Australian Government
Productivity Commission

January 2024

Review of the National Agreement on Closing the Gap

Study report

Volume 1

The Productivity Commission

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

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

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

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

Foreword

The Coalition of Aboriginal and Torres Strait Islander Peak Organisations and all Australian governments jointly entrusted the Productivity Commission with a significant and important job – to review progress and make recommendations to ensure that the objectives of the National Agreement on Closing the Gap are met.

The genesis of the Agreement was governments recognising that their efforts were not changing outcomes, and indeed the gap was widening in some areas. A new approach was required. The four Priority Reforms in the Agreement rely on a bedrock of trust, but trust is lacking and will only grow when decisions about Aboriginal and Torres Strait Islander communities are shared with communities.

The gap is not a natural phenomenon. It is a direct result of the ways in which governments have used their power over many decades. In particular, it stems from a disregard for Aboriginal and Torres Strait Islander people's knowledges and solutions.

Over the course of this review, it has become clear that in order to see change, business-as-usual must be a thing of the past. Across the country, we have observed small tweaks or additional initiatives, or even layers of initiatives, as attempts to give effect to the Agreement. However, real change does not mean multiplying or renaming business-as-usual actions. It means looking deeply to get to the heart of the way systems, departments and public servants work. Most critically, the Agreement requires government decision-makers to accept that they do not know what is best for Aboriginal and Torres Strait Islander people.

Change can be confronting and difficult. But without fundamental change, the Agreement will fail and the gap will remain. We cannot afford to waste the opportunity that this Agreement presents.

All Australians should expect that in three years' time, the Commission will be providing a very different assessment.

Romlie Mokak
Commissioner

Natalie Siegel-Brown
Commissioner

January 2024

Terms of reference

I, Josh Frydenberg, Treasurer, pursuant to Parts 2 and 4 of the *Productivity Commission Act 1998*, hereby request that the Productivity Commission undertake a review of progress on Closing the Gap.

Background

The goal of the National Agreement on Closing the Gap (the Agreement) is to overcome the entrenched inequality faced by too many Aboriginal and Torres Strait Islander people so that their life outcomes are equal to all Australians. The Agreement was developed in partnership between Aboriginal and Torres Strait Islander representatives and all Australian governments and commits governments to working in full and genuine partnership with Aboriginal and Torres Strait Islander people in making policies to close the gap.

The Agreement is built around four Priority Reform outcomes and 17 socioeconomic targets (and agreement to develop two additional targets, on inland waters and community infrastructure). The socioeconomic outcomes focus on measuring the life experiences of Aboriginal and Torres Strait Islander people. The Priority Reform outcomes are:

- Strengthening and establishing formal partnerships and shared decision-making.
- Building the Aboriginal and Torres Strait Islander community-controlled sector.
- Transforming government organisations so they work better for Aboriginal and Torres Strait Islander people.
- Improving and sharing access to data and information to enable Aboriginal and Torres Strait Islander communities to make informed decisions.

Parties to the Agreement agreed that the Productivity Commission will undertake a comprehensive review of progress every three years. The review is to inform the ongoing implementation of the Agreement by highlighting areas of improvement and emphasising where additional effort is required to close the gap. Parties have committed to undertaking actions if the review indicates that achievement of any of the targets that are set out in the Agreement is not on track.

This review will complement the Independent Aboriginal and Torres Strait Islander led review of progress.

Scope of the review

In undertaking the review, the Productivity Commission should:

1. analyse progress on Closing the Gap against the four Priority Reform outcome areas in the Agreement;
2. analyse progress against all of the socioeconomic outcome areas in the Agreement; and
3. examine the factors affecting progress.

The Productivity Commission should provide recommendations, where relevant, to the Joint Council on Closing the Gap on potential changes to the Agreement and its targets, indicators and trajectories, and on data improvements.

In undertaking the review, the Productivity Commission should have regard to all aspects of the Agreement, consider all parties' implementation and annual reports, and draw on evaluations and other relevant evidence.

Process

The Productivity Commission is to consult broadly, particularly with Aboriginal and Torres Strait Islander people, communities and organisations, and should invite submissions and provide other options for people to engage with the review. The Productivity Commission should publicly release a draft report and provide its final report to the Joint Council on Closing the Gap by the end of 2023. The final report will also be published.

The Hon Josh Frydenberg MP
Treasurer

[Received 7 April 2022]

Disclosure of interests

The *Productivity Commission Act 1998* (Cth) specifies that where Commissioners have or acquire interests, pecuniary or otherwise, that could conflict with the proper performance of their functions they must disclose those interests.

Commissioner Mokak advised that he is a patron of Winnunga Nimmityjah Aboriginal Health and Community Services, ACT; and a board member of the Australian Institute of Health and Welfare.

Commissioner Siegel-Brown advised that she is a member of the Independent Truth and Treaty Body, Queensland; and Board Director, Ageing and Disability Advocacy Australia.

Acknowledgements

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

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

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

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

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

About the artwork – Yindyamarra 'Connection'

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

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

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

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

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

About the artist

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

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

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

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

Contents

The Commission's final report is in two parts. The study report – volume 1 – includes an executive summary and the recommendations of the Review. The supporting paper – volume 2 – provides further detail on each of the main topics covered in the study report.

Study report – volume 1

Supporting paper – volume 2

An accompanying supporting paper provides further detail on each of the main topics covered in this report. It is available on the Commission's website: **pc.gov.au/closing-the-gap-review**.

Executive summary

In 2020, all Australian governments, along with the Coalition of Aboriginal and Torres Strait Islander Peak Organisations, signed the National Agreement on Closing the Gap (the Agreement). They committed to mobilising all avenues available to them to achieve the objective of the Agreement – which is 'to overcome the entrenched inequality faced by too many Aboriginal and Torres Strait Islander people so that their life outcomes are equal to those of all Australians'.

The Productivity Commission's first review of the Agreement shows that governments are not adequately delivering on this commitment. Despite some pockets of good practice, progress in implementing the Agreement's Priority Reforms has, for the most part, been weak and reflects tweaks to, or actions overlayed onto, business-as-usual approaches. The disparate actions and ad hoc changes have not led to improvements that are noticeable and meaningful for Aboriginal and Torres Strait Islander people. This raises questions about whether governments have fully grasped the scale of change required to their systems, operations and ways of working to deliver the unprecedented shift they have committed to.

The Commission's overarching finding is that there has been no systematic approach to determining what strategies need to be implemented to disrupt business-as-usual of governments. What is needed is a paradigm shift. Fundamental change is required, with actions based on a clear logic about how they will achieve that change.

It is too easy to find examples of government decisions that contradict commitments in the Agreement, that do not reflect Aboriginal and Torres Strait Islander people's priorities and perspectives and that exacerbate, rather than remedy, disadvantage and discrimination. This is particularly obvious in youth justice systems.

The Commission heard a clear message from Aboriginal and Torres Strait Islander people during the course of this review: persistent barriers to progressing the Agreement's Priority Reforms are the lack of power sharing needed for joint decision-making, and the failure of governments to acknowledge and act on the reality that Aboriginal and Torres Strait Islander people know what is best for their communities. Unless governments address the power imbalance in their systems, policies and ways of working, the Agreement risks becoming another broken promise to Aboriginal and Torres Strait Islander people.

The Agreement sits within an evolving landscape

The landscape in which the Agreement sits today is fundamentally different to that which existed at the time it was signed in 2020, and indeed during the time of its predecessor, the National Indigenous Reform Agreement. The Agreement is now one of several key commitments made by governments to improve the lives of Aboriginal and Torres Strait Islander people. These include a legislated Indigenous Voice to Parliament in South Australia, the establishment of the First People's Assembly of Victoria and legislated Treaty and Truth-telling processes in Victoria and Queensland. These initiatives may result in new decision-making and accountability structures that could provide a further catalyst for changes to the way governments work with Aboriginal and Torres Strait Islander people. But regardless of the outcomes of these processes, governments still have a responsibility to implement what they committed to in the Agreement. Into the future, consideration will need to be given to how the Agreement complements and can be strengthened by this architecture.

It is clear from the Commission's engagement across the country that there is strong support for the Agreement's Priority Reforms. They are seen as prerequisites for governments adopting a fundamentally new way of developing and implementing policies and programs that affect the lives of Aboriginal and Torres Strait Islander people.

The Agreement's reforms have not been prioritised by governments

The central pillars of the Agreement are its four Priority Reforms.

- Priority Reform 1 – Formal partnerships and shared decision-making.
- Priority Reform 2 – Building the community-controlled sector.
- Priority Reform 3 – Transforming government organisations.
- Priority Reform 4 – Shared access to data and information at a regional level.

These reforms are aimed at securing and accelerating improvements in life outcomes for Aboriginal and Torres Strait Islander people (measured against 17 socio-economic outcomes – SEOs). They are supported by a range of mechanisms to drive change, including commitments to develop place-based partnerships, policy partnerships and plans for strengthening key sectors (with plans initially covering the areas of justice, social and emotional wellbeing, health, housing, early childhood care and development, disability and languages).

Although there are pockets of good practice, overall progress against the Priority Reforms has been slow, uncoordinated and piecemeal. Despite over 2,000 initiatives being listed in governments' first implementation plans for Closing the Gap, many of these reflect what governments have been doing for many years. Actions often focus on the 'what' with little, if any, detail on the 'how' or the 'why'. Little attention is paid to the diversity of regional needs, cultures and governance structures within the jurisdiction (such as the unique needs of people living in the Torres Strait). And there is, for the most part, no strategic approach that explains (and provides evidence for) how the initiatives that governments have identified will achieve the fundamental transformation envisaged in the Agreement. This makes it near impossible for Aboriginal and Torres Strait Islander people, and the broader Australian community, to use these plans to hold governments to account.

The commitment to shared decision-making is rarely achieved in practice

The Agreement commits governments to building and strengthening structures that empower Aboriginal and Torres Strait Islander people to share decision-making authority with governments (Priority Reform 1). Place-based partnerships and policy partnerships are the key mechanism used in the Agreement to achieve this. But at its core, Priority Reform 1 is about power sharing, and this requires more than consultation and partnerships with Aboriginal and Torres Strait Islander people. It requires governments to relinquish some control over decisions and to trust that in doing so, they are enabling better outcomes for Aboriginal and Torres Strait Islander people.

Some governments have demonstrated a willingness to partner and share decision-making in some circumstances, however this is not observed more widely and, in some instances, there is contradictory practice. Governments are not yet sufficiently investing in partnerships or enacting the sharing of power that needs to occur if decisions are to be made jointly. There appears to be an assumption that 'governments know best', which is contrary to the principle of shared decision-making in the Agreement. Too many government organisations are implementing versions of shared decision-making that involve consulting with Aboriginal and Torres Strait Islander people on a pre-determined 'solution', rather than working together to identify priorities and co-design the best approach to achieving them.

- Policy partnerships (relating to justice, social and emotional wellbeing, housing, early childhood care and development, and Aboriginal and Torres Strait Islander languages) may foster collaboration, but the extent to which decision-making authority will be shared remains unclear, especially for significant policy matters.
- Place-based partnerships under the Agreement are in their very early stages, but governments appear to have been willing to be guided by Aboriginal and Torres Strait Islander organisations and communities in the selection of locations. This is a necessary first step for the future viability and progress of the partnerships.

The elements of shared decision-making articulated in Priority Reform 1 do not appear to have been adopted in wider practice, beyond formal partnerships. And while shared decision-making is essential to building trust and paving the way for implementing all of the Priority Reforms, it is only a step on the journey towards the ultimate goal of self-determination. The current focus of Priority Reform 1 – on a limited set of policy and place-based partnerships – is not commensurate with the much greater effort that is needed to achieve this goal. Other mechanisms, such as Truth and Treaty processes in several jurisdictions and Voice mechanisms (including the First Nations Voice to Parliament in South Australia and the First Peoples' Assembly of Victoria), can also support self-determination.

Government policy doesn't reflect the value of the community-controlled sector

Governments have acknowledged that in a broad range of service delivery areas, Aboriginal and Torres Strait Islander community-controlled services achieve better results for Aboriginal and Torres Strait Islander people, and so they have agreed that more services should be delivered by Aboriginal community-controlled organisations (ACCOs) (Priority Reform 2). While some transfer to ACCOs is occurring, efforts are slow (or ad hoc) and do not reflect the systemic changes that are necessary to transform service systems and improve outcomes.

The Commission heard from a number of ACCOs that they are treated as passive recipients of government funding, and that governments do not recognise that ACCOs are critical partners in delivering government services tailored to the priorities of their communities. This may be a symptom of unequal bargaining power with government agencies, and a government approach to commissioning that does not actively recognise the value of the expertise and knowledges that ACCOs bring to developing service models and solutions that are culturally safe and suited to communities. The Commission heard that even where services are being shifted from mainstream providers to ACCOs, governments still retain control over important elements of those programs. For instance, they often impose generic, pre-existing models of service and program design, and require reporting against narrow key performance indicators (KPIs), instead of allowing ACCOs to design services and measure outcomes in ways that are most meaningful to communities.

- In most jurisdictions, it is unclear how much funding is allocated to ACCOs and non-Indigenous, non-government organisations (NGOs), as most governments (the Australian, Victorian, Queensland, Northern Territory and Tasmanian governments) have either not undertaken or not published the expenditure reviews that they agreed to undertake in order to identify opportunities to prioritise ACCOs. Nonetheless, we heard that funding is continuing to go to NGOs and government service providers when it could be going to ACCOs.
- Some governments (including those in Victoria, New South Wales, South Australia and Western Australia) are planning or piloting promising reforms to how they commission the services of ACCOs. But it remains to be seen if these reforms will be translated into lasting and widespread changes.

The transformation of government organisations has barely begun

The Agreement requires systemic and structural transformation of mainstream government agencies and institutions to ensure they 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 (Priority Reform 3).

There is a stark absence of whole-of-government or whole-of-organisation strategies for driving and delivering transformation in line with Priority Reform 3. We are yet to identify a government organisation that has articulated a clear vision for what transformation looks like, adopted a strategy to achieve that vision, and tracked the impact of actions within the organisation (and in the services that it funds) toward that vision.

Some government organisations are engaging in self-assessment exercises to understand what transformation is needed. But transformation can only be realised by drawing on the experiences and perspective of those who governments serve – in this case, Aboriginal and Torres Strait Islander people – and working together with this knowledge to develop a strategy. Without external perspectives, government organisations will not be able to overcome any blind spots relating to institutional racism, cultural safety and unconscious bias.

Governments' efforts to date have largely focused on small-scale, individual actions (such as cultural capability training and workforce strategies to increase employment of Aboriginal and Torres Strait Islander people in the public sector), rather than system-level changes to policies and practices (although some positive changes to Cabinet and Budget processes have been implemented in several jurisdictions, including by the Australian, New South Wales and Northern Territory Governments).

There has been limited progress on putting in place an independent mechanism that will support, monitor and report on the transformation of government organisations in most jurisdictions.

Governments are not enabling Aboriginal and Torres Strait Islander-led data

Priority Reform 4 requires governments to implement large-scale changes to data systems and practices to enable Aboriginal and Torres Strait Islander people to participate in decision-making about data and to use data for their own purposes. Governments have made little progress on enacting these changes – Aboriginal and Torres Strait Islander organisations are continuing to report difficulties accessing government-held data, and often the data that is collected by government agencies does not reflect the realities of, or hold meaning for, Aboriginal and Torres Strait Islander people. As an illustration, government-held data that cannot be disaggregated at the community level or capture mob affiliation will often be ill-suited to support decision-making at the local level. Moreover, existing data often fails to capture the values, cultural diversity, and social and structural contexts of communities. As a result, it tends to perpetuate deficit narratives that problematise Aboriginal and Torres Islander people and leads to ill-conceived policy 'solutions'.

One of the reasons why there has been limited progress in implementing large-scale changes to data systems and practices in line with Priority Reform 4 could be that there is not a shared understanding of what Priority Reform 4 is trying to achieve. The Commission heard that Aboriginal and Torres Strait Islander people view Indigenous Data Sovereignty as the purpose of Priority Reform 4, but this is not clearly reflected in the text of the Agreement, nor in many governments' statements of what they are doing (in implementation plans, for example). Without clarity on this, there is unlikely to be meaningful and sustained progress on Priority Reform 4.

The community data projects (a commitment under the Agreement) are behind schedule, and it is too early to assess their progress. But a promising sign is that governments are looking to Aboriginal and Torres Strait Islander partners to set priorities in many of these projects.

Performance reporting provides only a partial picture of progress

The Agreement specifies performance monitoring and public reporting arrangements to support transparency and public accountability for progress against socio-economic outcomes and the Priority Reforms. However, there are significant challenges in the design and implementation of these arrangements.

- Even though the Priority Reforms are the foundation of the Agreement, no data is being reported on the agreed targets or supporting indicators for the Priority Reforms. These are critical gaps in data.
- Progress towards socio-economic outcomes is measured against national-level targets, with no indication of how jurisdictions should be held to account for their contribution.

Data still needs to be reported for all of the targets under the Priority Reforms, four of the 19 socio-economic targets, 143 supporting indicators and 129 data development items. The scale of the data development task means that it is unlikely that all of these will be developed within 10 years of the commencement of the Agreement (that is, by 2030). Improved governance arrangements and careful prioritisation of data development efforts are needed.

Accountability for delivering on the commitments in the Agreement is lacking

Despite the range of accountability mechanisms in the Agreement, they are not sufficient to influence the type of change envisaged in the Agreement. The existing mechanisms lack 'bite' – they are not sufficiently independent, do not contain timely and appropriate consequences for failure, obscure the individual responsibilities of each party and are not informed by high-quality evaluation.

The weakness (or effective absence) of accountability mechanisms means that the implementation of the Agreement depends heavily (or solely) on individuals being motivated to 'do the right thing'. While many individuals are motivated, this does (and will) not provide the necessary impetus for comprehensive and sustained system change.

Additional commitments are needed to drive change

A summary of the Commission's recommendations is provided below, with further detail on the specific actions in the tables following this. These recommendations and actions are intended to strengthen the implementation of the Agreement's Priority Reforms and to clarify the intent of Priority Reforms 1 and 4. They are not intended to replace or diminish the Agreement's Priority Reforms in any way. The proposed actions have been grouped into four thematic recommendations, but they are interlinked and interact (as do the Priority Reforms themselves) and it is not appropriate that they be acted upon in isolation of each other. All are needed to achieve the objectives of the Agreement.

Recommendation 1: Power needs to be shared

For meaningful progress to be made towards Closing the Gap, governments must share power, recognising that the right of Aboriginal and Torres Strait Islander people to have control over decisions that affect their lives is central to self-determination. This right is set out in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), of which Australia is a signatory. The Agreement's Priority Reforms contain many of the principles of self-determination, but governments are not adequately putting them into practice.

The Commission is proposing five actions to better enable power to be shared.

- The Agreement should be amended to clarify the purpose and broaden the scope of Priority Reform 1. This amendment should recognise that power must be shared with Aboriginal and Torres Strait Islander people in order for decisions to be made jointly and to achieve the ultimate goal of self-determination, as agreed to in the UNDRIP. It should also be made clear that efforts to share power should extend beyond the two forms of partnership specified in the Agreement. Other mechanisms, such as Treaty, Truth and Voice, can also play a role in transferring power to Aboriginal and Torres Strait Islander people and communities.
- Governments need to recognise the authority of ACCOs to represent the perspectives and priorities of their communities, and to determine how service systems and models of delivery can best reflect these. ACCOs should be seen as essential partners in commissioning services, not simply as passive funding recipients. To enable this, commissioning approaches need to incorporate obligations for governments to share decision-making in the design and delivery of solutions.

- Government Ministers should meet regularly with relevant Aboriginal and Torres Strait Islander peak bodies, so that they can hear directly from Aboriginal and Torres Strait Islander people about their priorities and perspectives before making decisions.
- Public sector employees should be required to be culturally capable and able to build and maintain relationships with ACCOs (see recommendation 3). Government agencies need to be adequately resourced to support this capability uplift.
- Implementation of the Agreement must be adequately resourced. In particular, greater resourcing is required to enable Aboriginal and Torres Strait Islander people and organisations to apply their knowledges and expertise to the implementation of the Agreement.
- Implementation plans need to be more strategic and written in collaboration with Aboriginal and Torres Strait Islander people. Together, they need to agree on a strategy and a set of associated actions that are the most substantive and critical to achieving the objectives of the Agreement and how they will be implemented. They also need to ensure that implementation plans fully reflect the diversity of regional needs, cultures, characteristics and governance structures in the jurisdiction (such as the unique culture, governance and needs of people living in the Torres Strait).

Recommendation 2: Indigenous Data Sovereignty needs to be recognised and supported

The Commission received overwhelming support in engagements and submissions from Aboriginal and Torres Strait Islander organisations, and a number of non-government organisations, for the Agreement to be amended to support Indigenous Data Sovereignty (IDS). Several governments also acknowledged the value of establishing a common understanding and 'authorising environment' for government action related to IDS.

While IDS is a paradigm shift from the status quo, in many respects, Indigenous Data Governance (which is how governments can give effect to IDS) is simply the practical application of Priority Reform 1 across the data lifecycle. Acceptance and application of IDS and IDG in the Agreement would provide a mandate for action. This would enable more effective partnerships, disrupt the deficit narratives that are dominating the interpretation of data, and help to build trust in data collections, leading to better information for policy design and delivery.

The Commission is proposing two essential actions to support Aboriginal and Torres Strait Islander people to progress IDS. The first is to amend the Agreement to include IDS and IDG under Priority Reform 4 and commit governments to:

- reform their existing data systems in line with IDG
- strengthen the technical data capability of ACCOs and the Indigenous data capability of governments
- invest in Indigenous data infrastructure.

The second is to establish a Bureau of Indigenous Data to:

- support governments to embed IDG into their data systems and practices
- invest in enhancing the data capability of Aboriginal and Torres Strait Islander organisations and communities
- consolidate and oversee data development work for the Agreement.

Recommendation 3: Mainstream systems and culture need to be fundamentally rethought

Governments have not fully grasped the scale of change required to their systems, culture, operations and ways of working to deliver the unprecedented shift they have committed to in the Agreement. Without this change, 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 – is unlikely to be achieved. A fundamental rethink of government systems and culture – in line with what Priority Reform 3 calls for – is required.

The Commission is proposing five actions to drive deep and enduring change.

- Government departments need to develop and execute a transformation strategy for their portfolio that sets out a clear theory of change, underpinned by an Aboriginal and Torres Strait Islander-led assessment of the department's historic and current institutional racism, unconscious bias and engagement practices, and by truth-telling to enable reconciliation and active, ongoing healing.
- Central agencies need to review and update funding and commissioning rules so that they explicitly incorporate accountability for funders to abide by the Priority Reforms when commissioning programs and services. ACCOs need to be at the negotiation table from the beginning, so that government funding decisions take full account of ACCOs expertise and knowledges on how best to meet community priorities, solve identified problems, and measure success. This must continue throughout contract lifecycles. Central agencies also need to provide clearer guidance to contract managers and decision makers, to help overcome inertia and reduce barriers to working in genuine partnership with ACCOs and to adopting a relational approach to commissioning.
- Central agencies also need to review and update Cabinet and Budget processes so that all submissions demonstrate the impacts of the policy proposal on Aboriginal and Torres Strait Islander people, and how the policy proposal aligns with, and has been developed in accordance with, the Priority Reforms.
- Governments need to designate a senior leadership group to drive change throughout the public sector in each jurisdiction, through improved communication, role modelling and skills building.
- Governments also need to embed responsibility for improving cultural capability and relationships with Aboriginal and Torres Strait Islander people into the employment requirements, performance agreements and KPIs of public sector CEOs, executives and employees.

Recommendation 4: Stronger accountability is needed to drive behaviour change

The Agreement provides for an independent mechanism that will drive accountability by supporting, monitoring and reporting on governments' transformations. But there has been limited progress towards establishing a mechanism and most jurisdictions will not have one in place by the end of 2023 as agreed. This is just one of the gaps in accountability that needs to be addressed.

The Commission is proposing four actions to strengthen accountability and drive behaviour change.

- Governments need to prioritise setting up an independent mechanism without further delay. It should have robust, legislated powers to independently examine progress on all aspects of the Agreement.
- Many of the actions that are needed to overcome the entrenched inequality faced by too many Aboriginal and Torres Strait Islander people are not specified in the National Agreement on Closing the Gap – they are instead found in other intergovernmental Agreements (on topics such as schools, health, skills and housing). When those other agreements are revised or new agreements are developed, governments should ensure that they reflect their commitments under the National Agreement on Closing the Gap.
- Greater transparency is needed so that the Australian community can hold governments to account. Governments should publish the stocktakes, partnership agreements, transformation strategies and other documents that have been developed under the Agreement.
- Governments should require every government organisation to include a statement in its annual report on the substantive activities it undertook to implement the Agreement's Priority Reforms and the demonstrated outcomes of those activities.

A guide to this report and its supporting paper

This report is accompanied by a supporting paper available on the Commission's website (www.pc.gov.au/inquiries/completed/closing-the-gap-review). The supporting paper provides further detail on each of the main topics covered in this report. It is not necessary for you to read the supporting paper to understand where the Commission has arrived at in its review or what our recommendations are. The supporting paper covers:

- the context and origins of the Agreement and the approach the Commission has taken to conduct the review, including who we engaged with (chapter 1)
- an assessment of progress against each of the four Priority Reforms in the Agreement (chapters 2–5)
- an assessment of the Agreement's performance reporting approach (chapter 6)
- the Commission's suggestions for embedding and strengthening accountability for implementing the Agreement (chapter 7)
- progress towards socio-economic outcomes (chapter 8)
- what we heard from participants over the course of the review (chapter 9).

Recommendations and actions

Recommendation 1
Power needs to be shared

For meaningful progress to be made towards the objective of the Closing the Gap Agreement, governments must share power for decisions that affect Aboriginal and Torres Strait Islander people. Governments need to trust that by relinquishing control over decisions they are enabling better outcomes for Aboriginal and Torres Strait Islander people.

Essential actions for sharing power are:

- amending the Agreement to clarify the purpose and broaden the scope of Priority Reform 1
- governments treating ACCOs as essential partners in program and service design and delivery, not simply as funding recipients
- regular meetings between Ministers and Aboriginal and Torres Strait Islander peak bodies
- governments adequately resourcing the implementation of the Agreement
- governments writing implementation plans more strategically, in collaboration with Aboriginal and Torres Strait Islander people.

Essential action	Need for change	Action details
Amend the Agreement to clarify the purpose and broaden the scope of Priority Reform 1 **(action 1.1 in chapter 2)**	The way in which Priority Reform 1 is drafted in the Agreement has important limitations. • It focuses on shared decision-making rather than self-determination. • Clauses 30 and 31 of the Agreement imply that efforts to build partnerships should be directed to a limited number of policy areas and places.	Parties to the National Agreement on Closing the Gap should amend Priority Reform 1 in the Agreement to: • recognise the ultimate goal of Priority Reform 1 is self-determination (which Australia has committed to under the UNDRIP) and that shared decision-making authority is only a step towards achieving this goal • clarify that efforts to achieve self-determination extend beyond the policy partnerships and place-based partnerships.

Essential action	Need for change	Action details
Governments treating ACCOs as essential partners in program and service design and delivery, not simply as funding recipients **(action 1.2 in chapter 2)**	Governments are not adequately recognising that Aboriginal and Torres Strait Islander community-controlled organisations (ACCOs) have knowledges, expertise and connection to community that governments do not have. This means that ACCOs are often better placed than governments to design and deliver high-quality, holistic and culturally safe services.	The Australian, state and territory governments should: • recognise the authority of ACCOs to represent the perspectives and priorities of their communities, and to determine how service systems and models of delivery can best meet these (see action 3.2 for details) • require public sector employees to have cultural capability and to build relationships with ACCOs (see action 3.5 for details) • adequately resource Aboriginal and Torres Strait Islander people and organisations to ensure they are able to apply their knowledges and expertise in the implementation of the Agreement (see action 1.4 for details).
Regular meetings between Ministers and Aboriginal and Torres Strait Islander peak bodies **(action 1.3 in chapter 7)**	Government Ministers will continue to be responsible for a very large proportion of government decisions for the foreseeable future. Government officials control much of the flow of information to Ministers and, in most jurisdictions, Aboriginal and Torres Strait Islander peak bodies have few avenues for ensuring that, before making decisions, Ministers are aware of Aboriginal and Torres Strait Islander priorities and perspectives and take steps to address the concerns and issues they raise.	The Australian, state and territory governments should ensure that Government Ministers meet with relevant Aboriginal and Torres Strait Islander peak bodies, without departmental officials present, at least twice per year.

Essential action	Need for change	Action details
Governments adequately resourcing the implementation of the Agreement **(action 1.4 in chapter 7)**	To date, the resources that governments have committed to the implementation of the Agreement have fallen far short of the ambition of the Agreement. Many of the commitments in the Agreement cannot be achieved unless there is additional investment.	The Australian, state and territory governments should ensure that the resources they devote to the implementation of the Agreement are commensurate with the ambition of the Agreement. At a minimum, this should include additional resourcing for: • Aboriginal and Torres Strait Islander people and organisations to enable them to apply their knowledges and expertise to the implementation of the Agreement. This includes funding for the design and delivery of programs and services but also funding for participation in government processes to ensure that Aboriginal and Torres Strait Islander knowledges and expertise are central in these processes • government organisations to implement the Priority Reforms • accountability mechanisms to oversee the implementation of the Priority Reforms and drive change.

Essential action	Need for change	Action details
Governments writing implementation plans more strategically, in collaboration with Aboriginal and Torres Strait Islander people **(action 1.5 in chapter 6)**	Governments' Closing the Gap implementation plans do not demonstrate a strategic approach. Many plans contain long lists of actions but provide little explanation of how those actions will collectively achieve the scale and pace of change that is needed and embed the Priority Reforms. In some jurisdictions, there is limited evidence that the plans have been developed in partnership with Aboriginal and Torres Strait Islander people.	The Australian, state and territory governments should: • treat Closing the Gap implementation plans as strategic documents (not as 'laundry lists' of current activities) • work closely with Aboriginal and Torres Strait Islander partners to agree strategies and actions that are substantiative and critical to achieving the objectives of the Agreement • develop a clearly articulated theory of change that demonstrates how the agreed strategies and actions will contribute to the desired change • include the strategies and actions agreed with Aboriginal and Torres Strait Islander partners in implementation plans, together with details of the funding and timeframe for each agreed action • ensure that implementation plans fully reflect the diversity of regional needs, cultures and governance structures in the jurisdiction (such as the unique needs, cultures and governance structures of people living in the Torres Strait) • report on every one of the agreed strategies and actions in Closing the Gap annual reports • update implementation plans when there are changes that affect the agreed strategies.

Recommendation 2
Indigenous Data Sovereignty needs to be recognised and supported

Throughout this review, Aboriginal and Torres Strait Islander people told us that Indigenous Data Sovereignty is central to the purpose of Priority Reform 4. However, the Agreement does not acknowledge the concept of Indigenous Data Sovereignty (IDS) or include explicit commitments to enable it to be exercised through the practice of Indigenous Data Governance (IDG).

Essential actions that will support Aboriginal and Torres Strait Isander people to progress Indigenous Data Sovereignty are:

- amending the Agreement to include Indigenous Data Sovereignty under Priority Reform 4
- establishing a Bureau of Indigenous Data.

Essential action	Need for change	Action details
Amend the Agreement to include Indigenous Data Sovereignty under Priority Reform 4 **(action 2.1 in chapter 5)**	The Agreement does not currently include a commitment to IDS. While the commitments under Priority Reform 4 relate to some aspects of IDS, they do not reflect all of the key principles of IDS. Specifically, sharing existing data with Aboriginal and Torres Strait Islander communities is a necessary but insufficient measure to empower shared decision-making. And too often, when communities ask for their data, governments' default response is no. Instead, communities must be able to access existing data easily, and to determine what other data they need to support their interests, values and priorities. Communities also need data governance structures that are accountable to them to counter the over-supply of Indigenous data that is aggregated, decontextualised, reductive and that problematises Aboriginal and Torres Strait Islander people. This is critical to maintain the social licence to collect, share and use Indigenous data.	The Agreement should be amended to explicitly include IDS as part of the outcome statement for Priority Reform 4. This should be accompanied by other changes, including: • adopting the definitions of Indigenous Data Sovereignty and Indigenous Data Governance, as set out by the Maiam nayri Wingara Indigenous Data Sovereignty Collective • recognising that IDS is a multi-faceted, long-term objective to be achieved by Aboriginal and Torres Islander people • recognising that IDS is necessary for Aboriginal and Torres Islander people to determine and make decisions about their priorities and development • committing governments to partnering with Aboriginal and Torres Strait Islander organisations and communities to embed IDG. This should include specific commitments to: – incorporate IDG into existing data systems to empower Aboriginal and Torres Strait Islander people to decide what, how, why Indigenous data are collected and managed across the data lifecycle – strengthen the technical and administrative data capability of ACCOs and build the Indigenous data capability of government and non-indigenous organisations – invest in developing Indigenous data infrastructure that enables communities to develop, manage and use their own data collections.

Establish a Bureau of Indigenous Data **(action 2.2 in chapter 6)**	Indigenous Data Governance (IDG) entails Aboriginal and Torres Strait Islander people having the ability to define, develop, access, use and control data that is locally relevant and reflects their priorities, values, cultures and diversity. Aboriginal and Torres Strait Islander people must lead the implementation of IDG (as per action 2.1), and to do so they must have the necessary authority and resources. Existing bodies and mechanisms do not have the remit or governance structure to steward the development and implementation of the necessary changes across all jurisdictions. In addition, the Agreement and its Data Development Plan (DDP) identify hundreds of indicators to monitor progress, but most are yet to be reported and lack a clear rationale as to how they are linked the Priority Reforms and socio-economic outcomes. There is no plan to address the key issues which include that: • responsibilities for data development are fragmented • processes for prioritising and developing the 'existing' indicators in the target frameworks and the vast number of data items identified in the DDP are not coordinated • no organisation has the resources or capacity to undertake the required work.	Parties to the National Agreement on Closing the Gap should commit to establishing a Bureau of Indigenous Data (BoID) that will: • support governments to embed IDG into their data systems and practices • invest in enhancing the data capability of Aboriginal and Torres Strait Islander organisations and communities • consolidate and oversee data development work for the Agreement. The BoID should be governed by an Indigenous Data Board, comprised of Aboriginal and Torres Strait Islander people initially appointed by the Joint Council. It should be funded jointly by the Australian, state and territory governments. Over the short term (1–2 years), the BoID should be auspiced by an existing statutory agency and tasked with: • developing a clear conceptual logic to underpin performance monitoring for the Agreement • coordinating and overseeing data development for the critical indicators • promoting and building understanding of IDS and IDG across all governments • stewarding the development of an intergovernmental plan for IDG. By no later than 2028, the BoID should be established under its own legislation as an independent cross-jurisdictional authority. The exact functions of the statutory BoID should be determined by advice from the Indigenous Data Board, and could include: • maintaining the Closing the Gap dashboard and annual reporting • developing Indigenous data standards and/or protocols • managing national Indigenous surveys and datasets and establishing new collections • investing in data infrastructure, such as warehouses for community-controlled data • advising on the use of Indigenous data • addressing systemic problems with the implementation of Priority Reform 4.

Recommendation 3
Mainstream government systems and culture need to be fundamentally rethought

Governments have not fully grasped the scale of change required to their systems, culture, operations and ways of working to deliver the unprecedented shift they have committed to in the Agreement. Without this shift, 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 – is unlikely to be achieved.

Essential actions for fundamentally rethinking mainstream government systems and culture are:

- government departments developing and executing a transformation strategy for the portfolio
- reviewing and updating funding and contracting rules so that they explicitly incorporate accountability for funders to abide by the Priority Reforms in commissioning processes
- reviewing and updating Cabinet and Budget processes so that they explicitly promote, support and encourage the Priority Reforms
- designating a senior leadership group to drive public sector change in each jurisdiction
- embedding responsibility for improving cultural capability and relationships with Aboriginal and Torres Strait Islander people into public sector employment requirements.

Essential action	Need for change	Action details
Government departments develop and execute a transformation strategy for the portfolio **(action 3.1 in chapter 4)**	Progress on the elements of government transformation – which include identifying and eliminating racism, embedding and practising meaningful cultural safety and improving engagement with Aboriginal and Torres Strait Islander people – is patchy at best. As the government organisations most directly under Ministerial control, government departments should be at the forefront of implementing the Agreement. But few government departments are pursuing the transformation required under the Agreement.	The Australian, state and territory governments should ensure that every government department has a clear, documented strategy for its portfolio to undertake the transformation required under the Agreement. Each department's portfolio-wide transformation strategy should: • have a clear theory of change • contain the evidence base as to how actions (both individually and collectively) will give effect to the committed change • be underpinned by an Aboriginal- and Torres Strait Islander-led assessment of its history with Aboriginal and Torres Strait Islander people, and truth-telling to enable reconciliation and active, ongoing healing. The Aboriginal and Torres Strait Islander-led assessment should also include an assessment of progress on other transformation elements, including: • institutional racism in the department • unconscious bias in the department • the department's current approach to engagement with Aboriginal and Torres Strait Islander people. Once this assessment has been undertaken, each department should develop and execute a transformation strategy to address identified issues, and to implement the transformation elements in a coordinated, coherent and comprehensive manner.

Essential action	Need for change	Action details
Review and update funding and contracting rules so that they explicitly incorporate accountability for funders to abide by the Priority Reforms in commissioning processes **(action 3.2 in chapter 3)**	Government organisations are rarely adopting approaches to commissioning in that fully value the knowledges and expertise that ACCOs bring to developing service models and solutions that are culturally safe and responsive to Aboriginal and Torres Strait Islander communities. Even where whole-of-government funding and contracting rules do not prevent best practice approaches to commissioning with ACCOs, the slow pace of change to practices and habits can impede implementation of the Agreement and its Priority Reforms. It appears that contract managers are often doing what has always been done, even where there is no explicit impediment to doing things differently.	The Australian, state and territory governments should task the relevant central agencies with reviewing and, where necessary, updating funding and contracting rules so that they explicitly incorporate accountability for funders to abide by the Priority Reforms. This should include ensuring that commissioning processes: • recognise that community control is an act of self-determination, and that ACCOs are essential partners that bring knowledges and expertise to developing service models and solutions • require ways of working by government agencies that further strengthen the ACCO sector, including funding contracts that: – support ACCOs to build organisational capacity – cover the full costs of service provision – minimise government-designed reporting and accountability requirements – allow communities to determine what performance indicators would best represent improved outcomes for their communities – oblige funding agencies to share data with ACCOs to enable them to do their work effectively – require government contract managers to adopt a relational approach to contracting. To support these changes, central agencies will need to issue clear guidance to funding decision makers and contract managers, to help overcome inertia and reduce barriers to working in ways that strengthen the ACCO sector.

Essential action	Need for change	Action details
Review and update Cabinet and Budget processes so that they explicitly promote, support and encourage the Priority Reforms **(action 3.3 in chapter 7)**	In order to successfully embed each of the Priority Reforms, system-level changes to governments' processes are required. Changing whole-of-government decision-making processes is a key component of system change.	The Australian, state and territory governments should task the relevant central agencies with reviewing and, where necessary, updating Cabinet and Budget processes so that they explicitly promote, support and encourage implementation of the Priority Reforms. This should include requiring all Cabinet and Budget submissions to demonstrate: • the impacts of the policy proposal on Aboriginal and Torres Strait Islander people • how the policy proposal aligns with, and has been developed in accordance with, the Priority Reforms. Relevant central agencies should ensure that other government organisations receive training and support so that they understand and can effectively implement the new Cabinet and Budget requirements.
Designate a senior leadership group to drive public sector change in each jurisdiction **(action 3.4 in chapter 7)**	Effective leadership is critical for driving the transformational change envisaged by the Agreement. But as it stands: • in some jurisdictions, no senior leader or leadership group is tasked with driving public sector change • in other jurisdictions, multiple people and organisations have been given that task. In both cases, no one is clearly responsible for providing all of the elements required for successful change.	The Australian, state and territory governments should task a senior leadership group with a wide span of influence (such as the Secretaries Board or another senior leadership group) with promoting and embedding the transformation of public sector systems and culture. At a minimum, this should include supporting transformation with: • continuous, consistent communication • role modelling and reinforcement • encouragement and support for desired behaviours • relevant tools and skills-building. The senior leadership group chosen to lead public sector change should meet with the relevant jurisdictional Aboriginal and Torres Strait Islander peak body at least twice per year.

Essential action	Need for change	Action details
Embed responsibility for improving cultural capability and relationships with Aboriginal and Torres Strait Islander people into public sector employment requirements **(action 3.5 in chapter 7)**	It is not acceptable for government employees to treat adhering to the principles of the Agreement as optional – these principles reflect essential skills and behaviours without which governments cannot hope to deliver on their Closing the Gap commitments. Changes to employment requirements are an essential part of driving cultural change in the public sector. In early 2023, the Queensland Government implemented legislation which requires public sector CEOs, executives and employees to enhance their cultural capability and support the state government in reframing its relationship with Aboriginal peoples and Torres Strait Islander peoples.	Following the Queensland model, the Australian, territory and other state governments should ensure that the employment requirements of all public sector CEOs, executives and employees require them to continually demonstrate how they have sought to: • improve their cultural capability • understand Aboriginal and Torres Strait Islander history and context • eliminate institutional racism • develop relationships with Aboriginal and Torres Strait Islander people • support the principles outlined in the National Agreement on Closing the Gap. These requirements should flow through into the performance agreements and KPIs of CEOs, executives and employees, with the strongest requirements placed on CEOs and executives.

Recommendation 4
Stronger accountability is needed to drive behaviour change

Despite the range of accountability mechanisms in the Agreement, they are not sufficient to influence the type of change envisaged in the Agreement. The existing mechanisms lack 'bite' – they are not sufficiently independent, do not contain timely and appropriate consequences for failure, obscure the individual responsibilities of each party and are not informed by high-quality evaluation.

Essential actions for stronger accountability are:

- establishing the independent mechanism in each jurisdiction without further delay
- including the National Agreement on Closing the Gap in other National Agreements
- including a statement on Closing the Gap in every government organisation's annual report
- publishing all the documents developed under the Agreement.

Essential action	Need for change	Action details
Establish the independent mechanism in each jurisdiction without further delay **(action 4.1 in chapter 7)**	The Agreement provides for an independent mechanism that will drive accountability by supporting, monitoring and reporting on governments' transformations. But there has been limited progress towards establishing an independent mechanism and most jurisdictions will not have a mechanism by the end of 2023 as agreed. The independent mechanism was originally envisaged as overseeing the implementation of Priority Reform 3. But there are important connections between the Priority Reforms – each Priority Reform supports, and is supported by, the other Priority Reforms, with the ultimate aim of securing and accelerating improvements in the lives of Aboriginal and Torres Strait Islander people.	The Australian, state and territory governments should prioritise establishment of an independent mechanism for their jurisdiction, and should ensure that it is not further delayed. Governments and Aboriginal and Torres Strait Islander people should share decision-making about the design and establishment of the independent mechanism. Features that would support the effectiveness of the independent mechanism include: • being governed and led by Aboriginal and Torres Strait Islander people, chosen with input from Aboriginal and Torres Strait Islander people and communities • having a legislative basis to help guarantee its ongoing existence and the power behind its functions • having sufficient guaranteed funding so that it can build and maintain organisational capabilities, and determine its priorities without undue influence from governments •

(Continued next page)

Essential action	Need for change	Action details
	If it were to consider Priority Reform 3 in isolation from the other Priority Reforms, the independent mechanism would struggle to take due account of the connections and dependencies between them, or the ultimate contribution of the Priority Reforms to the socio-economic outcomes envisaged in the Agreement.	• having a broad remit covering all Priority Reforms and all aspects of governments' relationships with Aboriginal and Torres Strait Islander people (subject to the role and remit of other Aboriginal and Torres Strait Islander bodies, such as elected bodies or truth-telling commissions) • having full control of its work program, so it can initiate its own inquiries, conduct its own research, benchmark performance, and review all relevant documents (such as Closing the Gap implementation plans and annual reports) • being able to require government organisations to provide information (with powers akin to those of auditors) • being able to intervene in real time to support Aboriginal and Torres Strait Islander organisations that have concerns about the way in which government actions or decisions are affecting Aboriginal and Torres Strait Islander people or organisations • operating with transparency, including freedom to hold public hearings and to publish its own reports and findings at a time of its choosing • not engaging in program delivery and not administer funding or programs, so that it is never in a position of needing to pass judgement on its own actions or inaction.
Embed the commitments of the National Agreement on Closing the Gap in other inter-governmental Agreements **(action 4.2 in chapter 7)**	Many of the actions that are needed to overcome the entrenched inequality faced by too many Aboriginal and Torres Strait Islander people are not specified in the National Agreement on Closing the Gap – they are instead found in other intergovernmental Agreements (such as those on health, housing, schools, skills, and disability services).	To enshrine the cross-cutting nature of the National Agreement on Closing the Gap, the Australian, state and territory governments should ensure that their obligations under the National Agreement on Closing the Gap: • are embedded in commitments in all other significant intergovernmental agreements, when existing agreements are revised or new agreements are developed • inform the way in which they go about revising existing intergovernmental agreements and negotiating new agreements.

Essential action	Need for change	Action details
Include a statement on Closing the Gap in every government organisation's annual report **(action 4.3 in chapter 7)**	The Australian, state and territory governments each have legislation or rules that require government organisations – departments, statutory bodies, commissions, hospitals and health services, government-owned companies, local governments and every other type of government organisation – to prepare annual reports containing certain specified information. But there are currently no legislation or rules that create reporting obligations in relation to Closing the Gap.	The Australian, state and territory governments should amend all relevant legislation or rules to include a requirement for every government organisation to include a statement on Closing the Gap in its annual report. The purpose of the Closing the Gap Statement would be to provide transparency about the substantive activities that each government organisation is undertaking to implement the Agreement's Priority Reforms and the demonstrated outcomes of those activities. The exact criteria that the Closing the Gap statements must meet should be designed by Aboriginal and Torres Strait Islander peak bodies and included in the relevant legislation or rules.
Publish all the documents developed under the Agreement **(action 4.4 in chapter 7)**	An important element of transparency is to make it clear to the community how governments' actions will collectively lead to delivery of the reforms to which they have committed. But many of the stocktakes, agreements, reviews and evaluations that have been developed under, or are highly relevant to, the Agreement are not publicly available. This makes it much harder for Aboriginal and Torres Strait Islander people, as well as the broader Australian community, to understand whether governments are moving beyond a business-as-usual approach, and to hold them accountable for meeting their commitments.	The Australian, state and territory governments should make public all of the outputs that are developed under the Agreement. At a minimum, this should include: • partnership stocktakes • partnership agreements • expenditure reviews • evaluations • transformation strategies (action 3.1).

Review of the National Agreement on Closing the Gap

1. The role of the National Agreement on Closing the Gap

In 2020, all Australian governments and the Coalition of Aboriginal and Torres Strait Islander Peak Organisations (the Coalition of Peaks) signed the National Agreement on Closing the Gap. This Agreement is unlike other national agreements. It is the first that includes a non-government party as a signatory – the Coalition of Peaks – and is ambitious in the scale of change required. It calls for an unprecedented, structural shift in the way governments work with Aboriginal and Torres Strait Islander people to drive better outcomes.

In signing the Agreement, governments made a commitment – to Aboriginal and Torres Strait Islander people, to the Coalition of Peaks, to each other and to the nation – to 'a fundamentally new way of developing and implementing policies and programs that impact on the lives of Aboriginal and Torres Strait Islander people' and to do so in a way that 'takes full account of, promotes, and does not diminish in any way, the cultures of Aboriginal and Torres Strait Islander people'. They also agreed to report on their progress to a new council with representation from governments and the Coalition of Peaks – the Joint Council on Closing the Gap (Joint Council).

Four Priority Reforms: the central pillars of the Agreement

The objective of the Agreement is 'to overcome the entrenched inequality faced by too many Aboriginal and Torres Strait Islander people so that their life outcomes are equal to all Australians'. This is a complex and multifaceted objective that requires concerted effort to strengthen outcomes important to the rights, wellbeing and quality of life of Aboriginal and Torres Strait Islander people. This is reflected in the 17 socio-economic outcomes identified in the Agreement, including in the areas of health, education, employment, housing, safety and strength in culture and language.

To secure and accelerate achievement of these socio-economic outcomes, which had not been reached under the predecessor Agreement (the National Indigenous Reform Agreement – NIRA), parties recognised that this meant governments did not just need to do more, but needed to work radically differently. As a result, the parties agreed to four Priority Reforms relating to the way governments work with Aboriginal and Torres Strait Islander people, organisations and communities. The Priority Reforms represent a new way of working for governments and set the Agreement apart from the NIRA, which largely focused on setting targets for socio-economic outcomes. A key lesson from the NIRA was that when presented in isolation,

socio-economic targets can problematise Aboriginal and Torres Strait Islander people, rather than the structures and systems that are driving these outcomes. It is these structures and systems which need to change to achieve improvements in life outcomes. This is the focus of the Priority Reforms.

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

Although these reforms are described as a new approach to the way governments work, they are not new ideas – most of what has been committed to reflects what many Aboriginal and Torres Strait Islander people have been saying for a long time. Further, some aspects of the reforms have been committed to by governments in the past, but only partially implemented or abandoned following changes in governments and shifts in policy. This has contributed to the existing level of distrust in government as well as a sense of fatigue and burden on already-stretched resources of Aboriginal and Torres Strait Islander organisations, communities and peak bodies. These groups are continually called on by governments to provide advice and perspectives on a broad range of policy issues but are often not given sufficient time or resources to do so meaningfully.

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

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

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

While the Agreement outlines the key building blocks of the reforms and their objectives, it has not explicitly linked them in a way that would support a shared understanding of the intended change. The absence of clear conceptual links risks contributing to siloed policy responses and insufficient investment in the government transformation necessary to improve outcomes for Aboriginal and Torres Strait Islander people (box 1).

Box 1 – The conceptual logic linking Priority Reforms with outcomes needs to be explicitly articulated and applied

The Agreement outlines the key building blocks of the reform effort (including a statement of the objective, the desired outcomes, a commitment to prioritising Aboriginal and Torres Strait Islander cultures, and an agreed set of Priority Reforms). However, it does not set out a conceptual logic linking each of the building blocks that would support a shared understanding of the intended change. In particular, the Agreement does not describe how the Priority Reforms interact or how they will contribute to improved socio-economic outcomes.

As a result, a clear logic is not applied to the Agreement's performance monitoring approach. The large number of targets, supporting indicators and data development items (over 300) for the Priority Reforms and socio-economic outcomes are listed in two separate tables in the Agreement and defined within their siloed outcome domain, without a clear or consistent rationale for why some have been included and others excluded. This obscures the relationships between the reforms, cultural determinants, and socio-economic outcomes.

The absence of conceptual logic is also reflected in governments' plans for implementing the Agreement, which are meant to set out how governments will transform the way they are working to accelerate improved life outcomes for Aboriginal and Torres Strait Islander people. Much like a roadmap, the community should expect to see a clear strategy logically connecting the actions that governments have said, in their implementation plans, that they will take to how they will actually achieve the change to which they have committed under the Agreement.

There are several consequences of this lack of logic and strategic approach.

- It results in ad hoc or insufficient investment in the transformative change necessary to shift ways of working that are needed to improve outcomes for Aboriginal and Torres Strait Islander people, described by some as a 'spray and pray' approach to change. Without a change of view, governments' efforts to address socio-economic outcomes will continue to draw on non-Indigenous framing of policy solutions, resulting in little change in outcomes and an increased likelihood of wasted government and community resources.
- It hinders a prioritisation of effort and leads to short-termism. Policy efforts that target actions or outcomes that are perceived as more achievable (or seen as 'low hanging fruit') but may be unlikely to produce significant change in outcomes may be prioritised instead actions or outcomes that are slower or more difficult, but more likely to bear fruit.
- It contributes to siloed policy responses, hindering broader progress in improving life outcomes by not making trade-offs, interdependencies and common drivers clear. For example, policy responses to reduce family violence might aim to increase the reporting, arrest and conviction of offenders. However, this could have the unintended consequence of increasing incarceration, overcrowding and homelessness, further undermining individual and community wellbeing.

When the logic or evidence base behind particular actions is unclear, it is hard for Aboriginal and Torres Strait Islander organisations and communities, as well as the broader Australian community, to understand whether governments are moving beyond a business-as-usual approach and to hold governments to account for meeting their commitments.

The Agreement sits within an evolving landscape

Much has changed since the Agreement was signed in 2020, and the Agreement is one of several key commitments made by governments to improve the lives of Aboriginal and Torres Strait Islander people. Several jurisdictions have established or commenced Voice, Treaty or Truth telling processes (box 2).

Box 2 – Broader government commitments to improve the lives of Aboriginal and Torres Strait Islander people

Aboriginal and Torres Strait Islander people have thrived for tens of thousands of years with strong cultures, knowledges and lore. Since colonisation, Aboriginal and Torres Strait Islander people have continued to assert sovereignty and self-determination, including greater representation in decision-making on issues that impact on their lives.

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

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

The Australian Government also endorsed the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), of which self-determination is a central feature. UNDRIP has become one of the most important instruments for Indigenous rights at the international level, and was the product of over two decades of discussions at the United Nations. It sets out a framework for States to take actions to truly recognise Indigenous peoples' rights to self-determination, participation in decision-making, respect for and promotion of culture, and equality and non-discrimination. This includes control over cultural traditions, customs and expressions. Although the Australian Government endorsed UNDRIP in 2009, there has been some criticism about the extent to which governments have translated its obligations into Australian domestic policies.

More recently, governments have stepped up their efforts to improve how they work with Aboriginal and Torres Strait Islander people to design policies that affect their lives. In addition to signing the National Agreement on Closing the Gap, several jurisdictions (Victoria, Queensland, the Northern Territory and the ACT) have commenced processes to facilitate Treaty negotiations, Victoria established the First People's Assembly of Victoria and the South Australian Government has passed legislation to establish a First Nations Voice. The Australian Government committed to implementing the Uluru Statement from the Heart in full, including holding a referendum on a Voice in its first term. The Voice was intended to be an independent and permanent body providing advice to the Australian Parliament and Government on matters that affect the lives of Aboriginal and Torres Strait Islander people. The referendum was held in October 2023 but did not gain the majority of votes required for it to pass.

These initiatives may establish new decision-making and accountability structures that could provide a further catalyst for changes to the way governments work with Aboriginal and Torres Strait Islander people. But, regardless of the outcomes of these processes, governments will still be responsible for adopting a fundamentally new way of developing and implementing policies and programs that affect Aboriginal and Torres Strait Islander people, as they have committed to do in the Agreement.

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

The Agreement requires a shift in power and control

For meaningful progress to be made towards Closing the Gap, governments must share power, recognising that the right of Aboriginal and Torres Strait Islander people to have control over decisions that affect their lives is central to self-determination. The Agreement implies this, but does not explicitly state it. It acknowledges that Aboriginal and Torres Strait Islander people have for a long time been calling for the transfer of power and resources to communities (clause 19c) and that community control is an act of self-determination (clause 44).

The resounding message the Commission received from the people and organisations who participated in this review is that the power imbalance between governments and Aboriginal and Torres Strait Islander people is a persistent barrier to progressing the Priority Reforms.

The Priority Reforms are aimed at transforming the way governments work, which is essential if power and control are to be shifted to Aboriginal and Torres Strait Islander communities. For instance, Priority Reform 1 calls for strengthening structures that empower Aboriginal and Torres Strait Islander people to share decision-making authority with governments. Priority Reform 2 commits governments to increasing the proportion of services under community control. And Priority Reform 4 requires governments to provide Aboriginal and Torres Strait Islander communities and organisations with access to the same data and information as governments. But the implementation of these commitments relies on governments being willing to give up some control, and for the most part, this has not occurred.

The failure to share power obstructs the Priority Reforms, and therefore progress under the Agreement, in many ways.

- Governments wield significant control over participation and agenda-setting, dictating the scope of policy considerations and reforms that are subject to shared decision making.
- The limited time allocated for engagement and response further undermines genuine partnership and shared decision-making.
- The unequal allocation of resources in partnerships places a heavy burden on Aboriginal and Torres Strait Islander organisations, compounded by governments' often perplexing decisions to defund initiatives that appear to show positive results.
- This problem is exacerbated by insufficient Indigenous-led data and an oversupply of government-controlled data, saturating the Indigenous data landscape with an excess of aggregated, decontextualised information that perpetuates negative and harmful stereotypes.
- Transparency issues, such as unpublished plans, expenditure stocktakes, and reasons for decisions hinder accountability, impeding the ability of peaks and communities to hold governments accountable.

- ACCOs must repeatedly use precious resources to advocate for their crucial role in designing and delivering services to Indigenous communities. Even when services are shifted to ACCOs, governments typically retain control of important elements (such as pre-determined KPIs or mainstream service models), perpetuating an imbalance in decision-making authority.

Many of the factors contributing to the imbalance of power are deeply embedded in governments' systems, organisational cultures and ways of working. Entrenched structures, rules, and decision-making processes – that do not respect the value of Aboriginal and Torres Strait Islander knowledges of what works best for their communities, do not prioritise Indigenous cultures or do not acknowledge, let alone tackle, institutional racism – persist. For the most part, key government systems, including policy-making processes and funding and contracting rules, have not undergone fundamental change. This can be linked to ingrained government cultures, attitudes and risk aversion that have not transformed to share power. Inadequate cultural capability and environments lacking cultural safety.

2. Assessing progress towards the Priority Reforms

The Commission has been tasked with reviewing progress towards the objectives and outcomes of the Agreement every three years (in addition to its role in producing the Closing the Gap Dashboard and Annual Data Compilation Report). This is the first such review. It is an opportunity to highlight where governments are changing (or failing to change) the way they operate, where outcomes are improving or worsening for Aboriginal and Torres Strait Islander people, and where additional effort is needed.

The Commission has focused this first review of progress on the Priority Reforms, reflecting the importance of the reforms in driving improvements in socio-economic outcomes. We have focused on whether the commitments in the Agreement have been met, or are on track to be met, for each Priority Reform. This involves more than assessing whether specific outputs have been delivered as agreed – such as the development and publication of expenditure stocktakes, engagement plans, and the establishment of formal partnerships – and focuses on whether governments are upholding the spirit and intent of the Agreement.

The Commission has also undertaken a deep dive into three socio-economic outcome areas of the Agreement to assess the extent to which governments have adhered to their commitments across all four Priority Reforms when making decisions about these policy areas. This work can be found in chapter 8 of the supporting paper, and is summarised in box 3 below. This process has revealed consistent problems in the way the Priority Reforms are implemented in practice, as well as highlighting some key overarching enablers that work across the four Priority Reforms that are important for driving better outcomes.

Box 3 – Deep dive on socio-economic outcome areas in the Agreement

The Commission took a targeted approach to assessing progress on the Agreement's 17 socio-economic outcome areas (SEOs) in its first review. We took a deep dive into three SEOs that work together to keep Aboriginal and Torres Strait Islander children and families strong and safe from harm – SEO 11 (youth justice), SEO 12 (child protection), and SEO 13 (family safety). The deep dives are focused on the extent to which governments designed and implemented policies across these SEOs in a way that aligns with the Priority Reforms.

Box 3 – Deep dive on socio-economic outcome areas in the Agreement

The Commission focused on three 'prominent' policies which have been implemented by governments to improve outcomes across the three SEOs.

- Reforms in youth justice to raise the minimum age of criminal responsibility (raising the MACR) (SEO 11).
- Delegated authority for child placement in out-of-home care (SEO 12).
- The Aboriginal and Torres Strait Islander Action Plan ('Action Plan') (part of the National Plan to End Violence against Women and Children 2022-2032) (SEO 13).

The selection of these policies has been informed by the Commission's engagement with Aboriginal and Torres Strait Islander people and organisations during this review, as well as previous reports into child protection, family safety and youth justice policies. Additionally, the choice of these three SEOs allows the Commission to analyse SEOs that are making different levels of progress against their identified targets.

Across all three policies, the Commission found that governments were willing to adopt approaches that have been called for by Aboriginal and Torres Strait Islander people for decades. However, there are still gaps in how these policies reflect the transformation required by governments to implement the Priority Reforms. For example:

- Governments still require Aboriginal and Torres Strait Islander people to fit into mainstream approaches. This ignores Aboriginal and Torres Strait Islander conceptions of the 'problem' to be 'solved' and limits recognition of Aboriginal and Torres Strait Islander people's rights to self-determination.
- With the exception of raising the MACR, reforms have focused on targeted programs for Aboriginal and Torres Strait Islander people, without engaging on reforms to mainstream systems and institutions that have significant impacts on outcomes across the three SEOs.
- Across all three policies, governments have limited the extent to which Aboriginal and Torres Strait Islander people have determined the pace and direction of reform, and have made other policy decisions that have undermined and contradicted these policies (such as rebutting presumptions of bail and increasing sentences for youth offences).

The Commission also found that while governments have demonstrated a willingness to partner with Aboriginal and Torres Strait Islander people, they still largely retained the power over key decisions, including whose voices are incorporated and how investment decisions are made. With respect to Priority Reform 4, there have been some promising commitments to improving data across the three SEOs, including a recognition of Indigenous Data Sovereignty as a key guiding principle under the Action Plan. Nevertheless, there are gaps in data and in sharing data and progress in many areas is slow.

The Commission has sought to centre the experiences and perspectives of Aboriginal and Torres Strait Islander people in this review. As the people at the centre of the Agreement, it is imperative that governments listen to Aboriginal and Torres Strait Islander people to understand whether governments' actions are making any difference (box 4).

Box 4 – Centring the perspectives of Aboriginal and Torres Strait Islander people

The Agreement states that 'when Aboriginal and Torres Strait Islander people have a genuine say in the design and delivery of services that affect them, better life outcomes are achieved'. Consistent with this, the Commission has aimed to centre Aboriginal and Torres Strait Islander people's perspectives, priorities and knowledges by:

- engaging widely with Aboriginal and Torres Strait Islander people, communities and organisations
- publishing what we heard through engagements
- drawing on submissions from Aboriginal and Torres Strait Islander people and organisations
- using case studies.

Engaging widely

The Commission held face-to-face meetings in major cities, regional and remote areas as well as online meetings. Of a total of 235 meetings, 136 were with Aboriginal and Torres Strait Islander organisations. Prior to the draft report, four virtual roundtable meetings were held with Aboriginal and Torres Strait Islander organisations working in justice, health, community services and education, and housing. Following the release of the draft report, three roundtables were held on the topics of Indigenous Data Sovereignty and accountability, attended by Aboriginal and Torres Strait Islander organisations, government organisation, statutory office holders and academics.

Acknowledging what we have heard

As part of our engagement approach (PC 2022), the Commission committed to the principle of reciprocity with our information, including by providing feedback to Aboriginal and Torres Strait Islander people. In February 2023, the Commission published a summary of what we heard in meetings held in the second half of 2022 (PC 2023b). A summary of what we heard from meetings during the entire review is in chapter 9.

Drawing on submissions

Submissions are a key source of information informing our work. Of the 101 submissions we received, 51 were from Aboriginal and Torres Strait Islander people and organisations.

Using case studies

The Commission has used case studies throughout the report and chapters, which reflect a range of experiences and perspectives from Aboriginal and Torres Strait Islander people.

We also looked to governments' implementation plans and annual reports (among other sources of information) in addition to speaking to governments and submitting information requests and seeking public submissions in response to our draft report.

Implementation plans are meant to set out how governments will transform the way they are working to secure and accelerate improved life outcomes for Aboriginal and Torres Strait Islander people. However, despite thousands of initiatives being listed in governments' implementation plans (over 2,000), actions often focused on the 'what' with little, if any, detail on the 'how' or the 'why' (box 5). There is, for the most part, no strategic approach or 'theory of change' that explains how the initiatives that governments have identified are linked to the Closing the Gap objectives, reforms or outcomes. And where a link is identified, in many cases it is tenuous. Further, governments' annual reports are difficult to reconcile against their implementation

plans. This makes it near impossible for the community to use these plans and reports to assess progress and to hold governments to account for their actions to enact the Priority Reforms.

Overall, implementation plans and annual reports provide an incomplete picture of what governments are doing or not doing, and the Commission has therefore not been able to conduct a detailed examination of what is happening inside every government organisation. The Commission's overall assessment of progress against the Agreement is therefore based on a judgement, drawing on the information and evidence that was available and what we heard through our engagements.

Box 5 – Government implementation plans and annual reports are not fulfilling their intended purpose

The Agreement commits the parties to develop rigorous implementation plans that set out the actions they will take to achieve the Priority Reforms and socio-economic outcomes and to report on their progress in annual public reports. The implementation plans are meant to ensure that Aboriginal and Torres Strait Islander people know what governments are doing to move beyond a business-as-usual approach and can monitor their progress. However, we heard from numerous participants that the first implementation plans fell significantly short of this purpose. For example:

> [Implementation Plans are] lists of actions and activities, devoid of clear strategy and aspiration. … At the end of five years, we will have multiple Implementation Plans listing in excess of ten thousand initiatives and actions. What is the point of preparing these documents if no-one will be able to read and absorb them? If one wished to design a process guaranteed to resist close analysis and inspection, one could hardly do better than the current miasma of bureaucratic gobbledegook that passes for serious policy aimed at closing the gap. (Michael Dillon, sub. 5, p. 3)

Many significant weaknesses are common across the first implementation plans.

- **They give little indication that they were developed in partnership.** While all governments reasserted their commitment to working in partnership, most jurisdictional plans did not demonstrate that they were the product of a genuine partnership process. Only five of the nine first implementation plans included a foreword or opening statement from Aboriginal and Torres Strait Islander partners and two included a cosigned statement. But some partners indicated their involvement had been limited to providing input into a consultation process. Both NSW CAPO and the Queensland Aboriginal and Torres Strait Islander Coalition noted that the New South Wales and Queensland Governments had improved their partnership approach in their second implementation plans.
- **They fail to set out a whole-of-government strategy that reflects the depth and scale of change that is required.** The plans provide little explanation of what issues and barriers the proposed actions are meant to address and how they are collectively envisioned to create the conditions for change. It is difficult to see whether most governments or their agencies have contemplated the ambition to which they have committed under the Agreement, and then worked backwards to determine what actions would feasibly achieve this. There is also little consideration of the interdependencies across the socio-economic outcome areas. Individual actions are assigned to lead Ministers or departments, but the plans do not establish how the Agreement will be embedded into all government departments, statutory bodies, commissions, hospitals and health services, government-owned companies, local governments and every other type of government organisation. For example, there are 189 Australian

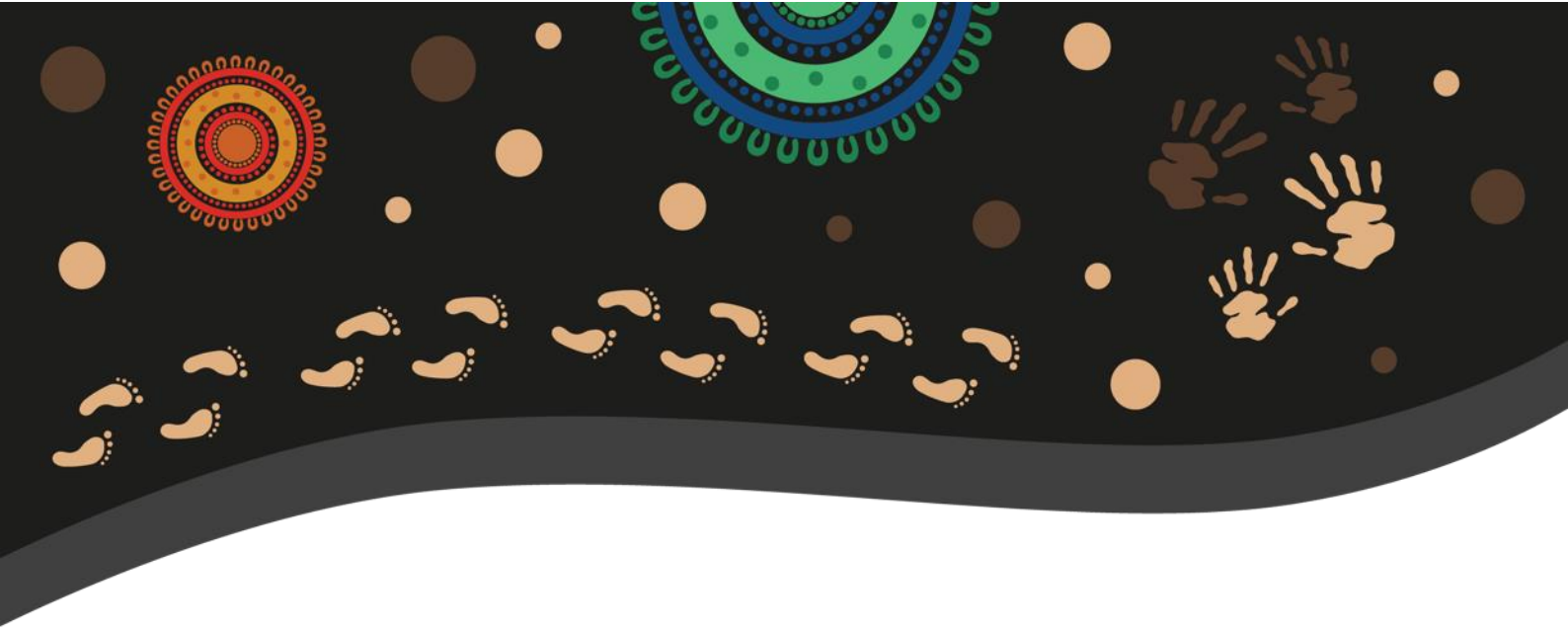
Box 5 – Government implementation plans and annual reports are not fulfilling their intended purpose

Government entities and companies, but only 19 are referred to in the Australian Government's actions table (DoF 2023; NIAA 2023).

- **They lack transparency about how actions will be delivered.** Details on the funding and timeframes for actions in most jurisdictional plans are often missing or vague. For example, 'new' initiatives are frequently listed as being delivered within existing funding or resourcing, while deliverable timeframes are often indicated as 'on-going'. Moreover, most plans do not specify key milestones or what steps will be taken to deliver each action or point to where this information can be found.

Governments' annual reports are difficult to reconcile against their implementation plans, which undermines their purpose as an accountability mechanism. Most only report on a subset of the actions that each government committed to, yet they also include updates on actions that were not listed in the implementation plans. Descriptions of progress are generally high level or incomplete, and most do not indicate whether actions are on track to be delivered as planned. Similarly, most do not discuss delivery risks or issues and how they are being addressed. By and large, the annual reports focus on listing activities that have been undertaken, while giving significantly less attention to describing what has not been delivered as planned and areas where there has been little progress. As the Coalition of Peaks stated:

> While intending to outline how governments are implementing and progressing the National Agreement, these documents are often continuing traditional government practices of highlighting selected achievements while neglecting systemic issues that limit progress. (sub. 25, p. 3)



3. Priority Reform 1: Shared decision-making

Priority Reform 1 commits governments to 'building and strengthening structures that empower Aboriginal and Torres Strait Islander people to share decision-making authority with governments to accelerate policy and place-based progress against Closing the Gap'. The Agreement identifies 'strong partnerships' as the key mechanism for achieving Priority Reform 1 and commits governments to establishing five new policy partnerships and six new place-based partnerships that respond to local priorities. The Agreement focuses effort on building these policy partnerships and place-based partnerships, with less attention on building partnerships more broadly.

Partnerships are a familiar tool for governments and Aboriginal and Torres Strait Islander people; many have been used in the past and are in place today. They take a range of forms including:

- high-level partnerships between national, state and territory governments and the corresponding coalition of Aboriginal and Torres Strait Islander peak organisations in the relevant jurisdiction, such as the Coalition of Peaks, the South Australian Aboriginal Community Controlled Network, Aboriginal Peak Organisations Northern Territory and the Coalition of Aboriginal Peak Organisations in New South Wales
- place-based partnerships, which focus on the priorities of a specific location or region like the Murdi Paaki Regional Assembly or Empowered Communities, which operates in 10 regions across Australia
- thematic partnerships that focus on a coordinated approach in a priority sector like the Aboriginal Children's Forum in Victoria or the Western Australia Aboriginal Health Partnership Forum and Northern Territory Aboriginal Health Forum.

Some of these types of arrangements have succeeded in building trust and progressing the priorities of communities. But others have done little to bridge mistrust (some exacerbated it) and most have fallen short of embedding shared decision-making in a sustained way.

The Agreement is an attempt to overcome the challenges of the past using a new approach to 'set out a future where policy making that impacts on the lives of Aboriginal and Torres Strait Islander people is done in full and genuine partnership' (clause 18). The Agreement does not define what a 'full and genuine' partnership is, but the inclusion of such terms may signal a desire by all parties to move away from business-as-usual approaches to partnerships, which do little to bridge mistrust or shift power imbalances. Parties have recognised that strong partnerships must include some critical elements, including that they are supported by a formal agreement, that they are accountable and representative, and that they involve shared decision-making.

But ultimately, success comes down to the intent of the parties involved and their willingness and commitment to work collaboratively and take concrete actions to share decision-making power.

There are some signs of governments working in partnership …

Governments are taking small steps to change the business-as-usual approach to relationships and engagement, with some now more willing to partner, trial new approaches and engage in shared decision-making. This appears to be especially true when legislation or agreements mandate this approach (such as the legislation and frameworks underpinning the Treaty process in Victoria (box 6)).

Box 6 – What rebalancing of power can look like – Victoria's Treaty process

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

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

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

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

Box 6 – What rebalancing of power can look like – Victoria's Treaty process

- **Self-Determination Fund** (signed October 2022). The Self-Determination Fund is a financial resource controlled by First Peoples that supports Aboriginal and Torres Strait Islander people to have equal standing with the State in Treaty negotiations as well as build future wealth and prosperity. This fund is independent from the State and administered by five independent First Nations experts (First Peoples' Assembly of Victoria 2023).

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

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

Successful shared decision-making has also been achieved where Aboriginal and Torres Strait Islander groups have pushed or incentivised governments to 'come to the table' either through convening or co-investment, thereby changing the dynamic of top-down, government-led initiatives. For instance, Wungening Aboriginal Corporation was able to expand its services to women and families facing domestic violence through a joint venture between the WA Department for Child Protection and Family Support, the Housing Authority, Lotterywest and the Indigenous Land and Sea Corporation in 2017 (Western Australia Government 2017). Similarly, the Anindilyakwa Land Council signed a local decision-making agreement with the Northern Territory Government in 2018 (NT Government and ALC 2018). It has used mining royalties in addition to government funds to invest in sectors like housing, education and justice to meet the priorities of traditional owners and communities, though challenges still remain with accessing relevant data.

… but shared decision-making is rarely achieved

The above examples highlight pockets of success. But the Commission also heard several examples where governments were compelled to work in genuine partnerships with Aboriginal and Torres Strait Islander organisations to meet an essential need, but often this would not result in changes to the ways governments operate more broadly. The clearest example of this was during the COVID-19 pandemic, when governments were compelled to work in partnership with ACCOs in recognition of their expertise and the connections they have with communities that enable them to respond quickly and effectively (box 7).

Box 7 – Shared decision-making in response to the COVID-19 crisis

In March 2020, the Australian Government convened the Aboriginal and Torres Strait Islander Advisory Group on COVID-19 (the taskforce) to protect Aboriginal and Torres Strait Islander people, who were identified early on to be a high-risk population due to the high burden of disease and inadequate infrastructure and services in Aboriginal and Torres Strait Islander communities (Department of Health 2020, pp. 8–9). The taskforce was co-chaired by the Australian Government Department of Health and the National Aboriginal Community Controlled Health Organisation (NACCHO) and comprised senior government representatives from state and territory public health teams, public health medical officers, the Australian Indigenous Doctors' Association, the National Indigenous Australians Agency (NIAA) and communicable disease experts (The Taskforce 2020, p. 1).

The taskforce jointly developed a management plan and met twice a week in 2020 with extra meetings taking place where required, demonstrating a willingness and commitment to share knowledge and decision-making. This commitment is emphasised in the management plan, which stated that:

> Responses [to COVID-19] must be centred on Aboriginal and Torres Strait Islander people's perspectives and ways of living and developed and implemented with culture as a core underlying positive determinant … These responses should be co-developed, and co-designed with Aboriginal and Torres Strait Islander people, enabling them to contribute and fully participate in shared decision-making. (DoH 2020, p. 6)

This specialised and collaborative response has been described as a 'reversal of the gap' in which Aboriginal and Torres Strait Islander people had better outcomes than non-Indigenous people and better outcomes than Indigenous peoples globally (Stanley et al. 2021, p. 1854). It stands in contrast to the government's response to the 2009 swine flu outbreak, which was a one-size-fits-all approach that did not recognise the higher risk level in Aboriginal and Torres Strait Islander communities, and because of this, had a disproportionate negative impact on communities (Crooks et al. 2020, p. 3).

As well as a national response, there were a range of jurisdiction specific partnerships and shared decision-making arrangements. Several Aboriginal Community Controlled Health Organisations (ACCHOs) told the Commission that there was a more genuine commitment to collaboration and shared decision-making during the height of the COVID-19 pandemic. Aboriginal and Torres Strait Islander health professionals echoed this sentiment. For example, Winnunga Nimmityjah Aboriginal Health and Community Services (Winnunga) – the ACT's sole Aboriginal community-controlled health service – described open and quick communication with both the ACT and Australian Governments during the pandemic. Winnunga was trusted to make decisions for the community and was provided with extra funding for activities such as COVID-19 testing and supporting people who were required to isolate.

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

Overall, the Commission's engagements with over 130 Aboriginal and Torres Strait Islander organisations have not identified systemic change in when and how decisions are made, indicating limited progress in governments sharing decision-making. This is exemplified by Aboriginal Peak Organisations NT which said that:

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

A large number of partnerships were in place before the commencement of the Agreement. Parties committed to undertake a stocktake and review of these partnerships and to strengthen them in line with the strong partnership elements. This work is still underway but the partnership stocktakes published so far do not reveal much about the health or effectiveness of existing partnerships.

For new partnerships under the Agreement, it remains to be seen what the outcomes will be. Both the policy partnerships and the place-based partnerships are in the early stages of development, and progress has been slow.

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

Only three jurisdictions have published stocktakes and reviews of their existing partnerships – Queensland, Victoria and the Australian Government. Each has taken a different approach to assessing their partnerships (and did not always use assessment criteria that are consistent with the strong partnership elements). For the most part, governments have assessed their partnerships as meeting the strong partnership elements. However, none provide public information on what process was used to assess their partnerships, and importantly, whether and how Aboriginal and Torres Strait Islander partners participated in the assessment.

This lack of information means that it was not possible for the Commission to assess the quality of these partnerships and whether the principle of shared decision-making is being achieved.

Progress on the policy partnerships has been slow, with the justice partnership in place the longest

The Agreement provides for five policy partnerships to be established, for the purpose of working on five discrete policy areas. They are:

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

The justice policy partnership (JPP) has been established the longest. The remaining policy partnerships were established in late 2022 and are still in their early stages. As a result, the Commission's assessment has focused on the JPP for this initial review.

The JPP was established in 2021, with the signing of the *Agreement to Implement the Justice Policy Partnership*. This agreement is a high-level document that sets out the objectives, roles and responsibilities and governance arrangements supporting it. It aims to establish a mechanism for the parties to develop a

joined-up approach to Aboriginal and Torres Strait Islander justice policy, with a focus on reducing adult and youth incarceration.

The primary function of the JPP is to make recommendations to reduce over-incarceration. More specific actions, responsibilities and timeframes are set out in the JPP work plan, which includes 11 actions covering preparation of reports (an annual report, a 3-year strategic plan and a second work plan), identification and reviews of partnerships across the justice sector, and engaging with data programs. So far, only two of the 11 actions have been implemented. These relate to the approval of the JPP's annual report and the inclusion of updates from the Closing the Gap Partnership Working Group as a standing agenda item.

Views on the effectiveness of the JPP are varied. Some members expressed support for the process, noting the value of the JPP as a mechanism to bring governments to the table to engage with Aboriginal and Torres Strait Islander people on policy priorities, including bail, policing, minimum age of criminal responsibility and youth justice. While this is important, particularly to overcome what has been longstanding mistrust between Aboriginal and Torres Strait Islander communities and the justice system, this role appears to fall well below the ambition and outcomes that the policy partnerships were designed to achieve under the Agreement. Key issues raised included:

- the time and resources for Aboriginal and Torres Strait Islander independent members and member organisations to participate in the JPP – for example, members have been asked to review lengthy documents with very little time to engage with their communities. Moreover, resources they spend to be part of the JPP often take resources away from their core operations, and the benefits of their involvement can be limited by their experience of long meetings that involve updates on work, rather than discussion of actions to progress outcomes
- insufficient representation of Aboriginal and Torres Strait Islander people with lived experience in the justice system and of certain groups that represent jurisdictional or regional issues
- governance structures that fail to coordinate government actions or to enhance accountability, particularly for actions that contradict the objective of the JPP, such as the introduction of stronger bail laws in some jurisdictions (discussed further below).

Structural reforms are required if the JPP, and potentially other policy partnerships, are to be more than a forum to foster relationships and allow for open dialogue.

The place-based partnerships are still in the early stages of development

All locations have been selected for place-based partnerships: Maningrida (Northern Territory), the western suburbs of Adelaide (South Australia), Tamworth (New South Wales), Doomadgee (Queensland), East Kimberley (Western Australia) and Gippsland (Victoria).

The place-based partnerships are still in their infancy, with selected locations currently working through the documentation and resourcing for the partnerships. Establishing the place-based partnerships has taken time. This is partly due to circumstances outside the control of the parties involved. The COVID-19 pandemic meant that community engagement was harder to facilitate, and in South Australia and Western Australia, state elections meant that some decisions were delayed or had to be reconfirmed with a new government.

The process for selecting locations has differed by jurisdiction but overall, it appears that governments have been led by Aboriginal and Torres Strait Islander peak groups and communities to select locations that communities have advocated for. Funding has been committed by governments for some of the partnerships and is being negotiated for others. But the Commission also heard concerns about the slow pace at which partnerships are progressing, and about the inadequacy of the funding allocated to them.

A focus on self-determination as the ultimate goal

Despite many existing and new partnerships, and governments' commitments to strengthen these, the Commission heard from Aboriginal and Torres Strait Islander people that they have seen little tangible change in when and how government decisions that affect their lives are made. Indeed, partnerships are a familiar and easily quantifiable mechanism, but it appears that governments often view partnerships as an output, rather than using them to empower shared decision-making.

Shared decision-making is essential to building trust and paving the way for implementing all of the Priority Reforms, but it is only a step on the journey towards the ultimate goal of self-determination. The right of Indigenous people to self-determination is expressed in the United Nations Declaration on the Rights of Indigenous People (UNDRIP), which the Australian Government endorsed in 2009. Among other things, UNDRIP outlines the right of Indigenous people to participate in decision making in matters which would affect their rights. But despite the similarities between the goals of UNDRIP and Priority Reform 1, self-determination is not articulated as an overarching objective of Priority Reform 1, nor is it reflected in its commitments. Rather, it is briefly mentioned through the strong partnership elements, '… where self-determination is supported, and Aboriginal and Torres Strait Islander lived experience is understood and respected' (clause 32).

A focus on shared decision-making that does not include self-determination as the ultimate objective, perpetuates the power imbalance between governments and Aboriginal and Torres Strait Islander people. This is because a focus on sharing decision-making implies that the power to make decisions is held by government institutions, and it is theirs to share as desired and in the circumstances they assess as appropriate. This hinders both progress to meaningful shared decision-making and self-determination.

The focus of Priority Reform 1 needs to be broadened

The current focus of Priority Reform 1 – on a limited set of policy and place-based partnerships – is not commensurate with the much greater effort that is needed to achieve the goal of self-determination. Other mechanisms, such as Truth and Treaty processes in several jurisdictions and Voice mechanisms (including the First Nations Voice to Parliament in South Australia and the First Peoples' Assembly of Victoria) can also support self-determination.

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

Governments need to relinquish some control over decisions to enable shared decision-making and self-determination

Articulating self-determination as the objective of Priority Reform 1 seeks to elevate the need for governments to examine how they contribute to and uphold power dynamics when making decisions. However, this change alone will not overcome the power imbalance which manifests within government decision-making systems and processes. Other actions, many of which are articulated as key elements in other Priority Reforms, are also required for governments to share decision-making power with Aboriginal and Torres Strait Islander people. They are outlined throughout this report.

Regardless of whether the Agreement is amended to include self-determination as the objective of Priority Reform 1, governments will still need to share power in order for decisions to be made jointly, in genuine partnership. Implementation of Priority Reform 3 would support the type of transformative change within governments that is needed for decision making power to be shared. In particular, it would enable a deeper understanding and increased value of the knowledges, skills and expertise of Aboriginal and Torres Strait Islander organisations and their ability to deliver better outcomes. The Commission has found that this understanding is largely lacking across governments.

Governments need to engage better with Aboriginal and Torres Strait Islander people

The Agreement commits government organisations to transform their engagement practices with Aboriginal and Torres Strait Islander people. This requires governments to engage fully and transparently, in a way that enables Aboriginal and Torres Strait Islander people to have a leadership role in the design and conduct of engagements and to understand how feedback has been taken into account in government decisions. Engagement is also a key element in developing full and genuine partnerships and shared decision-making with Aboriginal and Torres Strait Islander people. The Agreement acknowledges that shared decision-making requires engagement with a wide variety of groups of Aboriginal and Torres Strait Islander people, including women, young people, elders, and Aboriginal and Torres Strait Islander people with a disability (box 8).

Box 8 – Voices that are rarely sought need to be heard and understood

Many Aboriginal and Torres Strait Islander organisations told us that some voices are not being heard and need stronger representation, in particular:

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

The Commission was told that there needs to be space for grass roots organisations to have their voices heard and that regional representation is needed to ensure regional priorities are being heard. Several organisations highlighted that the organisations that governments choose to work with can sometimes be seen as 'creatures of government' by the community they claim to represent, and that national bodies are sometimes empowered at the expense of regional or state bodies.

Government engagement helps to test ideas about policy, programs and services with the lived experience and perspectives of people who are impacted by these. But the level of engagement needs to be commensurate with the impact that a policy or program is expected to have, and the capacity of governments to understand and articulate the priorities or knowledges of Aboriginal and Torres Strait Islander people. Government engagement with Aboriginal and Torres Strait Islander people has not always benefited from the knowledges

and practices that have survived for tens of thousands of years and has not been responsive to the diverse priorities and needs of Aboriginal and Torres Strait Islander people across Australia.

Aboriginal and Torres Strait Islander organisations told the Commission that governments are taking some steps to change how they are engaging with Aboriginal and Torres Strait Islander people, organisations and communities in the design and delivery of policies and programs (box 10 in section 8). Despite pockets of change, the Commission heard many examples of consultation that did not go far enough.

> Words like 'co-design' and 'partnership' are frequently used but often turn out to be empty promises with little practical effect. (Community First Development, sub. 9, p. 10)

The Commission heard that engagements can still feel tokenistic, as if they are being conducted to tick a box when the particular policy or program has already been decided upon. This was often demonstrated by the timing of engagement, with governments engaging too late in the policy or program development cycle, giving unrealistic timeframes for meaningful community input, and providing limited transparency on how input has shaped policy decisions. For example, the South Australian Aboriginal Community Controlled Organisation Network noted some of these characteristics 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 [National Agreement on Closing the Gap] and UNDRIP. 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 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. This was particularly evident in how many governments developed their first implementation plans (box 5).

Some more fundamental changes are being enacted by governments to enshrine engagement with Aboriginal and Torres Strait Islander people in the policy-making process. This includes strengthening Budget and Cabinet frameworks to elevate consideration of impacts on Aboriginal and Torres Strait Islander people in all new policies (discussed later under Priority Reform 3, in section 5), as well as Aboriginal and Torres Strait Islander bodies in several jurisdictions that can make representations to governments and the executive (discussed further in section 8).

Partnerships should be resourced as long-term investments

Adequate funding and time are required to support Aboriginal and Torres Strait Islander people to be partners with governments. The Agreement acknowledges this and notes that funding should allow Aboriginal and Torres Strait Islander parties to strengthen their governance arrangements, engage independent policy advice, meet independently of governments and engage with affected communities.

Despite this commitment, many organisations noted that lack of time and resourcing were impeding their ability to participate in partnerships. The Commission was told that Aboriginal and Torres Strait Islander people want to set the priorities and provide input but they need funding support for this to happen. Without it, the number and frequency of meetings means that many cannot adequately participate as it takes them away from their core service delivery work for too long without replacement. In relation to the burden on peak organisations, the Coalition of Peaks indicated that the majority of peaks are not yet receiving appropriate,

dedicated and secure funding to ensure they can act as accountable partners and fulfil their roles under the Agreement. They further noted that in some instances where funding has been provided 'the terms of the funding arrangements have not necessarily met the spirit of the National Agreement', pointing to instances of short-term funding, which 'has been allowed to lapse or has under-estimated salaries and overheads' (sub. 25, attachment 1, p. 9).

Similarly, with respect to the NT Aboriginal Justice Agreement, Aboriginal Peak Organisations NT said that no funding has been provided to the groups supporting the partnership – such as sitting fees, travel, consultation, interpretive services or training – to implement the actions assigned to them in the implementation plans. These actions include developing pre-sentencing reports for the community courts and providing culturally safe mediation (sub. 10, pp. 3–4).

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

At this stage, the Commission does not have full information on what funding has been provided to Aboriginal and Torres Strait Islander organisations to participate in the partnerships established under the Agreement. But it is clear that more funding will be required to improve the effectiveness of the partnerships (section 8).

4. Priority Reform 2: Strengthening the community-controlled sector

Priority Reform 2 commits governments to strengthening the community-controlled sector to deliver high-quality, holistic and culturally safe services to Aboriginal and Torres Strait Islander people. All parties to the Agreement have agreed that community control is an act of self-determination and that services delivered by community-controlled organisations generally achieve better results and are often preferred over mainstream services (box 9).

Box 9 – The value of the community-controlled sector

Priority Reform 2 affirms that Aboriginal and Torres Strait Islander community control is an act of **self-determination**. This has intrinsic value as a human right recognised under the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP). Self-determination can also have extrinsic benefits by bringing about better and more informed decision-making. Community control, as a particular example of self-determination, can lead to decisions and service designs that are made with more information about and involvement of the people who use those services, accounting for the differences in need, preference, and culture between communities.

Priority Reform 2 also affirms that Aboriginal and Torres Strait Islander community-controlled services **lead to better service outcomes** for Aboriginal and Torres Strait Islander people. ACCOs are well-placed to design and deliver culturally safe and effective services. This is in part because ACCOs employ more Aboriginal and Torres Strait Islander people, have greater cultural expertise, skills and knowledges, and have stronger ties to the community.

This suggests that government service outcomes for Aboriginal and Torres Strait Islander people and communities can benefit substantially from the knowledges and expertise of ACCOs. The Commission heard many examples where outcomes for communities were improved when services were designed and delivered by ACCOs. And there is a growing body of evidence that ACCOs can improve outcomes for Aboriginal and Torres Strait Islander people, particularly for health services (Panaretto et al. 2014; Pearson et al. 2020). A clear advantage that ACCOs have relates to their connections within community. Cultural expertise and authority is embodied in how ACCOs design and deliver services and by the

Box 9 – The value of the community-controlled sector

holistic model of care they offer. This is underpinned by an understanding of Indigenous wellbeing that encompasses social, spiritual, cultural and community elements.

From an economic perspective, more effectively designed and delivered human services present a more efficient use of private and public resources. This in turn can have broader economic implications, particularly for services that are fundamental to further social and economic participation. Human services such as health care underpin economic and social participation (PC 2017) and disadvantage and poverty can reduce people's ability to find work or to invest in their education and skills (PC 2018). More effective provision of such services can not only improve the wellbeing of individuals but also that of whole communities – particularly where publicly funded services and infrastructure play a more central role (for instance, due to geographic remoteness and thin markets).

The Agreement commits parties to building the ACCO sector in line with four 'strong sector elements', which aim to allow ACCOs to have:

- sustained capacity building and investment
- a dedicated Aboriginal and Torres Strait Islander workforce
- support from a peak body, governed by a majority Aboriginal and Torres Strait Islander board
- a reliable and consistent funding model that suits the types of services required by communities.

Under the Agreement, two key mechanisms for achieving Priority Reform 2 are sector strengthening plans (SSPs), which identify measures to build the capability of specific sectors, and expenditure reviews and funding prioritisation efforts, which seek to increase the proportion of services delivered by Aboriginal and Torres Strait Islander organisations. There has been *some* progress against these two mechanisms. The first four SSPs have been delivered. On funding, reviews of governments' expenditure with ACCOs have only been completed in full and made public by four governments. Beyond this, there has been progress in some jurisdictions in moving toward commissioning and funding approaches that prioritise ACCOs, with varying success. And while some transfer of services to ACCOs is occurring, efforts are slow (or ad hoc) and do not reflect the systemic changes that are necessary to transform service systems and improve outcomes.

Current actions are not supporting ACCOs to thrive

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

Making the most of ACCOs' knowledges, expertise and connections to community requires governments to adopt policy making and commissioning approaches that enable ACCOs to take the lead in the design and delivery of services that best suit their communities. To support this, governments need to treat ACCOs as essential partners, recognising that they have knowledge of their communities that is not paralleled by governments.

The Commission heard from a number of ACCOs that they are often perceived by governments as passive recipients of funding, rather than critical partners in delivering outcomes for governments and the community. This can mean that ACCOs are not involved in decision-making on policy design and implementation, and that key opportunities are missed for governments to learn from the knowledges and community

understanding that ACCOs have to develop better policy and service design and, importantly, to transform (as envisaged by Priority Reform 3).

The Commission also heard that when services have been 'lifted and shifted' from the non-Indigenous service sector into the ACCO sector, the approach has not always enabled ACCOs to design services and KPIs that align with Aboriginal and Torres Strait Islander community priorities and measures of success. As an example, the Indigenous Education Consultative Meeting told the Commission that:

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

This 'lifting and shifting' approach was described by some ACCOs as forcing 'square pegs into round holes'. This reveals a lack of government understanding of the knowledge and expertise that ACCOs possess, and risks delivering the same unsuccessful outcomes and causing harm to the community. This point was illustrated by the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council, which said that:

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

A number of ACCOs noted the problems arising from government agencies imposing models of service design and associated performance indicators that do not reflect Aboriginal and Torres Strait Islander notions of wellbeing and measures of success. Such concerns were consistently raised across jurisdictions and with respect to a broad range of services, including child protection, primary health care, early intervention and prevention, and adult literacy.

The shift towards ACCOs providing more services has been patchy

ACCOs and other Aboriginal and Torres Strait Islander organisations told us that some funding is being redirected from mainstream organisations to ACCOs, and that the Agreement has allowed some peak organisations to grow with more funding. But the demand for culturally safe services is still not being met. For instance, the Aboriginal Family Legal Service WA highlighted where a shift in funding had occurred, newly funded services quickly reached capacity, demonstrating significant unmet demand for culturally safe services (sub. 7, p. 7).

The shift of service to community control does not mean that all services can or will be delivered by Aboriginal and Torres Strait Islander organisations in all places. Indeed, in some cases, non-Indigenous NGOs have been able to deliver culturally safe services, and some Aboriginal and Torres Strait Islander communities may choose to maintain these longstanding relationships. However, where a community has a desire to transfer a service to an ACCO, this should be facilitated to achieve the outcomes of Priority Reform 2.

However, in many cases, we heard frustration about the pace of change. Overall, governments' responses to the Agreement have been described as 'lethargic' (KALACC, sub. 23, p. 10). The Commission heard of instances where non-Indigenous NGOs or governments themselves are in competition with ACCOs to deliver services, and where some non-Indigenous NGOs partner with ACCOs to make themselves more competitive when bidding for contracts to deliver services to Aboriginal and Torres Strait Islander people. It was suggested that governments should flip this power dynamic by engaging the ACCO with demonstrated

cultural capability to partner with an appropriate non-Indigenous organisation if further capacity was required (IECM, sub. 63, p. 4).

Transitions of service provision from non-Indigenous service providers to ACCOs could also be facilitated through funding and contracting arrangements that include both a succession plan and resourcing for skills transfer and strengthening of ACCO capacity (PC 2020a, p. 21). In these instances, governments have a crucial role to play in ensuring that, where appropriate, contracts with NGOs include KPIs about transferring service delivery to an ACCO within an agreed timeframe.

Improving funding and grant guidelines to reflect Priority Reform 2 at both the agency and whole-of-government level could also be a useful lever in creating momentum in transforming how agencies approach funding and commissioning of programs and services. Outcomes will also be determined by the actions of grant and contracting decision makers, demonstrating a link between Priority Reforms 2 and 3. The structural and behavioural changes that Priority Reform 3 requires are vital to driving progress in strengthening the Aboriginal and Torres Strait Islander community-controlled sector.

Approaches to commissioning ACCOs need to change

The overwhelming message the Commission heard from ACCOs during engagements for this review was the need for ACCOs to have more control over the design and delivery of services so they can meet community needs and respond to changing priorities.

To support this, governments need to move away from transactional forms of contracting of community services that focus on narrow problem solving, towards fostering a broader understanding of the wellbeing of Aboriginal and Torres Strait Islander people. This requires government agencies to work collaboratively with ACCOs and communities to identify community needs and priorities, design and deliver services, and enable communities themselves to define the outcomes against which a program or service should be measured. It also requires governments to ensure that ACCOs have a secure base to deliver services and programs through appropriate funding, to enable them to:

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

In contrast, short, insecure and inflexible funding contracts limit operational planning and flexibility – but the Commission heard from a number of ACCOs that these continue to be aspects of their funding relationship with many government organisations. We heard that funding contracts continue to be too short (much less than 5 years) and do not cover the full cost of providing services, such as funding for transportation costs to deliver health services and remote service delivery. Government funding also often does not cover investment in infrastructure and capital works that are needed to effectively deliver – or improve – services. And funding that is tightly prescribed to a given program often does not cover the essential administration, management, and infrastructure costs that allow the ACCO to operate.

The Commission, and others, have previously made recommendations for fundamental changes to the way governments commission and fund ACCOs by adopting a relational approach to contracting, significantly extending contract terms, and ensuring that funding covers the full costs of providing relevant services (see, for example, PC 2017, 2020a). Adopting a relational approach to contracting would see government contract

managers working collaboratively with ACCOs towards shared outcomes and continuous improvement, with flexibility for contracts to adapt to changing community needs and priorities. Setting default contract lengths for human services to at least seven years would further strengthen the community-controlled sector, increase certainty in the funding process, and free up ACCO resources to focus on service delivery. In addition to extending the length of contracts, the Commission has previously recommended that funding agencies allow sufficient time (a default of three months) for providers to prepare considered funding applications, including the development of integrated bids across related services; to publish a rolling schedule of upcoming grants and tenders over (at least) the next 12 months; and to notify providers of the outcome of grant and tender processes in a timely manner.

Some government agencies have made moves in these directions. For example, from 1 July 2023 – once the current funding agreements with health ACCOs expire – the Australian Government will move to rolling four-year agreements (NACCHO 2022). The Victorian Government is implementing a suite of reforms to the way funding is provided to ACCOs, including longer term funding contracts, a pooled outcomes-based funding model and a reduction to onerous reporting and accountability processes, including consolidating multiple funding reports to the one department. Other governments (including New South Wales, South Australia and Western Australia) are developing strategies or approaches to improve the way they commission and fund ACCOs. But it remains to be seen whether these initiatives will translate into lasting and widespread changes.

Whole-of-government reforms to contracting are needed

In the context of improving outcomes for Aboriginal and Torres Strait Islander people, shifting towards relational contracting is of crucial importance. This shift would involve greater collaboration between purchasers (governments), providers, and clients (Aboriginal and Torres Strait Islander communities), to jointly assess progress and service outcomes, and to identify opportunities to improve performance.

Relational contracting could lead to improvements in assessing need, designing programs, selecting providers, and conducting monitoring and evaluation. If contracting were more relational and commissioning more aligned to shared decision-making, governments would be able to better learn from ACCOs the most effective ways to deliver services for Aboriginal and Torres Strait Islander people. This would help both governments and ACCOs to achieve their mutual aims. Governments could write more contracts that enable ACCOs to deliver the services that the ACCO considers necessary, rather than coming to ACCOs with a fixed idea of what service delivery should reflect.

Several governments, including those in New South Wales, South Australia, Western Australia and the ACT, have signalled the desire to move towards a more relational approach to delivering all community services, by publishing strategies or guidelines to assist government organisations in the switch. Some governments (New South Wales, Victoria, South Australia, and Western Australia) are also taking a whole-of-government approach to improving the way they commission ACCOs specifically. Changes are also being implemented within individual government organisations, most notably the Australian Government Department of Social Services.

But these changes are largely in their planning or pilot stages, and so it is too early to tell how effective they will be. They would need to be rolled out more widely before ACCOs and communities can see substantial improvements on the ground. Further, none of these reforms are underpinned by whole-of-government changes to funding and contracting rules (including grant rules and guidelines). Grant programs are a prominent source of funding for ACCOs and will therefore play a key role in supporting Priority Reform 2.

Central agencies should review and update funding and contracting rules so that they explicitly incorporate accountability for funders to abide by the Priority Reforms in commissioning processes (**recommendation 3, action 3.2**). These changes should make clear that community control is an act of self-determination, and that ACCOs need to be at the negotiation table from the beginning and throughout the contract lifecycle. This

would help to ensure that government contracting decisions take full account of ACCOs' expertise and knowledges on how best to meet community priorities, solve identified problems, and measure success. Funding agencies should also be obliged to adopt a relational approach to contracting and to share data with ACCOs to enable them to do their work effectively. This will necessarily require funding agencies to set and meet timelines that give sufficient time for community input, and that this relational approach is not adopted at the eleventh hour so that the relational process is purely a lip-service.

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

Sector strengthening plans could be made more effective

A key question for SSPs is whether they promote transformation, short-term change, or business-as-usual. In some cases, actions listed in the SSPs are 'achieved' with reference to programs or practices that existed prior to the Agreement. This calls into question whether the actions are specified sufficiently to push government parties toward more transformative reforms.

SSPs require strong accountability mechanisms to ensure commitments have been followed through, and actions are implemented. Currently, many actions in the SSPs are defined only at a high level, often without concrete timeframes, responsibilities, and resourcing. This leaves a heavy reliance on further development of details for the agreed actions, policy partnerships that are equally early in their development, and for the Joint Council review of annual reports to ensure progress. However, the annual reporting process has been imperfect as a mechanism for transparency and accountability of SSP actions.

Moreover, a clearer conceptual logic would improve the Joint Council's ability to assess whether the SSPs are leading to genuine progress. It would also help efforts to understand the importance of listed actions and to design their implementation. The initial round of SSPs do not articulate a clear conceptual logic of how the listed actions will improve outcomes for Aboriginal and Torres Strait Islander people.

Furthermore, the effectiveness of the SSPs will depend in part on the strength of partnerships – not only in their development, but also as part of promoting ongoing accountability and alignment with policy partnerships.

5. Priority Reform 3: Transforming government organisations

Priority Reform 3 commits governments to systemic and structural transformation of mainstream government agencies and institutions to ensure that governments are accountable for Closing the Gap and are culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people. This commitment applies to government organisations without exception – to government departments, statutory bodies, commissions, hospitals and health services, government-owned companies, local governments and every other type of government organisation. This entails transforming the ways of working of over 2.4 million public sector workers across federal, state, territory and local government organisations. Priority Reform 3 also applies to the service providers and other entities that governments fund, amounting to billions of dollars annually. This is a major commitment that requires a commensurate response.

Transformation requires deep and enduring change to how government organisations work

The Agreement provides guidance on some aspects of what transformation of government organisations must include, in the form of six transformation elements. These require governments to: identify and eliminate racism; embed and practice meaningful cultural safety; deliver services in partnership with Aboriginal and Torres Strait Islander organisations, communities and people; increase accountability through transparent funding allocations; support Aboriginal and Torres Strait Islander cultures; and improve engagement with Aboriginal and Torres Strait Islander people. But the transformation committed to under Priority Reform 3 requires much more than piecemeal policies and programs aligned to individual transformation elements.

Priority Reform 3 requires organisations to deeply examine their own systems, structures and operations in order to tackle institutionalised racism, and to change their approach to decision-making, which has largely failed to reflect the priorities, cultures and knowledges of Aboriginal and Torres Strait Islander people.

Transformation of this kind involves deep and enduring changes to the culture, systems and processes of government organisations and to the behaviours and incentives that motivate their staff and leadership. This can only be realised by drawing on the experiences and perspectives of the people who governments serve – in this case, Aboriginal and Torres Strait Islander people – and working together with this knowledge to develop a strategy that sets out what transformation is needed and the pathways and actions to achieve it.

There is an absence of system-level strategies to transform government

While governments are pursing hundreds of actions ostensibly in support of Priority Reform 3, there is no clear strategy for transformation that underpins the individual actions – governments have not deeply examined their systems, structures and operations in the way the Agreement requires.

Transformation across government organisations will inevitably vary, but the first step for any organisation implementing Priority Reform 3 is assessing how its current ways of working align with Priority Reform 3 and the Agreement more broadly. It appears that very few government organisations have taken this first step.

Self-assessment is a legitimate part of that exercise, and this is happening in some jurisdictions and organisations (the Commission is aware of the findings of a self-assessment workshop undertaken by Australian Government organisations but these have not been made publicly available). However, self-assessment is not sufficient: 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 government organisations subject their systems and operations to this type of feedback.

Governments have committed to transforming their organisations so that they are free of institutionalised racism and in doing so, to challenge unconscious bias in their organisations. By definition, unconscious bias cannot be identified by organisations themselves. The areas where transformation is most needed, and the blind spots that organisations' assessments are most likely to miss, can only be identified by Aboriginal and Torres Strait Islander people.

Looking across government organisations, it appears that only a very small number are pursuing strategies that if implemented, could entail something like the organisational transformation envisaged under Priority Reform 3. Among the handful of examples that the Commission found were Queensland's First Nations Health Equity reforms and the Queensland Department of Environment and Science's Gurra Gurra Framework. The Commission heard mixed views on how well and how widely these initiatives are being implemented, and concerns about whether they indeed go far enough (box 10).

Box 10 – Mixed views on organisational-level transformational change

First Nations Health Equity (Queensland Health)

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 are 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 2021, p. 1). In response to this, the Queensland Aboriginal and Islander Health Council (QAIHC) noted that:

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

The new legislation requires each HHS to deliver a Health Equity Strategy in partnership with Aboriginal and Torres Strait Islander people. HHS boards are also now required to have at least one member who identifies as Aboriginal and/or Torres Strait Islander.

The Commission heard mixed views about the implementation of the First Nations Health Equity (FNHE) reforms. For some HHSs, the FNHE legislation has been a key enabler for igniting activity and executive support for addressing institutional racism and health equity more broadly. Some ACCHOs have seen a departure from business-as-usual practices and through FNHE reforms have been able to strengthen relationships with HHSs. For example, the Institute for Urban Indigenous Health (IUIH) said that the FNHE strategy:

> … is supporting system-level reform, including opportunities to direct mainstream Activity Based Funding to sub-acute healthcare delivered in the community-controlled setting, and has seen additional investment flow to the IUIH Network to provide culturally responsive and coordinated health care that may have otherwise been directed to mainstream services. (sub. 62, p. 12)

However, the Commission also heard that the FNHE reforms are yet to lead to consistent changes across all HHS regions or to a significant change in how Aboriginal and Torres Strait Islander people access their care (QAIHC, sub. 97, p. 4). The Queensland Aboriginal and Islander Health Council (QAIHC) submitted that opportunity exists for stronger and shared oversight of FNHE strategies, but this will require investment and a sharing of information with ACCHOs so that they have the time and resources to partner with HHSs (QAIHC, sub. 97, p. 4). To address systemic racism in health services – which 'continues to be viewed as the largest barrier to achieving health equity and better health outcomes for Aboriginal and Torres Strait Islander peoples and therefore to Closing the Gap' (QAIHC 2022, p. 2) – opportunities also exist to extend the coverage of FNHE reforms to Queensland Health and all health-related services such as ambulances. In its engagement, the Commission also heard that it is problematic to aspire to the system-wide change that the FNHE reforms aspire to, when they do not apply to the central office and policy-making arms of Queensland Health.

Box 10 – Mixed views on organisational-level transformational change

Gurra Gurra Framework (Queensland Department of Environment and Science)

The Gurra Gurra Framework was developed to reframe the Queensland Department of Environment and Science's (DES) relationships with Aboriginal and Torres Strait Islander people 'by holding Country and 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 Gurra Gurra 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 Davis, a Torres Strait Islander woman (sub. 27, p. 2), noted the Gurra Gurra 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)

Governments are mainly pursuing piecemeal changes

The Agreement requires governments to identify and call out institutional racism, discrimination and unconscious bias. It also requires governments to implement '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'.

Because so few government organisations have developed comprehensive transformation strategies, the Commission also examined the actions they *are* undertaking to deliver Priority Reform 3. We found that governments are pursuing hundreds of actions that align to the six transformation elements to varying degrees and have varying relevance to the task of organisational transformation. It is unclear how these actions will amount to the organisation-wide transformation that Priority Reform 3 calls for.

Perhaps most conspicuously, governments' efforts include employing more Aboriginal and Torres Strait Islander people and offering cultural capability and cultural safety training.

Work to eliminate institutional racism has received little effort

During engagements, and through submissions, the Commission heard from many Aboriginal and Torres Strait Islander people that racism and institutional racism remains a serious and widespread problem, particularly in the criminal justice, child protection and health systems. For instance, 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). And the Aboriginal Family Legal Service 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).

Governments' efforts to identify and eliminate racism have been narrowly focused on offering cultural capability training (see below) and on employment initiatives. Government organisations have given comparatively little, or no, attention to their commitment to identify and call out institutional racism and unconscious bias, and specifically to 'address features of systems that cultivate institutionalised racism' (clause 59).

The one tangible step that most governments have taken is to establish targets for the employment of Aboriginal and Torres Strait Islander people. But even judging this solely against increasing Aboriginal and Torres Strait Islander employment targets, the picture is mixed. For example, the Australian Government has a target for 5% of Australian Public Service employees to be Aboriginal and Torres Strait Islander by 2030 (APSC 2022, p. 24). This appears to subsume previous, similar targets that have not been or will not be met. But by 2021, 3.7% of the NSW Public Service and 130 of its senior leaders identified as Aboriginal, exceeding 2025 targets (NSW PSC 2022, pp. 5, 7).

Employing more Aboriginal and Torres Strait Islander people in the public sector can enhance its understanding and appreciation of Aboriginal and Torres Strait Islander culture, history, knowledge and skills. However, it does not directly address racism or unconscious bias. And Aboriginal and Torres Strait Islander people employed in the public sector should not have to bear the burden of calling out or educating their peers on racism.

Initiatives to increase the employment of Aboriginal and Torres Strait Islander people will not succeed if racism is not identified and eliminated, as the failure will perpetuate culturally unsafe workplaces. Taking the APS as an example, it will be difficult to address high attrition rates without addressing the fact that Aboriginal and Torres Strait Islander employees report higher rates of discrimination than any other cultural group (APSC 2023, p. 181). All of the dimensions contained in the first element of Priority Reform 3 must be addressed concurrently in order for any of them to succeed.

Despite their potential benefits, employment programs will not achieve the structural changes that are necessary to eliminate institutional racism. This requires system-focused efforts. But with the exception of South Australia, jurisdictions are yet to implement systemic approaches to identify and eliminate racism. For the most part, governments have committed to developing anti-racism strategies but have not yet done so, and in some cases have not met the timelines originally proposed. Given the state of these initiatives, there is much work to be done to address and eliminate racism.

Cultural safety is largely being pursued through training but this is insufficient to drive the necessary changes

The Agreement requires government organisations to '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'.

Cultural safety is defined in the Agreement but it is not a new concept. 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 of the Agreement)

The most discernible way in which government organisations are addressing cultural safety is through offering cultural capability training or similar initiatives to their staff. While such training can play a role in improving government organisations, the experience of Aboriginal and Torres Strait Islander people and organisations (and the available academic research) demonstrates that while training is often necessary, it is rarely sufficient to drive cultural change (Bainbridge et al. 2015, p. 3).

Given the disproportionate reliance that government organisations are placing on cultural capability training programs, evaluating the effectiveness of those programs is essential. But it appears that very little work is being undertaken or planned to evaluate the effectiveness of the training they are funding. An exception is work being done by Aboriginal Affairs New South Wales, in conjunction with the NSW Aboriginal Education Consultative Group, to deliver a new Connecting to Country training program to early childhood educators, that will be evaluated from 2024 (NSW Government 2021b, p. 8).

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' (NACCHO 2011, p. 29). Training that imparts knowledge can be an important part of truth telling. And 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).

Unless government agencies devise and implement transformation strategies, all the Priority Reforms are at risk

Each Priority Reform supports, and is supported by, the other Priority Reforms, with the ultimate aim of securing change and accelerating improvements in the lives of Aboriginal and Torres Strait Islander people. This means that slow progress towards one of the Priority Reforms can stifle progress towards the other Priority Reforms. In particular, Priority Reform 3 is more than a complement for the other Priority Reforms, it is a critical enabler. But governments have not fully grasped the scale of change required to their systems, culture, operations and ways of working to deliver the unprecedented shift they have committed to in the Agreement. Without this change, 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 – is unlikely to be achieved. A fundamental rethink of government systems and culture – in line with what Priority Reform 3 calls for – is required.

To deliver this fundamental rethink, government departments need to develop and execute a transformation strategy for their portfolio underpinned by a transparent theory of change that demonstrates *how* the listed actions will actually achieve the change to which governments have committed. The transformation strategy should also be underpinned by an Aboriginal and Torres Strait Islander-led assessment of the department's historic and current institutional racism, unconscious bias and engagement practices, and by truth-telling to enable reconciliation and active, ongoing healing (**recommendation 3, action 3.1**).

Services funded by governments, but delivered by NGOs, also need to transform

Priority Reform 3 also commits governments to ensuring that all services they fund are culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people. This captures a wide range of services (such as medical services, child care and employment services) and amounts to billions of dollars of expenditure every year. Governments fund many non-Indigenous organisations to deliver some of these services on governments' behalf.

Governments' implementation plans and annual reports suggest that they have done little or no work to ensure that Priority Reform 3 is realised through the services they fund. The Commission's engagements also bear this out, including engagements with some government representatives.

A number of non-government, non-Indigenous organisations indicated understanding of, and commitment to, Priority Reform 3 and have taken some action towards its implementation. But they also suggested that the impetus rests with the organisations themselves, and can vary, because it is not a requirement (funded or otherwise) of governments (headspace, sub. 18, pp. 9, 11, 14; Annika David, sub. 27, p. 4).

One of the most immediate ways to implement this requirement is through government contracts and grant agreements. Requirements could be included for tendering organisations to demonstrate efforts and achievements towards transformation as a requirement of being awarded a government contract. For example, 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. And as noted above, this can only be done by working with Aboriginal and Torres Strait Islander people who use these services. This will be a challenge where government organisations have not implemented Priority Reform 3 themselves (but reviewing and, where necessary, updating funding and contracting rules so that they explicitly incorporate accountability for funders to abide by the Priority Reforms would help with this – **recommendation 3, action 3.2**). 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.

Most governments will not meet their commitment on an independent mechanism

Recognising that government organisations cannot be relied on to transform without external scrutiny, the Agreement includes a commitment that governments will each identify, develop or strengthen an independent mechanism to 'support, monitor, and report on the transformation of mainstream agencies and institutions' by 2023.

There has been very little progress on the establishment of independent mechanisms and it is likely that most jurisdictions will not have a mechanism in place at the end of 2023. There is potential for the role of the independent mechanism to evolve to support enhanced accountability – this is discussed in section 8.

6. Priority Reform 4: Aboriginal and Torres Strait Islander-led data

Governments have committed to share data and change how they collect and use data to better meet the needs of Aboriginal and Torres Strait Islander people, and to enable Aboriginal and Torres Strait Islander people to use data to serve self-determined purposes. This includes establishing partnerships with Aboriginal and Torres Strait Islander people to improve the collection, management and use of data, providing Aboriginal and Torres Strait Islander people with the data and information on which decisions are made, collecting, handling and reporting data at sufficient levels of disaggregation, and building the capacity of Aboriginal and Torres Strait Islander organisations and communities to collect and use data.

Governments have also committed to establishing community data projects in up to six locations by 2023.

The Agreement should recognise and support Indigenous Data Sovereignty

For Aboriginal and Torres Strait Islander people to be able to use data to achieve their priorities they require more than just 'access' to existing data held by governments. Aboriginal and Torres Strait Islander people also need to be able to determine what data they need and how data about them is collected, accessed and used. In particular, they need leadership over the narrative used to frame this data. This is the basic intent of Indigenous Data Sovereignty (IDS), which is the right of Indigenous people to exercise ownership over Indigenous data (box 11).

There are some overlaps between the commitments of the Agreement under Priority Reform 4 and the concept of IDS, and some governments have already made commitments relating to IDS (box 12). If successfully implemented, these commitments could go some way towards enabling Aboriginal and Torres Strait Islander people to exercise IDS. In particular, the agreed actions are consistent with the IDS principle of data being *contextual and disaggregated* at the community level. And the Commission heard that the Agreement's commitment to establish partnerships with Aboriginal and Torres Strait Islander people *to improve the collection, access, management and use of data* and to *build the capacity* of organisations and communities to collect and use data is consistent with supporting the practice of Indigenous Data Governance (IDG).

However, the Agreement does not explicitly commit governments to working towards achieving IDS, nor set out how it is relevant. This is reflected in governments' implementation plans, which largely lack the ambition to change how Aboriginal and Torres Strait Islander people's data is managed across governments.

Box 11 – What is Indigenous Data Sovereignty?

In Australia, **Indigenous Data Sovereignty** (IDS) refers to 'the right of Indigenous people to exercise ownership over Indigenous data. Ownership can be expressed through creation, collection, access, analysis, interpretation, management, dissemination and reuse of Indigenous (Maiam nayri Wingara 2023a). IDS 'derives from the inherent right of indigenous peoples to govern [their] peoples, countries (including lands, waters and sky) and resources, as set out in the United Nations Declaration on the Rights of Indigenous Peoples' (USIDSN 2019, p. 1). The IDS discourse and movement, which has grown significantly in recent decades, can be understood as a response to the historical exclusion of indigenous peoples from the processes that determine what data governments collect about them, and why and how.

Indigenous Data is an expansive concept and refers to 'information or knowledge, in any format or medium, which is about and may affect Indigenous peoples both collectively and individually' (Maiam nayri Wingara 2023a). Aboriginal and Torres Strait Islander people and communities may be whole or part owners of Indigenous data and their ownership is intergenerationally transmissible.

The leading group on IDS in Australia is the Maiam nayri Wingara Indigenous Data Sovereignty Collective which includes representatives from peak bodies, academics and community leaders. In 2018 Maiam nayri Wingara established a set of principles to advance a shared understanding of IDS in Australia. The principles state that Aboriginal and Torres Strait Islander people have the right to:

- exercise control of the data ecosystem, including creation, development, stewardship, analysis, dissemination and infrastructure
- data that are contextual and disaggregated (available and accessible at individual, community and First Nations levels)
- data that are relevant and empowers sustainable self-determination and effective self-governance
- data structures that are accountable to Indigenous peoples and First Nations
- data that are protective and respects individual and collective interests (Maiam nayri Wingara 2023b).

IDS is given practical effect via the practice of **Indigenous Data Governance** (IDG) which embeds Indigenous decision-making across the data lifecycle (Walter and Carroll 2020, pp. 10, citing; Smith 2016; Walter and Suina 2019). Specifically, IDG refers to 'the right of Indigenous peoples to autonomously decide what, how and why Indigenous Data are collected, accessed and used. It ensures that data on or about Indigenous peoples reflects [their] priorities, values, cultures, worldviews and diversity' (Maiam nayri Wingara 2023a). Indigenous data governance can take many different forms – examples in Australia include the data governance arrangements as part of the Maranguka Justice Reinvestment Project and the Mayi Kuwayu study.

Data governance under the Maranguka Justice Reinvestment project

The Maranguka Justice Reinvestment project is an Aboriginal-led justice reinvestment project in Bourke, New South Wales, aimed at addressing persistent high crime and incarceration rates. The collection and use of detailed local data underpins decision-making within the project. The project has established an Indigenous data governance structure, which aims to ensure Indigenous Data Sovereignty and leadership engagement. It centralises data requests and collection to ensure accountability can be upheld. The structure includes the Palimaa Data Platform, which automates data access and sharing

Box 11 – What is Indigenous Data Sovereignty?

from 15 contributors, including NSW Government departments and services operating in Bourke (Maranguka Community Hub et al. nd).

Mayi Kuwayu, the National Study of Aboriginal and Torres Strait Islander Wellbeing

Mayi Kuwayu, the National Study of Aboriginal and Torres Strait Islander Wellbeing is a longitudinal study of the links between culture and wellbeing. The survey was developed to ensure that measures to assess social determinants of health capture the breadth of shared cultural attributes that are important to understanding Aboriginal and Torres Strait Islander people's health and wellbeing.

The study was led, developed, conducted, and governed by Aboriginal and Torres Strait Islander people. Mayi Kuwayu's governance group includes peak Aboriginal and Torres Strait Islander health and research groups. Its data governance processes are overseen by an all-Indigenous data governance committee, which applies Maiam nayri Wingara Indigenous Data Sovereignty principles to assess data use requests, along with continued engagement with communities in the implementation of the questionnaire, and the analysis, interpretation, and dissemination of data collected (Bourke et al. 2022).

Box 12 – What commitments have governments made in relation to Indigenous Data Sovereignty?

The Victorian Government has previously acknowledged 'the critical importance of Indigenous Data Sovereignty and has committed to this as a potential subject for negotiation in Statewide and Traditional Owner treaties under the Treaty Negotiation Framework' (Victorian Government 2023b, p. 9) and has submitted to this review that:

> Victoria considers that to substantively progress Indigenous Data Sovereignty under the National Agreement, the National Agreement would benefit from inclusion of an explicit statement about Indigenous Data Sovereignty as an outcome or objective of Priority Reform Four. This clear objective would support self-determined priorities and further align Priority Reform Four with broad Indigenous Data Sovereignty principles developed by the Australian Indigenous Governance Institute. (sub. 98, p. 10)

The Australian and NSW Governments have made commitments regarding IDS.

- The Australian Government has committed to 'providing meaningful change in relation to Indigenous Data Sovereignty and Indigenous Data Governance, and working with other levels of government, and other sectors and entities, to make practical changes' (Australian Government 2023a, p. 30). The forthcoming *Framework for Governance of Indigenous Data* aims to guide Australian Government agencies 'on how to practically implement and embed those areas of data governance where the objectives of the Indigenous Data Sovereignty movement and the Australian Government align' (Australian Government 2023b, p. 6).

Box 12 – What commitments have governments made in relation to Indigenous Data Sovereignty?

- The NSW Government has said that 'achievement of Priority Reform Four rests upon a shared sound understanding of the crucial role that Aboriginal and Torres Strait Islander data sovereignty plays, and adoption of robust data governance protocols and principles' (NSW Government 2021b, p. 32). The NSW Government has committed to developing a roadmap that sets out a shared understanding of what IDS and IDG mean in New South Wales, and developing a model to implement the principles of Indigenous data sovereignty and governance in practice (NSW Government 2022b, pp. 51–52). The NSW Government Data Strategy commits to working with the Aboriginal community on all aspects of the Data Strategy and whole-of-government data policy to embed the principles of IDS and IDG (NSW Government 2021a, p. 45).

Other governments have indicated actions relating to IDS. For example:

- the Queensland Government has noted that the First Nations Health Equity monitoring and evaluation framework 'will be underpinned by the principles of Aboriginal and Torres Strait Islander data sovereignty' (Queensland Government 2023, p. 11).
- the South Australian Government has indicated that it is developing an Indigenous data sovereignty and governance framework, and incorporating Indigenous data sovereignty principles and actions in its Data Strategy for SA (Government of South Australia 2022, p. 37). Delivering the western suburbs of Adelaide data project will involve 'identifying the data priorities of the Aboriginal community-controlled sector and the application of principles of Indigenous Data Sovereignty and Indigenous Data Governance' (SA Government, sub. 54, p. 5)
- the next phase of work for Western Australia's Kimberley data project will include developing and executing data governance frameworks and agreements to operationalise IDS (Western Australia Government 2023, p. 23). The Western Australian Government submitted that the WA Office of Digital Government 'is currently working with ACCOs and other key Aboriginal stakeholders to embed Aboriginal Data Sovereignty principles in the access and use of PeopleWA', a new whole-of-government linked dataset (sub. 43, p. 5)
- Tasmania's Department of Health is 'investigating ways to improve Aboriginal data sovereignty and access to Aboriginal health data and information by Tasmanian Aboriginal people at a regional level, and is seeking to improve the quality of data it collects' (Tasmanian Government 2023, p. 45)
- the NT Government said that it is supporting a process led by Aboriginal Peak Organisations Northern Territory (APO NT) to develop data sovereignty principles for the Northern Territory (sub. 70, p. 9).
- ACT Health has engaged the Maiam nayri Wingara Indigenous Data Sovereignty Collective to undertake work first build knowledge and awareness of IDS and IDG and then progress to implementation of IDS (ACT Government 2023, pp. 22–23).

There are at least three substantive IDS elements that are not explicitly included in Priority Reform 4.

- **Decision-making power across the data ecosystem**. Priority Reform 4 envisages partnerships between Aboriginal and Torres Strait Islander people and governments that will help 'guide' improved collection, access and management of data. In contrast, IDG calls for 'Indigenous leadership and control' over IDG processes and 'data structures that are accountable to Indigenous peoples' (AIGI 2023). This means moving beyond participation through advisory bodies towards Aboriginal and Torres Strait Islander people having decision-making authority over Indigenous Data.
- **Data that supports the interests, values and priorities of Aboriginal and Torres Strait Islander people**. IDS requires data that is 'protective and respects individual and collective interests'. This requires governance mechanisms that ensure data is ethical, representative, and beneficial. The absence of this element of IDS in the Agreement is significant given the overabundance of data that focuses on Indigenous 'difference, disparity, disadvantage, dysfunction and deprivation' which, as commonly presented in aggregate forms implies deficit as a population trait (Walter and Carroll 2020, p. 9). This is problematic, and can ultimately obstruct the other outcomes under the Agreement, because it can shape and distort how governments, media and the wider public 'see' Aboriginal and Torres Strait Islander people. IDG has the potential to disrupt this process through practices that provide Aboriginal and Torres Strait Islander people with the power to refute such narratives and to tell their own stories. In turn, this would increase the relevance, quality and accuracy of data, and better inform policy and funding decisions and improve service delivery outcomes. It would also increase trust and the social license to maintain the integrity of the Indigenous data system, which is increasingly important in the context of growing efforts to open up and link administrative datasets.
- **A broader conceptualisation of data**. While the Agreement does not provide a definition of 'data and information' or limit the scope of actions, it largely focuses on program and policy administrative data and performance metrics. This interpretation is consistent with the Commission's assessment of governments' progress towards Priority Reform 4, which mostly involves legislation and frameworks to improve data sharing, developing data dashboards and portals and building data capability (box 14). But Indigenous data is not limited to 'Indigenous-identifying data', it includes information (identified or not) about Indigenous interests, such as environments, cultures, languages and resources. Aboriginal and Torres Strait Islander people can have different standpoints to non-Indigenous Australians, leading to different ideas about what and how data should be used to inform policy. Using data in ways that aligns with Aboriginal and Torres Strait Islander people's world views can lead to policies that are more likely to result in positive outcomes, because this embeds concepts and logic that make most sense to those affected by the policies. This brings into scope a range of domains that are not within the purview of the current commitments under Priority Reform 4, including academic research, the management of cultural heritage collections and records in the GLAM sector (galleries, libraries, archives, and museums) and intellectual property rights over traditional knowledge, art and stories. Most governments have done little work to understand how Aboriginal and Torres Strait Islander people conceive of data to inform policy.

Throughout the Commission's engagements, Aboriginal and Torres Strait Islander people overwhelmingly emphasised that IDS was the underlying aspiration of Priority Reform 4. There was strong support for IDS to be explicitly included in the Agreement in feedback the Commission received on its draft report. For example, the Dharriwaa Elders Group recommended that IDS 'should be made explicit in Priority Reform 4 to shift the power imbalance and hold government responsible for making data accessible, meaningful and useful to the communities to whom it belongs' (sub. 53, p. 5). DSS submitted that 'there are potential benefits to including IDS as an explicit objective under Priority Reform 4' including creating a common authorising environment, but noted that there are 'a number of practical and legal considerations around implementing

IDS in the portfolio' (sub. 74, p. 20). The Victorian Government is the only government to explicitly call for the Agreement to be amended to reflect IDS (box 12).

Amending the Agreement to include IDS would accord with Australia's obligations as a signatory to UNDRIP and would serve to affirm and advance its commitments to it. Control of data (whether it is control over access to data, the nature of datasets collected or the narrative used in connection with data) is an act of self-determination – it transfers power to Aboriginal and Torres Strait Islander people to define and address their priority needs and aspirations. This is central to the intent of Priority Reform 1, which establishes that Aboriginal and Torres Strait Islander people need to have a greater say in how programs and services are delivered in their communities. In many respects IDG is simply the practical application of Priority Reform 1 across the data lifecycle.

The Commission is therefore proposing that the Agreement be amended to explicitly include IDS as part of the outcome statement for Priority Reform 4 (**recommendation 2, action 2.1**). This should be accompanied by other changes, including adopting the definitions of IDS and IDG formulated by the Maiam nayri Wingara Indigenous Data Sovereignty Collective. The amendment should acknowledge that while governments have a role to play in enabling IDG, IDS can only be exercised and realised by Aboriginal and Torres Strait Islander people. Accordingly, it should specify that Aboriginal and Torres Strait Islander people must be empowered to determine how IDS will be achieved. It should also acknowledge that IDS requires a long-term commitment and transformation process that will necessitate and enable shared decision-making.

To give practical effect to this, the amendment must also establish the actions that governments will undertake to advance IDG in partnership with Aboriginal and Torres Strait Islander people. These could include commitments to:

- **incorporate IDG into existing data systems**. This entails establishing rules and processes that provide Aboriginal and Torres Strait Islander people with authority in the management of Indigenous data (for example, via ethics and consent protocols and data use agreements)
- **build the Indigenous data capability of ACCOs and government**. This includes governments supporting Aboriginal and Torres Strait Islander communities and organisations in building their data capability and expertise as well as resourcing their own agencies to develop and implement IDG practices in partnership (for example, via the delivery of training programs and two-way secondments)
- **invest in Indigenous data infrastructure**. This includes establishing the technology, operating protocols and supporting services that communities and organisations require to develop the data items they need, to manage their own data collections and to assume custodianship of new datasets.

To support governments to implement these commitments, the Commission is also proposing the establishment of a Bureau of Indigenous Data (BoID) (see **recommendation 2, action 2.2**, discussed in section 7 below).

Implementing IDS and IDG will require a substantial investment by governments. The costs of incorporating IDG into existing data systems will entail upfront fixed costs, for example for agencies to assess and modify their existing data collection processes and establish data sharing agreements, as well as on-going costs to train and upskill staff to enact these changes. Reconfiguring data systems to enhance their capacity to capture and report on locally disaggregated data by Indigenous status is likely to be particularly costly. Additional dedicated funding and resourcing will be required by all governments. By their own accounts, government expenditure to date on actions to progress Priority Reform 4 has been modest.

There will also be transition costs. The implementation of IDG will necessarily involve disruption to existing data processes that will take some time to work through. IDG will not be reducible to simply enacting a new set of standard data practices (although there may be some areas where common protocols will be needed,

such as data quality standards). It will require governments to be willing to be led by ACCOs and communities to trial new practices and to tailor their data management practices in accordance with the diverse cultural protocols and data needs of different communities. But if haphazardly layered over existing processes, an array of localised IDG standards could be challenging and costly to navigate, reduce data interoperability and unintentionally inhibit potentially valuable research. However, as discussed in the next section, opaque, complex, and inconsistent data sharing processes are already a barrier to ACCOs accessing government-held Indigenous data. Advancing IDG could help to address these issues.

Further, IDG is more likely to support increased data openness than it is to erode it. There may be some concerns that embedding IDG could result in greater restrictions on accessing and using some government-held Indigenous data – and this may be more likely for data that is reductive and problematises Aboriginal and Torres Strait Islander people. Access to such data could be managed through development of protocols and data use agreements (which is a potential role for the BoID). Further, IDS and IDG does not inherently preclude government custodianship nor the concept of joint control of Indigenous data. In Australia, no one legally 'owns' their own data, and Indigenous data, like other forms of data, can be simultaneously used by many people for different purposes over time. Continuing with the status quo arguably poses a greater risk to the openness and integrity of government-held datasets if Aboriginal and Torres Strait Islander people increasingly lose trust in how these collections are managed, and chose to opt-out. Rather than limiting access to Indigenous data, IDG aims to ensure that it reflects the priorities of Aboriginal and Torres Strait Islander people and protects their interests. To this end, it could generate more data sharing, and better quality data.

On balance, the Commission is of the view that there is a significant potential net benefit from amending the Agreement to include IDS and IDG.

There has been little progress on Priority Reform 4

Overall, there have been no large-scale changes in the way governments share data, undertake data-related activities, or engage with Aboriginal and Torres Strait Islander people on data-related issues.

The few changes that have been made have largely been about increasing the sharing of existing data held by governments. For example, governments have worked on presenting data in more accessible formats, such as dashboards, and have been undertaking activities to make it easier for Aboriginal and Torres Strait Islander people to find out what data governments hold (box 13).

Not much has been done to rebalance the power between governments and Aboriginal and Torres Strait Islander people over the collection, management and use of data about Aboriginal and Torres Strait Islander people. We heard that data that is collected by government agencies is often framed in a way that is not meaningful to Aboriginal and Torres Strait Islander people – for example, the key performance indicators required to be used for government-funded programs and services can fail to reflect measures that Aboriginal and Torres Strait Islander people consider important in judging success. The way outcomes are measured for performance monitoring under the Agreement can also be inconsistent with Aboriginal and Torres Strait Islander people's views of wellbeing. For example, culture is central to Aboriginal and Torres Strait Islander people's life outcomes, but we heard that this is not reflected in the indicators across the Agreement's socio-economic outcomes. We also heard from a number of ACCOs providing health services that the data they collect is not considered credible by government agencies.

Governments need to do more work with Aboriginal and Torres Strait Islander organisations to jointly build capability to collect data that meets the priorities and needs of Aboriginal and Torres Strait Islander people and communities, and to use this data to make better informed policy decisions.

Box 13 – How are governments sharing more data?

Being more transparent about what data governments hold

Several governments have developed, or are developing, ways to make it easier for Aboriginal and Torres Strait Islander people to know what data governments hold. For example, open data websites in most states and territories allow users to search for datasets by government agency and topic, among other things. The NSW Government is also establishing a data connector service to take data requests and co-ordinate responses across government. And agencies are engaging directly with Aboriginal and Torres Strait Islander people through individual initiatives (such as the community data projects) about what relevant data government holds.

Presenting data through visual tools

Governments have developed a range of visual tools to present the data they hold. One example is the Regional Insights for Indigenous Communities dashboard, a publicly available online dashboard developed by the Australian Institute of Health and Welfare which brings together data from existing datasets about socio-economic indicators relating to Aboriginal and Torres Strait Islander people and communities. Users can view the data by scrolling in and out of a map of Australia, or using a list format. In New South Wales, dashboards showing fine debt were produced through collaboration between Revenue NSW and NSW CAPO, and the Dharriwaa Elders Group submitted that these dashboards have been useful as part of its Dealing with Fines program (sub. 53, pp. 7–8).

More effort to share existing data is needed

Even though most of the activity on Priority Reform 4 has been about sharing existing government data, the activity in this area is not enough. The Commission heard that governments remain reluctant to share the data they hold. For example:

- an Aboriginal foster care agency said that the relevant government agency in its jurisdiction would not share child protection files with it so that it could effectively undertake its work in kin and foster care. This is despite the organisation receiving government funding to deliver these services
- an ACCO that provides alcohol and drug support and family and justice services said that governments do not share the data they hold in relation to justice. As a result, this organisation is unable to ascertain whether its justice reinvestment programs are working.

There is a culture of risk avoidance in the public sector, which often manifests as a presumption against data sharing, but there are also tensions between protecting privacy and the Agreement's commitment to greater data sharing. While these tensions are amplified by conservative interpretations of legislation, as reflected in policy and individual public servants' habitual ways of working, a number of government and non-government submissions identified legislation itself as a barrier to greater data sharing. For example, the Department of Employment and Workplace Relations noted that privacy concerns are a key barrier to

providing data about First Nations people to First Nations organisations due to small sample numbers enabling individual identification (cited by NIAA, sub. 60, attachment C).

Governments need to be more open to understanding why Aboriginal and Torres Strait Islander people want access to the data they hold, and to exploring how this data could be provided in a way that respects privacy and upholds the trust of the Australian community. To support the attitude change required, governments need to not only declare that they are taking a different approach, but support officials to understand what this looks like in practice and why it is important. This could take the form of internal guidelines (which could demonstrate what change looks like) and training about obligations under the Agreement.

The community data projects are behind schedule, but offer promise

The requirement for parties to establish community data projects in up to six locations in Australia by 2023 is unlikely to be met. All locations for the community data projects have been selected. These are: Blacktown City Council local government area (Blacktown LGA), New South Wales; Doomadgee, Queensland; the Kimberley, Western Australia; the western suburbs of Adelaide, South Australia; Maningrida, Northern Territory; and Gippsland, Victoria.

Although their establishment is taking longer than was committed to in some jurisdictions, the community data projects appear to be broadly progressing in a way that aligns with the Agreement. For example, governments have generally looked to Aboriginal and Torres Strait Islander partners or communities to lead and set the direction of projects. Governments are also allowing time for communities to come together to define the topic and scope of the projects, which is crucial for their success – projects must be 'owned' by the community, for the benefit of the community. A number of governments noted that they were looking to their community data projects to glean lessons for what the implementation of Priority Reform 4 might look like more broadly.

However, the Agreement includes very little detail on how the community data projects are expected to advance wider progress against Priority Reform 4. To be most effective, their collective objective should be to purposively develop and test new approaches that demonstrate how Aboriginal and Torres Strait Islander communities can be empowered to develop and access data that serves their interests and to use and govern it in a way that reflects their cultural protocols and aspirations. For example, this could include experimenting with different data infrastructure models for facilitating the collection, processing, and sharing of data within and across communities. They could also provide an opportunity to experiment with different IDG structures and processes that provide communities with visibility of relevant government-held data and authority in determining how it is managed.

It is therefore critical that the parties develop and resource a robust evaluation plan to distil, share and apply the insights from the community data projects to their broader efforts to advance Priority Reform 4. While the individual projects must be community-led, their collective evaluation plan should be explicit about the similarities and differences in their designs and any key elements they are testing. The evaluation plan should include both an on-going developmental component to provide 'real-time' feedback and support adaptation, as well as a process and outcomes components to provide an understanding of how local context affects the feasibility and effectiveness of different approaches. The Coalition of Peaks have indicated that the NIAA is developing a monitoring and evaluation framework for the Community Data Projects (Coalition of Peaks 2023), but there is no other information available on how this is being advanced.

7. Tracking progress towards outcomes

The Agreement sets out a performance monitoring approach to determine if governments' actions are making a difference. This framework is intended to support public accountability and drive effort to improve socio-economic outcomes.

The effectiveness of the Agreement's performance monitoring approach depends on its ability to direct attention to areas where greater effort is needed (and where success has been achieved) and to inform decision-making. It can best achieve this when developed in partnership with Aboriginal and Torres Strait Islander people, so that their perspectives and knowledges are central to all aspects of performance monitoring, including defining objectives and logics, developing the measurement approach, and managing data collection and reporting (PC 2020c, pp. 10–11).

The Agreement's performance monitoring approach was developed in partnership with the Coalition of Peaks and incorporates elements recognised as central to improved outcomes for Aboriginal and Torres Strait Islander people, such as the foundational importance of self-determination and recognition of Aboriginal and Torres Strait Islander cultures. These are reflected in the Priority Reform indicators, the addition of two outcomes on connection to land and waters, and culture and languages, and some supporting indicators on culturally appropriate services and practices. However, a number of issues in the design and implementation of the approach undermine its ability to support the transformative change required of governments and public accountability for that change.

The Agreement does not support a shared understanding of how to hold jurisdictions to account for progress

Government parties to the Agreement are jointly accountable for a set of 23 national targets that monitor progress against the Priority Reforms and socio-economic outcomes. However, the Agreement does not describe how jurisdictions will be held to account for their contribution to these targets. It simply specifies that 'targets are designed to be met at the national level, while recognising that starting points, past trends and local circumstances differ so jurisdictional outcomes may vary' (clause 83). As a result, there is no agreed approach for determining whether each jurisdiction has made acceptable progress, and the Commission's review revealed diverse perspectives on how to best do this.

The Commission currently evaluates national progress for each target as on or off track against a linear trend to the target year. Target indicators are then disaggregated by jurisdiction and progress for each state and territory is assessed against baseline as improving, worsening, or not changing. This approach is currently under independent review, with the goal of identifying options for measuring jurisdictional contribution to

meeting the national targets (PC 2023a, p. 35). In the meantime, some jurisdictions have self-assessed whether they are on or off track to meet the targets in their annual reports (Queensland and Tasmania).

Some review participants highlighted areas that they saw as missing from the targets (such as supporting cultural expression and the Aboriginal and Torres Strait Islander business sector) and raised concerns about how well the targets reflect the scope and intent of the outcomes that they are intended to measure. In some jurisdictions (ACT, New South Wales, and Victoria), governments and Aboriginal and Torres Strait Islander partners have adopted additional targets, goals or measures in their implementation plans that go beyond the Agreement. For example, New South Wales has committed to a fifth Priority Reform relating to employment, business growth and economic prosperity, which is intended to accelerate progress towards socio-economic outcomes 7 and 8 of the Agreement. This has allowed them to respond to the priority areas that Aboriginal and Torres Strait Islander people have identified as important in their jurisdictions. If they are found to be effective in driving effort, these jurisdiction-specific targets or goals could be adopted by all parties in the Agreement.

Many participants in the review also questioned the value of jurisdiction-level data alone, arguing that further geographic disaggregation was necessary to hold jurisdictions to account for equitable progress across regions. These points were often enmeshed with the need to recognise community diversity and self-determination. For example, the Torres Shire Council noted the wide discrepancy in outcomes between the Torres Shire and the rest of Queensland and argued that regional autonomy in the co-design and evaluation of programs is fundamental to change (box 14).

Box 14 – Focusing at the jurisdictional level can obscure regional priorities and needs: an example in the Torres Strait

The Torres Shire Council is a local government area located in Far North Queensland covering large sections of the Torres Strait and the northern tip of the Cape York Peninsula. Statistics provided by the Torres Shire Council, drawing on Queensland Regional Profiles data, showed that while people in the region have similar rates of educational attainment relative to Queensland, they also experience much lower incomes, higher unemployment and higher rates of homelessness. The Council described the unique conditions faced by the region: the entire region is classified as very remote, compared to just 1% of Queensland as a whole, and this is reflected in the high cost of living and challenges accessing key infrastructure and services, such as internet access and post-primary education. While some challenges such as high transport costs particularly impact the region, disparities in outcomes are the result of policy choices.

The Council noted that there are over 30 state and federal agencies on Thursday Island providing government services, crowding out local delivery and jobs. The impact of mainland-driven policy is two-fold. First, policy priorities of the region will not always align with state priorities. For example, mainland government organisations offer non-local staff subsidised housing, an offer not extended to local staff. While this addresses recruitment difficulties, it does not resolve the broader issue of housing availability and affordability and even exacerbates it. Second, it denies local organisations the opportunity to design services attuned to the cultures and languages of the Torres Strait and northern Peninsula, where statistics show a significant majority of people speak a language other than English at home, with multiple Indigenous languages represented, compared to less than 15% of Queenslanders.

The Torres Shire Council has asked the Queensland Government Statistician's Office to produce an annual report card compiling statistics for the region relative to the rest of Queensland and Australia to

Box 14 – Focusing at the jurisdictional level can obscure regional priorities and needs: an example in the Torres Strait

direct local effort and monitor progress to parity. They note that this level of data aligns with the proposal for a regional voice and emphasise that:

> For too long, policy makers and governments have over-complicated the root cause of policy and program failures affecting First Nations people […] Council submits that the root cause is the absence of Indigenous agency, Indigenous policy design and Indigenous program control (p. 3).

Source: Torres Shire Council (sub. 6).

Regional disaggregation of national target indicators is consistent with the objectives of Priority Reform 4 but largely requires additional data development work. It also risks being at odds with community priorities if not developed in partnership. While some data, particularly data derived from the five-yearly census, are publicly available at smaller geographic levels, smaller populations could make trends more volatile and harder to interpret (ABS, sub. 1, p. 3). Determining the appropriate level of disaggregation will require further engagement with data custodians and Aboriginal and Torres Strait Islander communities and organisations.

Critical gaps in data for Priority Reforms and culturally appropriate indicators risk reinforcing business-as-usual

As most existing national data has been developed to inform government priorities largely based on non-Indigenous understandings of progress, the Agreement requires significant data development to reflect Aboriginal and Torres Strait Islander people's perspectives. However, without a shared understanding of the purpose and conceptual logic of the Agreement's performance reporting framework, the Agreement has identified an overwhelming number of indicators for development and reporting, most of which are not currently reported. There are reporting gaps for all four Priority Reform targets, four of the 19 socio-economic targets, 143 supporting indicators, and 129 data development items. The large number of indicators obscures the data most critical to informing change. Unless the indicators that are most representative of change are identified and prioritised, there is a risk that data development will produce a dataset that partially answers many questions but fails to answer those that are most critical for monitoring progress against the Agreement.

The most critical data gap identified by participants in the review is the lack of any systematic data on the Priority Reforms. The monitoring framework for the Priority Reforms was introduced to hold governments to account for the structural changes necessary to advance socio-economic outcomes. Many review participants argued that monitoring socio-economic targets in isolation risks attributing deficits to Aboriginal and Torres Strait Islander people or siloing effort within policy sectors rather than elevating attention to common structural drivers (Queensland Family and Child Commission, sub. 8, p. 2; Lowitja Institute, sub. 15, p. 7; Federation of Victorian Traditional Owner Corporations, sub. 24, p. 1). Regarding progress to date, the Coalition of Peaks noted that 'while the Priority Reforms are designed to change the way governments work with our communities and organisations, there tends to be over-emphasis on achieving the socio-economic outcomes in isolation, or simply completing the listed partnership actions' (sub. 25, p. 2). Some indicator data on the Priority Reforms could be collected through other commitments in the Agreement, such as the partnership stocktakes for Priority Reform 1 or the expenditure reviews for Priority Reform 2 (if these were

consistently reported and collated across jurisdictions). However, this is not a substitute for the further conceptual work needed to develop the measurement approach for all of the Priority Reforms.

A second significant gap is in the identification of culturally appropriate indicators. The Agreement prioritises culture in performance monitoring through the addition of two new socio-economic outcomes (outcome 15 on land and waters and outcome 16 on culture and languages) and a commitment to identifying contextual information on the cultural determinants of wellbeing to aid reporting. However, as the Australian Council of TESOL Associations put it, the current approach is 'inconsistent, sporadic, tokenistic and inadequate' because it fails to recognise the centrality of cultural determinants like language across the Priority Reforms and socio-economic outcomes (sub. 11, p. 11). This criticism was echoed by many participants (including the Torres Shire Council, sub. 6, p. 1; Translational Research in Indigenous Language Ecologies Collective, sub. 20, p. 2; Federation of Victorian Traditional Owner Corporations, sub. 24, p. 2; Annika David, sub. 27, p. 2). For example, Kimberley Aboriginal Law and Cultural Centre drew attention to the lack of representation of culture:

> … First Nations arts and culture remain peripheral to the Closing the Gap Agenda. We hear language like 'strong Aboriginal and Torres Strait Islander cultures are fundamental to improved life outcomes for Aboriginal and Torres Strait Islander people.' But there are very few, if any, tangible policies and programs around implementing support for culture. (KALACC, sub. 23, p. 9)

A measurement approach recognising cultural determinants might define supporting indicators across outcomes that capture culturally relevant responses, such as access to culturally appropriate services. It also requires re-evaluating some targets and indicators in terms of their cultural appropriateness and expanding the scope of the indicators reflected in some outcomes. For example, indicators drawing on the Australian Early Development Census or the National Assessment Program-Literacy and Numeracy have been identified by some submissions as not valuing Aboriginal and Torres Strait Islander languages, knowledges and child-rearing practices (Australian Education Union, sub. 3, pp. 4-5; Australian Council of TESOL Associations, sub. 11, pp. 15-16; Translational Research in Indigenous Language Ecologies Collective, sub. 20, pp. 4-5). Review participants also said a broader understanding of culture needed to be recognised. For example, outcome 16 on culture and languages only includes indicators on languages, which ignores other aspects of flourishing cultures such as cultural expression and the arts, spiritual beliefs and practices, and traditional knowledge and healing (KALACC, sub. 23, pp. 6-7; Federation of Victorian Traditional Owner Corporations, sub. 24, p. 5). Prioritising culture across the performance framework will require clarifying the conceptual logic and elevating these indicators as a priority for data development.

These issues with the measurement approach and large data gaps significantly limit the extent to which performance reporting can enable public accountability and drive jurisdictional effort.

Responsibilities for data development need to be clarified

The Agreement's data governance arrangements assume that indicators that do not fall under the 'data development' category in the performance framework can be specified and compiled based on existing data collections. Responsibilities were divided based on the anticipated work required: the Productivity Commission would lead work specifying, compiling and reporting on existing data with the Partnership Working Group, while the Data and Reporting Working Group (DRWG) would coordinate new data development through the data development plan (DDP). In reality, many of the indicators that were assumed to have existing data sources do not exist, are not routinely collected, or have been found to be unsuitable. Coordination of data development could be consolidated under the DRWG through the DDP, but DDP development and implementation has been delayed and is still in its initial stages.

In effect this has meant that responsibility for developing the measures required to report on the Priority Reforms and the four socio-economic targets and many supporting indicators without existing data was not formally established. Recognising the need for greater cultural and technical expertise, the Partnership Working Group has recently engaged a third party to further develop the measurement approach for the Priority Reforms (PC 2023a, p. 17). However, the governance arrangements for developing the socio-economic targets and supporting indicators without suitable data remain unclear.

Without a holistic approach, the accountabilities and costs of data development are at risk of being obscured across multiple working groups and data custodians with different priorities, resulting in a dataset that struggles to present a coherent account of progress.

A proposed Bureau of Indigenous Data

Based on the progress to date, the outstanding indicators and data items are unlikely to be developed to monitor progress within the life of the current targets. The task has exceeded the capability and resourcing of current data governance arrangements. Moreover, a failure to advance data development also risks inhibiting progress on Priority Reform 4. Stronger data governance arrangements are therefore needed.

The Commission is proposing the establishment of a *Bureau of Indigenous Data* (BoID) (**recommendation 2, action 2.2**) to promote and advance Indigenous Data Governance and to progress data development for the Agreement.

The primary role of the BoID would be to advance IDG

The immediate priority for the BoID would be to progress data development, including developing a clear conceptual logic to underpin the Agreement's performance monitoring approach and coordinating and overseeing data development for the critical indicators.

However, the primary (and ongoing) role of the BoID would be to support governments to embed IDG into their data systems and practices and to invest in enhancing the data capability of Aboriginal and Torres Strait Islander organisations and communities. These roles could be achieved through four key functions.

- **Building Indigenous data capability across the public service**. This would include socialising and promoting IDS and IDG across the public service, developing IDG action plans, and developing IDG guidance, such as data sharing agreements with ACCOs.
- **Reporting on Indigenous Data**. The BoID would take carriage of the Closing the Gap information repository (dashboard) and Annual Data Compilation reports (currently undertaken by the Productivity Commission) and could also consolidate other Indigenous reporting frameworks, such as the Aboriginal and Torres Strait Islander Health Performance Framework.
- **Improving the development and management of Indigenous Data**. This could include developing a national catalogue of Indigenous data collections and/or assuming custodianship of specific collections such as the National Aboriginal and Torres Strait Islander Health Survey (which is not yet factored in the ABS's future work program). It would also involve investment in community-controlled data infrastructure, such as warehouses that enable ACCOs to store, manage and use their data.
- **Safeguarding the use of Indigenous Data**, including by examining systemic issues relating to the collection, sharing or management of Indigenous data by government agencies.

The BoID should be Aboriginal and Torres Strait Islander led …

In keeping with its role to support governments to embed IDG into their data systems and practices and to invest in enhancing the data capability of Aboriginal and Torres Strait Islander organisations and communities, the BoID should be Indigenous led and governed. This would also help to ensure the BoID has the trust and confidence of Aboriginal and Torres Strait Islander people, and the required Indigenous expertise. It will also require the independence and authority of a statutory agency and be able to work in partnership with state and territory governments. Finding this balance will be critical to ensure the BoID has the credibility and buy-in it needs to achieve its important aims.

Initially, the BoID should be auspiced by an appropriate existing agency – as it needs to be stood up quickly to avoid further delays to developing the data required to monitor progress against the Agreement. During the time it is auspiced (1-2 years), the BoID should also focus on socialising IDS and IDG across government and stewarding the development of coordinated IDG action plans.

Over the longer term (3-5 years), the BoID should be established under its own enabling legislation as a cross-jurisdictional authority. It could then assume responsibility for reporting against the Agreement (the dashboard and annual data compilation report – ADCR) and begin managing Indigenous data (including by curating a national catalogue of Aboriginal and Torres Strait Islander datasets).

Regardless of which entity the BoID is auspiced in – and there are several options, including the ABS, AIHW, AIATSIS and the Commission, each with advantages and disadvantages – a separate Indigenous Data Board should be established to oversee the BoID. The Indigenous Data Board should be appointed by the Joint Council and comprise of Aboriginal and Torres Strait Islander people with relevant expertise and experience. The BoID would be led by a Chief Indigenous Data Executive, appointed by the Indigenous Data Board, who could establish memorandums of understanding (MoUs) with key government agencies (such as the ABS and AIHW) to determine workstreams and to enter into research partnerships.

… and it will require strong capability and adequate resourcing

The BoID will require staff with both strong technical capability (such as in statistics, data science and surveys) and cultural capability (including expertise in Indigenous studies and social epidemiology and research relating to Aboriginal and Torres Strait Islander wellbeing). It will also require staff with specific expertise relating to IDG, including with respect to data privacy, data-sharing and intellectual property.

The BoID must also be adequately resourced. The operating costs of the BoID may require significant ongoing funding, including a budget for its own staff and funding for it to commission other agencies to undertake data collection activities where required. As it would be a cross-jurisdictional entity, all Australian governments should commit to jointly funding the BoID. However, some of the funding of the BoID could come from reprioritising existing funding for performance monitoring under the Agreement. Further, it would provide greater transparency of the actual costs of data development (some of these costs are currently ‘hidden’ by the complex arrange of working groups) and help to reduce duplication of effort, thereby saving costs. And importantly, the BoID has the potential to generate savings for governments by facilitating the creation and use of better data to inform more effective policy solutions.

8. Embedding responsibility and accountability for change

Governments are not consistently adhering to – and are sometimes contravening – the Agreement

As the previous sections demonstrated, governments have made varying levels of progress towards each of the Priority Reforms, socio-economic outcomes and associated actions outlined in the Agreement. But the overall picture is that governments' current piecemeal actions will not deliver the fundamental transformation they have committed to, and Aboriginal and Torres Strait Islander people are not seeing the types of actions or understanding that will bring about real change.

The wide gap between governments' rhetoric and action appears to stem, in part, from a failure by governments to fully grasp the nature and scale of the change required to fulfil the Agreement. Despite some pockets of good practice, many parts of government are still operating in what amounts to a variation of business-as-usual, where their actions to implement the Agreement are simply tweaks of, or actions overlayed onto, existing systems, rather than root-and-branch transformations. Implementation plans and annual reports provide an incomplete picture of what governments are doing or not doing (box 4), and the Commission has not been able to conduct a detailed examination of what is happening inside every government organisation. However, based on the available information it is the Commission's assessment that the changes being made are not yet leading to improvements that are noticeable and meaningful for Aboriginal and Torres Strait Islander people.

The absence of improvement is exacerbated by the lack of conceptual logic linking for system-wide change, meaning there is no indication of how the myriad of small actions governments have listed in their implementation plans (some of which were already underway before the Agreement) are capable of delivering the large-scale, transformational change they have committed to under the Agreement.

It remains too easy to find examples of governments making decisions that contradict their commitments in the Agreement, that do not reflect Aboriginal and Torres Strait Islander people's priorities and perspectives and that exacerbate, rather than remedy, disadvantage and discrimination. Among other examples described in chapter 7:

- the Queensland Government made changes to bail laws that will mean more Aboriginal and Torres Strait Islander young people are incarcerated for longer periods of time. This is in the context of Queensland having one of the highest rates of Aboriginal and Torres Strait Islander young people in detention

(40.9 per 10,000 young people aged 1017 years were in detention in Queensland on an average day in 202122, compared to 22.3 per 10,000 nationally) (PC 2023a)

- IBAC (the Victorian independent broad-based anti-corruption commission) (IBAC) last year identified 'concerning patterns in how Victoria Police handles the investigation of complaints made by Aboriginal people and serious incidents involving Aboriginal people … Victoria Police has considerable work to do to ensure that it investigates complaints and serious incidents involving Aboriginal people thoroughly and impartially' (2022, pp. 8, 80).

The shortcomings of current accountability mechanisms mean that these types of decisions could continue to go unchecked – changes are needed to strengthen governments' accountability to Aboriginal and Torres Strait Islander people and to drive more meaningful, effective and widespread action across government organisations. These changes are the focus of the remainder of this report.

Changes are needed to increase understanding of, and accountability for delivering, agreed reforms

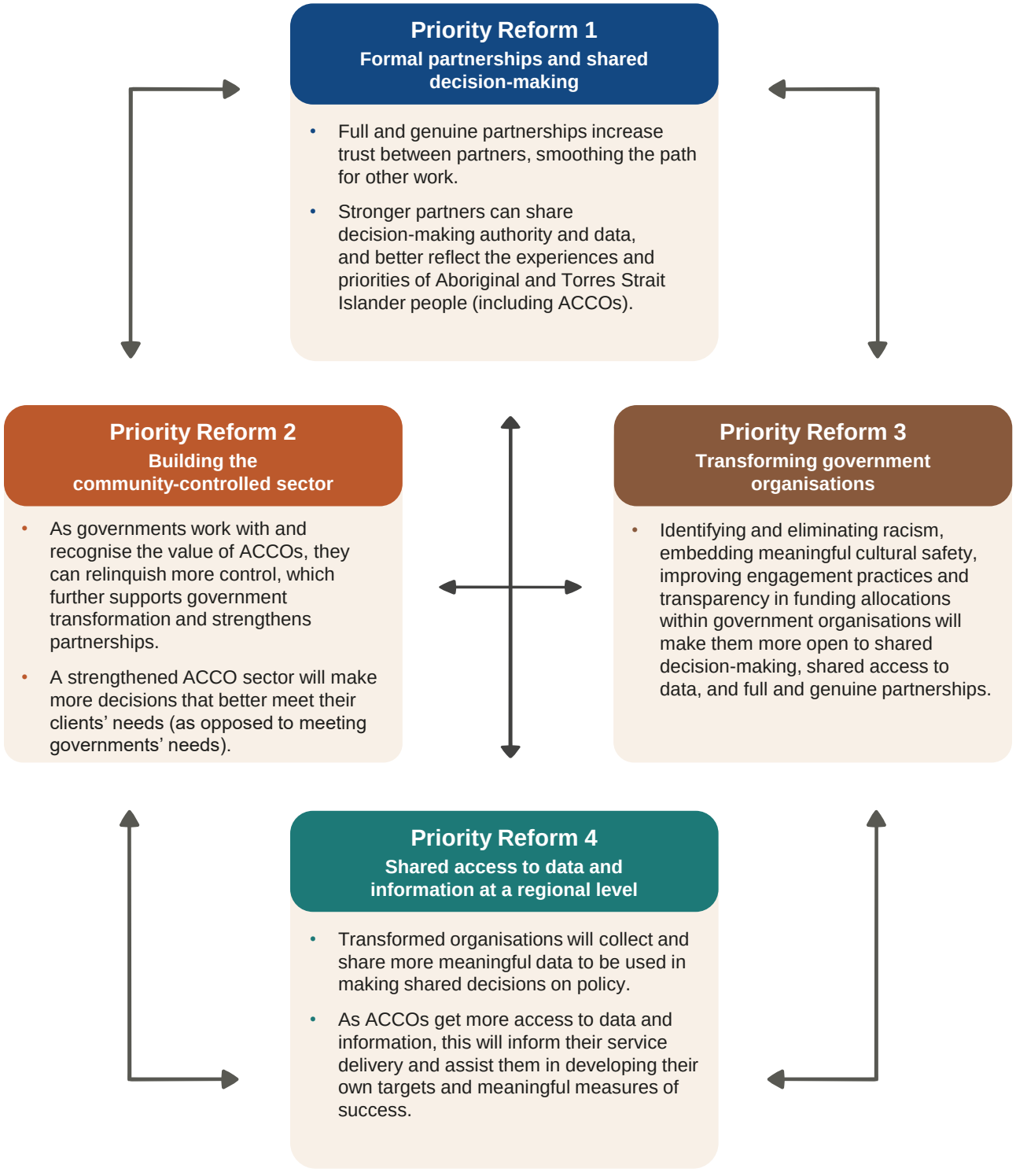
The Priority Reforms need to progress together

Each Priority Reform supports, and is supported by, the other Priority Reforms, with the ultimate aim of accelerating improvements in the lives of Aboriginal and Torres Strait Islander people (figure 1). Effectively, they are enablers for each other. But this interconnection is not explicitly recognised in the Agreement.

Interconnection adds difficulty and complexity to the reform task, and means that slow progress towards one of the Priority Reforms can stifle progress towards the other Priority Reforms. In particular, Priority Reform 3 is more than a complement for the other Priority Reforms, it is a critical enabler.

Interdependencies can also impede progress towards the outcomes envisaged in the Agreement. For example, in drawing attention to the decline in outcomes for school readiness, adult incarceration, suicide, and children in out-of-home care since the signing of the Agreement, the Close the Gap Campaign pointed out that 'a decline across any target area will only make the work to improving all outcomes more difficult' (sub. 17, p. 1). The interconnection between the Priority Reforms can also make it much harder to hold any person or organisation accountable for progress on any particular reform element.

Figure 1 – The Priority Reforms are closely interconnected



Existing accountability mechanisms lack bite

While the Agreement includes a suite of accountability mechanisms, there are significant deficiencies in them. As discussed above, these accountability mechanisms do not provide sufficient opportunity for Aboriginal and Torres Strait Islander people to be heard and to raise concerns, do not include all relevant government organisations and do not provide clarity about how governments' actions are (or should be) linked to outcomes. In addition, they:

- are not sufficiently independent
- do not contain timely and appropriate consequences for failure
- are not informed by the learnings of evaluation.

There is no independent oversight

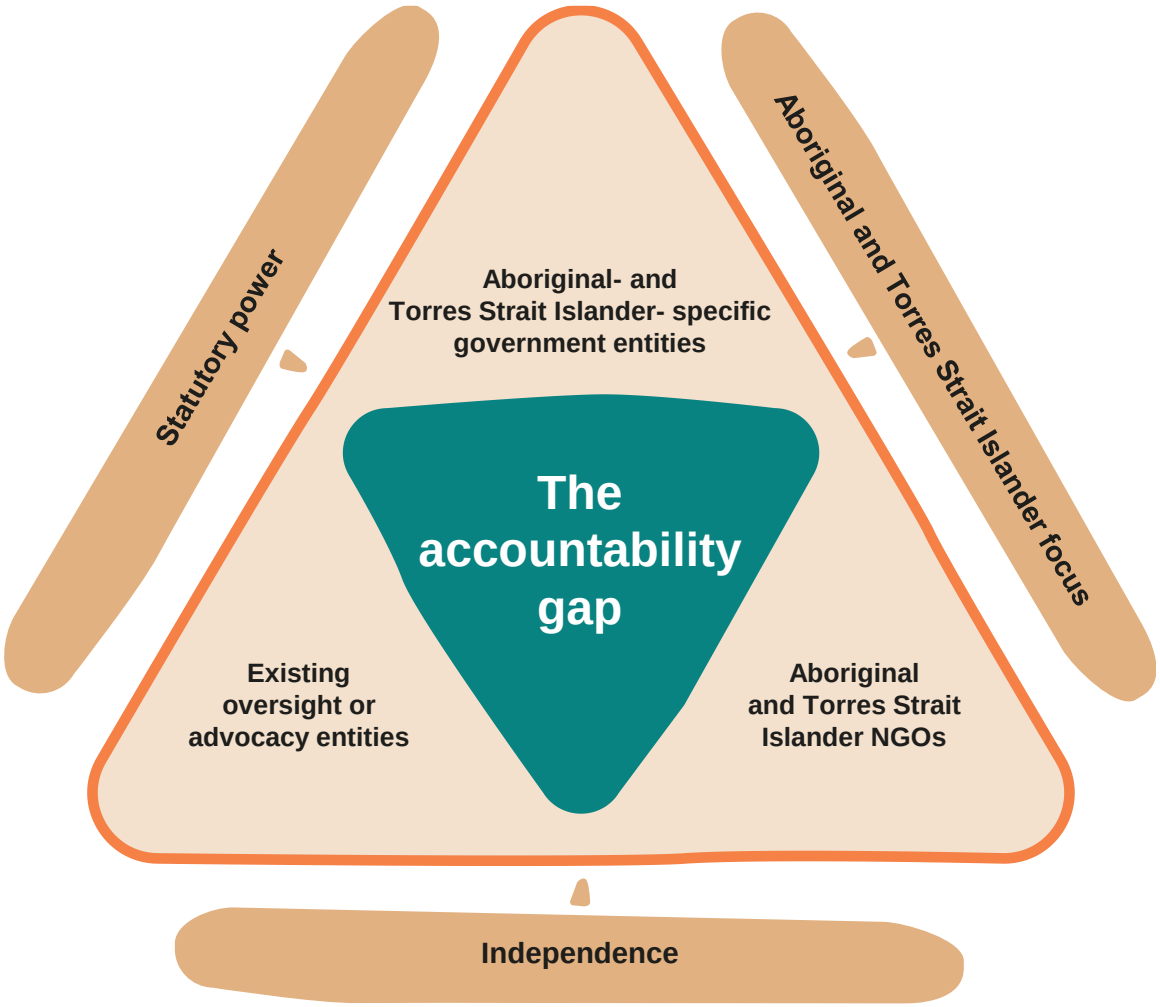
The Agreement provides that the Joint Council is responsible for ongoing administration and oversight of this Agreement (clause 139). But as the parties to the Agreement comprise the membership of the Joint Council, this 'oversight' has little effect – the parties are simply reporting to themselves.

This is the antithesis of effective practice, in which oversight bodies that have a greater degree of independence operate with more objectivity and transparency, as AIATSIS pointed out.

> A strong and transparent accountability framework is fundamental to keep discretionary decision makers focussed on securing the best outcomes for Aboriginal people. AIATSIS submits that this will be better facilitated through a dedicated entity with statutory powers and independence from the government of the day. (Strelein and Hassing 2018, p. 1)

Independent oversight that centres Aboriginal and Torres Strait Islander people, perspectives, priorities and knowledges is also essential for addressing the gap at the intersection of existing accountability mechanisms. The gap arises because some existing accountability mechanisms are independent of government, some have statutory power, some focus specifically on matters relating to Aboriginal and Torres Strait Islander people and communities (the sides of the triangle in figure 2). Some have dual features (such as Aboriginal and Torres Strait Islander NGOs, which focus on Aboriginal and Torres Strait Islander matters and are, as the names suggests, independent of government) (the corners of the triangle in figure 2). But no existing accountability mechanisms have all three – independence, statutory power and an Aboriginal and Torres Strait Islander focus (the gap in the centre of figure 2).

Figure 2 – An accountability gap



Source: adapted from WADPC (2018, p. 6).

There are no consequences for failure

As it currently stands, governments do not face timely or appropriate consequences for failure to meet the commitments they made in the Agreement. Decision-makers have not faced negative repercussions (timely or otherwise) for poor decisions, or for the continuation of similar practices that exacerbate, rather than remedy, disadvantage and discrimination.

Where governments have behaved in ways that were contrary to the Agreement – for example, by imposing a program or service in a community without meaningfully engaging with that community, or by giving Aboriginal and Torres Strait Islander people and organisations too little time to meaningfully respond to a request for consultation – the people, organisations and communities have no way to hold governments to account. The Agreement does not provide any recourse, and does not stop the program being implemented or the decision being made without meaningful input from Aboriginal and Torres Strait Islander people.

The Commission has previously noted 'government agencies must not only be 'called' to account; they must also be 'held' to account. Accountability is incomplete without effective consequences or sanctions' (PC 2012, p. 239).

The weakness (and effective absence) of accountability mechanisms means that the implementation of the Agreement depends heavily (or solely) on individuals being motivated to 'do the right thing'. While many

individuals are motivated, this does not provide the necessary impetus for comprehensive and sustained system change.

Evaluations are not undertaken or do not lead to governments learning

Evaluation is an essential component of holding governments accountable for outcomes, and identifying opportunities to improve outcomes, to support learning and adaptation or to use funds more effectively. Publishing evaluations can further enhance accountability by increasing visibility and pressure for agencies to follow up with a management response to evaluation findings. Publishing evaluations also has many other benefits, including supporting learning, improvement and the diffusion of knowledge. But there is a lack of published evaluation of policies and programs affecting Aboriginal and Torres Strait Islander people (PC 2020b, p. 99).

Evaluations need to centre Aboriginal and Torres Strait Islander people, perspectives, priorities and knowledges if outcomes are to improve.

> This is about valuing Aboriginal and Torres Strait Islander knowledges, cultural beliefs and practices, and building capability among Aboriginal and Torres Strait Islander evaluators, organisations and communities. And it is about non-Indigenous evaluators having the necessary knowledge, experience and awareness of their own biases to work in partnership with, and to draw on the knowledges of, Aboriginal and Torres Strait Islander people. (PC 2020b, p. 15)

Stronger accountability mechanisms are needed

The deficiencies in current accountability mechanisms raise questions as to the status and influence of the Agreement and its ability to drive change. These issues are not unique to the National Agreement on Closing the Gap – similar concerns have been raised about other national agreements. For example, in its 2022 review of the National Agreement for Skills and Workforce Development (NASWD), the Commission found that 'the NASWD's performance framework is not sufficient to hold governments to account on their reform commitments, nor on the performance of their [vocational education and training] system' (PC 2020c, p. 7) and that failure to meet the performance targets in the NASWD is 'a disheartening legacy common to many of the targets set under other national agreements' (PC 2020c, p. 6).

But the shortfalls of previous national agreements stem in large part from their singular focus on achieving targets for particular outcomes. The Agreement is fundamentally different, because its Priority Reforms represent a new way of working for governments and set the Agreement apart from its predecessor – the NIRA. As noted above, a key lesson from the NIRA was that when presented in isolation, socio-economic targets can problematise Aboriginal and Torres Strait Islander people, rather than the structures and systems that are driving these outcomes. It is these structures and systems which need to change to achieve improvements in life outcomes. This is the focus of the Priority Reforms.

And there are many things that can be done to improve implementation of, and hold people and organisations accountable for delivering, the Priority Reforms. This will only have benefits, as the Indigenous Education Consultative Meeting pointed out.

> Accountability should not be seen as a burden or pure compliance, rather as an opportunity to ensure all interested parties can feel assured that everything is being done to ensure our future generations are secure, thrive and our culture is celebrated. (sub. 63, p. 4)

The following sections each outline potential reform directions to achieve this better future. While none of the actions recommended as part of these reform directions can, on its own, shift the trajectory of progress, together they can influence the incentives of people working at all levels of government, and drive the necessary changes in governments' efforts to implement the Agreement.

Establishing an independent mechanism without further delay

A key mechanism for accountability within the Agreement is the independent mechanism. However, there has been limited progress towards establishing an independent mechanism and most jurisdictions will not have a mechanism by the end of 2023 as agreed. While a lack of progress in implementing any aspect of the Agreement is of concern, the absence of significant action in establishing the independent mechanism does provide an opportunity to reconsider its role.

A role for the independent mechanism beyond Priority Reform 3

The first way in which the role of the independent mechanism could be reconsidered is to expand its role beyond Priority Reform 3. An independent mechanism with a broader role would be better placed to drive accountability for progress towards all of the outcomes of the Agreement. Many participants emphasised the importance of the independent mechanism being able to look beyond Priority Reform 3. For example, the Coalition of Peaks said:

> … we think it would be important for the independent mechanism to have a broader function than monitoring Priority Reform three and could be extended to monitor the whole implementation of the National Agreement by governments and other reforms with a significant impact on Aboriginal and Torres Strait Islander people. (sub. 58, pp. 3–4)

An independent mechanism with a broader role – one that goes beyond Priority Reform 3 – would be better placed to drive accountability for progress towards all of the outcomes of the Agreement, and to hold governments to account for commitments made and the services they fund, and provide system-level advice for improved policies, programs and services affecting Aboriginal and Torres Strait Islander people. This would help to ensure that governments understand and respond to the views, aspirations and interests of Aboriginal and Torres Strait Islander people and enable self-determination.

If the independent mechanism was clearly positioned at the centre of the accountability gap described in figure 2, it could play a key role in strengthening accountability.

The independent mechanism is likely to take different forms and names in different jurisdictions, to better fit with existing institutions in each jurisdiction. But regardless of its exact form or name, the independent mechanism should be able to shine a spotlight on good and bad practices under the Agreement and advocate for improved policies, programs and services affecting Aboriginal and Torres Strait Islander people.

Potential features of the independent mechanism

Participants suggested a range of other features that they considered to be essential for the independent mechanism. One frequently suggested feature was the ability to hold public hearings. As suggested by its name, **independence** is an essential feature of the independent mechanism.

Features that would support the effectiveness of the independent mechanism include:

- being **governed and led by Aboriginal and Torres Strait Islander people**, chosen with input from Aboriginal and Torres Strait Islander people and communities
- having a **legislative basis** to help guarantee its ongoing existence and the power behind its functions
- having **sufficient guaranteed funding** so that it can build and maintain organisational capabilities, and determine its priorities without undue influence from governments
- having a **broad remit** covering all aspects of governments' relationships with Aboriginal and Torres Strait Islander people (subject to the role and remit of other Aboriginal and Torres Strait Islander bodies, such as elected bodies or truth-telling commissions)

- having **full control of its work program**, so it can initiate its own inquiries, conduct its own research, benchmark performance, and review all relevant documents (such as Closing the Gap implementation plans and annual reports)
- being able to **require government organisations to provide information** (with powers akin to those of auditors)
- being able to **intervene in real time** to support Aboriginal and Torres Strait Islander organisations that have concerns about the way in which government actions or decisions are affecting Aboriginal and Torres Strait Islander people or organisations (potentially with specific provisions for whistleblowing)
- **operating with transparency**, including freedom to hold public hearings and to publish its own reports and findings at a time of its choosing
- **not engaging in program delivery and not administer funding or programs**, so that it is never in a position of needing to pass judgement on its own actions or inaction.

In designing the details of each of these features, it will be important to consider the interaction between them. For example, a broad remit will only be sustainable if it is accompanied by sufficient funding and the effectiveness of public hearings will depend on having the capacity and expertise to be well prepared for them. In addition, the potential role of the independent mechanism in supporting the development of the Aboriginal community-controlled sector requires careful consideration, as a mandate to support a sector or organisation does not sit easily with a mandate to hold that sector or organisation to account.

The process for determining the optimal mix of responsibilities, powers, funding and features for the independent mechanism should be led by Aboriginal and Torres Strait Islander people in each jurisdiction. Differences between jurisdictions – notably the potential for an elected representative body to be involved in decisions about how to best constitute the independent mechanism in some jurisdictions – may affect the timeframes within which this process can be undertaken. For example, the SA Government said that it:

> … is committed to exploring the essential features of, and suitable models for, the independent mechanism, in partnership with SAACCON and the SA First Nations Voice. The outcomes of these conversations cannot be pre-empted and will therefore not be known until 2024 after the SA First Nations Voice has been elected. (sub. 54, p. 22)

Similarly, the Victorian Government said that 'both treaty and the Yoorrook Justice Commission will likely lead to significant systemic reform, including in relation to systems oversight and accountability' and that it will work with these First Nations partners to consider the best approaches for establishing the independent mechanism (Victorian Government 2021, p. 23).

To the extent that this indicates an intent to allow sufficient time to work in partnership with, and to be led by, the appropriate Aboriginal and Torres Strait Islander representatives, this is to be commended, as those practices are all too rare (chapter 2). But it is also important that an independent mechanism is established in each jurisdiction without further delay (**recommendation 4, action 4.1**).

Driving accountability for implementing the Priority Reforms through government leadership and systems

The new and emerging Aboriginal and Torres Strait Islander bodies described above, together with the independent mechanism once established, will help to ensure that governments are held accountable for progress towards the outcomes of the Agreement. But it is not reasonable or appropriate to put the burden for fundamentally rethinking government systems on newly created bodies that sit outside of government – governments must be held accountable for making changes from within.

This will necessitate the creation of better governance systems, so that accountability at the level of a jurisdiction's government affects the day-to-day actions of public sector CEOs, executives and employees in that jurisdiction. The need for improved governance and accountability was highlighted by review participants, who told us that better mechanisms are needed to ensure that senior department executives understand and engage with the Closing the Gap initiatives (chapter 9), and that this understanding and engagement cascades down to middle managers and staff.

The Commission is recommending a number of ways to enhance accountabilities for implementation of the Agreement by changing whole-of government systems and processes. They are:

- reviewing and updating Cabinet and Budget processes so that they explicitly promote, support and encourage the Priority Reforms
- requiring regular meetings between Ministers and Aboriginal and Torres Strait Islander peak bodies
- embedding responsibility for improving cultural capability and relationships with Aboriginal and Torres Strait Islander people into the core employment requirements of all public sector CEOs, executives and employees
- designating a senior leadership group to drive public sector change in each jurisdiction.

And, as noted above, the Commission is also recommending that governments review and update funding and contracting rules so that they explicitly incorporate accountability for funders to abide by the Priority Reforms in contracting. This could include requirements, such as for governments to give sufficient time for ACCOs to properly raise problems with an existing model of service and lead its redesign, and to provide data to ACCOs to enable the design and delivery of services that best meet the priorities and needs of service users. Such obligations would provide another mechanism by which Aboriginal and Torres Strait Islander people could hold governments accountable.

These new approaches to enhancing accountability within the public sector are designed to work alongside, and to complement, the Agreement and its Priority Reforms. All of the recommended changes will only be effective if they are implemented in ways that are consistent with the Agreement, and centre Aboriginal and Torres Strait Islander people and perspectives. So, for example, the new responsibilities for public sector CEOs, executives and employees should be developed in partnership with Aboriginal and Torres Strait Islander people, and should cover all of the transformation elements in Priority Reform 3.

Ensuring that Cabinet and Budget processes explicitly promote, support and encourage the Priority Reforms

In order to successfully embed each of the Priority Reforms, system-level changes to governments' processes are required. Whole-of-government decision-making processes – especially Cabinet and Budget processes – should actively drive changes to deliver the outcomes of the Agreement.

It is expected that in many cases, changing such processes would require central agencies to make changes to those arrangements, as well as to provide more robust guidance for agencies about best-practice approaches. Many jurisdictions have already made a range of changes to Cabinet, Budget and other high-level decision-making processes as part of their efforts to implement the Priority Reforms, but some have yet to do so and there remains room for improvement.

First, while some governments have created obligations for engagement with the agency with primary responsibility for Aboriginal and Torres Strait Islander policy, multiple participants stressed that engagement

within government is not a substitute for engagement with the community and is contrary to the principles of the Agreement.

> Often, we will ask about consultation undertaken and realise that consulting Aboriginal staff in the Department is being used as a proxy for community consultation. Government speaking about its agenda to its employees cannot be a substitute for meaningful engagement with Aboriginal families and communities. (Absec, sub. 88, p. 6)

Without genuine and ongoing engagement with Aboriginal and Torres Strait Islander community members, governments will not be able to deliver on their commitment to ensure that Aboriginal and Torres Strait Islander people have led the design and delivery of services that affect them (clause 6).

A second and related concern is that, even where decision-making processes have been redesigned to implement the Priority Reforms, the changes are too modest in scope or still do not allow community participation in all of the relevant steps of the decision-making process. For example, the Department of Social Services (DSS) submitted that:

> … challenges have arisen where there is conflict between new policy proposals that advocate for community-led solutions and Budget processes that require detailed policy parameters. In some cases, the extent of this detail cannot be provided before engagement with communities on design and implementation. This can hinder genuine community-led approaches. (sub. 74, p. 11)

Third, there have been no changes at all to embed the Priority Reforms in many important components of governments' decision-making processes. For example, VACCA submitted that although the Victorian Government 'has a longstanding promise to improve its budget processes to ensure Aboriginal community involvement' it has 'acknowledged that the State Budget process does not currently have a mechanism which allows for Aboriginal community decision-making on budget priorities and outcomes' (sub. 75, p. 5).

It is essential that Aboriginal and Torres Strait Islander organisations are involved in developing any new processes, as SNAICC pointed out.

> Governments must engage with the relevant Aboriginal and Torres Strait Islander peak bodies and lead service providers in designing new approaches to Cabinet, Budget, funding and contracting arrangements to ensure that these processes do not inadvertently perpetuate discriminatory or exclusionary practices. (sub. 96, p. 8)

Indeed, it is important to see changes to Cabinet and Budget processes that align commitments on of the Priority Reforms. This could mean, for example, that instead of requiring consultation with the government department or agency with responsibility for Aboriginal and Torres Strait Islander policy, there would be a requirement to engage directly with Aboriginal and Torres Strait Islander partners on issues affecting them (as already required under the Agreement).

It is also important that changes are made to all of the component parts of decision-making processes. Changes to Cabinet *and* Budget systems will be more impactful than changes to Cabinet or Budget systems alone. And there also needs to be a process for ensuring that changes to Cabinet and Budget systems are reflected in handbooks, toolkits and other guidance materials. Such a process might have meant that when the Australian Government updated its Guide to Policy Impact Analysis, it consulted with the NIAA (as required by its Cabinet processes) or with Aboriginal and Torres Strait Islander partners. But instead, the March 2023 edition of the guide mentions 'indigeneity' once and contains no guidance about the need to, and or the importance of, assessing the impact of policies on Aboriginal and Torres Strait Islander people (DPMC 2023), in clear contravention of the Agreement.

It is also essential that staff receive training and support to effectively follow the new guidance. This is something that the Victorian Department of Treasury and Finance has recognised, undertaking to provide 'Aboriginal cultural awareness training to all staff, and further self-determination training for budget analysts and executives' (VDTF 2020, p. 8).

Regular meetings between Ministers and Aboriginal and Torres Strait Islander peak bodies

Ensuring that Cabinet and Budget processes explicitly fulfill commitments to promote, support and encourage implementation of the Priority Reforms is essential. But many other key government decisions are made by individual Ministers. Given the complex web of legislation that governs Ministerial decision-making authority, Ministers will continue to be responsible for a large proportion of government decisions for the foreseeable future.

It is therefore critical that individual Ministers actively obtain the input of Aboriginal and Torres Strait Islander people into decision-making processes directly, over and above the advice they receive from their public servants. Without it, they will not hear the priority or perspectives they need to, in order to have informed input into Cabinet decisions and to make the decisions for which they have direct delegation. Hearing directly from Aboriginal and Torres Strait Islander people will also help to build each Minister's capacity to act in accordance with the Agreement. It also ensures the advice is not subject to filtration by agencies that are still a long way behind where they need to be in their own transformation, and therefore their ability to promote this input.

Some jurisdictions already have processes in place so that individual Ministers meet regularly with Aboriginal and Torres Strait Islander representatives, and hear their priorities and perspectives. For example, in New South Wales:

> Accountability and delivery of Closing the Gap across government has been pursued through quarterly progress meetings to monitor delivery of the Implementation Plan and to discuss strategic challenges and opportunities. These meetings have been introduced by the Premier and attended by NSW CAPO with every NSW Minister and cluster responsible for Closing the Gap. (NSW Government 2022a, pp. 6–7)

The Commission heard that this type of arrangement – in which Ministers responsible for key policy areas meet regularly with relevant Aboriginal and Torres Strait Islander peak bodies – has considerable merit. It reflects the intent of the Agreement, in which 'the views and expertise of Aboriginal and Torres Strait Islander people, including Elders, Traditional Owners and Native Title holders, communities and organisations will continue to provide central guidance to the Coalition of Peaks and Australian Governments throughout the life of this Agreement' (clause 9), and translates this intent to a state and territory level.

Meetings between Ministers and relevant Aboriginal and Torres Strait Islander peaks would not replace other partnership arrangements, or other forums for consultation and coordination at which departmental CEOs and other public servants are present. Rather, they would help to give effect to the Agreement by providing an opportunity for peaks to speak directly with Ministers on key strategic matters.

The Commission is recommending that meetings between Ministers and relevant Aboriginal and Torres Strait Islander peak bodies initially take place at least twice per year. Quarterly meetings, such as in New South Wales, could also be considered. To allow maximum participation, the agenda for each meeting should be set well in advance, by agreement between both parties.

Designating a senior leadership group to drive public sector change in each jurisdiction

Effective leaders who are committed to the Priority Reforms and to creating an authorising environment that explicitly supports this paradigm shift are critical for driving the transformational change envisaged by the Agreement. But as it stands:

- in some jurisdictions, no senior leader or leadership group is tasked with driving change by promoting and embedding the required changes to systems and culture throughout the public sector
- in other jurisdictions, multiple people and organisations have been given that task.

Involving multiple leaders in Closing the Gap leadership and governance arrangements is, on the face of it, a positive step, as all public sectors leaders and employees have a role to play in delivering the Priority Reforms. But there is also a considerable risk that if everyone is responsible, no one is responsible for driving whole-of-government and system-wide change, nor is anyone ultimately accountable for lack of progress. It also means that critical elements of successful change (box 15) are absent or in short supply.

Box 15 – Critical elements of successful public sector change

- **Continuous, consistent communication**. Employees must understand what change is expected and why. This requires clear, persuasive and consistent communication from leaders and involvement from staff. Communication must be more or less continuous, not one-off.
- **Role modelling and reinforcement**. Witnessing influential leaders acting consistently with expected new behaviours helps people feel confident to take the risk associated with changing. Role models with lived experience – in this case, Aboriginal and Torres Strait Islander people – are best placed to support behaviour change.
- **Accountability, encouragement and support for desired behaviours**. Incentives and reward mechanisms (such as learning and development, performance assessment at all levels, promotions and appointments) must align with the expected behaviours and reinforce desired change.
- **Relevant tools and skills-building**. Employees must be equipped with the skills, capabilities and tools to act in new ways. Failing to do so necessarily undermines their ability to change, while building up the ability and belief of individuals to act in new ways creates positive reinforcement.

Source: adapted from Thodey et al. (2019, pp. 82–83).

While the leadership gap is clear, the best option for filling the gap is not as easy to identify. The Commission considered several potential leadership options. Each of the potential options have different strengths and will require different changes to support them – there is no perfect 'off-the-shelf' solution ready to deliver the innovative leadership required.

- The **Secretaries of the Departments of the Prime Minister, Premier or Chief Minister** have the positional authority to drive the systemic, jurisdiction-wide changes that are needed to deliver on the Agreement, but may lack a deep knowledge of Aboriginal and Torres Strait Islander perspectives.
- **Secretaries Boards and other secretary-level leadership groups** are similarly placed. And while each member of the group has considerable authority as an individual, the group itself often plays a coordination (rather than a decision-making) role. But they also have positional authority as a group of the

most senior decision makers in government. And when it comes to transformational change, positional authority and the ability to drive the agenda may be leaders' most important attributes.

- **Departments or agencies with responsibility for Aboriginal and Torres Strait Islander policy** have relevant expertise, but are often small groups within larger agencies, and may lack the necessary authority and influence to motivate other larger agencies to do what has been committed to in the Agreement.
- In some jurisdictions, the **Public Service Commissioner** is already active in efforts to increase the cultural capability of the public service. For example, the NSW Public Service Commission provide freely accessible resources designed to build cultural awareness of Aboriginal people's past interactions with government, the diversity of Aboriginal people and culture, and significant Aboriginal events and celebrations (NSW PSC 2021). And in New Zealand, the NZ Public Service Commissioner was given new responsibilities under the *Public Service Act 2020* (NZ) to support the implementation of the Māori–Crown provisions of the Act, supported by a Deputy Public Service Commissioner whose core focus is on system leadership for Māori–Crown relations.

On balance, the Commission considers that a senior leadership group is best placed to drive the transformational change required across the public sector in each jurisdiction (**recommendation 3, action 3.5**). In many states and territories, this will be a Secretaries Board or Secretaries Leadership Group. Ensuring that the chosen leadership group is informed by Aboriginal and Torres Strait Islander perspectives and cultures is essential. To ensure that this occurs in a systematic way, the Commission is recommending that the senior leadership group chosen to lead public sector change should meet with the relevant jurisdictional Aboriginal and Torres Strait Islander peak body at least twice per year. These meetings would be in addition to those that the Aboriginal and Torres Strait Islander peak body has with Ministers (**recommendation 1, action 1.3**).

Clear responsibilities for Closing the Gap in the employment requirements of public sector CEOs, executives and workers

In each jurisdiction across Australia, public sector CEOs, executives and employees must have certain capabilities and meet certain standards of competence, ethics and behaviour. These standards are often, but not always, prescribed in legislation. The existence of standards of performance and behaviour provide a potential mechanism for changing the incentives and motivations of public sector CEOs, executives and employees.

New Zealand has already changed the legislation governing public sector employment to change public servants' behaviour towards First Nations people. The *Public Service Act 2020* (NZ) explicitly recognises the role of the public service to support the Crown in its relationships with Māori under the Treaty of Waitangi, and makes chief executives of public sector agencies accountable to their Minister for upholding their responsibilities to support the Crown's relationships with Māori. Similar changes have recently been introduced in Queensland, drawing on the New Zealand experience (box 16).

Box 16 – Reframing the Queensland public sector's relationship with Aboriginal and Torres Strait Islander peoples

Queensland's *Public Sector Act 2022* (the Queensland PS Act) commenced in March 2023. It aims to ensure that the Queensland public sector is responsive to the community it serves and:

- supports the state government in reframing its relationship with Aboriginal peoples and Torres Strait Islander peoples
- ensures fairness in the employment relationship and fair treatment of its employees
- is high-performing and apolitical.

The Queensland PS Act draws on the example of New Zealand's *Public Service Act 2020*, which:

> … explicitly recognises the role of the New Zealand public service to support the Crown in its relationships with Māori under Te Tiriti o Waitangi/the Treaty of Waitangi, and places responsibilities on public service leaders to develop and maintain cultural capability and understanding of Māori perspectives. Similarly, [the *Public Sector Act 2022* (Qld)] places responsibilities on chief executives to support a reframed relationship between Aboriginal peoples and Torres Strait Islander peoples and the State. (Queensland Government 2022, p. 9)

The Queensland PS Act designates all public sector entities (including government departments, hospital and health services, Queensland Police, and most statutory offices, boards, committees, councils, bodies and other groups established under legislation) as 'reframing entities'. Reframing entities must:

a) recognise and honour Aboriginal peoples and Torres Strait Islander peoples as the first peoples of Queensland
b) engage in truth-telling about the shared history of all Australians
c) recognise the importance to Aboriginal peoples and Torres Strait Islander peoples of the right to self-determination
d) promote cultural safety and cultural capability at all levels of the public sector
e) work in partnership with Aboriginal peoples and Torres Strait Islander peoples to actively promote, include and act in a way that aligns with their perspectives, in particular when making decisions directly affecting them
f) ensure the workforce and leadership of the entities are reflective of the community they serve
g) promote a fair and inclusive public sector that supports a sense of dignity and belonging for Aboriginal peoples and Torres Strait Islander peoples
h) support the aims, aspirations and employment needs of Aboriginal peoples and Torres Strait Islander peoples and the need for their greater involvement in the public sector.

In effect, this gives all employees of reframing entities a duty to actively promote the perspectives of Aboriginal and Torres Strait Islander peoples.

Chief executives of reframing entities have additional responsibilities, including to make a plan for developing the entity's cultural capability, publishing the plan, conducting an annual audit of the entity's performance as measured against the plan, and reviewing the plan annually.

The Queensland Government made clear that including requirements for cultural capability in public sector employment legislation is the start – not the end – of the journey.

> 'Cultural capability' of an entity is defined as the integration of knowledge about the experiences and aspirations of Aboriginal peoples and Torres Strait Islander peoples into the entity's workplace standards, policies, practices and attitudes to produce improved outcomes for Aboriginal peoples and Torres Strait Islander peoples. Cultural capability and cultural safety are steps on a continuum towards the aspirational goals of 'cultural competence' and 'cultural security' respectively.
>
> Given the current status quo in Queensland's public sector, the [Public Sector Act] establishes a baseline for reframing entities to achieve cultural capability and therefore cultural capability has been defined. Other terms have intentionally not been defined, however as reframing entities mature on the journey to cultural competence and cultural security, there may be further opportunities to characterise these concepts as part of the entity's operational workplace standards, policies, and practices. (Queensland Government 2022, p. 17)

While requiring all public sector CEOs, executives and employees to become culturally capable will not immediately result in cultural competence and cultural safety, it is a necessary step on that journey.

In jurisdictions other than Queensland, governments have not underpinned their commitment to 'listen to the voices and aspirations of Aboriginal and Torres Strait Islander people and change the way we work in response' (clause 19) with changes to their standards for public servants' performance and behaviour. Without an explicit instruction that puts valuing the perspectives of Aboriginal and Torres Strait Islander people on a par with other core public services values and behaviours, it is not clear how the public sector will change. It is not acceptable for government employees to treat adhering to the principles of the Agreement as optional – they are essential skills and behaviours without which governments cannot hope to deliver on their Closing the Gap commitments. Governments should therefore embed these skills and behaviours into public sector employment and performance requirements (**recommendation 3, action 3.4**).

These principles should flow through into the performance agreements and KPIs of CEOs, executives and employees. The nature of the change to performance agreements and KPIs will vary depending on level of seniority. The strongest requirements should be placed on CEOs and executives, who would have the responsibility of opening up their organisation's processes and operations to Aboriginal and Torres Strait Islander eyes for identification of institutionalised racism (which, as discussed above, is not something that government organisations can do internally).

The change to performance agreements and KPIs will also vary depending on role. Those whose role involves providing policy advice about, or contributing to the design and delivery of services to, Aboriginal and Torres Strait Islander people should have more stringent KPIs than those whose role is procedural or technical in nature (such as a tax clerk or meteorologist).

Resourcing the implementation of the Agreement

Adequately resourcing the Priority Reforms

To date, the resources that governments have committed to the implementation of the Agreement have fallen far short of the ambition of the Agreement. Examples of resourcing being inadequate to deliver the intended outcomes can be found across each of the Priority Reforms. And inadequate resourcing leads to numerous challenges, including that:

- governments often underestimate the time and funding needed to engage in shared decision-making (section 3)

- ACCOs have to argue and justify their role in decision-making (despite the commitment to shared decision-making in the Agreement). This takes time, money and resources away from ACCOs core work with Aboriginal and Torres Strait Islander people (section 4)
- implementing a commitment to Indigenous Data Sovereignty would involve a significant investment to reform existing data systems, build capability and establish Indigenous-controlled data infrastructure. This would require additional dedicated funding and resourcing by all governments (section 7).

Each of these issues is likely to pose barriers to progress towards implementing the Priority Reforms and improving socio-economic outcomes. They also disproportionally affect Aboriginal and Torres Strait Islander organisations. This then places them at a disadvantage when dealing with governments. APO NT suggested how to address this disadvantage.

> We are seeking a whole-of-government strategy to resource the Closing the Gap work program. On shared decision making, we are resourced to participate in a small number of the forums where we contribute our advice and experience to governments. On transitions, we are looking for coordinated and significant investments into our Aboriginal Community Controlled Organisations (ACCOs) to enable them to take on services. On government transformations, we would like to see Implementation Plans accounted for in budget processes, and staff job descriptions designed around implementing the Priority Reforms. On data sovereignty, we want to see investments in collecting and sharing data differently. (sub. 69, pp. 2–3)

The Australian, state and territory governments should ensure that the resources they devote to the implementation of the Agreement are commensurate with the ambition of the Agreement (**recommendation 1, action 1.4**).

Including Closing the Gap in other intergovernmental agreements

Many of the actions that are needed to overcome the entrenched inequality faced by too many Aboriginal and Torres Strait Islander people are not specified in the National Agreement on Closing the Gap – they are instead found in other intergovernmental agreements. These agreements are part of the broader framework of federal financial relations, and play a key role in setting policy objectives and allocating funding to achieve the agreed objectives in each of the sectors they cover. This means that many of the policies and programs that will contribute to achieving the socio-economic outcomes in the National Agreement on Closing the Gap will be determined, or highly influenced, by these other agreements.

Review participants recognised the importance of ensuring that other agreements reflect governments' obligations under the National Agreement on Closing the Gap. For example, the Coalition of Peaks said:

> Mainstream National Agreements are a critical funding and performance mechanism to be mobilised by Governments to 'closing the gap'. We also note that many of the Indigenous-specific Intergovernmental Agreements have ceased in recent years with no replacement. This places greater emphasis on ensuring that mainstream National Agreements are responsive to the needs of Aboriginal and Torres Strait Islander people and make a significant contribution to 'closing the gap'. (sub. 58, p. 4)

The Commission agrees that the agreements currently being negotiated should reflect the commitments made in National Agreement on Closing the Gap. This is an essential prerequisite for delivering on the Agreement.

New or revised agreements about cross-cutting issues need to contain sufficient funding to deliver policies and programs that will contribute to achieving the socio-economic outcomes in the National Agreement on Closing the Gap (**recommendation 4, action 4.2**). They also need to be developed using processes that are consistent with the Priority Reforms. This means, for example, that new policies being considered for

inclusion in a national or wide-ranging sectoral agreement should be developed in partnership with Aboriginal and Torres Strait Islander people, and should include explicit consideration of the role of, and funding for, the Aboriginal and Torres Strait Islander community-controlled sector. And when intergovernmental agreements are being evaluated, Aboriginal and Torres Strait Islander perspectives and performance metrics should be central in that evaluation.

Improving transparency of actions taken to implement the Agreement

Improving Closing the Gap implementation plans

As noted above (box 5), we found that governments' implementation plans do not demonstrate a strategic approach. They collectively list hundreds of actions for each Priority Reform, some with very little relevance to the Priority Reform that action is ostensibly supporting. This makes it very difficult for members of the community, or even for non-government partners to the Agreement, to understand whether and how governments are taking meaningful action.

The Commission is providing specific guidance about what should, and should not, be included in governments' Closing the Gap implementation plans, in order to transform them into useful documents that drive improved outcomes for Aboriginal and Torres Strait Islander people (**recommendation 1, action 1.5**). Governments need to write implementation plans that position the Agreement and its Priority Reforms as their compass (not as 'laundry lists' of current activities), and work more closely with Aboriginal and Torres Strait Islander partners to agree actions that are substantiative and critical to achieving the objectives of the Agreement. The community needs to be able to see evidence the actions will actually lead to change (through a clearly articulated theory of change) and how the actions in the implementation plan will collectively lead to delivering the changes to which governments have committed under the Agreement.

The plans should fully reflect the diversity of regional needs, cultures and governance structures in the jurisdiction (such as the unique needs, cultures and governance structures of people living in the Torres Strait). But they should include only the strategies and actions agreed with Aboriginal and Torres Strait Islander partners, together with details of the funding and timeframe for each agreed action. That is, business-as-usual activities and vaguely specified activities without agreed timeframes and budgets have no place in implementation plans.

Once implementation plans include only substantive, well-conceived activities that contribute to an overarching strategy towards change, there should be less need to update them. This is because they will have contemplated next steps and iterated these at various stages in the lifespan of the plan. Going forward, they should be updated when there are changes that affect the agreed strategies.

Further, planning is not enough – reporting annually on the outcomes of those plans is also essential even, and perhaps especially, when outcomes fall short of expectations. It is essential that governments report on every one of the agreed strategies and actions in Closing the Gap annual reports.

Including information about Closing the Gap in government organisations' annual reports

All government organisations – departments, statutory bodies, commissions, hospitals and health services, government-owned companies, local governments and every other type of government organisation – are

required to prepare annual reports each year. These reports must comply with relevant legislation or rules and include certain specified information, which makes them an important input for accountability. For example, in New South Wales:

> The annual report is the key medium by which NSW Public Sector entities discharge their accountability to the Parliament, the Government and the public. It provides an overview of an entity's activities and financial position relating to the preceding year. (NSW Treasury 2022)

Requiring government agencies to include information about Closing the Gap in each of their annual reports would provide an important means of ensuring that every agency is making a substantive effort to implement the Priority Reforms and to track the outcomes it achieves for Aboriginal and Torres Strait Islander people (**recommendation 4, action 4.3**). At a minimum, this should include reporting on:

- how each of the Priority Reforms have been implemented in the agency
- how the agency has contributed to relevant socio-economic outcomes
- how the agency tracks the outcomes it achieves for Aboriginal and Torres Strait Islander people
- how the agency assessed the effectiveness of each of the above actions.

Statements on Closing the Gap in agencies' annual report would be a complement to, and would not replace, improved and strengthened Closing the Gap annual reports and implementation plans.

Publishing documents developed under the Agreement

Another important element of transparency is to make it clear to the community how governments' actions will collectively lead to realisation of the reforms to which they have committed. But many of the outputs that have been developed under, or are highly relevant to, the Agreement are not publicly available.

When stocktakes, agreements, reviews and evaluations are not published, it makes it much harder for Aboriginal and Torres Strait Islander organisations and communities, as well as the broader Australian community, to understand whether governments are moving beyond a business-as-usual approach, and to hold them accountable for meeting their commitments. This is why the Commission is recommending that governments should publish the stocktakes, workplans, evaluations and other documents that have been developed under, or are highly relevant to, the Agreement (**recommendation 4, action 4.4**).

Abbreviations

Acronym	Definition
ABS	Australian Bureau of Statistics
ACCHO	Aboriginal community-controlled health organisation
ACCO	Aboriginal community-controlled organisation
ACF	Aboriginal Children's Forum
ADCR	Annual data compilation report
AEDC	Australian early development census
AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
AIHW	Australian Institute of Health and Welfare
ALGA	Australian Local Government Association
APP	Aboriginal Procurement Policy
ATO	Australian Taxation Office
ATSIC	Aboriginal and Torres Strait Islander Commission
ATSIEB	Aboriginal and Torres Strait Islander Elected Body (ACT)
COAG	Council of Australian Governments
DDP	Data development plan
DRWG	Data and Reporting Working Group
DSS	Department of Social Services
EC	Empowered Communities
ECCD	Early childhood care and development
ECEC	Early childhood education and care
ECPP	Early childhood policy partnership
HHS	Hospital and Health Service
JPP	Justice Policy Partnership
KPI	Key Performance Indicators
NDIS	National Disability Insurance Scheme
NGO	Non-Government Organisations
NIAA	National Indigenous Australian Agency
NIRA	National Indigenous Reform Agreement
PP	Policy partnership
SSP	Sector Strengthening Plan

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