

2023

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

TENTH ASSEMBLY

**Auditor-General Report 6 of 2023 –
Implementation of the ACT Aboriginal and Torres Strait Islander Agreement –
Government Response**

**Presented by
Rachel Stephen-Smith MLA
Minister for Aboriginal and Torres Strait Islander Affairs
November 2023**

Introduction

The Government thanks the Auditor-General for *Report No. 6 of 2023 – Implementation of the ACT Aboriginal and Torres Strait Islander Agreement*. The Report examines the effectiveness of the ACT Government directorates in implementing the *ACT Aboriginal and Torres Strait Islander Agreement 2019-2028* (the Agreement) by evaluating the governance arrangements and the monitoring and reporting activities associated with the Agreement.

The ACT Agreement was signed in February 2019 by the Aboriginal and Torres Strait Islander Elected Body (the Elected Body), the Chief Minister, the Minister of Aboriginal and Torres Strait Islander Affairs and the Head of Service.

The Elected Body was established in 2008 after consultations across the Aboriginal and Torres Strait Islander community. It has specific roles, functions, and authority under the *Aboriginal and Torres Strait Islander Elected Body Act 2008 (ACT)* (ATSIEB Act). It is democratically elected and represents Aboriginal and Torres Strait Islander Canberrans, helping to ensure that they are more engaged in shaping their own futures. This is the underpinning principle of self-determination.

The ACT Government is committed to self-determination as the guiding principle in the delivery of programs and services for Aboriginal and Torres Strait Islander people in the ACT. We work in partnership with the Elected Body as representatives of the Aboriginal and Torres Strait Islander community in the implementation of the actions under each phase of the ACT Agreement.

The ACT Agreement includes ten focus areas. Four of these focus areas are considered core and in which all Directorates have a role to provide leadership in their respective portfolios. The remaining six focus areas are considered significant, and Directorates have developed actions relevant to their core functions and service delivery.

The ACT Agreement Focus Area Action Plans (Action Plans) provide the ACT Aboriginal and Torres Strait Islander community and key community partners with clear visibility of the actions to be progressed by the ACT Government.

Each focus area includes Quality Life Outcomes that have been agreed to by all ACT Government Directorates and the Elected Body, providing measurable outcomes under the ACT Agreement and the National Agreement on Closing the Gap to improve the lives of Aboriginal and Torres Strait Islander peoples in the ACT.

The ACT Agreement is a 10-year agreement and is structured around four phases:

Phase One	February 2019 – June 2022
Phase Two	July 2022 – December 2024
Phase Three	January 2025 – December 2027
Phase Four	January 2028 – December 2028

Phase One was extended in July 2020 for twelve months to July 2021 due to the challenges of holding an Elected Body election during the COVID-19 pandemic. It was then extended for an additional 12 months, from July 2021 to July 2022, to reflect extra time needed to support the implementation of existing commitments that were delayed by COVID-19.

Rescheduling the commencement of Phase Two to July 2022 provided an opportunity to consult with the ACT Aboriginal and Torres Strait Islander community about priorities for Phase Two implementation.

The implementation of the Action Plans of the Agreement requires a whole-of-government approach. And it is overseen by two cross-directorate committees:

- The Aboriginal and Torres Strait Islander Affairs Committee of the ACT Public Service Strategic Board (SBC), responsible for:
 - Driving ACT Government's contribution to the Closing the Gap Partnership to achieve the Priority Reform Areas in the National Agreement and to the ACT Agreement.
 - Leading strategic responses and purposeful collaboration to realise emerging opportunities and risks with potential to impact Aboriginal and Torres Strait Islander communities.
 - Providing leadership to, and collaborating with, other Strategic Board committees and working groups on Aboriginal and Torres Strait Islander priorities and ACT Agreement commitments to inform Cabinet decision making.
- The Aboriginal and Torres Strait Islander Affairs Inter-Directorate Committee (IDC), responsible for:
 - Implementing and monitoring of the ACT Agreement, including the development of the reporting framework.
 - Providing six-monthly progress reports to SBC on the progress made against the ACT Agreement
 - Assisting the SBC with other matters that require Cross-Directorate input and advice.
 - Seeking Aboriginal and Torres Strait Islander policy advice on systemic and whole of government issues for the SBC.

The Office for Aboriginal and Torres Strait Islander Affairs (OATSIA) provides secretariat and administrative support to these IDC and SBC, the Elected Body and the United Ngunnawal Elders Council. In addition to these functions, OATSIA provides strategic policy advice across ACT Government agencies on overarching issues impacting Aboriginal and Torres Strait Islander Affairs, including the ACT Agreement and the National Agreement, and policy support and advice to the Minister for Aboriginal and Torres Strait Islander Affairs.

The Report provided the following conclusions:

- The audit found there is a need to support the Elected Body in its ability to consult and engage more broadly with communities.
- The audit found that Directorates are not yet able to demonstrate their ability to support self-determination for Aboriginal and Torres Strait Islander ACT communities.

- Performance management and reporting have been ineffective in clearly and objectively conveying the status of progress in implementation to the community.
- The audit found that governance arrangements need to be reviewed and mechanism ensuring accountability on priority actions need to be developed.

The Report made eight recommendations. The Government agrees to seven recommendations and agrees in principle to one recommendation.

General comments to the findings and recommendations of the Report.

The ACT Government would like to thank the Audit Office for working closely with all directorates to provide a comprehensive analysis of the implementation of the 2019 Agreement.

There has been considerable reflection across directorates on both the strengths and potential shortcomings of implementation to date. The Government welcomes the contribution the current Audit has made to this process and wishes to offer the following general comments collectively.

The introduction of the current Agreement in 2019 marked a significant change in how the ACT Government, the ACT Public Service and the Elected Body work together. The focus of the Agreement is to enable self-determination and improve outcomes for Aboriginal and Torres Strait Islander people in the ACT.

Work occurring under the 2019 ACT Agreement has also been impacted by significant reforms agreed under the National Agreement on Closing the Gap between all jurisdictions and representatives from the Coalition of Indigenous Peak Organisations, which includes representation from the Elected Body, in 2020. This provides additional context which must guide the way that parties to these agreements work together into the future, in genuine partnerships to deliver against both Agreements and support outcomes for the community.

The two Agreements are aligned across many areas in terms of outcomes and the underpinning principles. Work has specifically been underway in the ACT to better align the reporting of the two Agreements, and ensuring that these alignments are reflected and easy to report against and interpret for both the ACT Government and the Aboriginal and Torres Strait Islander community.

We acknowledge that the Elected Body played a significant role in the development and signing of the National Agreement, and currently remains the ACT's sole representative with the Coalition of Indigenous Peak Organisations.

We also recognise the significant impact of the COVID-19 public health emergency throughout 2020-2022. This created several unique challenges for the ACT Government, the Elected Body and the broader Aboriginal and Torres Strait Islander community.

This required specific prioritisation of work to deliver on the needs of the community, which in some cases meant slowing or pausing work related to areas under the Agreement among many other important projects. It also posed challenges for how the ACT Government and the Elected Body could effectively engage with the Aboriginal and Torres Strait Islander community in line with our commitments to genuine engagement and shared decision making.

The Audit Report suggests a range of areas in which implementation of the Agreement can be improved, particularly through more coordinated and consistent governance across directorates to ensure joined up delivery of services for Aboriginal and Torres Strait Islander people. Each of these challenges have also been apparent to directorates as they have worked to deliver the initial phase of the Agreement in recent years.

We acknowledge the findings contained in this Audit Report, and the time and input provided by external Aboriginal and Torres Strait Islander stakeholders that helped to inform and shape the information contained. As identified in the National Agreement, where self-determination is supported, Aboriginal and Torres Strait Islander lived experience is understood and respected.

We are pleased the Audit Report acknowledges the work directorates have undertaken to diagnose these issues and take steps to address them through new governance arrangements developed for Phase 2 of the ACT Agreement.

ACT Government response to the Audit Report into the Implementation of the ACT Agreement

Recommendation	ACT Government Response	
<p>Recommendation 1: Governance Committees</p> <p>The Community Services Directorate, through its responsibility as chair of the governance committees that oversight the implementation of the 2019 Agreement (the Strategic Board sub-committee and the Inter-Directorate committee) should:</p> <ol style="list-style-type: none"> a. update the Inter-Directorate committee’s terms of reference to recognise the Aboriginal and Torres Strait Islander Elected Body’s (Elected Body) co-chair responsibility for the IDC committee; b. ensure action items raised in governance committee meetings are tracked to their conclusion in meeting minutes; and c. establish a process for the Aboriginal and Torres Strait Islander Elected Body to assess the effectiveness of the governance committees and report this to the ACT Public Service Strategic Board and ACT Government as signatories to the 2019 Agreement. 	<p>Agreed</p>	<p>The Inter-directorate Committee (IDC) Terms of Reference (ToR) have been revised to:</p> <ul style="list-style-type: none"> • formally reflect the co-chairing arrangements with the Deputy Director-General (CSD) and the Chair (or the Deputy Chair) of the Elected Body. • Specify membership at Deputy Director General or Executive Group Manager. • Each Directorate has two members of the IDC, one of which must be at the level of Executive Branch Manager or above. • ToR now limit the presence of proxies to a maximum of two meeting per calendar year and requires proxy members to have delegation at an appropriate decision-making level. <p>Actions arising from each meeting are reviewed in subsequent meetings, and the Secretariat may follow up outstanding actions as necessary.</p> <p>As the primary forum for directorates and the Elected Body to oversee implementation of the ACT Agreement, any issues regarding the effectiveness of governance committees or other arrangements can be raised either by the Elected Body or directorates through regular meetings the IDC.</p> <p>A standing item has also been included on the Strategic Board Committee for the Elected Body Chair and Deputy Chair to provide feedback on government performance and any other issues arising through the implementation of the Agreement. This includes reporting to SBC on individual Elected Body portfolio meetings with directorates.</p> <p>There are also a range of other formal and informal mechanisms through which the Elected Body are able to report views on the effectiveness of governance arrangements, including through hearings and reporting under the <i>Aboriginal</i></p>

		<p>and Torres Strait Islander Elected Body Act 2008 (ATSIEB Act), and regular meetings between Elected Body representatives and directorates.</p>
<p>Recommendation 2: Oversight of directorate progress against the 2019 Agreement</p> <p>The ACT Health Directorate, Community Services Directorate and Environment, Planning and Sustainable Development Directorate should:</p> <ol style="list-style-type: none"> a. review the authority and operation of their senior governance committees to ensure they have a clear responsibility to oversight and lead the implementation of their obligations under the 2019 Agreement; and b. implement more robust processes for tracking progress in implementing commitments under the 2019 Agreement. This could involve using a commitment register that facilitates the regular review of progress with senior executives and governance committees and regular meetings with Aboriginal and Torres Strait Islander Elected Body representatives. 	<p>Agree</p>	<p>Further consideration will be given to improving the coordination of Aboriginal and Torres Strait Islander policy and program responses through established governance structures, and an environment that supports effective coordination of overarching cross-government policies and approaches. This will flow into reporting and oversight of directorate progress against the 2019 Agreement.</p> <p>It will respond to findings in the report which noted that there are gaps in directorate accountabilities to implement priority actions which increases the risk of actions not being implemented in a joined-up way across ACT Government agencies, or that parts of the Agreement were not implemented at all.</p> <p>This will also assist directorates apply consistent approaches to self-determination, noting that the report identified that while most directorates were able to show they consulted with and took the views of Aboriginal and Torres Strait Islander communities, they were not yet able to demonstrate their ability to support self-determination.</p> <p><u>ACT Health Directorate (ACTHD)</u></p> <p>The ACT Health Directorate has established a monthly reporting system from June 2022 with information on implementation communicated to the Director General, Elected Body representative and the Directorate’s Ministerial and Governance team. An Agreement Coordination Group has been re-established.</p> <p>These systems supporting accountability and implementation have been developed through internal review, and consultation with the Elected Body and through collaboration with other ACT Government Directorates.</p> <p>Systems now implemented include:</p>

		<ul style="list-style-type: none"> • all Agreement actions for ACTHD have been entered into an automated monthly reporting system (Commitments Register). This includes explicit executive line accountability for all actions. • the monthly reporting is rolled up into monthly meetings with the Elected Body representatives, and more formally into quarterly reporting to the Elected Body representatives. • a new tool has been developed through consultation with the Elected Body representatives and other Directorates to facilitate transparent and useful quarterly reporting with a focus on outcomes and impact. • quarterly reporting will be rolled up into 6 and 12 monthly reporting Against the Agreement and Closing the Gap • terms of Reference for the ACTHD Agreement Coordination Group have been updated, and membership is under review to ensure senior executive strategic direction and leadership. <p><u>Community Services Directorate (CSD)</u></p> <p>The Community Services Directorate has a Commitments Register which is a collaborative space for all CSD business areas to coordinate tracking and reporting of all CSD priorities to support timely delivery. The Commitments Register currently tracks progress of CSD budget initiatives, accountability indicators, ministerial and Parliamentary and Government Agreement (PaGA) commitments.</p> <p>CSD Executives are responsible for keeping their commitments up to date. CSD Corporate uses the Commitments Register to provide status reports to the Strategic Board of Management, capturing implementation status through a traffic light system.</p>
--	--	--

		<p>The Commitments Register will be updated to include a separate tab for all actions under the CSD Directorate Implementation Plan which include ACT Agreement Focus Area Action Plans for which CSD is responsible for leading.</p> <p><u>Environment, Planning and Sustainable Development Directorate (EPSDD)</u></p> <p>Monitoring progress against the ACT Aboriginal and Torres Strait Islander Agreement 2019-2028 has been embedded as a standing agenda item for the EPSDD's Executive Management Board. Reporting tools to assist this mechanism of oversight are being refined.</p>
<p>Recommendation 3: Accountability and transparency for directorate implementation plans</p> <p>The ACT Public Service Strategic Board should:</p> <ol style="list-style-type: none"> a. publish all directorate implementation plans on the 2019 Agreement website; and b. implement a process to provide assurance to the signatories to the 2019 Agreement that the directorate implementation plans have allocated all responsibilities under the Phase Two focus area action plans. 	<p>Agreed</p>	<p>All Directorate Implementation Plans will be published on the OATSIA website (2019 Agreement page) along with the Focus Area Action Plans, noting that any commercial in confidence or other sensitive information will be redacted.</p> <p>Through the development of the Directorate Implementation Plans all Directorates ensured that their Phase 2 Directorate Implementation Plans aligned with the Phase 2 Focus Area Action Plans.</p> <p>In September 2023 the Aboriginal and Torres Strait Islander Strategic Board Committee agreed several measures to strengthen governance arrangements for monitoring progress on implementation of the ACT Agreement. This includes:</p> <ul style="list-style-type: none"> • establishing an Inter-Directorate Committee working group to re-establish six monthly reporting to the Strategic Board Committee on actions under Phase 2 of the ACT Agreement. The working group will propose timeframes for submission of six-monthly reports to the SBC to consider how this reporting can inform an annual statement of progress against both the ACT and National Agreements. • Identifying Lead Facilitator Directorates responsible for: <ul style="list-style-type: none"> ○ coordinating updates on progress against their respective Focus Area Action Plan; and

		<ul style="list-style-type: none"> ○ convening discussions across the ACT Government (Lead Directorates) as appropriate to support reporting; and providing quality assurance to ensure a consistent whole of government approach to reporting, and alignment with Directorate Implementation Plans.
<p>Recommendation 4: the Elected Body</p> <p>The Community Services Directorate and Chief Minister, Treasury and Economic Development Directorate should, through the auspices of the Aboriginal and Torres Strait Islander Affairs Sub-committee of the Strategic Board and in consultation with the Aboriginal and Torres Strait Islander Elected Body, strengthen the Elected Body’s ability to fulfil its responsibilities under the <i>Aboriginal and Torres Strait Islander Elected Body Act 2008</i>. Consideration should be given to:</p> <ol style="list-style-type: none"> a. resourcing the Elected Body to be able to fulfil its accountability, consultation and oversight roles. The Elected Body should receive support to independently determine the necessary resourcing that is needed to complete these roles and have them considered as part of the ACT Government budget process; and b. supporting improved community participation in elections for the Elected Body. 	<p>Agreed in principle</p>	<p>The ACT Government recognises the pivotal role of the Elected Body as key partners to the ACT Agreement.</p> <p>The ACT Governments supports Elected Body members in this role through the provision of Secretariat services. Secretariat services were previously provided through OATSIA.</p> <p>In 2022 CSD worked with the Elected Body to engage an independent Aboriginal and Torres Strait Islander owned consultancy to provide secretariat support, furthering the Elected Body’s independence from the ACT Government and supporting self-determination. The support provided to members includes:</p> <ul style="list-style-type: none"> ● Providing comprehensive secretariat support to the Elected Body across governance, administration, engagement, and policy. ● Organising papers, agendas, and minutes for Elected Body meetings. ● Organising and scheduling meetings between Elected Body and ACT Government and community organisations. ● Ensuring all requirements against the ATSIEB Act are met. ● Enabling liaison with policy professionals relevant to key policy discussions for the Elected Body. ● Supporting the Elected Body hold public hearings into government service provision in accordance with Section 10A of the ATSIEB Act. <p>Resourcing and the enabling legislation for the Elected Body needs to be considered in the context of the outcomes of the recent Voice to Parliament referendum, and ATSIEB’s ability to undertake the functions of an independent</p>

		<p>mechanism in accordance with Clause 67 of the National Agreement on Closing the Gap. This recognises that the functions of an independent mechanism are to:</p> <ul style="list-style-type: none"> • Support mainstream agencies and institutions embed transformation elements and monitor their progress. • Be recognisable for Aboriginal and Torres Strait Islander people and be culturally safe. • Engage with Aboriginal and Torres Strait Islander people to listen and respond to concerns about mainstream institutions and agencies. • Report publicly on the transformation of mainstream agencies and institutions, including progress, barriers and solutions. <p>While the Elected Body has authority to undertaken many of these functions, the ACT Government is committed to working with the Aboriginal and Torres Strait Islander community on the configuration, authority and resourcing of the model to ensure the independence of advocacy, advice and accountability in line with Government commitments.</p> <p>The ACT Electoral Commission is responsible for the successful delivery of the Elected Body elections. Under the ACT Electoral Commission corporate plan one of their responsibilities is to 'Engage the community and stakeholders to promote electoral awareness, participation and compliance' (Strategic Priority 2). This includes delivering information and awareness campaigns to promote public participation in elections.</p> <p>In 2021 the ACT Electoral Commission conducted a widespread information campaign which included:</p> <ul style="list-style-type: none"> • 'A wide range of media releases, social media posts on Facebook and Twitter and through the Canberra Times, radio and newspaper advertising, including a radio interview.
--	--	---

		<ul style="list-style-type: none"> • Promotion at public events including the Boomanulla Raiders Game, Reconciliation Day event, and big screen advertising and announcements at the Canberra Raiders home game. • Promotion on Access Canberra silver screens and Canberra Convention Centre display banner. • A range of printed publications (fact sheets, posters, digital postcards). <p>For a full list of awareness raising activities refer to the ACT ATSIEB 2021 Election Report at www.elections.act.gov.au</p>
<p>Recommendation 5: Impact Statement targets</p> <p>The Community Services Directorate should, through the auspices of the Aboriginal and Torres Strait Islander Affairs Inter-Directorate Committee:</p> <ol style="list-style-type: none"> finalise outstanding performance measures for the Outcomes Framework; and develop targets for all performance measures identified in the Outcomes Framework. 	Agreed	<p>The ACT Agreement Outcomes Framework is used to track progress against targets in the ACT Aboriginal and Torres Strait Islander Agreement and the National Agreement on Closing the Gap. The Outcomes Framework is based on the 10 Focus Areas from the ACT Agreement and incorporates four Priority Reform Targets and 18 socio-economic targets from the National Agreement.</p> <p>One national target relating to sea rights has been omitted and is anticipated to be replaced by an inland water target currently being developed by the Partnership Working Group on Closing the Gap (Targets Working Group).</p> <p>A small number of national targets relating to early childhood education; youth education, training and employment; adult employment; housing; and adults held in incarceration have been increased to maintain current parity or to achieve parity by 2031.</p> <p>The ACT Government is working closely with parties to the National Agreement on Closing the Gap, including the Elected Body, to develop a nationally consistent approach to identifying performance measures for those Targets where data is currently unavailable.</p>
<p>Recommendation 6: Whole-of-Government reporting</p> <p>The Community Services Directorate should, through the auspices of the Aboriginal and Torres Strait Islander Affairs</p>	Agreed	<p>The ACT Government is committed to presenting an annual statement of performance under both the ACT Agreement and the National Agreement on Closing the Gap (National Agreement) to monitor implementation and measure impact.</p>

<p>Inter-Directorate Committee, work with directorates to establish a whole-of-government, publicly reported annual performance statement on progress to implement the 2019 Agreement.</p>		<p>The ACT and National Agreements are closely aligned. For example, the four Core Focus Areas under the ACT Agreement are closely aligned with Priority Reforms of the National Agreement and outcomes and performance targets under Focus Areas are shared between the two agreements.</p> <p>In line with this, annual reporting has been streamlined in past years to produce a sole annual performance report against both Agreements.</p> <p>The Government is committed to ensuring that annual performance reporting is structured, clear, faithful and unbiased. Acknowledging the findings of the Audit Report, in 2023 the Government developed an Impact Statement that provides greater clarity on the alignment of both Agreements and figures that facilitate the assessment of indicators under Focus Areas outcomes.</p> <p>Going forward, the annual performance reporting will include information on the progress in implementing the priority actions under each Focus Areas.</p>
<p>Recommendation 7: Annual Report directions</p> <p>The Chief Minister, Treasury and Economic Development Directorate should review and update the annual report directions to explicitly require ACT Government directorates and agencies to report their progress in implementing the 2019 Agreement faithfully and without bias.</p>	<p>Agreed</p>	<p>The ACT Government agrees there should be timely, transparent and consistent reporting on progress by all directorates to implement actions and commitments under the ACT Agreement.</p> <p>Work is currently being undertaken across directorates to streamline reporting.</p> <p>The Government commits to ensuring there are clear and explicit directions for how directorates and agencies report on progress against implementing the 2019 Agreement faithfully and without bias, and will work with the Elected Body, through the IDC, to ensure that these arrangements are both efficient for directorates and done in a way that is most useful and accessible for community.</p> <p>CMTEDD will review the Annual Report Directions as they relate to other Aboriginal and Torres Strait Islander reporting requirements, to confirm whether any further clarity is required.</p>
<p>Recommendation 8: Annual reporting template</p>	<p>Agreed</p>	<p>Per the responses to Recommendations 6 and 7, the ACT Government will work with the Elected Body, through the IDC, to ensure there is consistent and</p>

In conjunction with Recommendation 7, the Office of Aboriginal and Torres Strait Islander Affairs should develop an annual reporting template for directorates to complete and include in their annual report. The template should require:

- a. reporting on the status of all priority actions identified in the directorate's action plan;
- b. the activities completed to progress each priority action; and
- c. the planned activities to progress incomplete priority actions.

transparent annual reporting on progress to deliver actions under the ACT Agreement.