



**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

STANDING COMMITTEE ON PUBLIC ACCOUNTS

(Reference: [Inquiry into Auditor-General's Performance Audit Reports July-December 2023](#))

Members:

**MR E COCKS(Chair)
MR M PETERSSON (Deputy Chair)
MR A BRADDOCK**

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 22 MAY 2024

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**Secretary to the committee:
Ms S Milne (Ph: 6205 0435)**

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

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Amended 20 May 2013

The committee met at 10.29 am.

STEPHEN-SMITH, MS RACHEL, Minister for Aboriginal and Torres Strait Islander Affairs, Minister for Children, Youth and Family Services, Minister for Disability and Minister for Health

EVANS, MS JACINTA, Executive Group Manager, Strategic Policy, Community Services Directorate

MOYLE, MR BRENDAN, Executive Branch Manager, Strategic Policy, Community Services Directorate

THE CHAIR: Good morning, and welcome to the public hearings of the Standing Committee on Public Accounts, for its Inquiry into Auditor-General's Performance Audit Reports, July to December 2023. The committee today will hear from the Minister for Aboriginal and Torres Strait Islander Affairs.

The committee wishes to acknowledge the traditional custodians of the land we are meeting on, the Ngunnawal people. The committee wishes to acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region. We would also like to acknowledge and welcome other Aboriginal and Torres Strait Islander People who may be attending today's event.

The proceedings today are being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and webstreamed live. When taking a question on notice, it would be helpful if witnesses used these words, "I will take that question on notice." This will help the committee and witnesses to confirm questions taken on notice from the transcript.

We welcome Ms Rachel Stephen-Smith, MLA, Minister for Aboriginal and Torres Strait Islander Affairs and officials. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter any may be considered contempt of the Assembly. Please confirm that you understand the implications of the statement and that you agree to comply with it.

Ms Evans: I do.

Ms Stephen-Smith: Yes.

Mr Moyle: Yes, I do.

THE CHAIR: Would you like to make an opening statement?

Ms Stephen-Smith: I do not have an opening statement, no.

THE CHAIR: In that case, we will proceed with questions.

MR BRADDOCK: Thank you for your response dated November last year. Can you please give me an update on the directorate implementation plans. Where are we at with those?

Mr Moyle: The phase 2 directorate implementation plans are being implemented. We have been working in partnership with the Aboriginal and Torres Strait Islander Elected Body to do that. As you may be aware, the Elected Body is now in caretaker mode, so no major decisions can be made. Once their election has been finalised, we will be moving towards the negotiation of the phase 3 implementation plans, which will draw on information from the hearings report and continue to drive outcomes against the Aboriginal and Torres Strait Islander agreement.

MR BRADDOCK: So when it comes to recommendation No 3 from the Auditor-General to publish those directorate implementation plans on the website, which the government agreed to, is the intent to publish the phase 2 and the 11phase 3 implementation plans?

Mr Moyle: Yes, that is correct—once we have sign off from all parties, which includes the Elected Body as partners to the ACT government.

MR BRADDOCK: Okay. Is there anything stopping the phase 2 plans being put on the website?

Mr Moyle: It just needs to be finalised, particularly with the Elected Body. As I said, we were trying to get a whole heap of work finished before they went into caretaker mode.

MR PETTERSSON: Earlier this year the government announced funding for an independent First Nations-led review of the Elected Body model. Can you walk me through the timing and sequencing of that review and potential implementation, noting that an election has just commenced and they are in caretaker right now?

Mr Moyle: We have gone out through a restricted procurement process to suitably skilled and experienced Aboriginal and Torres Strait Islander consultants to lead phase 1 of that, which is working with the community to gather their thoughts in terms of the future aspirations of the Elected Body model. Part of that will include a discussion with community about the model as it currently stands and what adjustments they want to see, but particularly recognising the ACT community resoundingly voted yes to the national voice, how the community may want to apply some of the national design principles.

That will draw out what we are calling a listening report. We are hoping to have the listening report ready for publication by about October. That listening report can then be provided to the new government and to the community, in accordance with Priority Reform One of the National Agreement, Formal Partnerships and Shared Decision Making. It will then inform further conversations about how the government and the Aboriginal and Torres Strait Islander community work together to build and strengthen the current model.

We are looking to the new term of the Elected Body, when they will be settled in. The formal review process will commence with that listening report and the community consultations. The second phase will be ongoing work to look at what legislative amendments could be needed, the model arrangements in terms of budgeting proposals

to be brought forward, and understanding what that would all look like. The next evolution will be the conversations between government and community on that. The intention is that any legislative amendments that need to be brought in, once developed, can be considered by the next government towards the end of the term of the Elected Body, with the next elections providing a strengthened model moving forward.

THE CHAIR: One of the concerns raised in the audit report, and one of the things I hear about government consultation frequently, is the capacity to actually hear and understand at a deeper level what is going on and what needs to be addressed. So can you talk a bit more about how the consultation process will work to make sure it gets a bit deeper than surface level?

Mr Moyle: Absolutely. So the intention, particularly with the listening report as phase 1, is that it is completely independent of government. I will not speak on behalf of ministers, but the current government has increased investment in the Elected Body, not just in terms of the review but also in ensuring and supporting the independence of that body as a strong governance mechanism in accordance with clause 67 of the national agreement.

Adhering to that, the first listening report will not be vetted by government. It will not be directed by government. In the request for quote, which was provided to those restricted tender providers, we require demonstration in terms of broad engagement across various factions of the Aboriginal and Torres Strait Islander community. As part of that, we are looking to make sure we can capture the depth of conversations without any government filter as a first point of call. That has to be the foundation in terms of how we move forward together.

In terms of the broader partnership approach, the Elected Body is the first and longest standing independent body in Australia. When we look at genuine partnerships, the ACT Agreement is the strongest mechanism by demonstration, prior to the actual National Agreement, of a formal partnership between government and between community. So we are adhering to those same principles in terms of providing that independence to allow community to raise the issues they want, to flag what their future aspirations for the model and representation look like, and then work from that, as a starting point, in a genuine partnership with deep listening.

THE CHAIR: How will you make sure you are reaching the full cross-section of the community? One issue raised was the, to a degree, limited reach?

Mr Moyle: Absolutely. So we are working, particularly around this current election, to be able to elevate the number of people participating, both those nominating and those voting. In terms of the consultant, we have been quite explicit in the request for quote, and it will be a part of the schedule, that we do not just want discrete conversations. We want evidence that they have been able to reach out and talk to diverse stakeholder groups, which includes Aboriginal Community-Controlled Organisations and their clients. It will include established groups that may not necessarily be incorporated like the Nannies Group. As well, in accordance with the settlement proceedings, it will engage all people who are identifying themselves as having some formal traditional custodian connection to the ACT. So we will be working with the independent consultant to make sure they are going out and providing evidence—not just statements,

providing evidence and proof—that they have been able to generate those broad conversations. It is always a challenge trying to capture everyone, but by identifying those critical stakeholder groups we are trying to centralise and make sure we lift as many voices as possible.

THE CHAIR: Minister, throughout the report there are numerous references to reporting as not being a faithful representation. For example:

Reporting does not enable Aboriginal and Torres Strait Islander communities to hold the government to account for the implementation of the 2019 Agreement as it is not materially complete or faithfully presented.

It has been a concern across a few different areas of policy that maybe the government is not always comfortable recognising what is not working well, and it seems in this case there has been a degree of bias toward positive stories. Can you tell me, how is the government addressing that? How are you going to make sure you are recognising problems and working to address them in the future?

Ms Stephen-Smith: I think we have been very upfront around a range of challenges and problems we have, and where things have not worked. Part of the challenge with bringing together these reports on the agreement is the Office for Aboriginal and Torres Strait Islander Affairs is quite reliant on the information that is provided by a range of directorates. So it is an ongoing conversation across government about telling that balanced story.

Among the challenges we face in Aboriginal and Torres Strait Islander affairs though are a very negative narrative, a lack of strength-based responses, and a lack of acknowledging where the actions of our Aboriginal and Torres Strait Islander organisations, our partnerships with Aboriginal and Torres Strait Islander organisations and the work of our staff have in fact delivered some positive outcomes. There is often a very negative narrative around Aboriginal and Torres Strait Islander affairs that sucks the hope out of community.

So I think we need to find a balance with those things. We absolutely need to recognise where things have not worked the way that we had expected or are not delivering the goals and outcomes that we want them to. I would 100 per cent support that. As Minister for Children, Youth and Family Services, and child protection minister in particular, I have spent a lot of years talking about the unacceptable rate of overrepresentation and the real challenges we have in that space, and we often see a kind of hopeless narrative around that. So I do try to balance that with the limited positive views that we can have and the real efforts our Aboriginal and Torres Strait Islander partners are making in delivering some really substantial change.

The other thing I would say about that is my observation over now decades of social policy involvement is that something, say a new policy, is put in place and when after two or three years it does not have an immediate impact on turning around intergenerational trauma and the challenges of disadvantage, people throw their hands up in the air and say, “Well that did not work.” They then try something else rather than making a long-term commitment to something and then tweaking it as we go to see the improvements.

Going back to your question, I would absolutely accept that there is always a tendency from all parties to talk about the good things they are doing and not necessarily to reflect the ongoing challenges they have or where something did not work as well as they expected. I think we do need to do better in being upfront and honest about that, but we also need to ensure that we are continuing to take a strengths-based approach to these kinds of conversations where we also acknowledge some of the really hard work that is happening and the fact that it sometimes takes time to have an impact. Brendan, do you want talk more specifically about how we are addressing that finding?

Mr Moyle: Absolutely. Certainly the feedback from some of the ACCOs I am engaging regularly with is about the churn of government—not just ACT government but all governments, including the federal government as well—working on budgetary and election cycles. So if they do not get that headline outcome almost immediately, there are changes from the bureaucratic structures, changes to the policy guidelines and it all changes. This is certainly something I have had conversations about just in the last week with a few of the ACCOs locally, not about the ACT, but about the federal government.

If I can also respond in a technical context? Some of the challenge we face with the ACT Agreement, and it flows through to the National Agreement, is that while the aspirations and the targets themselves are highly relevant, across Australia we do not have the data collection methodologies yet to be able to capture those. So some of those data points are ABS census level data, which is only updated every four years. Some of it, when we talk about Aboriginal and Torres Strait Islander languages, is captured every five years, and the ACT has not necessarily been represented previously in that.

So OATSIA is working across the directorates to be able to strengthen our data collection methodologies and our efficiencies, particularly in terms of what we know we can report on, where we have data sets available, and making sure we can provide that to the Elected Body and to the community, publishing it so it is more relevant. We have also in the last year put additional narrative into it. So it is not just, “Here is the data.” We are also trying to tell some of the story behind the data to provide that additional layer of context. The next phase of that is going to have to be: where are we not able to collect data and how do we work in partnership with community to be able to gather and identify the data that tells the holistic picture?

THE CHAIR: Just going back because I do not think we have quite hit the target; I think we are starting to get to it there. On the issue of a faithful representation, it would seem to me that there would be some impact if the community does not see recognition of the problems in the system as much as always seeing just the good stories presented. Is there a risk that it undermines trust in the government?

Ms Stephen-Smith: I would absolutely agree with that. From my perspective, we have tried to take a balanced approach on that, but we certainly take the feedback of the Auditor-General on board, and also the feedback from community as well. One of the challenges around that is people are more likely to reflect on and talk about the negative experiences they have had than the positive ones. So we do need to maintain that balance. I absolutely agree with you. We also hear that from the community; when they do not see their negative experiences reflected, it undermines trust in what we are saying about the positive as well.

Mr Moyle: When we look at the whole framework, in terms of the Elected Body itself, the report is one part of the mechanism for accountability and transparency. The other is the requirement to hold two public hearings per term for the Elected Body. That provides a very real time opportunity for the Elected Body, representing community, to challenge government quite openly, and that also flows through in terms of their reports because those reports are completely independent of government. So absolutely, I concur with everything the minister says, as someone who lives it and breathes it as well. But when I look at it, I look not just at the annual report but those other mechanisms that paint a much broader picture of how we are doing against the ACT Agreement.

THE CHAIR: The other thing you mentioned minister was the whole of government perspective and being reliant on other portfolios. That seems to be one of the challenging spaces here. How are you going to be able to influence other portfolios and embed a better-balanced approach?

Ms Stephen-Smith: Well one of the things we have done recently, at cabinet level, was have a meeting with the chair of the national Coalition of Peaks, Pat Turner, and the deputy chair of the Aboriginal and Torres Strait Islander Elected Body. It was a very frank conversation with cabinet, a few months ago now, about performance, reporting and holding us particularly to those Priority Reforms in the National Agreement on Closing the Gap. I think it was a useful conversation for cabinet. I would not call it a wake-up call, because I think all of my colleagues are very conscious of the challenges we face and the need to be really frank about that. But it certainly was a useful conversation in terms of how we are upfront about that and encouraging every minister to have that conversation with their director-general and their deputy directors-general about how all of our directorates engage. From a bureaucratic perspective, I might ask Ms Evans to talk about how the strategic board subcommittee works and encourages that at a senior level across the organisations.

Ms Evans: Yes, certainly. The subcommittees have been formalised again and reviewed after the Auditor-General report to ensure we are working collaboratively and that we are all taking equal responsibility for these areas that, of course, cannot be managed within one directorate. We were just talking about reporting before and one of the challenges you always have with reporting is that it tends to be rigid. Some people think about it in a particular way, but with Aboriginal and Torres Strait Islander matters it is very cross cutting. So there is a level of sophistication in the way that we all have to interact and report. I think we are all getting better at it as officials, but it is quite challenging.

In terms of our governance committees, we have an inter-directorate committee and that brings together all of the areas of government to really focus on the strategic. Certainly Mr Moyle would be able to attest to the fact that there have been a lot of challenges put to that group in terms of bringing in some of our experts and Elders to talk about what the deep meaning of all of these commitments that are being made is. They are more than superficial. They are not just reporting. They are things that the community is very passionate about. So how do we, as officials, respond to that?

As the minister has referred to, we also have had a number of conversations through

our Aboriginal and Torres Strait Islander subcommittee of cabinet, which allows the directors-general to really get very involved in these conversations. So I think we have strengthened that governance as a direct response to the report, but also as a way to make sure our reporting starts to get a little bit more collaborative.

Mr Moyle: From a procedural perspective as well, following the meeting Aunty Pat Turner and Paula McGrady had with cabinet, OATSIA has been working with CMTEDD. There are increased requirements, particularly in terms of cabinet submissions and budget proposals, to consider and respond to the National Agreement as well as the ACT Agreement. We are also working to increase and strengthen not just the annual report that we provide against the impact statement, against the ACT Agreement or the national report, but also the directorate annual reports as well. Our work and effort with that was proceeding and recommendations have now come forward from the Productivity Commission. So what we are trying to do, as Jacinta and the minister have said, is make sure we have the appropriate governance structures, make sure the conversations are actually happening and make sure the procedural elements are put in place to drive that.

MR BRADDOCK: With these governance reforms, is there any accountability reform as well? Because we are facing cross-directorate complex issues, is anyone actually being held accountable for their contribution towards achieving these objectives?

Mr Moyle: When we look at the platform in terms of the ACT Agreement and the National Agreement, the primary mechanism is clause 67, which is an independent mechanism to independently review government performance and drive accountability. We are lucky here in the ACT as the Elected Body is the only independent mechanism that has been established and is running. In the last seven months we have had two sets of public hearings and their reports. The first one was made available, and the next one will be tabled on Monday at Reconciliation Day. So that is an accountability mechanism. We are working through with CMTEDD again, the procedural and structural. We want to touch people's hearts as well as their minds and make sure we have the appropriate systems in place to be able to drive that. We are working across government to look at strengthening accountability. Certainly the Productivity Commission's *Review of the national agreement on closing the gap*, which flows through to the ACT Agreement, was talking about stronger accountability, not just at the directorate levels but for us as individual public officials as well.

Ms Stephen-Smith: I was just going to add that the Queensland government in response to the requirement for greater accountability of senior public servants has, I think, amended their public service act to add in accountability for the Priority Reforms and the National Agreement on Closing the Gap as being a requirement for their senior public servants. They of course do not have the accountability mechanism that we have in the Elected Body, which is a public accountability mechanism for those senior officials to be held to account in a public forum for their commitment to the Priority Reforms and the Closing the Gap Agreement.

I think that is something that is another mechanism for potentially holding people to account that is worth considering into the future, but it is probably more a matter for CMTEDD to comment on, in terms of the mechanisms around that and what is currently built into the expectations of directors-general. Jurisdictions are using a range of

mechanisms. I think Mr Moyle is right that we probably have, in the Elected Body, the strongest existing accountability mechanism of all areas, but that does not mean we could not do more.

MR BRADDOCK: Please stop me if I am putting words in your mouth here that are not correct. So, I am trying to understand—great that we have the board and that accountability—but for the senior public servant and below accountability, that is still a piece of work that is currently happening within the ACT government?

Mr Moyle: That is correct. It is a piece of work that is currently happening. One of the key recommendations from the Productivity Commission was exactly that: jurisdictions are to look at and start to embed that accountability, using the Queensland government as a model. Those recommendations are going to be tabled at the Joint Council on Closing the Gap, which the minister will be attending on 5 July. Once agreed at the joint council, jurisdictions will need to formulate and formally put forward a position in terms of how they are responding.

THE CHAIR: For me, one of the concerning things was the issue around self-determination in this report. Minister, perhaps we can just start with: how is self-determination understood and what are the objectives of the government around self-determination for Aboriginal people?

Ms Stephen-Smith: I think that is a really interesting complex question, chair. Fundamentally it is about Aboriginal and Torres Strait Islander people and communities having control over key mechanisms of how services are delivered, how they engage with those services and with the wider mainstream community as well. Mr Moyle probably has a much more succinct definition of self-determination. I think the reality is that it probably does mean different things in different contexts—so whether you are talking about the delivery of services and community control in that delivery, or whether you are talking about individuals' rights to self-determination in the way that they engage. So I might ask Mr Moyle to—

THE CHAIR: Just before you do, if I can make sure I am understanding correctly—it sounds like there is not a single understanding across government of self-determination?

Ms Stephen-Smith: I do not have the agreement in front of me. My recollection is that we do have a statement about it in the agreement, but I think it is important to recognise that it is a statement in the context of the agreement.

Mr Moyle: Absolutely. I was going to say as well, that agreement was agreed on behalf of the community with the Elected Body in terms of developing that statement in partnership with government.

Self-determination is fundamentally the right to be able to be involved in decisions and matters which affect us and take the leadership in terms of how we respond. It supports what the minister was talking about. In terms of self-determination, the greatest example of self-determination is the announcement of the Elected Body elections and the work that we are currently doing to support community to lift and have their voices heard.

The next element in terms of self-determination, particularly with the ACT Agreement and the National Agreement, is general partnership and how we shift the platform within government so that we are working within general partnership, not just saying, “Here is the funding agreement.” That then flows through in terms of what the minister was saying about the strength of our Aboriginal Community-Controlled Organisations and how we empower them to drive the solutions that they see for our community.

THE CHAIR: I am very interested to hear if there is anything in place to try and embed that understanding across directorates because that seems to have been the critical problem that has been identified.

Ms Stephen-Smith: That is certainly the aim of the Aboriginal and Torres Strait Islander agreement, which as Mr Moyle has said, is agreed with the Elected Body on behalf of the community, and results from a deep engagement of the Elected Body with the community. Part of the fundamental purpose of the agreement is to drive understanding of the importance of self-determination right across all directorates and the commitment to it. Are we there yet? Absolutely not, but it is our key mechanism for doing that.

Mr Moyle: Following the August 2023 Elected Body hearings, that was certainly one of the things the Elected Body challenged government with. The Office of Aboriginal and Torres Strait Islander Affairs, obviously within CSD, has been working with CMTEDD. We have done a lot of work to bring together SES executive from across the ACTPS, from the director-general level right the way down through to EBMs and even SOG As, to educate and inform, not just on the ACT Agreement, but also the key fundamental principles that are identified under Priority Reforms in the National Agreement. Next week, during Reconciliation Week, there is a whole of SES meeting that focuses on exactly this. OATSIA has been leading this with CMTEDD. We are having a broad conversation with—we are hoping—about 400 SES officers. We want to embed not just the practical—this is what we have to do—but an understanding of this is how we do it and this is why we do it. We have one of the commissioners from the Productivity Commission coming. We also have the Elected Body deputy chair participating because, in the efforts of self-determination, we always make sure we have community representation.

Ms Stephen-Smith: I should add to what Ms Evans said earlier around the inter-directorate committees and the Strategic Board Subcommittee: the chair or deputy chair, depending on who is available, sits on that Strategic Board Subcommittee. So it is not just public servants, the Elected Body is represented.

THE CHAIR: Before we finish, is there anything that you would like to add?

Ms Stephen-Smith: I do not think so, thank you, and thank you for your interest in this. It is a very important topic.

THE CHAIR: Absolutely it is. So on behalf of the committee, I thank our witnesses for your attendance today. If you have taken any questions on notice—I do not believe you did—please provide your answers to the committee secretary within five business days of receiving the uncorrected proof *Hansard*. On behalf of the committee, I would

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like to thank our witnesses who have assisted the committee through their experience and knowledge. We also thank broadcasting and Hansard for their support. If a member wishes to ask questions on notice, please upload them to the parliament portal as soon as practicable and no later than five business days after the hearing. The hearing is now adjourned.

The committee adjourned at 11.02 am.