

2025

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

ELEVENTH ASSEMBLY

PUBLIC SECTOR (CLOSING THE GAP) LEGISLATION AMENDMENT BILL 2025

PRIVATE MEMBER'S AMENDMENTS

SUPPLEMENTARY EXPLANATORY STATEMENT

**To be moved by
Thomas Emerson MLA**

Public Sector (Closing the Gap) Legislation Amendment Bill 2025

Overview of Mr Emerson's amendments

On 25 June 2025, the Public Sector (Closing the Gap) Legislation Amendment Bill 2025 was introduced in the Legislative Assembly. The Bill makes amendments to the *Public Sector Management Act 1994* (PSM Act) and the *Annual Reports (Government Agencies) Act 2004*.

Mr Emerson's amendments respond to feedback received during community consultation and through the inquiry conducted by the Standing Committee on Public Accounts and Administration.

Mr Emerson's amendments will narrow the scope of the PSM Act provisions such that new obligations on public servants will only apply to senior executives and statutory office holders; will include a statutory review provision of the PSM Act provisions; and will delay the Bill's commencement date.

Consultation on the proposed approach

Mr Emerson's amendments reflect feedback received in community submissions and in evidence during the public hearings for the Standing Committee on Public Accounts and Administration's inquiry into the Bill. They also reflect feedback received in consultation with the broader community and in discussions with Members of the Legislative Assembly.

Consistency with human rights

Rights promoted

Mr Emerson's amendments engage and promote the following rights under the HR Act:

- Section 27B – Right to work and other work-related rights

The delay in the Bill's commencement date enables a transitional period for public sector staff who would have new obligations under the Bill to prepare for those changes to come into effect. This seeks to minimise any disruption, anxiety, and unreasonable performance expectations that may have arisen as a result of the new employment obligations being imposed on senior staff immediately.

The addition of a statutory review of the PSM Act provisions of the Bill ensures there would be evaluation of the operation and effectiveness of the 'closing the gap principle,' and whether the outcomes or impacts of that principle on public sector staff are reasonable in the circumstances. Any findings and recommendations that

come out of the review would also provide a clear avenue for changes to be made to the new public sector obligations if necessary.

By narrowing the scope of the application of the 'closing the gap principle' to only impose obligations on senior executive staff and statutory office holders, the Bill would impose direct obligations on fewer staff and would not impose unreasonable responsibilities on junior staff. Nevertheless, the 'closing the gap principle' requires senior executives to undertake a number of functions that would foster a more culturally safe and responsive workplace for all Aboriginal and Torres Strait Islander staff. The review provision would also provide an opportunity to revisit the scope of the reforms and reconsider whether applying the 'closing the gap principle' to a broader range of public servants is practicable and/or appropriate.

Rights limited

Mr Emerson's amendments engage and limit the following rights under the HR Act:

- Section 27B – Right to work and other work-related rights

1. Nature of the right and the limitation (ss28(2)(a) and (c))

In conjunction with Mr Emerson's amendment to narrow the scope of the PSM Act provisions to only senior executive staff and statutory office holders, the 'closing the gap principle' obligations have been slightly altered to reflect this. For instance, instead of "working to develop" the Aboriginal and Torres Strait Islander cultural capability of the administrative unit in which the public servant is employed, senior executives must simply "develop" that cultural capability. This slightly increases the level of responsibility on those senior staff to implement the transformative reforms committed to by governments under the National Agreement.

2. Legitimate purpose (s28(2)(b))

Increasing the level of responsibility on senior executive staff and statutory office holders reflects the higher duties of those staff compared to more junior staff, and also the significance of the reforms needed from the top down to effect the transformative changes to government agencies committed to under the National Agreement.

3. Rational connection between the limitation and the purpose (s28(2)(d))

In the absence of obligations being imposed on all public sector staff under the 'closing the gap principle,' it is essential that those obligations carry sufficient strength to generate the transformative changes committed to under the National Agreement. It is important that there is a clear mandate for senior staff to develop cultural capability within their administrative unit and to implement the principles of the National Agreement as a core function of their role.

Government reforms as agreed to under the National Agreement have been largely unsuccessful to date, so it is important that the appropriate level of responsibility is imparted on the senior staff who ultimately have the relevant change-making power.

While the ‘closing the gap principle’ obligations have been framed in slightly stronger terms through this amendment, the substance of the obligations has remained the same as in the original drafting. The changes simply reflect that senior executives and statutory office holders carry a higher level of responsibility for implementing the ‘closing the gap principle’ than junior staff would have. The level of responsibility remains consistent with the other workplace responsibilities of senior executives in the PSM Act (for example, executive functions include at section 22(2)(b) the definitive responsibility “to promote and demonstrate cooperation and collegiality within and between administrative units” - as opposed to a lesser responsibility such as “*works to promote and demonstrate*”).

4. Proportionality (s28(2)(e))

In the absence of a general ‘closing the gap principle’ obligation being imposed on all public sector staff, it is reasonable and proportionate that a higher degree of responsibility should be imparted on senior executives and statutory office holders.

The increased level of responsibility on senior executives and statutory office holders under the ‘closing the gap principle’ is consistent with the level of responsibility allocated to those senior public sector employees under other areas of the PSM Act.

Clause notes

Clause 2 Commencement

This clause changes the commencement date to 1 July 2026.

Clause 6 New section 8 (3A)

This clause changes the obligation for all public servants to do their job in accordance with the *closing the gap principle*, such that only an SES member must do their job in accordance with the *closing the gap principle*.

Clause 7 Proposed section 8 (4), new definition of *closing the gap principle*

This clause includes minor alterations to the definition of the *closing the gap principle* to increase the level of responsibility on senior executives and statutory office holders.

Clause 8 Public sector standard for public sector member etc

New section 151 (1A)

This clause clarifies that the obligation for SES members to do their job in accordance with the *closing the gap principle* also applies to statutory office holders.

Clause 9 New section 253

This clause introduces a requirement for the provisions of the Bill relating to the *Public Sector Management Act 1994* must be reviewed as soon as practicable after 1 July 2027 and that a review report must be presented to the Assembly within six months after the review starts.