

MEDIA RELEASE**10 August 2023**

Implementation of the Aboriginal and Torres Strait Islander Agreement

ACT Auditor-General, Mr Michael Harris, today presented a report on the **Implementation of the Aboriginal and Torres Strait Islander Agreement** to the Speaker for tabling in the ACT Legislative Assembly.

The audit examined how ACT Government agencies oversighted and reported on implementing the 2019 Agreement to improve government services for First Peoples in the ACT. The audit also looked at whether directorates could demonstrate they had taken into account the views of the Aboriginal and Torres Strait Islander community in implementing the 2019 Agreement.

The audit found governance arrangements to oversight the implementation of the 2019 Agreement have not been effective. Twenty-four of 99 priority actions included in the 2019 Agreement's ten focus area action plans had not been adequately addressed by directorates in their implementation plans. Whole-of-government governance arrangements have not provided effective oversight of the implementation of the 2019 Agreement.

The audit found reporting by directorates on implementation of the 2019 Agreement does not enable Aboriginal and Torres Strait Islander communities to hold the government to account. Mr Harris says 'Directorate implementation plans are not publicly reported and reporting is not complete, lacks structure and neutrality. This prevents stakeholders from understanding how the 2019 Agreement is being implemented.'

The audit noted the Aboriginal and Torres Strait Islander Elected Body is a key support for self-determination through its accountability, oversight and consultation roles for the Agreement. A key risk to its effectiveness is that it comprises seven-part time members. Mr Harris says 'Elected Body members have a small amount of time available to complete their responsibilities. Each member carries a significant expectation to work with directorates and hold them to account for delivering the Agreement as well as working with Aboriginal and Torres Strait Islander communities.'

The audit report made eight recommendations to improve directorates' transparency and accountability for implementing the 2019 Agreement, as well as to strengthen support for the Elected Body.

Implementation of the Aboriginal and Torres Strait Islander Agreement is available to download from the ACT Audit Office's website www.audit.act.gov.au. If you need assistance accessing the report please phone 6207 0833.

SUMMARY

On 26 February 2019, the *ACT Aboriginal and Torres Strait Islander Agreement 2019-2028* (the 2019 Agreement) was signed. The 2019 Agreement was signed by the chair of the Aboriginal and Torres Strait Islander Elected Body, the Chief Minister, the Minister of Aboriginal and Torres Strait Islander Affairs and the Head of Service. It followed the earlier *ACT Aboriginal and Torres Strait Islander Agreement 2015-2018* (the 2015 Agreement).

The 2019 Agreement seeks to hold the ACT Government accountable to ACT Aboriginal and Torres Strait Islander communities through the Aboriginal and Torres Strait Islander Elected Body. The Agreement sets the long-term direction for Aboriginal and Torres Strait Islander affairs in the ACT and obliges the signatories to work together to enable equitable outcomes for Aboriginal and Torres Strait Islander people.

This performance audit examines the effectiveness of ACT Government directorates' implementation of the 2019 Agreement. It considers the governance arrangements and monitoring and reporting activities associated with the implementation of the 2019 Agreement across directorates.

Conclusions

GOVERNANCE ARRANGEMENTS

Governance arrangements to oversight the implementation of the ACT Aboriginal and Torres Strait Islander Agreement 2019-2028 (the 2019 Agreement) have not been effective.

Twenty-four of 99 priority actions in the ten Phase One focus area action plans have not been adequately addressed by directorates in their implementation plans. This increases the risk of actions not being implemented in a joined-up way across ACT Government agencies, or that parts of the Agreement are not implemented at all. Furthermore, an Outcomes Framework, which was to be developed to demonstrate the impact of the 2019 Agreement on Aboriginal and Torres Strait Islander communities, has taken over two years to implement. Whole-of-government governance committees (the Aboriginal and Torres Strait Islander Affairs sub-committee of the ACT Public Sector Strategic Board and the Aboriginal and Torres Strait Islander Affairs Inter-Directorate Committee) have not provided effective oversight of the implementation of the 2019 Agreement.

Most directorates had processes to oversight the implementation of their specific commitments under the 2019 Agreement. Effective processes to oversight implementation included the use of directorate registers to track implementation, and regular meetings with members of the Aboriginal and Torres Strait Islander Elected Body. In a number of instances, however, actions reported by directorates were not relevant to, and did not support, the related commitment in the 2019 Agreement.

SUPPORT FOR SELF-DETERMINATION

Directorates are not yet able to demonstrate their ability to support self-determination for Aboriginal and Torres Strait Islander communities. While most directorates were able to show how they consulted with, and took account of the views of, local Aboriginal and Torres Strait Islander communities, their activities were on a small-scale and had only recently commenced. While this shows some positive signs, the results of these efforts are not presently understood or observed broadly across local Aboriginal and Torres Strait Islander communities. Significant and sustained effort by ACT Government directorates, working closely with communities and their leaders, will be necessary to change this.

A key support for self-determination is the Aboriginal and Torres Strait Islander Elected Body, through its accountability, oversight and consultation roles. A key risk to the effectiveness of the Elected Body is that it comprises seven part-time members, who fulfill their Elected Body responsibilities in addition to other responsibilities and commitments. The small amount of time available to each member carries a significant expectation with respect to:

- working with directorates and local Aboriginal and Torres Strait Islander communities; and
- undertaking its accountability and transparency functions in holding directorates to account for delivery of the Agreement.

PERFORMANCE MANAGEMENT AND MONITORING

Performance management and monitoring arrangements for the implementation of the 2019 Agreement have not been effective.

While performance reporting has been conducted over the life of the 2019 Agreement, it has not provided a structured and faithful representation of progress in implementing the 2019 Agreement. Outputs-based reporting has not been conducted routinely and has not consistently and faithfully represented directorate progress implementing the 2019 Agreement. Outcomes-based reporting has not included a line of sight to activities undertaken under the 2019 Agreement.

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. As the differences between the directorate implementation plans and the focus area action plans have not been disclosed publicly, communities cannot know of all commitments included in the 2019 Agreement. This, taken together with the lack of structure and neutrality to external reporting, prevents stakeholders from understanding the status of the implementation of the 2019 Agreement.

Key findings

GOVERNANCE ARRANGEMENTS

Paragraph

Cross-directorate oversight committees

Two cross-directorate governance committees were established to oversight the implementation of the 2019 Agreement; the Aboriginal and Torres Strait Islander Affairs sub-committee of the ACT Public Sector Strategic Board; and the Aboriginal and Torres Strait Islander Affairs Inter-Directorate Committee. Neither committee has had sufficiently stable and consistent attendance by members since the commencement of the 2019 Agreement and neither committee has met according to the timeframes set down by their terms of reference. Action items have been consistently noted in the meeting minutes of both committees, but the completion of actions has not been consistently reported or tracked to their ultimate completion. The Strategic Board sub-committee has not effectively fulfilled its responsibility under its terms of reference to oversight risk management of the 2019 Agreement. These issues limit the effectiveness of these committees to maintain oversight and accountability for directorates to implement their obligations under the 2019 Agreement.

2.26

At the commencement of the 2019 Agreement, the development of an Outcomes Framework was identified as a means by which to oversight agency performance. It took over two years to implement. While some consideration was necessary to ensure alignment with the National Agreement for Closing the Gap, which was agreed in November 2020, the Aboriginal and Torres Strait Islander Elected Body expressed frustration at the lack of transparency and progress in developing the Outcomes Framework at its public hearings in March 2020. Progress in the development of the Outcomes Framework accelerated in late 2020 and updated directorate implementation plans were agreed with the Elected Body in the first half of 2021.

2.32

Directorate oversight arrangements

Each directorate has an implementation plan that documents its commitments under the 2019 Agreement. Most directorates were able to demonstrate processes for the monitoring of progress in relation to the commitments in the implementation plan that involved: a register that was used by staff to provide regular updates on progress to senior directorate leadership; and regular meetings or briefings between senior directorate leadership and members of the Aboriginal and Torres Strait Islander Elected Body. Despite these arrangements, a review of directorates' commitment registers found missing commitments and reported actions that did not sufficiently relate to the commitment on the directorate's implementation plan.

2.55

Assignment of responsibilities to implement the 2019 Agreement

There are two sets of governing documents that track directorates' accountability for the implementation of Phase One of the 2019 Agreement: 2.74

- focus area action plans: publicly available documents available alongside the 2019 Agreement that list priority actions across ten different areas that have been prioritised for improving outcomes for Aboriginal and Torres Strait Islander communities. These documents were agreed as part of the 2019 Agreement; and
- directorate implementation plans: internal documents that identify specific actions for each directorate to implement the 2019 Agreement. These are agreed directly between each directorate and a representative of the Elected Body. These implementation plans are not publicly available.

There are gaps in directorate accountabilities to implement priority actions under the 2019 Agreement. Not all priority actions from the focus area action plans have been appropriately addressed in directorate implementation plans; the Audit Office considers that 24 priority actions outlined in Phase One focus area action plans were not appropriately recognised in directorate implementation plans. Eleven of these 24 were whole-of-government actions that no directorate recognised in their implementation plan. The remaining 13 of 24 priority actions that were unassigned were the responsibility of at least one directorate. Some directorates were more effective than others in recognising their individual responsibilities in their implementation plans. 2.75

Directorates have since implemented clearer accountabilities for implementing each focus area action plan as part of Phase Two of the 2019 Agreement. If these accountabilities are effectively acquitted, this is expected to assist with better quality implementation and reporting of priority actions under the 2019 Agreement. 2.76

SUPPORT FOR SELF-DETERMINATION

Paragraph

Self-determination

A review of directorates' consultation approach with Aboriginal and Torres Strait Islander communities for the implementation of priority actions from the 2019 Agreement shows: 3.59

- there is a need for including service users more broadly in consultation activities to support self-determination across all directorates;
- many of the directorates' consultation activities were focussed in size and scope and had been commenced within the term of the 2019 Agreement. The Audit Office heard from community organisations that small consultation groups tended to promote cultural safety and that the diversity of community members and their views will mean there is no single community view. There is, however, a risk that only those members consulted will be aware of these activities in the absence of

effective communication about the effects of this work. The relatively recent status of these consultation activities also means it will take some time to evidence meaningful results and broader cultural change (which will also require significant ongoing effort and resourcing); and

- directorates prioritise consulting with members of the Elected Body. This is appropriate to the extent that the Elected Body is the representative body that executed the 2019 Agreement. Members of the Elected Body were also able to identify more instances where ACT Government agencies had taken into account the views of the community than community organisations. However, this does not substitute the need for broad, regular and targeted consultation with Aboriginal and Torres Strait Islander service users. The impact of the COVID pandemic on government operations and the local Aboriginal and Torres Strait Islander community is noted as a limiting factor on this activity during 2020 and 2021.

Most directorates have been able to demonstrate consultation activity that has taken into account the views of local Aboriginal and Torres Strait Islander communities and ultimately demonstrate support for self-determination. However, much of this consultation activity has been on a small scale and undertaken on a comparatively recent basis, since the current term of the 2019 Agreement. The consultation activity may indicate improving practices across directorates, but views heard from local community organisations suggests there still needs to be significant and continuing effort to demonstrate cultural change across directorates with respect to consultation and support for self-determination. 3.63

The Elected Body

The Aboriginal and Torres Strait Islander Elected Body is the elected Aboriginal and Torres Strait Islander representative body in the ACT. It has significant and diverse responsibilities by virtue of section 8 of the *Aboriginal and Torres Strait Islander Elected Body Act 2008*. There are risks that may limit the effectiveness of the Elected Body to support local Aboriginal and Torres Strait Islander communities and the right to self-determination. A key risk is that the Elected Body membership consists of seven part-time members, who fulfill their Elected Body responsibilities in addition to other responsibilities and commitments. The small amount of time available to each member carries a significant expectation with respect to: 3.70

- working with directorates and local Aboriginal and Torres Strait Islander communities; and
- undertaking its accountability and transparency functions in holding directorates to account for delivery of the Agreement.

Other risks in the Elected Body's ability to support Aboriginal and Torres Strait Islander communities include that there is low voting participation from the eligible population and there is a high proportion of current or former government employees serving on the Elected Body. Improved diversity and participation in elections for the Elected Body could better support self-determination. 3.71

PERFORMANCE MANAGEMENT AND MONITORING

Paragraph

Whole-of-government performance reporting

The Inter-Directorate committee is responsible for producing six-monthly progress reports of directorate performance on the implementation of the 2019 Agreement. In the four years since the 2019 Agreement commenced, the committee has produced two reports: one in November 2019 and another in September 2020. No other progress reports have been produced. The reports were structured to demonstrate how each directorate had progressed in implementing its commitments and were predominantly output-focused, with little structured analysis of directorate performance in achieving intended outcomes. It was difficult to determine directorate progress between the two reports as the reports changed from reporting against directorate implementation plans to a mix of directorate implementation plans, Outcomes Framework measures and focus area action plan priority actions. Nevertheless, the reports did outline progress against the priority actions at a point in time under the 2019 Agreement. No progress reports have been produced since September 2020 and no alternative reports have been produced that monitor the completion of the priority actions under the 2019 Agreement.

4.14

The *Annual Report on the Aboriginal and Torres Strait Islander Agreement 2019-2028* was tabled in the Legislative Assembly in April 2020. There was a lack of structure to the report and it was not possible to accurately determine which parts of the 2019 Agreement had (or had not) been progressed. The report predominantly consisted of unstructured reporting of highlights, which does not provide a faithful representation of progress that has (or has not) been made. There was also insufficient information provided in the report on the progress in developing and implementing the Outcomes Framework, which was intended to be used to promote accountability for implementation. Performance measures included in focus area action plans for Phase One of the 2019 Agreement, which were reported in the annual report, lacked specific targets or methods to assess performance. The annual report did not provide a clear assessment of directorate performance in implementing the 2019 Agreement.

4.25

The Outcomes Framework was finalised in April 2021. It describes how performance on the implementation of the 2019 Agreement will be tracked and sets out: the outcomes of both the 2019 Agreement and National Agreement; performance measures relevant to their achievement; and the baseline data against which to measure performance. The Outcomes Framework performance measures were generally improved from those shown in the annual report on directorates' progress that was tabled in the Legislative Assembly on 2 April 2020.

4.33

The impact statement is a publicly reported statement of performance that is prepared in line with the Outcomes Framework. The impact statement is updated as new information is available, but information has not been provided to date for four of ten 2019 Agreement focus area action plans. While the Outcomes Framework and impact statement give an effective picture of achievement of outcomes for communities, they do not effectively demonstrate the impact of the implementation of priority actions under the 2019 Agreement. Annually reported performance

4.34

measures do continue to lack specific targets, however, with measures conveying only an increase or decrease in a stated metric. There is no direct line of sight between the implementation of each of the 2019 Agreement's priority actions and the measures in the impact statement.

Directorate performance reporting

Directorates' reporting of their activities to implement the 2019 Agreement, as shown in their 2020-21 annual reports, did not provide a faithful representation of their activities. Report users cannot effectively understand progress against the 2019 Agreement's focus area action plans and annual report commentary from directorates is not comprehensive. While some directorates gave commentary on activity, this was often through unstructured reporting of highlights and it did not consistently consider progress against incomplete priority actions. It is not possible for users to understand the impact of directorate activity to implement the 2019 Agreement.

4.45

Recommendations

RECOMMENDATION 1 GOVERNANCE COMMITTEES

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:

- a) update the Inter-Directorate committee's terms of reference to recognise the Aboriginal and Torres Strait Islander Elected Body's co-chair responsibility for the 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.

RECOMMENDATION 2 OVERSIGHT OF DIRECTORATE PROGRESS AGAINST THE 2019 AGREEMENT

The ACT Health Directorate, Community Services Directorate and Environment, Planning and Sustainable Development Directorate should:

- 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 commitments 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.

RECOMMENDATION 3 ACCOUNTABILITY AND TRANSPARENCY FOR DIRECTORATE IMPLEMENTATION PLANS

The ACT Public Service Strategic Board should:

- 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.

RECOMMENDATION 4 THE ELECTED BODY

The Community Services Directorate and Chief Minister, Treasury and Economic Development Directorate should, through the auspices of the Aboriginal and Torres Strait Islander Affairs Subcommittee 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 *Aboriginal and Torres Strait Islander Elected Body Act 2008*. Consideration should be given to:

- 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.

RECOMMENDATION 5 IMPACT STATEMENT TARGETS

The Community Services Directorate should, through the auspices of the Aboriginal and Torres Strait Islander Affairs Inter-Directorate Committee:

- a) finalise outstanding performance measures for the Outcomes Framework; and
- b) develop targets for all performance measures identified in the Outcomes Framework.

RECOMMENDATION 6 WHOLE-OF-GOVERNMENT REPORTING

The Community Services Directorate should, through the auspices of the Aboriginal and Torres Strait Islander Affairs Inter-Directorate Committee, work with directorates to establish a whole-of-government, publicly reported annual performance statement on progress to implement the 2019 Agreement.

RECOMMENDATION 7 ANNUAL REPORT DIRECTIONS

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.

RECOMMENDATION 8 ANNUAL REPORTING TEMPLATE

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.

Agencies' responses

In accordance with subsection 18(2) of the *Auditor-General Act 1996*, all ACT Government directorates were provided with the draft proposed report for comment. All comments were considered and required changes were reflected in the final proposed report.

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In accordance with subsection 18(3) of the *Auditor-General Act 1996*, other entities considered to have a direct interest in the report were also provided the draft proposed and final proposed reports or extracts thereof for comment. All comments were considered and required changes made.

The following comments were provided for inclusion in this Summary chapter.

ACT Government agencies

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 Agreement.

There has been considerable reflection across directorates on both the strengths and potential shortcomings of implementation of the Agreement to date.

Directorates have welcomed the contribution the current Audit has made to this process and wish 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 Aboriginal and Torres Strait Islander Elected Body (Elected Body) work together. The focus of the Agreement is to enable self-determination and improve outcomes for Aboriginal and Torres Strait Islander people within the ACT.

In implementing the ten-year Agreement, directorates, the Elected Body and community have needed to adapt, evolve and innovate to determine how the Agreement's commitments will be

upheld. This includes delivering against the National Agreement on Closing the Gap which was agreed in 2020.

The Audit Report accurately notes a range of areas in which implementation of the Agreement could have been improved, particularly through more coordinated and consistent governance across directorates. These challenges have also been apparent to directorates as they have worked to deliver the initial phase of the Agreement in recent years.

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

In particular, directorates note there have been significant challenges in coordinated tracking and reporting on work that has occurred under the Agreement. Directorates also acknowledge the impact this has on the ability of the Elected Body and broader community to see and engage with the significant work that has been occurring.

As noted in the Audit Report, this has also resulted in some confusion as to which directorate/s are responsible for specific Phase 1 actions. While this observation is shared by directorates, we consider this issue may be overstated in the report. For example, directorates are not of the view that all priority actions were intended to be reflected in all Directorate Implementation Plans (discussed at paragraphs 2.57 to 2.65). We also note that while the actions in Table 2-2 may not have been reflected in any Directorate's Implementation Plan, work has nevertheless progressed against most of the listed actions.

The ACT Government would also like to highlight the significant impact of the COVID-19 public health emergency throughout 2020-22. This created a number of unique challenges for the ACT Government, the Elected Body, and the broader Aboriginal and Torres Strait Islander community. These challenges impacted the ability to deliver against some elements of the Agreement.

The emergency response to COVID-19 required specific prioritisation of work, which in some cases meant slowing or pausing work related to some areas under the Agreement, among many other important projects.

However, consistent with the intent and principles of the Agreement, significant uplift was achieved during this time in a range of services in response to the immediate needs of Aboriginal and Torres Strait Islander Communities in the ACT and Region, including in areas aligned to the Significant Focus Area of Health and Wellbeing.

During this time, directorates' efforts necessarily prioritised other activities to support the Aboriginal and Torres Strait Islander community, examples of which include:

- Supporting Gugan Gulwan Youth Aboriginal Corporation with \$200,000 to enhance capacity to deliver their youth support services and integrated services for families;*

- *Supporting Winnunga with \$100,000 to deliver a range of holistic wellbeing supports for individuals and families and almost \$250,000 provided to support its COVID-19 health response;*
- *Supporting Relationships Australia Dhunlung Yarra with \$100,000 to enhance its capacity to provide counselling and conflict resolution services;*
- *Supporting the Canberra Rape Crisis Centre Nguru Program with \$75,000 to increase the provision of holistic, culturally appropriate counselling for people who have experienced sexual assault and their families;*
- *Supporting Tjillari Justice Aboriginal Corporation and Yeddung Mura Aboriginal Corporation each with \$20,000 to continue their important work supporting individuals and families, including those who are or have been engaged with the justice system; and*
- *A total of \$65,000 being made available for grass roots organisations to support activities that helped with connection to culture and mental health. This included support for funerals and Sorry Business during the COVID-19 pandemic. Work to identify the most appropriate organisations to receive or distribute these funds was undertaken in collaboration with Aboriginal and Torres Strait Islander Communities.*

Finally, the ACT Government acknowledges there have been a range of factors, including COVID-19, that have impacted the Elected Body in its previous and current term. This has in turn had an impact on the ability to progress certain aspects of the Agreement, given the fundamental principles of working in partnership and supporting self-determination.

The ACT Government will continue to review arrangements and consider how the Elected Body can be better supported to fulfil its role in the Agreement.