to implementing Priority Reform 3 at an institutional level and from a person-centred, First Nations perspective. Speaking to the Commission, one official noted that:

> Each of the Social Services portfolio agencies acknowledges this is an important reform that we want to be a part of. We want to be curious and courageous, we want to disrupt the status quo. When we're not sure what change can or should look like, it's not a reason not to do anything. We will learn by doing, in partnership with Aboriginal and Torres Strait Islander people, communities and organisations.

Source: DSS (pers. comm., 22 June 2023).

Whether it indicates progress or not, the Commission has not been permitted to cite much of the additional information it has received. This has affected multiple aspects of the review, and is a particular problem for Priority Reform 3. The Agreement presaged the difficulties that would arise relying on government organisations to transform without external scrutiny, and included a commitment to developing an independent mechanism to (among other things) monitor government organisations' transformation. Progress on the independent mechanism has been limited (section 4), so this review is an opportunity for Australian government organisations to publicly share information on how they are implementing Priority Reform 3 (information request 3).

> **? Information request 3**
>
> There is some information on how government organisations are implementing Priority Reform 3 in Closing the Gap implementation plans, annual reports and other public-facing documents, but this information is largely inadequate to understand whether government organisations have grappled with the scale of change required.
>
> The Commission is seeking additional information from government organisations on how they are implementing Priority Reform 3.
>
> • What work have government organisations done to understand the systemic and structural changes that they need to make to improve accountability and respond to the needs of Aboriginal and Torres Strait Islander people?
> • How have government organisations sought to address institutionalised racism?
> • How have government organisations changed their organisational cultures and priorities to align with the principles of Priority Reform 3?
> • How have these changes been reflected in government organisations' structures, operations and decision-making?
> • What overarching changes need to occur at the whole-of-government level to ensure that changes within government organisations are not isolated activities?
> • What role should truth-telling play in implementing Priority Reform 3?
>
> The Commission has a strong preference that this information be provided by individual government organisations as public submissions to this review.

Different organisations serve and work with different parts of the community, so transformation across agencies will invariably look different, but there are some things that can be expected of any organisation implementing Priority Reform 3.

As a first step, government organisations need to assess how their current ways of working align with Priority Reform 3 and the Agreement more broadly. Self-assessment is a necessary part of that exercise. Some jurisdictions and organisations are undertaking self-assessments (the Commission is aware of the findings of self-assessment workshops undertaken by Australian Government organisations but this information has not been published and therefore the Commission has been unable to cite it). Self-assessment is not sufficient though: it leaves organisations exposed to any 'blind spots' they have relating to institutional racism, cultural safety and other aspects of Priority Reform 3. And self-assessment – clearly – cannot reflect the perspectives and priorities of the Aboriginal and Torres Strait Islander people, organisations and communities that government organisations serve and work with.

Progressing Priority Reform 3 requires that governments organisations reflect the perspectives of, and open their operations to scrutiny by, the Aboriginal and Torres Strait Islander people, organisations and communities they serve and work with. Those perspectives should inform the assessment of current ways of working, shape the vision for what transformation looks like, and the actions that will deliver that vision.

Looking across the government organisations responsible for the five policy priority areas identified in the Agreement – justice, social and emotional wellbeing, housing, early childhood care and development, and Aboriginal and Torres Strait Islander languages – it appears that only a very small number of organisations are pursuing strategies that, if implemented, could entail something like the organisational transformation

envisaged under Priority Reform 3. One example of a strategy is Queensland's First Nations Health Equity reforms (box 10). Queensland Health's Statement of Action 'committed all areas of Queensland Health to undertake organisational, system-level changes to build sustainable cultural capability' (Queensland Government 2021a, p. 2) and every Hospital and Health Service in the state is now required to produce a Health Equity Strategy that details how it 'will achieve health equity with and for Aboriginal and Torres Strait Islander peoples' (Queensland Health 2021a, p. 1). Looking beyond the organisations responsible for the five policy priority areas, the Queensland Department of Environment and Science's Gurra Gurra Framework commits the organisation 'to progressing self-determination by working with First Nations peoples to incorporate their priorities and perspectives in decision-making and operations' and 'internal and structural changes needed to reframe [its] relationships' (QDES 2020, pp. 5, 9; box 10).

The impact of such changes comes down to how well they are implemented. The Commission will be undertaking further work for the final report to understand whether any of the emerging examples of system-level transformation are generating sustained improvements in how governments work with Aboriginal and Torres Strait Islander people.

Box 10 – Emerging examples of organisational transformation

First Nations Health Equity

In response to a report that found all Queensland Hospital and Health Services (HHSs) rated very high to extremely high on a measure of institutional racism against Aboriginal and Torres Strait Islander people (Marrie 2017, p. 17), the Queensland Government undertook a health equity reform agenda. These reforms included amendments to the *Hospital and Health Boards Act 2011* (Qld) in 2020, and its associated Regulation in 2021, which aimed at driving health equity, eliminating institutional racism across the public health system and achieving life expectancy parity for Aboriginal and Torres Strait Islander people by 2031 (Queensland Health 2021a, p. 1). The Queensland Aboriginal and Islander Health Council (QAIHC) noted that:

> For the first time in Queensland's history, a legislative document acknowledges, verbalises and addresses institutional racism and the inequity of health experienced by Aboriginal and Torres Strait Islander peoples since colonisation. (2022, p. 2)

The new legislation requires each HHS to deliver a Health Equity Strategy (section 40(1)(c)) in partnership with Aboriginal and Torres Strait Islander people and community-controlled health organisations (Queensland Health 2021b). Each strategy must outline the activities and key performance indicators to improve health and wellbeing outcomes of Aboriginal and Torres Strait Islander people (Queensland Government 2021a, p. 3). The new legislation also requires HHSs to have at least one member of their governance board identify as Aboriginal and/or Torres Strait Islander (section 23(4)).

In its November 2022 position statement on 'Institutional Racism in the Queensland Public Health System', QAIHC noted that further attention is required to tackle institutional racism, which 'continues to be viewed as the largest barrier to achieving health equity and better health outcomes for Aboriginal and Torres Strait Islander peoples and therefore to Closing the Gap' (QAIHC 2022, p. 2).

Box 10 – Emerging examples of organisational transformation

Gurra Gurra Framework

The Gurra Gurra Framework was developed to reframe the Queensland Department of Environment and Science's (DES) relationships with Aboriginal and Torres Strait Islander people 'by holding Country and its people at the centre' of its work (QDES 2020, p. 9). 'Gurra Gurra' means 'everything' in the language of the Kooma people, whose Country lies in southern inland Queensland (QDES 2020, p. 2).

The framework was developed through 'mob-centred design' and is underpinned by First Nations terms of reference, meaning that it 'seeks to understand and respect the diversity of First Nations cultures across [Queensland], the collectivist nature of decision-making, the importance of Elders and other knowledge keepers, and the primacy of relationships and connection to Country above all things' (QDES 2020, p. 6).

Annika David (sub. 27, p. 2) noted the framework as an example 'of governments doing better than they have in the past' and that it 'put traditional owner groups and communities and ranger groups at the heart of decision making. That involved leadership inside the Department.' And the General Manager of the Wuthathi Aboriginal Corporation noted the framework is:

> … an opportunity to reframe the Government's relationship with Indigenous First Nations through new place-based relational contracting and funding arrangements. … We appreciate the commitment from the Director General … [of DES] … for his Department to work with us in what we hope will be a more holistic and integrated way, to reflect the intent of the Gurra Gurra framework. (Turnour 2022, p. 2)

Public governance processes can support government transformation

Improving public governance processes can promote internal accountability and better policy development across governments, supporting agencies to meet their commitments under the Agreement. These processes include levers, usually held by central agencies, that impose requirements on agencies prior to them seeking Cabinet authority for their programs and policies. Some examples are Budget and expenditure processes, other Cabinet submission requirements, and whole-of-government governance, performance and accountability frameworks.

Some jurisdictions are making changes to improve existing public governance processes to support broader adoption of the transformation elements of Priority Reform 3. These actions tend to be focused on improved engagement with Aboriginal and Torres Strait Islander people, and better assessment of the impacts of programs and policies on Aboriginal and Torres Strait Islander people to improve the quality of policy responses. For example the NSW Government noted that:

> NSW Treasury worked in partnership with Aboriginal Affairs and NSW CAPO to develop a customised, culturally appropriate evaluation framework to analyse Closing the Gap budget proposals from Government and Aboriginal communities, as part of the 2022-23 NSW Budget. This framework balances NSW Treasury's standard evidence-based requirements and economic impact considerations with culturally appropriate principles developed by Aboriginal peak bodies. (NSW Government 2022b, p. 56)

Ultimately, 27 initiatives were endorsed by the NSW Partnership Working Group and NSW Joint Council for submission to the 2022-23 Budget process (NSW Government, sub. 32, p. 18). Building on this work, the NSW Government has committed to establishing a First Nations Budget model by 2024, which 'will ensure that shared decision-making, community consultation and cultural appropriateness are incorporated when designing funded programs or services for Aboriginal communities' (2022c, pp. 41–42).

The Australian Government's Cabinet Handbook was updated in 2022 to include a commitment to 'early, meaningful consultation' with the NIAA to:

- give genuine consideration to the impact of proposals on Indigenous Australians, early in the policy development process
- ensure new policy proposals are developed in line with the Government's commitments in the National Agreement on Closing the Gap, and
- align with and advance the Closing the Gap Priority Reforms and socioeconomic outcomes and targets as appropriate. (DPMC 2022, p. 7)

To support this work, the NIAA is developing a First Nations Impact Assessments Framework that will 'support Australian Public Service agencies to assess the implementation of the Priority Reforms in the development of new policies and programs, and effectively consider the impact on First Nations peoples' (Australian Government 2023, p. 25). Similar initiatives are being pursued in the Northern Territory and Western Australia.

- The NT Government has amended its Cabinet process to include a Closing the Gap impact statement. The change requires all Cabinet submissions to demonstrate how proposals align with and support the Agreement, and how agencies have engaged with Aboriginal people during the development of the proposal. The Department of the Chief Minister and Cabinet developed guidance and training resources to support adoption of these new requirements (NT Government 2022a, p. 46).
- WA Treasury now has an Aboriginal Affairs Coordination Unit, which has a role 'reviewing investment proposals and policy considerations across government to bring a greater focus on Aboriginal outcomes in decision making to support meeting the socioeconomic targets under the National Agreement' (Government of Western Australia 2022, p. 25).

The effectiveness of these sort of changes is yet to be determined and is difficult to assess. Because they are tools for executive government deliberation, there is generally little transparency on the quality of assessments made, the degree of compliance, or the weight they are given in decision-making.

These tools are meant to guide agencies to make better informed policy decisions, but their value can quickly diminish if they are seen by agencies as a compliance obligation. This can occur if arrangements are not fit-for-purpose to the policy development cycle, if there is limited oversight of compliance, or if participants fail to see improved engagement or policy outcomes in decisions made by governments.

Decisions will need to be made on the extent to which these assessments are made publicly available, whether compliance is independently monitored and assessed for quality, and how exemptions to these assessments are regulated to allow the consideration of urgent issues.

The transformation of government organisations has barely begun

The Commission has observed pockets of change within a number of government organisations, but pockets of change do not add up to transformation. The Commission has not identified any government organisation that has documented and published a vision for what transformation looks like, adopted actions to achieve that vision, and tracked the impact of those actions. 'Transformation' is not a goal in itself, but Priority Reform 3 anticipates that government organisations should at least benchmark indicators of change as they transform.

The Commission's engagements suggest there is little awareness about Priority Reform 3 (and the Agreement more broadly) in many government organisations. For example, APO NT submitted that 'understanding and ownership of the National Agreement is limited to the [NT Government's] Office of Aboriginal Affairs' (sub. 10, p. 3). This is a troubling finding three years into the Agreement. As the Chair of NACCHO put it:

> If you are a public servant and the National Agreement isn't on your desk. If you can't rattle off these key priority reforms, if your department does not have resources for it – you need to lean in, and quickly. We are now in a new way of operating and we expect you to meet the obligation under the National Agreement. (ANZSOG 2023)

Even where organisations recognise change is needed, it can take years to embed. For example, an audit of the cultural competency of child protection staff and the Foster Care and Adoption Manual at Western Australia's Department of Communities – commissioned in 2017 and finalised in 2019 – found 'wide scale and endemic racism' within the department (Indigenous Psychological Services 2019, p. 327). The department was restructured in 2019 and external advice was sought from PwC Indigenous Consulting on the establishment of its new Aboriginal Outcomes Division. PwC Indigenous Consulting observed that the department was 'slow in adopting and enacting change and is often not responsive enough to drive the level of transformation that is required to improve Aboriginal outcomes' (2021, p. 77). The Commission has heard that there is awareness and action on the Priority Reforms at the highest levels of the department, and some areas within the department have changed the way they work, but transformation is not always evident at the community level.

Responsibility for transformation sits with all public servants, but leaders have a special role to play. Western Australia's *Structural Change Management: A Guide for Agencies* notes that 'The role of leadership in any change management program cannot be underestimated and is repeatedly cited as a major contributor of change success' (WA PSC 2017, p. 4). Political leaders, in particular, define the 'authorising environment' in which transformation can be made: in 'Sustaining transformation in 2022 and beyond', the Commissioner of Taxation remarked that when he was appointed to the role he had a mandate from government to change the organisation (Jordan 2022).

The Australian Tax Office and the New South Wales public service were both highlighted as examples of successful government transformations in Australia by David Thodey (2022), who led an independent review of the Australian public service (Thodey et al. 2019, boxes 11 and 12). Both examples underscore the importance of leadership, of communicating with people inside and outside the organisation to understand what transformation is needed and whether it is being implemented well, and of resourcing.

Transformation is an intentional exercise that requires new resources or redeploying existing resources; based on governments' implementation plans, annual reports, Budgets, and a survey of government organisations' annual reports, it is not clear that the need for transformation to be resourced is sufficiently appreciated.

Box 11 – Transformation in the New South Wales public service

The CEO of the 2012 NSW Commission of Audit found that the state's public sector was ''quite poor' compared with its peers and that a four- to five-year reform period would be needed to remedy the problems' (Nicholls and Wade 2012). Specifically, the Commission of Audit found that:

generally managerial performance is far from excellent. … Capabilities need improving and the Commission is surprised at the low importance that has been attached to financial, people and asset management. Information systems are complex and cumbersome and often non-existent. (NSW Government 2012, p. 5)

A decade later, David Thodey suggested that the New South Wales public sector was 'consistently one of the strongest state governments we have in Australia' due to its transformation (2022).

A range of reforms were pursued to support NSW Government's objective 'to modernise and transform the NSW Public sector to make it the best in Australia' (NSW Public Service Commission 2012, p. 27). These included establishing the independent Public Service Commissioner and legislative changes to public sector employment. *State of the NSW Public Sector* reports, produced by the NSW Public Service Commission, were also part of the reform program, and provide insights into the transformation of the NSW public sector:

- Transforming an organisation's culture to optimise performance is a long-term process of embedding good practice and changing mindsets. … The PSC will facilitate this culture change by strengthening the application of the sector's core values and principles, all of which are connected to performance in some way. (NSW Public Service Commission 2013, p. 37)
- Change is already evident … What sometimes seems to be missing is the vision or courage to turn disparate elements of change into systemic transformation. (NSW Public Service Commission 2014, p. 57)
- [An external review] found very strong support for the direction of the current reforms … That said, agencies are struggling to understand how the elements of the reform package combine to form an integrated whole. (NSW Public Service Commission 2015, p. 4)

A review of public sector employment reforms found that they were 'overwhelmingly regarded as a success by NSW government agencies' but that implementation had stalled. The review found that:

agency leaders failed to drive the reforms deeper down into their organisations and across clusters, and the Public Service Commission neglected to provide sufficient tools and practical supports to help agencies adjust to the reforms. The upshot was that many public servants struggled to understand the new capability framework and some actively resisted it, which meant that implementation progress has been slower than might have been anticipated and the results have been mixed and varied across agencies. … There needs to be engagement with public servants at all levels, explaining what the reforms are designed to do and how to go about implementing them, through communication, information exchange and learning and development. … public servants need greater support to understand and implement [the reforms] well so that they become the new normal and culturally accepted way of recruitment in the public service. (Briggs 2018, p. 5)

Box 11 – Transformation in the New South Wales public service

The factors identified as holding back implementation of the public sector employment reforms are more or less the converse of the three factors that made transformation in New South Wales successful overall: political and public service leadership; clear articulation of the 'prize' or greater good sought through transformation; buy-in and truthfulness about the challenges faced (Thodey 2022). Thodey also noted that governments need to fund and invest in change.

Box 12 – Transformation at the Australian Tax Office

The Australian Public Service Commission's 2013 capability review found that 'for the [Australian Taxation Office] to continue to be a high-performing organisation, it needs to undergo transformational change' (2013, p. 5) and that:

Internal and external stakeholders are looking to the ATO's executive for leadership and coherent and cohesive direction and guidance from an enterprise perspective to ensure momentum for strategic shifts is maintained. … The executive needs to consider how the vision and themes will be achieved by:

- clearly articulating what the ATO of the future should look like
- detailing how the organisation will go about achieving it
- ensuring senior managers are held accountable for meeting these requirements. (p. 8)

Strong, top-down leadership along with a long-term, enterprise-wide strategy is necessary to guide this transformation. Effective leadership, starting from the executive and cascading throughout every level of leadership is critical. Assigning accountability to senior tax officers for the success of strategy implementation will create ownership and maintain focus. (p. 14)

The ATO allocated $70 million to invest in transformation in 2012-13 and 2013-14, mainly for ICT (APSC 2013, p. 10), but soon came under budgetary pressures. The House of Representatives Standing Committee on Tax and Revenue found that these pressures 'appear to be a challenge to the Commissioner's attempts to modernise the ATO' (2014, p. viii). Asked about how budgetary pressures and staffing reductions were affecting his ambitions for cultural change, the Commission for Taxation responded that:

I cannot deny that this is making it harder. So, yes, this will make cultural change more difficult. Change in itself is often difficult for people to deal with. It is often something where you have got to be very careful in the way that you manage, communicate and achieve that change. In an uncertain environment, in an environment in which our budgets are being reduced, that will probably make the pace of change slower and might make the ambitious nature of some of our change program less easy to implement over time. It is a long-term process, though. (Commonwealth of Australia 2014, p. 21)

The ATO appreciated that transformation could not be achieved without input from staff and the people it serves. The *Reinventing the ATO Blueprint* 'was co-designed with taxpayers and staff and describes their expected experience shifts as a result of the implementation of the program' (ANAO 2017, p. 15).

3 '... and the services they fund'

Just as Priority Reform 3 applies to all government organisations, it also applies to all of the services that are funded by governments but delivered by others on their behalf.

> Governments, their organisations and their institutions are accountable for Closing the Gap and are culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people, *including through the services they fund*. (clause 17c, emphasis added)

When the Commission discussed this aspect of the Agreement – within and outside government – the discussion often veered towards the commitments and principles of Priority Reform 2 and prioritising the delivery of services to Aboriginal and Torres Strait Islander people by Aboriginal and Torres Strait Islander organisations. Sometimes this included explicitly advocating that funding ACCOs to deliver services is how governments can deliver on this aspect of Priority Reform 3. For example, Aboriginal Family Legal Service WA submitted that:

> Regarding how governments can deliver on the commitment within Priority Reform Three to transform the services that they fund, this requires a shift in commissioning and procurement processes to prioritise service delivery for Aboriginal people by Aboriginal organisations. Funding to deliver services to Aboriginal communities must be quarantined for ACCOs, including where possible through non-competitive tender processes. (sub. 7, p. 8)

But the Agreement's commitment to building the community-controlled sector and its commitment to delivering on Priority Reform 3 through the services that governments fund, are distinct. There are good reasons for this: first, in some cases, communities or individuals may prefer a non-Indigenous service provider. A blanket rule or policy posture about what type of organisations are funded to deliver services would go against the wishes of community in such cases. Second, not all of the services provided by non-Indigenous organisations can be delivered by ACCOs.

> Although building the community-controlled services sector to provide Closing the Gap services is a priority, not all the services can be delivered by a community-controlled organisation. This includes services such as university education, hospitals, courts, prisons and policing, and the provision of income support and Medicare. (Coalition of Peaks 2019, p. 17)

Taking the early childhood care and development sector as an example, in 2022 there were about 14,000 approved childcare services in Australia and 100 Aboriginal and Torres Strait Islander-focused integrated early years services (Australian Department of Education 2022; PC 2023b, p. 49). This meant that 'most Aboriginal and Torres Strait Islander families and children do not always have access to a dedicated Aboriginal and Torres Strait Islander integrated early years' service' (Joint Council on Closing the Gap 2021, p. 8). While delivering on Priority Reform 2 would increase the availability of ACCOs, it is not realistic to expect that there will be a 'critical mass' of people qualified and motivated to operate ACCOs in every place that an Aboriginal or Torres Strait Islander child needs childcare.

The Agreement obliges governments to deliver on transformation regardless of whether Aboriginal and Torres Strait Islander people are served by Indigenous or non-Indigenous government-funded service providers.

A number of non-government organisations that the Commission spoke to noted that they are trying to change to better respond to the needs of Aboriginal and Torres Strait Islander people, but these changes were not necessarily driven by the Agreement or government. Before the Agreement, in 2019, Relationships Australia's Indigenous Network produced its *Action Plan on a Page*, which specified the organisation's spirit of intent, what it wanted to achieve and how it would be achieved, how the organisation would behave and how it would know it made a difference (Relationships Australia Indigenous Network 2019). These are the

basic ingredients of any theory of change or plan for transformation, which most government organisations are yet to produce.

Governments need to provide more leadership to ensure transformation through the services they fund

Implementation plans and annual reports indicate that little work has been done to ensure that governments are accountable for Closing the Gap through the services they fund. This message was reinforced during the Commission's engagements, which included meetings with government representatives.

The Commission heard of instances where tender processes incorporated aspects of the Agreement, and that there is potential to influence the design of those processes where they are not appropriately set up. This will be a necessary part of ensuring accountability for Closing the Gap because service providers cannot be expected to deliver services of a type or quality that they are not contracted to deliver. As noted by Annika David, GHD's Indigenous relations lead across federal government, 'The problem firms will face is pricing themselves out of the market. Doing the right thing, aligning to the [United Nations Declaration on the Rights of Indigenous Peoples] and other things we have signed up for, can mean a more expensive solution that may take longer to deliver' (sub. 27, p. 4).

But we heard that governments need to provide greater leadership and accountability in supporting the transformation of non-government organisations (box 13). headspace relayed an example where a new model of care was proposed by a Primary Health Network (PHN) but headspace:

> slowed its commitment and progress to establishment of the proposed model as the [PHN was] not yet aligned with the National Agreement.
>
> Before progressing this project and approving key activities, headspace has asked the PHN and the current Lead Agency to provide further advice on their current and future approach, including how it will align with the National Agreement; specifically, how they are partnering with [Aboriginal community-controlled health organisations] and how First Nations leadership and the National Agreement partnership principles will underpin planning and delivery of this project. (sub. 18, p. 11).[1]

Government organisations are likely to face challenges assuring themselves that services they fund align with Priority Reform 3 and the Agreement more broadly. Doing so will likely involve some combination of evaluating the quality of service delivery (to provide assurance that it is providing culturally safe and effective services and supports to Aboriginal and Torres Strait Islander people) and requiring that the organisation or its staff satisfy certain criteria (for example, delivering on their Reconciliation Action Plan, or the completion of cultural safety training – which do not necessarily translate into service quality). The Tasmanian Department of Health, for example, now has a requirement that organisations funded to deliver alcohol and other drugs and mental

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[1] The Commission heard about rigidities in the headspace model that prevent services being tailored to local needs. This was highlighted in the 2022 evaluation of headspace, which found that 'the headspace model enables localised services, however this is inconsistent across services, and the link between local needs analysis work undertaken by PHNs and implementation of headspace services could be strengthened' (KPMG 2022a, p. 254). In particular, 'States that had larger Indigenous populations felt the model was not culturally adaptive' (KPMG 2022a, p. 200).

health services demonstrate their workforce is qualified and trained in culturally sensitive and inclusive practices (Tasmanian Government 2023, p. 41). The South Australian Government submitted that:

> To ensure the transformation of services that government funds, requirements could be imposed in contracts and grant agreements for funded providers to report on how they are achieving the transformational elements at clause 59 of the National Agreement. (sub. 28, p. 9)

Such requirements will only be workable if government organisations are capable of evaluating other organisations' achievement of the transformation elements and Priority Reform 3 more broadly. This will be particularly challenging where government organisations have not implemented Priority Reform 3 themselves. The NIAA indicated that the Australian Government's approach to delivering transformation in relation to the services it funds will be supported by the outcomes of research commissioned by the Partnership Working Group on cultural safety (Australian Government, pers. comms., 6 June 2023).

Even if government organisations implement Priority Reform 3 in their own operations, assessments of whether it is being realised through the services they fund needs to be done transparently. This could be particularly challenging where governments are several steps removed from service delivery. Taking an example from the health sector, the Department of Health currently assesses whether drug and alcohol services commissioned by PHNs are culturally appropriate for Aboriginal and Torres Strait Islander people using qualitative information provided by the PHN (Australian Department of Health 2018, p. 33). This is an opaque arrangement and provides little confidence that the department's assessment is directly informed by the experience of service users.

Box 13 – The Commission heard from non-Indigenous organisations seeking more government leadership on how Closing the Gap applies to them

headspace indicated that it sees itself as a part of the implementation of the Agreement, but wants more leadership from government. It said that:

> headspace is a government established, mainstream, not-for-profit organisation that is 95 percent funded by national, state and territory health departments. As such, we consider it incumbent on us to work with government to model leadership in systemic and structural transformation within government and government-funded organisations. This includes identifying and eliminating racism and embedding and practicing meaningful cultural safety. (sub. 18, p. 9)

> The language in the National Agreement is focused on governments as partners, and does not encompass government-funded organisations (e.g., headspace National, PHNs). This enables limited accountability to the agreement by organisations tasked with service delivery.

> More explicit language around the role of government funded organisations would enable greater accountability to the Priority Reforms beyond goodwill. This would strengthen the way the Agreement could be leveraged by staff within organisations and by local First Nations communities where services are being delivered by organisations not defined as 'Parties' to the National Agreement. (sub. 18, p. 14)

Annika David submitted that:

> In the past, and still, it is up to the service provider to offer black knowledge as a value add. The private sector can do that — and investing in that knowledge is the right thing to do — but

> **Box 13 – The Commission heard from non-Indigenous organisations seeking more government leadership on how Closing the Gap applies to them**
>
> if governments' concept of 'value for money' does not change and it is only an optional add on that we have to work to convince governments to pay for that is a risk.
>
> If Closing the Gap Priority Reforms were taken into consideration by governments when writing Requests for Quotes, and the private sector had to demonstrate how they would deliver against those Priority Reforms — in alignment with what Australia has already signed up to under the [United Nations Declaration on the Rights of Indigenous Peoples] — the gap would close. The gap would close because it would involve working with Indigenous communities as partners. In some areas, like land management, working with them as partners on things they have done for thousands of years. (sub. 27, p. 4)

4 The independent mechanism

The Agreement commits governments to, by the end of 2023:

[identifying, developing or strengthening] an independent mechanism, or mechanisms, that will support, monitor, and report on the transformation of mainstream agencies and institutions. The mechanism, or mechanisms, will:

a. support mainstream agencies and institutions to embed transformation elements, as outlined in Clause 59, and monitoring their progress
b. be recognisable for Aboriginal and Torres Strait Islander people and be culturally safe
c. engage with Aboriginal and Torres Strait Islander people to listen and to respond to concerns about mainstream institutions and agencies
d. report publicly on the transformation of mainstream agencies and institutions, including progress, barriers and solutions. (clause 67)

There has been very little progress on the independent mechanism in most jurisdictions (table 3). New South Wales appears to be most advanced in its efforts to develop the independent mechanism.

It seems unlikely that any government will have an independent mechanism in place by the end of 2023, notwithstanding the ACT's intention to use the existing ACT Aboriginal and Torres Strait Islander Elected Body as its independent mechanism (the Commission has not evaluated whether it is fit-for-purpose). The Coalition of Peaks indicated to the Commission that it is unlikely that any governments will have something in place by July 2023 and most are in the very early planning stage (pers. comm., 12 July 2023).

There is very little transparency about how most governments are progressing their work on the independent mechanism. The Commission is unaware of any public information beyond what is contained in implementation plans and annual reports – some of which make no mention of the independent mechanism. The exception to this is the June 2023 Joint Council on Closing the Gap meeting communique, which noted that the Council 'discussed principles developed by the Coalition of Peaks to support jurisdictions in establishing independent mechanisms to support, monitor, and report on the transformation of mainstream agencies and institutions' (2023, p. 1).

Meanwhile, progress is being made on non-independent mechanisms: the Australian Government has stated that it will develop a government-led Monitoring and Accountability Framework by the end of 2023. The

framework 'will measure and drive cultural, systemic and structural transformation' (Australian Government 2023, p. 24).

Information paper 7 discusses the independent mechanism in more detail, including consideration of whether its remit should be expanded to cover the other Priority Reforms, and the features that it could have.

Table 3 – There has been minimal progress on the independent mechanism

Commonwealth

Expected date operational: Unknown.

The Australian Government's first implementation plan and annual report noted that it was looking into how existing mechanisms could be used to fulfil the role of the independent mechanism (Australian Government 2021, p. 17, 2022, p. 34). Its second implementation plan notes that the Australian Government 'commits to prioritising work' on the independent mechanism and that options will be developed 'in partnership with the Coalition of Peaks and all levels of government for consideration by the Secretaries Board' (Australian Government 2023, p. 24).

New South Wales

Expected date operational: Unknown.

The NSW Government's first implementation plan noted that Aboriginal Affairs NSW had 'commissioned the Centre for Aboriginal Economic Policy Research, Australian National University to develop an instrument to measure change in the relationship between NSW Government and Aboriginal and Torres Strait Islander people in NSW. Under the NSW partnership, NSW CAPO will be closely involved in this work' (NSW Government 2021, p. 27). And New South Wales' annual report describes a project to develop an Aboriginal-led government accountability mechanism, funded as part of the 2022-23 New South Wales Budget, which will run until June 2024 (NSW Government 2022b, p. 23).

The NSW Government submitted that 'NSW CAPO is leading a project to explore options for Aboriginal-led mechanisms to monitor the transformation of government in line with Priority Reform 3, and ensure government is held accountable to Aboriginal communities when designing policies and programs that affect them. NSW CAPO will work in close partnership with NSW Government on developing the scope and evidence for this initiative' (sub. 32, p. 17).

Victoria

Expected date operational: Unknown.

The *Victorian Government Aboriginal Affairs Report 2022* – released in June 2023 – indicates that the independent mechanism 'will be progressed through Victoria's Treaty process, under which there is an opportunity for a body comprising representatives elected by Aboriginal Victorians to lead or oversee engagement with Aboriginal Victorians in relation to any concerns about mainstream institutions and report publicly on the transformation of mainstream agencies' (Victorian Government 2023b, p. 22).

Queensland

Expected date operational: Unknown.

The independent mechanism is not mentioned in the Queensland Government's first implementation plan, second implementation plan or annual report.

Table 3 (cont.) – There has been minimal progress on the independent mechanism

Western Australia

Expected date operational: Unknown.

The WA Government's implementation plan noted that it is 'committed to working in partnership with the Joint Council' on the independent mechanism (WA Government 2021, p. 28) and its annual report noted that it is 'in the preliminary stages of scoping a whole-of-government Aboriginal affairs accountability framework, which will draw on existing advisory and independent review mechanisms in the first phase' (WA Government 2022a, p. 24).

South Australia

Expected date operational: Unknown.

South Australia's implementation plan and annual report do not mention the independent mechanism.

Tasmania

Expected date operational: Unknown.

Tasmania's implementation plan and annual report do not mention the independent mechanism.

Australian Capital Territory

Expected date operational: Currently operational.

The ACT's implementation plan and annual report do not mention the independent mechanism. The ACT Government told the Commission that 'The [Aboriginal and Torres Strait Islander Elected Body] currently has the ability to hold government to account. The ACT may consider enhancing its role in the future subject to the outcome of the Voice referendum through an independent review process' (pers. comm., 6 July 2023).

Northern Territory

Expected date operational: Unknown.

The NT Government's annual report notes that 'An options paper for a proposed independent mechanism has been developed and shared through the NT [Partnership Working Group]. A proposal will be developed based on feedback to the paper for further consideration, for the establishment of an independent mechanism by 2023' (NT Government 2022a, p. 53).

Australian Local Government Association (ALGA)

Expected date operational: Never.

ALGA does not intend to identify, develop or establish an independent mechanism (ALGA, pers. comm., 11 July 2023).

5 Progress on Priority Reform 3 has been limited – additional effort is required

Overall, the Commission's assessment is that insufficient progress has been made on Priority Reform 3, which puts at risk the achievement of the other Priority Reforms and the realisation of the objective of the Agreement – to overcome the entrenched inequality faced by too many Aboriginal and Torres Strait Islander people so that their life outcomes are equal to all Australians.

The lack of progress on Priority Reform 3 observed by the Commission is consistent with a paper that was considered by the 16 December 2022 meeting of the Joint Council on Closing the Gap. The paper analysed the nine jurisdictional annual reports and found that:

> Priority Reform Three was the most disappointing Priority Reform area reported by each jurisdiction. Progress reported largely focused on Business as Usual Functions (for example Reconciliation Action Plans and cultural training for staff members) as opposed to transformative and systems change actions and levers (for example workforces, policies, programs, services, legislation, partnerships, and frameworks). Reportable actions are often not able to be measured with an inability to track genuine progress. More broadly they do not improve accountability in transforming government and the services it funds, nor ensure that the actions are responsive to the needs of Aboriginal and Torres Strait Islander people. Further, there is limited information reported on the delivery of independent mechanisms to support transformation of mainstream / government organisations and only described jurisdictions' intentions to develop or research these independent mechanisms in the future (per Clause 67). (Joint Council on Closing the Gap 2022, pp. 1–2)

The Commission's assessment is that while there are pockets of progress, and some examples of potential transformation, most government organisations have not undertaken the groundwork to understand the size and scope of the transformation required. This will vary from organisation to organisation based on what the organisation does and the extent to which it already operates in line with Priority Reform 3. But every government organisation needs to engage with the Aboriginal and Torres Strait Islander people, organisations and communities they serve and work with to understand what transformation is required in their context – where existing deficiencies are and the vision for the future and how that vision can be achieved.

Priority Reform 3 is a critical prerequisite for the other Priority Reforms and improving the life outcomes of Aboriginal and Torres Strait Islander people. The Coalition of Peaks submitted that:

> It was our hope that three years into the National Agreement, there would be more achievements and progress made. However, the life outcomes of Aboriginal and Torres Strait Islander people, and the success of the National Agreement, *depends on governments changing the way they work*. (sub. 31, p. 1, emphasis added)

The Commission agrees. The Agreement does not place the Priority Reforms in a hierarchy – or include an explicit conceptual logic overall (information paper 6) – but systemic and structural transformation within government organisations is arguably the key enabler for implementing the Agreement and improving outcomes for Aboriginal and Torres Strait Islander people. The observed lack of progress on Priority Reform 3 puts the Agreement as a whole at risk.

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