Submission Cover Sheet

Inquiry into Public Sector (Closing the Gap) Legislation Amendment Bill 2025

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Standing Committee on Public Accounts and Administration
ACT Legislative Assembly
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Inquiry into Public Sector (Closing the Gap) Amendment Bill 2025

Dear Committee

Thank you for the opportunity to comment on the *Public Sector (Closing the Gap) Amendment Bill 2025* (**the Bill**). This submission is made in my personal capacity.

In this submission, I do not seek to comment on the ACT's progress on Closing the Gap, or the National Agreement on Closing the Gap (**the National Agreement**). Rather the submission focusses on what the Bill seeks to do.

The Bill makes amendments to the *Annual Reports (Government Agencies) Act 2004* (**Annual Reports Act**) and the *Public Sector Management Act 1994* (**PSM Act**).

<u>Annual Reports Act</u>

The proposed change requires an annual report to include information about the measures taken by the reporting entity to implement the National Agreement. The information contained in this report must be in the form agreed by the Minister and the Aboriginal and Torres Strait Islander Elected Body.

This section seeks to implement recommendation 4.3 of The Productivity Commission's review of the National Agreement - Include a statement on Closing the Gap in every government organisation's annual report.

There is nothing inherently wrong with this proposed provision. However, the section appears to be redundant as the ACT Government seems to already be implementing this recommendation.

The Annual Reports Act, in section 8, already prescribes that a Minister must make what is called an annual report direction. Section 8(3)(a) outlines that a Minister may require an annual report to include 'stated information'. Stated information can include the ACT's progress under the National Agreement.

Indeed, the annual report direction for this year (*Annual Reports (Government Agencies) Directions 2025 (No 1)*) – NI2025-240) states on page 22:

Basis of requirement: *Reporting entities must report annual progress under the ACT Aboriginal and Torres Strait Islander Agreement 2019 – 2028 (ACT Agreement) and the National Agreement on Closing the Gap (National Agreement). This is done through the Impact Statement and* *through the ACT Annual Report for the National Closing the Gap Agreement coordinated by the Office of Aboriginal and Torres Strait Islander Affairs for the ACT Public Service.*

Report descriptor: *For 2024-25 reporting entities with obligations under both Agreements must report on how actions and programs undertaken relate to the implementation of the Priority Reforms. Reports must include:*

- *work undertaken to improve areas that are not on track in their responsibility under the ACT Agreement;*
- *engagement undertaken to understand the environment and evidence used to inform actions to address issues impeding progress towards targets; and*
- *findings from work undertaken that supports the rationale of our actions and how they connect to the National Agreement Priority Reform areas.*

This reporting format was optional in 2023-24 and is the new requirement for 2024-25 reporting period.

So, to my reading, the Bill seeks to achieve something that is already being done. In fact, the current system seems to go further than the Bill in including a report on the *ACT Aboriginal and Torres Strait Islander Agreement 2019 – 2028*.

I assume that advocates for the Bill are seeking legislative backing for these reports. This is understandable given the annual reports directions are notifiable instruments that can be changed year on year.

However, I don't see the need for any amendment to the Annual Report Act. Rather cruelly, there is no guarantee these reports will make any improvement in closing the gap, and there is no guarantee the reports just don't become another government compliance mechanism which stretches taxpayer resources. If these reports are useful then the Legislative Assembly can consider making them a legislative requirement at a future date. At the moment, however, I believe it is far more beneficial for the government to have the flexibility to determine what is included in annual reports through the annual report direction. This is particularly true as these reports only became mandatory from the 2024-25 financial year. Let's see how they go.

Recommendation 1

The proposed changes to the *Annual Reports (Government Agencies) Act 2004* be removed.

However, should the committee be inclined to support this change, one modification should be made to proposed section 7E(3). This section requires that the information contained in these reports be agreed by the Minister and the Aboriginal and Torres Strait Islander Elected Body.

Ultimately it is the Minister, not the Aboriginal and Torres Strait Islander Elected Body, that is responsible for the Annual Report. Under the Annual Reports Act:

- The Minister must provide an annual report direction (s 8).

- Responsible Ministers are assigned for the state of the service report, director-general annual reports, public sector body annual reports and territory entity annual reports (s 9A – s 12)
- The Minister must present the report to the Legislative Assembly (s13).

As Ministers have obligations under the Annual Reports Act, I see their role in the production of an annual report as superior to that of the Aboriginal and Torres Strait Islander Elected Body. Giving them equal weight in legislation, to agree the contents of an annual report, sits uneasily with me. Indeed, it's a democratic fallacy to suggest a Minister appointed following an election of 275,000+ voters is given the same power as a board of seven people elected following a vote of 200 people.

My view is that Ministers should be required to simply consult with the Aboriginal and Torres Strait Islander Elected Body on the information contained in these reports.

Recommendation 2

In the event the committee supports the amendment to the *Annual Reports (Government Agencies) Act 2004*, the committee should propose that section 7E(3) be modified so that the information contained in Annual Reports be determined by the Minister following consultation with the Aboriginal and Torres Strait Islander Elected Body.

PSM Act

The Bill seeks to amend section 8 the PSM Act to ensure that a public servant does their job in accordance with a new closing the gap principle. This principle includes things such as cultural capability, cultural safety, the elimination of institutional racism and the implementation of the closing the gap principles contained in the National Agreement.

This change seeks to implement recommendation 3.5 of The Productivity Commission review - embed responsibility for improving cultural capability and relationships with Aboriginal and Torres Strait Islander people into public sector employment requirements.

The Bill arguably goes further than this by embedding a requirement to implement the principles of the National Agreement.

Section 8(2) of the PSM Act currently outlines that public servants must do their job in accordance with the best practice principle. The best practice principle seems to be a set of high-level, ethical conduct principles for public servants to follow. They must work efficiently, effectively and constructively, be responsive, collaborative and accountable and make fair and reasonable decisions.

None of the actions in the best practice principle are tied to a specific policy of the ACT Government. A public servant must act efficiently, effectively and constructively if they work on preparing the ACT Budget or organising bus routes. They must be responsive, collaborative and accountable if they work in the ACT planning system or teach at a public school. And they must make fair and reasonable decisions if they are writing a report informing hospitality owners in Garema Place that menu boards are best located where they can be seen.

The proposed closing the gap principle ties directly to an ACT Government policy of implementing the National Agreement. This contrasts with the best practice principles. Because of this, the committee should assure itself of is that the proposed changes to the PSM Act don't create a hierarchy of policy priorities that places closing the gap at the top. Such a decision should only be made by the government of the day and not legislated.

In effect, the committee should assure itself that the changes don't create a permanent bias within the ACT Public Service to support closing the gap over other policy areas.

It is not ideal, but every policy decision a government makes is a trade-off. For example, every Minister, Shadow Minister and MLA would be able to find something for the government to spend money on, whether it is fixing a footpath, improving infrastructure, or adding a bus route. Spending this money however takes that money away from other priorities, and adds to the debt. In a planning example, there are continual trade-offs about how to best use land. An upgrade in one school means another school might have to wait to get the same upgrade.

It is not pleasant to hear, but sometimes spending money to support closing the gap is not justified. The government may get better value from spending that money in another policy area, or not spending that money at all (which, dare I say, is a policy MLA's should try to heed more). Contextually, with the ACT Government running significant deficits, it has never been more paramount for government to place efficiency at the heart of their decision-making.

It would be a shame if these changes in any way create a perception or bias within the ACT Public Service that closing the gap should be prioritised over other policy areas. If this is the intention of the legislation, then it should be rejected. As stated, such a position should only be determined by the government of the day.

For the record, I don't believe the proposed changes to the PSM Act create a hierarchy, or perception of a hierarchy, that prioritises policies designed to support the National Agreement. It does appear that the proposed closing the gap principle is drafted at a sufficiently high enough level to avoid this hierarchy and perception.

However, I note in the Explanatory Memorandum that the proposer of the legislation, Mr Emerson, seems to indicate that he did not consult with legal experts in drafting the Bill. Therefore, the committee may find it beneficial to discuss the legislation with a legal expert in examining this section.

Recommendation 3

For the complete avoidance of doubt, the committee may find it beneficial to discuss the proposed changes to the *Public Sector Management Act 1994* with legal experts.

Furthermore the committee may find it beneficial to recommend that this section include a note to the effect that public servants, while heeding the closing the gap principle, must assess policy proposals objectively against other stated policies of the ACT Government, including the ACT Fiscal Strategy outlined in the budget.

Recommendation 4

A note be added to this section which indicates public servants must assess policy proposals against other stated policies of the ACT Government, including the ACT Fiscal Strategy.

Thank you for the opportunity to comment on the Bill.

ACT Resident
Waramanga