



**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**STANDING COMMITTEE ON PUBLIC ACCOUNTS AND
ADMINISTRATION**

(Reference: [Inquiry into Public Sector \(Closing the Gap\) Legislation Amendment
Bill 2025](#))

Members:

**MR J MILLIGAN (Chair)
MS F CARRICK (Deputy Chair)
MS C TOUGH**

TRANSCRIPT OF EVIDENCE

CANBERRA

THURSDAY, 9 OCTOBER 2025

**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.

WITNESSES

EMERSON, MR THOMAS , Member for Kurrajong, ACT Legislative Assembly	.32
FANNING, MS KATRINA AO PSM	1
GEORGE, MS NATALEE , Executive Branch Manager, Cultural Transformation Branch, Chief Minister, Treasury and Economic Development Directorate	16
LEIGH, MS KATHY , Head of Service and Director-General, Chief Minister, Treasury and Economic Development Directorate	16
McGRADY, MS PAULA , former Deputy Chair, ACT Aboriginal and Torres Strait Islander Elected Body	32
MOYLE, MR BRENDAN , Executive Branch Manager, Office for Aboriginal and Torres Strait Islander Affairs, Health and Community Services Directorate	16
STEPHEN-SMITH, MS RACHEL , Minister for Health, Minister for Mental Health, Minister for Finance and Minister for the Public Service	16
TONGS, MS JULIE , Chief Executive Officer, Winnunga Nimmityjah Aboriginal Health and Community Services	32
WALKER, MR MAURICE , Chairperson, Aboriginal and Torres Strait Islander Elected Body	10
YOUNG, MR MICHAEL , Acting Deputy Director-General, Office of Industrial Relations and Workforce Strategy, Chief Minister, Treasury and Economic Development Directorate	16

Privilege statement

The Assembly has authorised the recording, broadcasting and re-broadcasting of these proceedings.

All witnesses making submissions or giving evidence to committees of the Legislative Assembly for the ACT are protected by parliamentary privilege.

“Parliamentary privilege” means the special rights and immunities which belong to the Assembly, its committees and its members. These rights and immunities enable committees to operate effectively, and enable those involved in committee processes to do so without obstruction, or fear of prosecution.

Witnesses must tell the truth: giving false or misleading evidence will be treated as a serious matter, and may be considered a contempt of the Assembly.

While the Committee prefers to hear all evidence in public, it may take evidence in-camera if requested. Confidential evidence will be recorded and kept securely. It is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly; but any decision to publish or present in-camera evidence will not be taken without consulting with the person who gave the evidence.

Amended 20 May 2013

The committee met at 12.30 pm.

FANNING, MS KATRINA AO PSM

THE CHAIR: Welcome to the public hearing of the Standing Committee for Public Accounts and Administration for its inquiry into the Public Sector (Closing the Gap) Legislation Amendment Bill 2025. The committee will today hear from a number of witnesses. We have here Ms Katrina Fanning. We will also have the Aboriginal and Torres Strait Islander Elected Body; Ms Rachel Stephen-Smith, Minister for Public Services, and officials; and the member sponsoring the bill, Mr Thomas Emerson.

The committee would like to acknowledge the traditional custodians of the land on which we are meeting on, the Ngunnawal people. We wish to acknowledge and respect their continuing culture and contribution that 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 or watching this hearing.

This hearing is a legal proceeding of the Assembly and has the same standing as proceedings of the Assembly itself. Please note that, as a witness, you are protected by parliamentary privilege and bound by its obligations. You must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. The hearing is being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and web-streamed live. When taking a question on notice it would be useful if witnesses are able to say, "I will take that question on notice." This will help the committee and witnesses to confirm questions taken on notice from the transcript.

We now welcome Ms Katrina Fanning. Could you please confirm that you are appearing as an individual today?

Ms Fanning: That is correct.

THE CHAIR: Would you like us to go straight into questions or would you first like to make an opening statement?

Ms Fanning: I have an opening statement.

THE CHAIR: Go for it; knock yourself out.

Ms Fanning: I, too, would like to begin by acknowledging the Ngunnawal people, the traditional custodians of this place we call Canberra, and their connection to my people, the Wiradjuri people, through the Murrumbidgee River. I pay my respects to their elders, past and present.

I am appearing today because I am a proud Canberran. I have lived here for more than 30 years; I have raised my family here; and I have given my all to this city, in government, in sport and in the community. When the fires raged across our suburbs, I stood in the Narrabundah Evacuation Centre helping families who had lost everything. I have worked with our sporting communities to make gender equity real, to make sure women were not just participants but leaders. I have marched for marriage equality,

because equality matters and fairness matters. And I have defended this place, this city, with every bit of passion that I have.

I say these things not because they are exceptional. Many Aboriginal and Torres Strait Islander people have done the same. Many Canberrans have done the same. We contribute to this wonderful city across any domain you could measure. We do it proudly and we do it without expectation of reward. We are part of this city. But the life outcomes for too many of our people fall unfairly behind the very Canberrans we stand shoulder to shoulder with.

I was proud that Canberra was the only jurisdiction in Australia to vote yes in the referendum. That said something about who we are: that, that even when others hesitate, Canberra finds the courage to do what is right. Yet, despite all that progress, we still fail to close the gap. How can that be so? If not here in Canberra, with all our resources, compassion and courage, then where? If not us, then who? If not now, then when?

When I asked the ACT Aboriginal community to trust me as the chairperson of the Elected Body at the time that the current whole-of-government agreement was signed, I truly believed I could bring my cultural, community and government experience together to make real change. I signed that agreement—and it is my signature; it is my promise—that the ACT government and our community could work together in genuine partnership, not to be busy but to deliver change. That agreement carried hope. It carried responsibility and it carried accountability. But, six years later, I am at times overwhelmed by the burden of its failure, not because the Elected Body have not tried and not because our community and our organisations have not tried, but because too many of our government partners have not.

There is no excuse for the ACT not to be leading the nation on every aspect of Closing the Gap. We are small and we are stable. We have had the same Chief Minister and the same Head of Service throughout this agreement. Continuity should have delivered progress and should have ensured consistent understanding of the task. Instead, it has delivered very little.

All of you, as elected representatives, hear year after year how things are progressing. I do not see the use of accountability mechanisms currently available used within this place in any comprehensive, informed way to change the trajectory that has held Aboriginal and Torres Strait Islander people hostage to the impacts of colonisation. The ACT have worse results than larger, more complex jurisdictions, and that should shame us all. This is not about government-bashing; there are many good people working hard. My own experience with Minister Stephen-Smith and now Minister Orr is that they have been responsive and worked well with me and when I was with the Elected Body, from my own experiences.

But the biggest accountability measure for government is, of course, that every few years the citizens vote for the best people to represent them. The problem for the ACT Aboriginal and Torres Strait Islander community is we are not a big enough population to swing elections. Our votes do not decide who governs. So, too often, we are treated like a political football—kicked around and talked about but never truly respected. All sides of government do this. This is the one truly equitable part of the process—and that must end. The day that the ACT government agreement was signed, as an example,

the opposition at the time launched its own plan for Aboriginal and Torres Strait Islander affairs without any consultation with the Aboriginal and Torres Strait Islander Elected Body. The inequity from both sides, from all sides, has been there from the start. My hope with this legislation is it helps us find bipartisan ways to act, to stand together not as parties but as people, as Canberrans, who believe in justice and equality, and that that should not depend on electoral math.

The way forward must also ensure accountability for our public service. Without an agreed report that shows the view of both sides of the Partnership on Progress, we will continue to circle the drain. This is not about capacity; this is about courage and accountability. That is why this bill, the Public Sector (Closing the Gap) Legislation Amendment Bill is so important. For the first time, this bill will embed accountability into the daily work of people in the public service, not just to act but to deliver. It legislates that closing the gap is not the job of a few people in one directorate; it is the duty of everyone in government. It says clearly that public servants must demonstrate and develop cultural capability; they must promote cultural safety; and they must help eliminate institutional racism in their workplace. This would make these no longer symbolic commitments but systemic responsibilities. It is hard to believe in 2025 in the ACT that these are things that are too big to ask for.

This bill moves us from aspiration to action and from talk to transformation. It also requires directors-general to report each year in partnership with the Elected Body on how implementing the National Agreement—which is aligned to the ACT whole-of-government agreement, and responding to the Productivity Commission’s findings—and not to just mark their own report card. That reporting must be transparent, specific and public. That is what accountability must look like, because for too long the Elected Body has been the only one held to account in this partnership. We face our community when a family is evicted, when a child is removed and when a young person gives up hope. We carry the burden of failure while the system that made the decision moves on unchanged. This bill helps to rebalance that burden. It says that public servants, ministers and elected officials and agencies must now carry their share of responsibility for progress or the lack of it.

The Elected Body hearings have shown the same pattern over and over—a gap in outcomes matched by a gap in accountability. Six years after signing the agreement, there is still no Aboriginal and Torres Strait Islander data strategy. There is no shared measurement framework and no consistent accountability. We have seen directorates ignore agreed actions, dismiss community advice and resist cultural reform. We have heard, “It is complex,” “It takes time,” and “We are reviewing frameworks.” Meanwhile, children are still being removed from their families and elders are still waiting for justice that never comes.

The problem is not that government does not know what to do; the problem is that no-one is made to do it. This bill helps change that. It makes accountability a condition of employment; it makes partnership a requirement, not a courtesy; and it makes transparency the standard, not the exception. It says if you want to serve the people of this city, you must serve all of them with respect, with fairness, and with cultural understanding. Canberra likes to call itself progressive, a place of fairness, inclusion and justice. If we truly believe that, then we must prove it here in this chamber with this bill. This is not about more bureaucracy; it is about moral courage. It is about making

sure that, when the ACT government commits to Aboriginal and Torres Strait Islander people, those commitments are binding, measurable and enforceable.

I love this city. I love its optimism, its belief in fairness and its instinct to lead when others lag behind. But I am also heartbroken—heartbroken that the city I have defended and believed in, the city that stood for equality when others would not, still cannot deliver equality for its First People. We celebrate when we do the right thing for women, for the LGBTQI community, for refugees—and so we should. But for Aboriginal and Torres Strait Islander people, your First Peoples, there is always another plan, another delay, another excuse. If not here in Canberra, then where?

This bill gives us a chance to lead again, to be the jurisdiction in Australia to legislate cultural capability, cultural safety and anti-racism as professional duties of government and to be the first to make closing the gap everyone's business, every day, in every job. It will not fix everything, but it will fix something critical: accountability. It will make sure that the next time that government signs an agreement with our people that signature carries consequences.

We have just in the past week been told by an ACT public servant that a national agreement, signed up to by the ACT government with allocated funding specifically for the ACT, will not be done in the terms of the agreement because they know how to do it better than an Aboriginal community-controlled organisation, even though that national agreement specifically requires it. Integrity in government is not just about money; it is about keeping your word—and that is what this bill demands.

I do not stand here in anger; I stand here in truth—or sit. I am asking this Assembly, this government, this city, to meet the truth with courage. We do not need another strategy. We need accountability, we need partnership and we need justice, real responsibility, real consequences and real change—because if not here then nowhere and if not now then never. Thank you.

THE CHAIR: Thank you, Ms Fanning. We will go straight into some questions. You have a lot of experience in the public service, particularly at senior levels, and you were part of the Elected Body for quite some time. I know you are here in the capacity as an individual and so without going too specific into those areas and more from your own personal perspective, what do you think are the main challenges that we might face in implementing this across the board and setting the right framework so that, if it is successful and it goes into place, it will operate smoothly and that it will be effective and then there will be the support from the public service as well?

Ms Fanning: The simple answer to that is that it is part of the system of how performance is managed and accounted for in government, and not set off to the side as something that people will get to if they can and when they can, and to not differentiate between Aboriginal and Torres Strait Islander public servants, for example, Indigenous-facing roles or what some people would call mainstream roles—that there is a line of sight for everybody about what we mean, like there is for how our job roles are described for anyone. To do anything less makes it problematic and creates a load on Aboriginal and Torres Strait Islander staff predominantly that is not acceptable, and they get treated like—my reference for that is black Siri.

THE CHAIR: You mentioned in your introduction that action needs to be taken to create real change. How do you think that by putting this bill in place we will actually work towards hitting those targets and have that level of accountability?

Ms Fanning: Firstly, because people will have to, on their annual cycle, look at what the evidence tells us, what the performance tells us. It will help people to understand that institutional racism and discrimination is not about what I might say to you or you might say to me, but about where in our system an Aboriginal person in Canberra gets a different outcome to other people on such a scale that is disproportionate to population we need to do something about that.

MS CARRICK: The bill was introduced 3½ months ago. Has the government consulted the Elected Body or yourself on this bill?

Ms Fanning: I have not been consulted on the bill, and to my knowledge—given that we still have a role with the secretariat for the Elected Body and the chairperson will speak next, they have not been consulted, from the government perspective. We have sat at roundtables with the person proposing the bill.

MS CARRICK: Yes, Mr Emerson—but the government has not consulted you in 3½ months?

Ms Fanning: That is correct.

MS CARRICK: They do say that they will need to consult with the Elected Body about amendments, about implementation and about definitions, and they have not yet done any of that?

Ms Fanning: They have not done any of that, no.

MS CARRICK: The Elected Body's submission says, "Time has become weaponised currently in the ACT government's slow response to the needs of Aboriginal and Torres Strait Islander peoples." Given this, and the Elected Body's support for this bill, indicated upon its introduction, the Elected Body's submission and your opening statement, what do you make of the ACT government's submission asking for the debate on the bill to be deferred?

Ms Fanning: I cannot speak for the Elected Body but, personally, I would not support that. Six years ago, definitions around institutional racism, around accountability and around cultural safety were agreed to and signed off as part of the National Agreement and the ACT agreement. We are up to a third phase of action plans on all of those things. I think the Elected Body and the community across the last six years have been really clear about their expectations in that regard.

MS CARRICK: Are those definitions public?

Ms Fanning: Yes. There are definitions within the National Agreement. Those are consistent with the definitions around institutional racism and the National Anti-Racism Framework as well.

MS CARRICK: Thank you. I understand phase 3 of the ACT agreement is a key part of the government's response to the Productivity Commission review. It was supposed to commence in January of this year and then July, but I believe it still has not commenced. Why has its commencement been repeatedly delayed?

Ms Fanning: My understanding is that the phase 3 action plans—if I understand your question correctly—should have been ready to start in January. They are at an almost final stage of negotiations now. I cannot talk to why government delayed starting that process.

MS CARRICK: Okay. Assumedly, by the time they start, they will be nearly 12 months late.

Ms Fanning: If they started in January. For them to start in January, that should have started at the start of this term's cycle, in August of last year.

MS CARRICK: Would you support passing the bill later this month but doing so with a delayed commencement date so that the government can look at its implementation and what have you? That would mean that the requirements are legislated now but there would be some delay, say six months, before the bill commences—say, a commencement date of 1 July 2026.

Ms Fanning: I think that that would be sensible given that performance cycles and funding cycles all commence on that date as well—but with the proviso that the training and understanding of what is required on July 1 has been completed by then and not started on that date.

MS CARRICK: There have been ongoing concerns raised, including at the recent Elected Body hearings, that actions related to delivering the National Agreement that were developed and agreed by the ACT public service have not been delivered or directorates have chosen not to deliver on them without consulting the Elected Body. Why does this keep happening?

Ms Fanning: I cannot speak to why that keeps happening. Certainly, the issues are raised consistently at the hearings and the consultations. The Elected Body meets with directors-generals on a four- to six-week cycle, and Aboriginal community-controlled organisations meet with directorates on the same sort of cycle. I do not know how much more we can be doing before action is completed.

MS CARRICK: Regarding the annual reporting on progress under the National Agreement being done in a format agreed by the Elected Body, do you think it is important for this requirement to be legislated as proposed in the bill?

Ms Fanning: Yes. There has been the potential for that to happen for the last six years of at least this cycle and it has not been undertaken or actioned. While the Elected Body can, through its hearings process, give its version of it, I think true partnership and accountability requires both to sit at the table and do that together and be very transparent with each other about what is working and what is not—and that does not occur.

MS CARRICK: I wonder what checks and balances there are if that does not happen. Do you think it is important for individual senior public servants, not just government agencies, more generally—like in Queensland—to be responsible and accountable for upholding the principles of the National Agreement on Closing the Gap?

Ms Fanning: Absolutely I do. The hearings show that not only does that not occur without this accountability measure; their understanding of what is actually committed to in the National Agreement and what that means in the ACT action plans is also limited at senior levels.

MS CARRICK: Is making all SES members accountable to key requirements of Priority Reform 3 likely to increase cultural load and lateral violence for Aboriginal and Torres Strait Islander public servants or decrease cultural load by increasing the load on non-Indigenous public servants?

Ms Fanning: My belief is that it will decrease it because it makes it everyone's responsibility. In my experience in the public sector, there have been a lot of times things ended up in my email tray just because it had Aboriginal or Torres Strait Islander in the headline and nothing to do with my actual duties, responsibilities or delegations. This will fix that. The response and the implementation plan need to require that the cultural capability work that is needed by some of the SES is not the responsibility of Aboriginal and Torres Strait Islander staff to provide, but that they need to do the work on building that and not take away that as responsibilities that the Indigenous public servants may have.

MS CARRICK: Does the government have a working definition of institutional or systemic racism or discrimination? Can you share it with the committee?

Ms Fanning: Those things, again, are described in the ACT agreement, in the National Agreement on Closing the Gap and in the National Racism Framework.

MS CARRICK: Okay; so the SES and everyone has it. What are the obstacles that have kept the ACT public service from delivering on its commitments under all these different agreements, reviews and reports? Where does the failure lie?

Ms Fanning: In that it is not a whole team approach. People look at these things as not their responsibility to deliver, not their responsibility to understand and, unless it is an Indigenous-specific program, have not taken the opportunity to understand “What does this look like for Aboriginal and Torres Strait Islander people passing through the areas I am responsible for and the connection to other areas?” I think that limits the effectiveness of the efforts that have been made.

MS CARRICK: Thank you.

MS TOUGH: In the original bill, the requirement for the Closing the Gap principle applies to all ACT public servants.

Ms Fanning: Yes.

MS TOUGH: There is an amendment on the table to limit that to just the SES because

of the concerns around how that practically could work for everybody when they are under the direction of SES and their different roles. The Productivity Commission report suggested SES should be held accountable through KPIs, and this bill has used that as a framework. Do you think the bill reflects what the Productivity Commission has suggested for SES? Do you have a view on whether it does more or less than what the Productivity Commission has recommended? How do you then see that operating in practice?

Ms Fanning: I think the bill without the amendments meets the aspiration of what is in the Productivity Commission expectations. Sorry, what was the other part of the question?

MS TOUGH: Do you think the bill with the amendments and without meets what the Productivity Commission was recommending or goes further, and how do you see it operating in practice?

Ms Fanning: I think that, with the amendments, it limits many of the roles that are public facing—and so that is a little problematic. All staff have performance agreements, have roles and responsibility statements and delegations that they have to follow. But I understand that this is a significant change and if the amendment starts with the decision-makers initially and could allow for that to change over time, I would have no issue with it.

MS TOUGH: So you can see a way where the bill as amended is introduced and we do the KPIs or something through the SES, but see how that then through cultural capability being developed and everything being developed, it can then flow on in a way that allows more junior public servants to implement without there being a risk of, say, their SES saying something and them having to follow that direction but, if they follow that direction, feeling like they might be in breach?

Ms Fanning: The significant thing to remember, of the 350 or so people that this would then affect, is that there are very few of the Aboriginal and Torres Strait Islander people in the public sector here in the ACT. It would need to make sure that that is not passed on to them without the SES doing their part for that, which is my hesitation with separating it, and that the load will then be passed on to much more junior officers to be rolled out at meetings and in situations that are above their skills and experience at a point in time and that they are asked to provide context and content that is rightly the role of groups like the Elected Body and community-controlled organisations to do.

MS TOUGH: So that concern that if it is just on the SES, the SES will bring out junior public servants to show they are doing things when that might not be their role and putting more cultural load on the junior public servants.

Ms Fanning: Yes.

MS TOUGH: Just touching back on the definitions that Ms Carrick brought up, I know they are in the National Agreement and they are in the ACT agreement. Do you see a role for those definitions being put into legislation to be quite clear that that is what is meant?

Ms Fanning: I think as soon as we are too prescriptive of what it is or is not, the first thing that comes across someone's desk will be something that sits outside of that. So I think we need to be mindful of that. Similarly, if we think about something that is maybe not as emotive—something, in, say, financial delegations—there are still things that are added. I think by having it too prescriptive now will create a headache at some point.

MS TOUGH: I think that covers what I had. Thank you. I appreciate that.

MS CARRICK: Assumably, the government will start consulting with the Elected Body and, assumably, before 1 July 2026 there is time to do the implementation plans that they need. It will be a work in progress—continual improvement. So things will be developed and changed as time goes by.

Ms Fanning: That is correct. The other frustration in that suggestion is that what this bill does is require accountability about it, and these are all things that were agreed to be done six years ago.

MS CARRICK: Yes. The government wants to delay it to do these things, but it is not clear that there is really a case to delay implementation and debate.

Ms Fanning: Yes.

MS CARRICK: Interestingly, if the government wants to amend the bill, it would have been nice if the amendments had come into the inquiry so we could have scrutinised them while we are having the inquiry and scrutiny of the bill.

THE CHAIR: I take that as more of a comment. Thank you, Ms Fanning, for coming along and appearing today and also for providing an opening statement and answering the questions.

Ms Fanning: I appreciate the opportunity.

THE CHAIR: My pleasure.

Hearing suspended from 1.02 pm to 2 pm.

WALKER, MR MAURICE, Chairperson, Aboriginal and Torres Strait Islander Elected Body

THE CHAIR: We welcome Mr Walker from the Aboriginal and Torres Strait Islander Elected Body. Please note that, as a witness, you are protected by parliamentary privilege and bound by its obligations. You must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Would you like to start with an opening statement?

Mr Walker: Yes; I would. Thank you very much. Before I begin, I acknowledge the privilege statement. I understand the statement. I acknowledge the Ngunnawal people, the traditional custodians of the land that you are on today, and pay my respects to their elders, past and present. I also acknowledge the Aboriginal and Torres Strait Islander people who call the ACT home, whose strength and patience and commitment continue to hold this community together. I acknowledge the many leaders who have come before me and have established and run Aboriginal community controlled organisations in our city to serve the most vulnerable and protect and support our families, especially our children and elders.

Chair and members of the committee, thank you for the opportunity to speak on behalf of the Aboriginal and Torres Strait Islander Elected Body. This hearing and this bill mark a turning point. It is not just another consultation; it is about whether this government is finally ready to honour its commitments and make accountability real. We are now 16 years into the life of the Elected Body, six years into the ACT Aboriginal and Torres Strait Islander Agreement, and almost five years into the National Agreement on Closing the Gap, yet here we are again, still explaining the same issues, still asking for the same changes, and still waiting for the same promises to be delivered. The bill must be the moment that the pattern stops. It must move us from planning to performance, from intentions to implementation, and from words to results.

For years, the ACT government has described itself as a national leader, but leadership means more than holding meetings or publishing plans. Leadership is proven through outcomes, and those outcomes for our people remain deeply unequal. Aboriginal children in the ACT are still removed from their families at one of the highest rates in the country, as you know. Too many of our young people are disengaged from school and training. We continue to face poorer health outcomes and shorter lives. Aboriginal employment in the public sector has stalled, and too often the government funds mainstream services that fail us, while underfunding Aboriginal community controlled organisations that are succeeding. We do not need another strategy to tell us this; we need people to take responsibility for fixing it.

The bill is called the Closing the Gap bill, not “Talking about the Gap Bill”. Its purpose must be to drive accountability, not simply record activity. For too long our people have shown patience. We have been part of every review, every plan and every partnership table, but we are not seeing accountability when governments fail to act. This has to change. If this bill is to mean anything, it must answer three simple questions: who is responsible, what happens when they fail and how will the community know the truth? Accountability cannot live in glossy reports; it must live in the culture of the government, in the performance agreements of directors-general and in the expectations of this Assembly, because, when accountability disappears, trust disappears as well.

The National Agreement on Closing the Gap rests on one principle: the government must do things differently. Doing things differently is not about endless co-designed workshops; it is about changing who holds power, who controls the resources and who decides what happens next. That means the government must not act for us; it must act with us. Funding must not go to the consultant that makes public servants feel the most comfortable; it must go to those closest to the community. Policies must not be written in offices and handed down; they must be built through shared tables of power. Above all, doing this differently means being honest enough to admit that the current system is not just slow; it is also structurally incapable of delivering equality under the old rules. If we keep doing things the same way, we will keep getting the same results.

The Elected Body exists to speak truth to power and to hold the government to the promises that it makes. We know how much effort it takes to just get traction across directorates. We know that progress often depends on the will of the individuals, not the strength of the systems. And we know that, when accountability disappears, our community pays the price. That is why we are calling on this inquiry and on the Legislative Assembly to strengthen accountability provisions with this bill. Especially, we need named responsibilities. Every minister and directorate must own their targets. There must be outcomes based reporting, not lists of activities; independent verification so that the government cannot mark its own homework; and consequences for failure, not just lessons learned. These are not radical ideas; they are the foundation of good governance.

We often hear words like “partnership” and “co-design”, but too often those words describe a process still controlled by government. If this bill is to truly reflect the national agreement, then shared decision-making must become a statutory obligation, not a voluntary principle. That means Aboriginal people must be part of decisions from the beginning, not at the end. Funding must reflect the truth that community controlled organisations deliver better outcomes. Aboriginal leadership must exist within every directorate, not just outside of it. Shared decision-making is not a courtesy; it is a right that this government has already agreed to uphold. This bill is a test of that courage—courage to confront the uncomfortable truth that this system, even with good intentions, continues to fail Aboriginal and Torres Strait Islander people; courage to redistribute the power to make the system answerable to the people it was meant to serve; and courage to accept that accountability is not punishment but the path to truth, partnership and progress. Our community has done its share through patience, persistence and partnership. Now it is time for the government to do its share, not with more planning but with action.

In closing, the Elected Body calls on this inquiry and on the Assembly to ensure that the bill delivers real responsibility by naming who is accountable, real consequences so that failure is not free of cost, and real change so that the next generation of Aboriginal and Torres Strait Islander children in the ACT see a government that keeps its word. No more planning, no more waiting and no more excuses. It is time for action, it is time for accountability and it is time to close the gap for real. Thank you.

THE CHAIR: Thank you, Mr Walker. I will start from my position here with a couple of questions and we will work down the table. Firstly, could you explain the role the Elected Body could have in the implementation and operation of this bill when enacted

and also the ongoing function of this bill in practice?

Mr Walker: The Elected Body already has a structure of monitoring and meeting with directors-general around issues that the community have deemed important to them. The role we play will include continuing to advocate for the actions and the priorities that have been pointed out in our agreement. We obviously have a role on behalf of the community to question what the ACT government is doing in relation to advancing Aboriginal and Torres Strait Islander access and equity, and we will continue to do that from the capabilities that we have at our disposal now. As you may or may not know, the Elected Body has been reviewed a number of times about our capacity to participate in all the meetings and all the activity that needs to be done, in order to go forward as informed members of the Elected Body. We will continue to ask the government to make sure that we are resourced properly so that we can carry out that duty to our best abilities.

THE CHAIR: My question may be focused more around what the Elected Body could do in terms of assisting the government to meet the needs and requirements of this bill, particularly around awareness, training and how to report, and what the functions of Closing the Gap are, what the achievements are and what it means for them in their workplace. Is there a role for the Elected Body to participate in assisting in that area?

Mr Walker: Absolutely. That obviously depends on the government's ability to share that responsibility. We have been trying to. There has been some success with a number of directorates in co-designing and sharing responsibility, but not to the point where a little more autonomy is given to the community and the community controlled sector. But we can certainly make sure that the connections are made to community organisations and, more particularly, to new organisations and individual Aboriginal and Torres Strait Islander people who may not be connected to the community controlled sector.

THE CHAIR: On the reporting side of things, there obviously need to be measures—or a framework or whatever the government decides to do in terms of a regulation, if this bill were successful. How do you measure the statements of a claim that is being put through? How do you measure them? What accountability would there be? How would they be assessed? And what supports would be provided for the public servants who are making their statements on behalf of the Closing the Gap targets?

Mr Walker: That is a very complicated question, Mr Chair. A number of methods are being used at the moment around building a better relationship with directors-general and directorates. The Elected Body's current sitting members are working really hard on establishing and continuing to build on the relationships that we have with directors-general and other staff members in all directorates. I hopefully say this on behalf of all elected members: we would be very willing to make sure that those pathways are made safe for public servants to come and talk individually or in groups with Aboriginal people and Aboriginal and Torres Strait Islander organisations in order to make that transition. A connection needs to be made with our community if the community is going to trust public servants to fulfil some of those duties.

THE CHAIR: Excellent. Thank you, Mr Walker. I will pass the questioning along to Ms Carrick.

MS CARRICK: Thank you, Chair. Mr Walker, my question is about consultation. The bill was introduced 3½ months ago. Has the government consulted the Elected Body on the bill?

Mr Walker: The government has not really consulted with the Elected Body to a great extent. All Elected Body members are aware of the bill and are very supportive of the direction that it is going. We want to make sure that Aboriginal affairs are everybody's business. I have seen effective consultation in the community. We have not had that much consultation around the bill itself.

MS CARRICK: In their submission, the government talk about wanting to make amendments to the bill and that they will need an implementation plan, and they talk about definitions. Have they reached out to you to talk about any amendments they would be interested in or how they might implement them, or anything like that?

Mr Walker: We have talked to MLA Emerson about some of those. We have had a workshop with some of the community organisations. We have only had the opportunity to have one workshop. That talked about how some amendments would be made for the bill to be successful, to create a way for us to fulfil some of the objectives of the bill. The Elected Body are looking forward to making sure that anything that comes from community is reflected in those changes.

MS CARRICK: Thank you. I will just make clear that Mr Emerson is a crossbencher and not in the government. So the government has not reached out to you?

Mr Walker: That is right. Sorry.

MS CARRICK: That is all right. Consultation is good. For the record, I want to be clear that Mr Emerson is not in the government. That is all.

Mr Walker: I appreciate that.

MS CARRICK: Given that time and things being dragged out are big issues, and the Elected Body supports this bill, what do you think about the ACT government's submission asking for debate on the bill to be deferred?

Mr Walker: The only thing I would say about that is that, if debate were deferred, it could be harmful to the community. There could be an issue in the community, and it would not create any great benefit. Nothing happens if the government wants to defer. The status of Aboriginal and Torres Strait Islander people stays the same. Nothing changes for our mob. Either the bill succeeds or the bill fails. That is the whole premise behind the bill: how does this help the community bridge the gap? A delay would be badly received by community, I would think. Some of the issues are around institutional racism. We have issues at the moment where Aboriginal people are not using mainstream services because of the systemic racism. We do not want to make that any more difficult than it already is.

MS CARRICK: Thank you. I understand that phase 3 of the ACT agreement is a key part of the government's response to the Productivity Commission review. It was

supposed to commence in January this year, and then July, but I believe it still has not commenced. Why do you think that the commencement has been repeatedly delayed?

Mr Walker: That is a good question. I think it is around the directorates not being ready to move forward with that and they have not finished implementing stages 1 and 2. We are way behind in implementation. When I say “we”, I mean the ACT government, which I am no longer part of. And I think directorates are having trouble understanding the intent behind the actions. It is causing a lot of difficulty.

MS CARRICK: Would you support passing the bill later this month but doing so with a delayed commencement date? For example, the bill would commence on 1 July 2026. This would mean that the requirements are legislated now, but there would be some time—say, six months—before the public service would have to implement them. It would give them six months to develop their implementation plan and consult with the Elected Body and the broader Aboriginal and Torres Strait Islander community on the implementation. How would you feel about it being passed now, but the commencement date would not be until later—for example, 1 July 2026?

Mr Walker: Personally, I would be in favour of supporting that plan of action, knowing that the bill will be passed. I back that up by saying that I would like to talk to Aboriginal and Torres Strait Islander community controlled organisations about their reaction to that statement. Knowing that the bill will be passed would be a win for the community and it would give time for the community, directors-general and directorates to maybe sit down and make clear what we want to achieve.

MS CARRICK: Thank you.

MS TOUGH: I want to pick up on the point of a potential delay in commencement. The bill does not have the details of how obligations will be met, so something will need to be developed on how the Closing the Gap principle applies in performance agreements and how it operates in practice. Significant consultation processes could be required through enterprise agreements and the Public Sector Management Act. I want to know whether you see a role for the Elected Body in those conversations and consultation or in developing a framework on how the government will change the performance framework to meet the act.

Mr Walker: Definitely, there is a role for the Elected Body. Obviously, we would do our own consultation with community organisations as well to make sure that we reflect the views of our community, so that we do not move forward without consent from our community as well. There is definitely a role for us to play in every step of this process.

MS TOUGH: The amendments that are on the table for the bill from Mr Emerson restrict the requirement for the Closing the Gap principle to just the SES after concerns were raised about how it would apply to the entire public service. Do you see this amendment meeting the Productivity Commission’s recommendation that the SES should have KPIs about Closing the Gap in their performance agreements? And what kind of accountability would you like to see in that process?

Mr Walker: I am not too sure. For the answer, I would like to talk to other members of the Elected Body and/or community about the sorts of accountability measures that

could be put in place in relation to failure to reach targets. As I said before, the Elected Body is in the prime position to be part of this process. If we are negotiating on the intent—what we are trying to achieve in relation to the bill—we have to have understanding across the board, so that the community understands and so that the government understands what the community wants.

MS TOUGH: Thank you. The risk in the alternative to passing it this year and delaying commencement to next year, so that implementation can be worked through, is that amendments will need to be made to the bill before commencement, to make sure it is workable. What about the alternative of making amendments before it is passed, so that everything is lined up ready to go and it can commence immediately without needing last-minute changes?

Mr Walker: As long as it happens in a pretty fast timeframe, the community and the Elected Body would be happy to engage in making sure that we get it right. I would not be happy, and I do not think the community would be happy, if it were extended beyond June 2026. If the bill is on a trajectory to pass, then we would want it in that timeframe.

MS TOUGH: Potentially not passing it this year but passing it early next year, all ready to go so that it commences immediately, rather than passing it now with delayed commencement and having the risk of having to make some amendments to get it right before it starts?

Mr Walker: Yes. I said in my opening speech that it is time for that to happen, and the sooner the better for our community.

MS TOUGH: Thank you.

THE CHAIR: Mr Walker, on behalf of the committee, thank you for appearing today. We really appreciate the time that you have taken to respond to this inquiry. As I understand it, no questions were taken on notice. You have answered everything. Once again, thank you for your time and attendance. Look forward to the final report, when it comes out.

Mr Walker: Thank you, Mr Chair and committee members, for the opportunity to speak on behalf of the Elected Body.

THE CHAIR: Thank you very much.

Short suspension.

STEPHEN-SMITH, MS RACHEL, Minister for Health, Minister for Mental Health, Minister for Finance and Minister for the Public Service
LEIGH, MS KATHY, Head of Service and Director-General, Chief Minister, Treasury and Economic Development Directorate
GEORGE, MS NATALEE, Executive Branch Manager, Cultural Transformation Branch, Chief Minister, Treasury and Economic Development Directorate
MOYLE, MR BRENDAN, Executive Branch Manager, Office for Aboriginal and Torres Strait Islander Affairs, Health and Community Services Directorate
YOUNG, MR MICHAEL, Acting Deputy Director-General, Office of Industrial Relations and Workforce Strategy, Chief Minister, Treasury and Economic Development Directorate

THE CHAIR: Welcome to the afternoon session of the committee inquiry into the Closing the Gap amendment bill that was presented by Mr Emerson. Today, we will hear from the Minister for Health, Ms Rachel Stephen-Smith, in her capacity as the public service minister. We also have officials here today. Please note that, as witnesses, you are protected by parliamentary privilege and bound by its obligations. You must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly.

Rumour has it that the minister has an opening statement, so I will hand over to the minister.

Ms Stephen-Smith: Thank you very much, Chair. I do not have a long opening statement, but I want to put on record up-front, at the beginning of the hearing, that the government absolutely supports the principle underpinning Mr Emerson's bill. We have been clear, in relation to the Productivity Commission essential action 3.5, that we have agreed to this essential action. Indeed, we had work underway, for the next time that we were amending the Public Sector Management Act, to look to address this recommendation through that work.

We support the principle of ensuring that responsibility for improving cultural capability and relationships with Aboriginal and Torres Strait Islander people is brought into public sector employment requirements. At a level of detail, the commission was very clear that that should be the responsibility of senior public servants, so we are pleased to see Mr Emerson's proposed amendment in relation to that. That was one of the conversations that we had directly with him, in relation to practicality and accountability.

In relation to the Productivity Commission's essential action 4.3, including a statement on Closing the Gap in every government organisation's annual report, while we recognise that there is still ongoing work to refine the description around how each public service agency does that reporting, the annual report directions for the last financial year—for the annual reports that will be released tomorrow—did include a requirement to report against the priority reforms under the National Agreement on Closing the Gap. Certainly, the annual reports that I have seen so far in my own portfolios have reported.

There is a question, again, around the practical implementation work on how we determine the form of reporting that is required. Obviously, engagement with the

community and the Aboriginal and Torres Strait Islander Elected Body may be an important part of that. That is something that I would always like to emphasise.

It is also important, though, to recognise that we do separately report on the implementation of both the ACT Aboriginal and Torres Strait Islander Agreement and the National Agreement on Closing the Gap Implementation Plan. Ms Orr tabled both of those reports in June, with a ministerial statement. The ACT Aboriginal and Torres Strait Islander Agreement 2019-2028 ACT annual impact statement 2024-25 and the National Agreement on Closing the Gap ACT annual report for 2024 were both tabled in June 2025. I believe it was after Mr Emerson had introduced this legislation. It was probably true to say at that time that it had been more than 12 months since the last report, as a result of timing issues.

From a practicality perspective, one of the things we have tried to do is to ensure that we align reporting requirements to collect once and report through multiple formats. We already include much of the same information in our report against the ACT agreement, as we do in our report against the National Agreement on Closing the Gap, but because of the different structures and the different reporting requirements, we do two separate reports. We then report much of the same information again in annual reports.

Agency by agency, it is important that agencies are focusing on that. We also need to take account of the amount of resources expended in collecting information and reporting it in multiple formats. That is an accountability mechanism, and it is really important, but it is not as if we do not do it already. Again, we are really supportive of the principle in Mr Emerson's bill about including that information in annual reports. Our only concern is around the practical mechanism for doing that and the fact that we already have annual report directions that are required to be issued by the relevant minister, and that that is an appropriate place to include that detail.

THE CHAIR: I am interested to know, particularly, what is required specifically to implement a bill of this nature throughout the public service. Obviously, we are not in government, and we are not in charge of the department, so we are not aware of that process. We might start with that; then I have a follow-up.

Ms Stephen-Smith: Can I just be clear? You are talking about if we were to implement the bill without Mr Emerson's amendment?

THE CHAIR: No; that has been negotiated with you already, and it seems like it may be successful. Let us go with that.

Ms Stephen-Smith: Okay; if we were to implement this bill in relation to SES officers only?

THE CHAIR: Yes, correct.

Ms Leigh: I might start; I will then ask others to provide more detail. I have read and understand the privilege statement.

THE CHAIR: Excellent; thank you.

Ms Leigh: There are a number of steps, including cabinet processes et cetera, but the really core issue here is the development of the actual support for SES staff—education, training and learning opportunities for SES staff—if we are to truly achieve the outcome that everybody seeks here. I think there is a vast difference between sending everyone off to a standard training course and developing learning opportunities that will truly make a difference to the understanding of staff.

I think it is that understanding by our key senior staff that is core to all the other outcomes that are sought to be achieved. I have heard the frustration from the Elected Body about there not being a proper understanding of what is sought in the Closing the Gap Agreement.

That is my hesitation about timing. We need to consult. Obviously, we consult continually, and there has been, as I am sure the Elected Body will point out, some years of opportunity. Nevertheless, I have constantly heard and learned that, if we are going to truly get outcomes, we need to do them in partnership with our Aboriginal and Torres Strait Islander community, our staff and our Elected Body, as the core source of expertise for us.

I will hand over to Ms George in a moment. While we could just start rolling out some of the work that Ms George has already been doing—and she has been doing that not just off her own whim; she has already, of course, been consulting and doing that—if we are going to really hit the spot, to make a real difference, we need that detail to be worked through with the Elected Body, to make sure that they are comfortable that we are really going to make a difference.

That is the key thing. Of course, there are a whole lot of process issues, but that is the one that I think really goes to the substance of what everybody is trying to achieve here. If you like, Ms George can talk about the work she already has underway and what it would really mean to roll out learning opportunities for senior staff where they will be able to fully appreciate all of those different aspects—whether we are looking at the socio-economic indicators and what they mean and what we need to do to achieve the targets, as opposed to what we might assume they would mean.

Ms George: I have read and acknowledge the privilege statement. I would like to acknowledge the senior community members that are in the room, Brendan Moyle, for the work he does as head of Aboriginal and Torres Strait Islander Affairs, and Katrina Fanning and Maurice Walker, who provided their statements earlier today.

We work really closely with Brendan and the OATSIA team around the work under priority reform 3, under the National Closing the Gap Agreement. That is all around transforming government organisations. Our role within the cultural transformation branch is to uplift capability and cultural capability, enhance cultural safety, and improve career pathways for Aboriginal and Torres Strait Islander staff, among other functions that I have that are not relevant to today, so I will not go into those.

Some of the things that we have done are things like refresh the cultural adviser network. Cultural advisers are internal to the ACTPS. They are not providing cultural advice per se; they are providing advice around internal initiatives or things that need

to happen around reconciliation, or it could be on employment or recruitment. I utilise the cultural adviser network to collaborate internally on different things like resources that we have developed.

That is one thing that we have done, and it has proven to be successful, in that we now have an expansion of cultural adviser roles across directorates. We are working towards putting together a consistent ACT public service approach to those roles so that each directorate has a consistent approach, but one that is flexible in terms of their context and who their stakeholders are. That is one key thing we have done.

We have also developed a cultural load matrix, which was done when I first started almost two years ago, which was done by some of the cultural advisers, which goes to speak to what cultural load or colonial load might look like at a low, medium or high time. That is done as a resource to uplift understanding around what cultural load or colonial load is. I use those terms interchangeably because different people will say that it is not actually cultural load; it is actually the system that we are in. That is why I have referred to colonial load. Actually, we are quite proud of who we are in our culture, so it is not really a load. That is an individual perspective; I am not speaking on behalf of other people.

We have done that. We have also created a pilot cultural care plan. The concept of that is still in the early phase. We have piloted it with the Aboriginal Service Development Branch within Health and CSD. We are also working with the HR area of Health and CSD to pilot this in other areas, given the significant load that OATSIA and other areas of that directorate face.

The whole concept is about how to take the knowledge from the cultural load matrix and put in place some proactive measures around supporting cultural safety in the workplace. That is still a concept that we are working through.

We have developed the Cultural Integrity Professional Learning Database. It is an Excel spreadsheet that lists all the cultural awareness training that has been delivered across the service. It identifies who delivered the training, what the training is and who in that directorate you can contact about getting more information. Importantly, we have also included some definitions around what cultural integrity means, what cultural capability means, and racial literacy. There are a couple of other definitions in there as well. That is a resource we have done internally, as well as creating an internal SharePoint page to build the service's understanding, as a self-service library, if you like, of cultural capability resources.

We have also partnered with OATSIA. Brendan organised Rob Waters, who is a Kamilaroi man, to deliver a slam poetry session earlier this year. That was really impactful for a lot of people. Our Head of Service attended that. Lots of SES have attended that; staff and community were also invited to attend that.

Sometimes cultural awareness training will not give you the knowledge or the impact that you need to then be able to translate that into your work practices. When we are thinking about training—and Kathy mentioned learning opportunities—those foundational courses are very important. We must have a space for truth-telling respectfully, and make sure that there are foundational learning opportunities. We also

need to provide relationship and connection opportunities for senior executive and public servants to be more connected with the community. The most impactful sessions that anyone has been to or that people share with me, particularly at the senior executive level, is when they have met an Aboriginal and Torres Strait Islander person that has shared their story with them. That has been impactful, and it has helped that person to think about things from a different perspective.

That is, ultimately, the work that we need to do in the cultural transformation branch to develop the cultural capability assessment methodology. With respect to having the frameworks that go to meeting what is in the bill around the Closing the Gap principle, it is about having not only the supportive frameworks but also the tools, resources and activities that help senior executives to build their cultural capability.

Mr Moyle: I have read and acknowledge the privilege statement. Like Nat, I would also like to acknowledge the traditional custodians, Julie Tongs, Beth, Paula, Maurice, and Katrina as well.

OATSIA runs a number of events on behalf of the ACT. OATSIA runs every year the NAIDOC celebrations, particularly the flag raising. In the last year, we have had a number of seminars about Aboriginal servicemen. We managed to bring along a very old elder who filmed the very first documentary on some Aboriginal deaths in custody in the early 80s, to do some private screenings for staff. We also run Reconciliation Day, which has grown now to 7½ thousand people participating.

THE CHAIR: I am well aware of what OATSIA are doing out in the community. I am sure a lot of our committee members are aware of that, too, and thank you for the work that you do.

Ms Leigh: Chair, with your indulgence, could I say that that has dealt with the training and learning opportunities side of what we would need to do, but there is also the compliance side. Could Mr Young say a few words about what we would need to do to get that prepared? That goes to your question about what we need to do.

THE CHAIR: Okay. You have two minutes; then we will go to questions.

Ms Leigh: This is highlighting that there is a lot of work underway, and there is a lot of work that would need to be done.

THE CHAIR: I want to know what work needs to be done to implement this bill. You have requested that the implementation be delayed. In terms of possible debates, we need to know the justification behind that. If you are already doing a lot of work in this space, what have you not done that you need to do?

Mr Young: I acknowledge the statement. We have talked at length about, upstream, the type of changes that would need to be made to equip affected officers, be they SES or officers, to execute changing the way that they are behaving. However, the bill would insert that positive obligation within the Public Sector Management Act in a way that attaches performance management and conduct obligations.

In order to execute those changes, it would be necessary to have the infrastructure in

place to manage performance and to manage allegations of misconduct against those new heads of obligation. If you consider the infrastructure that is already in place and things that may be missing, there would be an internet-connected suite of materials that guide the conduct of performance management and misconduct—two quite separate processes.

The misconduct process in particular has serious consequences for an affected officer that fails to meet their obligations. There would need to be a capacity to conduct preliminary assessments and investigations against those new principles. They would need to be defined to a sufficient extent that they could then be translated into materials that can be used to steer a conduct process and potentially to inform sanctioned performance management.

Given the breadth of the changes that others have talked about here, they would be impactful on the wider service, whether the specific provision applies to SES or more broadly. That then triggers the consultation requirements in the enterprise agreements. Interconnected infrastructure, ensuring that there is a market able to conduct those investigations against the new guidance, and for all of that to be developed in a way that satisfies the consultation requirements at a high level, would be, I think, minimum requirements in order to make the changes operable.

THE CHAIR: We will go to questions. Ms Carrick?

MS CARRICK: I am curious to know what amendments you are thinking of. It is now just SES, not the whole public service, so that one seems to have sorted itself out. With respect to reporting, there is the bill and there are the annual report directions, but they are fairly similar. Given that the 2024-25 annual reports will come out soon, under the directions, and 2025-26 will come out under the directions, if we were not to start this until 1 July 2026, there is plenty of time to put in place the two amended directions. I am not clear about what amendments you want to make to the bill.

Ms Stephen-Smith: Starting with the annual report parts of the bill, if the bill were to pass in its current form in relation to annual reports, it would be doable; it is just not really aligned with legislative best practice to implement it in this particular way. If I had been starting this process, I probably would have looked at a different way of doing it in the bill, in that the act already requires directions to be made. I would make provision there for the directions to include reporting against, rather than the specific legislative change that Mr Emerson is proposing. It is about how you draft legislation and legislative best practice; that is the concern in relation to annual reports. That is probably a reasonable way of describing it.

Ms Leigh: I would add a technical comment, and it goes to whether the requirements are in the directions or in the act. It might sound stronger to have them in the act. Directions are still legislation; they are subordinate legislation that the act provides for. The benefit of directions is that they are much easier to amend. As we learn each year whether the reporting is achieving the intended result, they are easy to amend, to change, to achieve a better outcome, as opposed to legislation, which has to go through the full Assembly process.

It might sound like a technical detail; in practice, putting those changes in the act

potentially could have the perverse outcome that strengthening the reporting is impeded.

Ms Stephen-Smith: We will get to the other element of the bill in a moment. Building on that, again, best practice legislation would not refer to an existing document and its specific clauses, because that document and those clauses might change. There has been a national conversation about whether we want to review and revisit the National Agreement on Closing the Gap. That has been part of a conversation at joint council that I am aware of, as a former member of joint council.

If that were to happen, and with the clauses that Mr Emerson's bill refers to in the National Agreement on Closing the Gap, if we were to change the name of the national agreement or move clauses around, the act would then no longer be accurate in terms of what it was seeking to achieve. Those are the kinds of amendments that we would be looking to bring forward. It is about making that intent—which we 100 per cent support and which is already given effect through our directions, and which could be more explicit—implementable, not just today or tomorrow, but for the next decade.

MS CARRICK: I appreciate what you are saying. Why didn't you bring those amendments to the inquiry? The bill has been out for 3½ months. I have had a look at the legislation that is being amended. What you are saying would be fairly simplistic. Why hasn't it been done in the last 3½ months?

Ms Stephen-Smith: That is not the way the legislative process works, Ms Carrick. With respect to what normally happens with a private member's bill, a private member's bill normally is circulated as an exposure draft, with public consultation on an exposure draft, before it is introduced into the Assembly. That is an opportunity for people to comment and provide feedback. We provided in-principle feedback to Mr Emerson, but we did not see his bill in explicit writing until it was introduced.

Once a bill is introduced into the Assembly, it is referred to a committee. The committee considers it, and the committee reports. Government and the mover of the bill, in the case of a private member's bill, consider the recommendations of the committee, usually, before bringing forward amendments. We would be waiting for the committee to make recommendations before we finalised any amendments, because there is not a lot of point in our bringing amendments, and potentially Mr Emerson bringing amendments.

To give an example, Ms Orr, in the last term of parliament, introduced the Disability Inclusion Bill. She circulated it as an exposure draft to the wider community, got significant feedback on that, refined the bill, talked to the relevant minister, and refined the bill to make it not only as implementable as possible, but also reflecting that feedback from the community. It then went to the committee. The committee made recommendations to the mover of the bill, which was Ms Orr, and she responded to the committee's recommendations.

We do not know what amendments government will need to bring because we do not know what the committee will recommend or what amendments Mr Emerson might bring. He may bring additional amendments to his own bill to reflect the feedback received during this committee process and any recommendations of the committee.

That is the way the legislative process works. We have flagged the types of things that we would look at, but we cannot bring explicit amendments until we know the context in which the bill will be debated, what the committee has recommended and any amendments that Mr Emerson is planning to bring.

MS CARRICK: Does that process specifically exclude being able to provide your amendments to the committee?

Ms Stephen-Smith: We could have drafted amendments. The time of the Parliamentary Counsel's Office is valuable and limited, and us drafting amendments at the same time as Mr Emerson is potentially drafting amendments to do exactly the same thing, when we do not know what the committee will recommend, we do not know the position of other parties and we do not know what Mr Emerson is going to do, is simply not the way that the legislative process works.

We have given an indication of the types of amendments that we would be bringing. Once we have the context of how those amendments would be brought, it will not take long to draft those amendments, but we are here giving evidence about what the nature of those amendments would be. That is actually what is valuable to you, not the exact words, I would have thought.

MS CARRICK: You have an amendment around the reporting; how long would that take to draft?

Ms Stephen-Smith: We would potentially be bringing an amendment, depending on the committee's recommendations and Mr Emerson's response. I do not think it would take very long to draft. Of course, work is underway to consider what that could possibly look like, and different options as well. If the committee was minded to support this particular part of the bill in the way that it is drafted, and Mr Emerson and the other parties were not going to support any amendments, it would not be worth us introducing any amendments. We might do some tweaks, rather than an amendment that substantively moved the objective from one part of the act to another, for example. It is an iterative process. We are trying to outline the practical things that we are considering as we work through that iterative process.

I cannot remember what your actual question was, but I know I only answered it in relation to annual reports, and I have not answered it in relation to the other matter yet.

MS CARRICK: It appears that the only amendment left to make is the one to the annual reports that you would like to make. Are there any other amendments that you are keen to bring on?

Ms Stephen-Smith: Again, we would be looking potentially at technical amendments around the reference to the National Agreement on Closing the Gap, to make it more generic. I do not mean "generic" in the sense of not being about the priority reforms under the national agreement; I mean that will stand the test of time, in a legislative sense.

MS CARRICK: Have you consulted the Elected Body on this bill?

Ms Stephen-Smith: I personally have not. Obviously, we have been paying attention to the feedback that we have been getting. Part of the committee process is to hear from all stakeholders, including the Elected Body. I do not know whether officials have explicitly consulted the Elected Body at this point.

Ms George: Not specifically about the bill, but I do meet regularly with the chair, Maurice Walker. The Head of Service has a monthly meeting with Maurice Walker and the secretariat. Whilst not consulted specifically on the bill, we have generally spoken about cultural capability.

MS CARRICK: With the timeframes, would it be possible to have the bill debated this year in Mr Emerson's slot and then defer the implementation until around 1 July 2026, so that you can continue work on the education tools? Would that be suitable?

Ms Stephen-Smith: My recollection is that Mr Emerson's slot is in October; is that correct?

MS CARRICK: Yes, in the next couple of sittings that are coming up.

Ms Stephen-Smith: Ms Carrick, the legislative process cannot really be driven by when slots are allocated to particular members of the Legislative Assembly, a matter over which the government has no control whatsoever. It is up to members of the Legislative Assembly, if you want the bill to be debated this year, to swap slots with Mr Emerson. It is completely open to any non-executive member of the Legislative Assembly to swap slots with Mr Emerson to enable proper consideration of the bill, the committee to have time to consider and report, for both Mr Emerson and the government to respond to any recommendations that the committee might make, and to still pass the bill by the end of the year. That is not a matter that is in the control of government.

MS CARRICK: Okay, fair enough. Would you have enough time to do your tools, your implementation plans, by 1 July 2026?

Ms Leigh: I do not want to sound like I am being technical about this. We can do something, and we would, of course, apply our best endeavours to do that. It will not be the end of the matter. We will need continually to keep taking steps. The reality regarding how long it takes to develop these will only become apparent with some aspects as we are doing the work. I can say that, if that were the date—and I understand the logic of why that would be a date—we would make our absolute, best endeavours to get everything in place.

You have already heard about the requirements of consultation and that we are looking at the whole compliance infrastructure, as well as the development of the tools. They have different complexities in terms of the time they might take for development. I am sure that we would have something in place by then. Whether it is the best possible outcome is a different question.

MS CARRICK: Would you say that it is a process of continuous improvement?

Ms Leigh: Of course.

Ms Stephen-Smith: Absolutely, in every one of these types of measures that we implement, whether it is disability inclusion, carer recognition, or the responsibility to build and support a culturally safe workplace and operate with cultural integrity, it will always be an ongoing piece of work. From my perspective, if it was 1 July 2026, yes, absolutely, we would have something in place. Would it be perfect? No. Is it ever going to be perfect? Probably not. It is always going to be a learning exercise. Nat, do you want to add to that?

Ms George: Yes, absolutely. We are currently working; consultation will need to happen with the Elected Body and with community members around the cultural capability piece and putting that in the performance framework. There is a government process that needs to be undertaken. Also, we would want to consult with the unions, Aboriginal and Torres Strait Islander staff, senior executives and HR leads across the service, which has been the process we have followed to date.

That would require a couple of months. Certainly, as the Head of Service and the minister have said, we would have something in place. Cultural capability is an ongoing journey; it is learning, so that you evolve; therefore our tools and resources would evolve. The performance framework cycle is a 12-month cycle. It gives opportunity for people to reflect. But the deep consideration of how we assess and what goes into that process would still need to be worked out.

MS CARRICK: You have to start somewhere, so 1 July 2026 is as good a date as any other to start. I have a question for Mr Moyle. You are the head of the Office for Aboriginal and Torres Strait Islander Affairs.

Mr Moyle: Yes, that is right.

MS CARRICK: A simple yes or no: do you feel culturally safe, as an Aboriginal person in your workplace?

Mr Moyle: No.

MS CARRICK: Why not?

Mr Moyle: Sorry, it is—

Ms Stephen-Smith: It is up to Mr Moyle if he wants to answer that question, but if he chooses not to answer that question, it would also be entirely appropriate. This is not an environment in which you are creating cultural safety for Mr Moyle.

Mr Moyle: I would rather not go into too much detail. I have had a very long career in Aboriginal and Torres Strait Islander affairs. I have never experienced the level of lack of cultural safety as I have here. That is all I will say. In saying that, though, I do want to commend that we have some amazing people. I have had the pleasure of working with amazing ministers like Minister Stephen-Smith. We have amazing allies within the service. I need to couch my response in acknowledging that we have some amazing people out there that are supportive, particularly in terms of how we strengthen cultural

capability. But my answer is no.

THE CHAIR: Thank you very much. Ms Tough?

MS TOUGH: Mr Emerson's bill, as introduced, would apply the Closing the Gap principle to all ACT public service staff. There have subsequently been amendments that would restrict the application just to the SES. Despite these proposed changes, would there likely remain impacts from the bill on the work and obligations of non-SES staff?

Ms Leigh: The answer, Ms Tough, is yes. I think that has already been alluded to. I am sure that others at the table would be happy to provide more detail, if you would like.

MS TOUGH: As a follow-up, do you expect members of the SES impacted by the amended version of the bill will alter their management of staff as a result of the bill, and how will that impact?

Ms Leigh: Sorry, could you just repeat that?

MS TOUGH: Do you expect that SES will alter their management of staff as a result of the bill?

Ms Leigh: One would hope so, but I would also hope that that is a process that is already underway.

MS TOUGH: Can I get you to elaborate slightly on how it will impact non-SES staff?

Ms Leigh: I might ask Ms George and then also Mr Young.

Ms George: If there is a requirement for the senior executive to demonstrate cultural capability—particularly because proposed bill talks to the senior executive driving that from their business unit—I definitely would expect that that would be something that the senior executive would, I guess, roll out in terms of their performance. So it would have a broader impact on non-SES members.

MS TOUGH: Thank you.

Mr Young: I support the comments here. If you consider the definitions that are provided in the bill call for significant changes to be made, albeit in the continuous improvement spectrum within the administrative units that the SES have responsibility for, I think that requires SES to make change. That change would impact the way that their staff and their teams are doing business. I think it is that requirement that would bring the consultation provisions of the enterprise agreements into play. So, yes, is the short answer to that question.

MS TOUGH: Perfect. That follows on to the next one I was going to raise. Under the enterprise agreement, there is a clause that mandates CMTEDD undertake consultation with staff prior to the finalisation of any significant changes or any new provisions in the PSM Act. Would this bill represent a change significant enough to require consultation under this clause?

Mr Young: I think the changes that would need to be made in order to fulfil the obligations placed on SES in that bill would require change to a whole range of work practices—employment principles, recruitment, selection processes et cetera, et cetera. They would all be significant changes of the type contemplated in the enterprise agreement.

MS TOUGH: If government were to undertake this consultation with the ACT public service on these changes, how long do you think that would take? How long does a consultation period often take for significant changes?

Mr Young: It depends on the scope of the change—so how extensive, how wide a category of the workforce is affected. I think the changes here contemplate some very local changes that could be done relatively quickly and others that are more complex and would involve engagement with multiple unions across multiple work sites. We will look up and advise what the minimum standard period for that engagement is.

MS TOUGH: That would be useful. While you look that up, Mr Young, in the interests of time, my next question is: do you expect the consultation may provide useful feedback in ensuring changes to the PSM Act are effective at delivering the desired change in the specific context of the public service?

Ms Leigh: Of course. The experiences of our staff are experienced on the ground and they will understand the implications of things in a much more practical way than might otherwise be realised—so absolutely, yes.

MS TOUGH: Is that consultation and that feedback likely then to lead to potentially needing to amend the act or is it more the act is amended, then there is the consultation and then you work out how to implement?

Ms Leigh: I am sorry; the answer sounds like it depends. I do not know whether Mr Young wants to say anything further on that.

Mr Young: Again, it is difficult to speculate given the final form of the bill is not yet settled, but the enterprise agreement consultation would mostly be activated in the implementation of change arising from the bill rather than the specific content of the act once amended.

MS TOUGH: Do you happen to have that minimum consultation period?

Mr Young: Any moment now.

MS TOUGH: Thank you. I am happy to come back to it when you get it.

MS CARRICK: I want to ask about consultation. Is there a definition of what consultation means in the ACT government? Under the Planning Act, you just ask for submissions; you do not actually have to talk to anyone.

Mr Young: The enterprise agreement is quite prescriptive on the consultation.

MS CARRICK: Is it? So you have to actually talk?

Mr Young: Yes.

MS CARRICK: Okay; interesting. Different strokes for different directorates. That was just a point that consultation is different in different directorates.

Back to Ms George and Mr Moyle: the government submission suggests that passing this bill could somehow increase the cultural load for Aboriginal and Torres Strait Islander public servants. Have you two, as Aboriginal SES officers, ever raised concerns about cultural load, cultural capability or cultural safety or being made aware of such concerns being raised by other staff members?

Ms George: I am happy to take that. Part of my role in the Cultural Transformation Branch is to enhance cultural safety and increase cultural capability. I support individual staff or directorates with concerns around cultural safety or I might provide advice on inclusive recruitment or providing culturally safe recruitment processes, and I do work quite closely with directorates when there are scenarios that occur.

In the role that I am in, I experience some load but my load is very different to others across the service. When you increase cultural capability, you increase cultural safety. You would hope that, by having a focus on cultural capability, there is an increase in cultural safety across the service. But that would take some time, because everyone is at a different stage of their own cultural capability. So I would just kind of caveat that with that. But, when you increase cultural capability, broadly, I would expect cultural safety to increase.

That is why we have created the cultural care plans and the resources, because people need to understand what cultural safety is, how to provide it, how to talk about it and how to actually engage with the Aboriginal and Torres Strait Islander staff about what cultural safety means to them. Under the definition in the National Closing the Gap Agreement, cultural safety is unique to that individual.

MS CARRICK: Thank you.

Mr Moyle: Would you like me to respond to that?

MS CARRICK: Yes, Mr Moyle.

Mr Moyle: OATSIA has been involved in working with Natalee George and the Cultural Transformation Branch. Yes, I am aware and, yes, OATSIA has raised concerns. I want to give a bit of a shout-out to the work that Natalee has done, because the Cultural Load Matrix is a fantastic tool. The challenge for us is how we actually ensures that the supports are there. From an OATSIA perspective, and certainly from the conversations I have had with Nat and others, we tend to operate in the extreme range.

I want to preface that as well, though, because, as Natalee said, people talk about cultural load and they talk about colonial load. There have been a number of times I have had people say that the load comes from the community. The load does not come

from community; the load comes from being the interface with government systems. That is the colonial load—trying to bring that lived experience, the expertise, not just as an individual but as a business area, and creating the pathways for community to have their voices heard and participate in that shared decision-making, but also trying to navigate government systems to ensure that we are actually delivering on the intention and agreements made by the executive government. That is where the load sits.

MS CARRICK: What sorts of issues get raised and what kinds of responses do you receive when you raise those concerns internally?

Mr Moyle: I am probably going to struggle to answer that; I do apologise. I might defer to Nat.

Ms George: Some of the types of things could be around an individual's experience in a workplace and then not understanding where to go to ask for assistance. Sometimes that is around performance and sometimes that is around advice around cultural debriefing or what is called or cultural supervision or one-on-one cultural supports. The Yarning Brew Network, led by Mark Sanderson, instigated coffee catch-ups for Aboriginal and Torres Strait Islander staff to come together and also instigated the concept around yarning circles and healing circles.

Often we all get asked advice from directorates who might be experiencing cultural safety matters around what cultural support they could provide. That is sometimes what I provide advice on. Or, as I said, it is around recruitment or how someone might deal with a particular issue they are facing in their workplace.

Mr Moyle: I might add to that as well. Cultural support is one thing but, if the situation does not change, if the circumstances that have actually created it—that is in the definition of “systemic discrimination”, as contained under the National Agreement or as aligned to the National Agreement and advocated by the Human Rights Commission—does not change, then you can put the band-aids over but the wound does not get repaired.

MS TOUGH: In response to the Productivity Commission Closing the Gap review, the ACT government agreed with Essential Action 3.5. How does Mr Emerson's approach in the bill differ from the approach the government had envisaged?

Ms Stephen-Smith: I think it is fair to say, Ms Tough, that we had not commenced drafting yet. Our intention was to implement Essential Action 3.5 when we had some other amendments to the PSM, the Public Sector Management Act. So I am not sure that we could say we have given detailed consideration to exactly what the drafting would have looked like. Having had a look at it, I think Mr Emerson's amendment to apply the principle to SES officers only is a good starting point. I am not sure that I would have chosen to make it an extra principle. Having said that, I think if we were doing this work, we probably would have had a look at the whole section 8 and potentially restructured the whole section to flow better and to put things in the right place.

Personally, I think the best practice principle actually duplicates the public sector values

by which all public servants must and must not. So I am not sure that the best practice principles are actually useful or used beyond the public sector values. So I probably would have actually looked at the whole section. The Public Sector Management Act does not sit in my portfolio, by the way; it belongs to the Chief Minister.

What I am saying is that we support the principle and, if we are going to do it this way, then that is fine; we can do it this way. But it reflects the structure of an act that we probably would have looked at a bit more deeply to say, “Does this whole section remain fit for purpose, and how can we restructure the section and think about all of the responsibilities of the public service and our senior executive service while we are doing this work?” For example, we have a Disability Inclusion Act, we have a Carer Recognition Act and we have a whole lot of other obligations on the public service that have come into being through other acts. Would we have wanted to reflect those things in some ways as well or would we not? It is an open question. I have no fixed view on that. But those are the kinds of things we would have considered if we were sort of starting from scratch in implementing Essential Action 3.5 as part of some broader work.

MS TOUGH: Thank you. Following on from that, does this approach, including the proposed amendment, differ from the Queensland model that was cited by the Productivity Commission?

Ms Stephen-Smith: The approach in the original act certainly does. It is much broader. I think, roughly, it is aligned. I think there has been some conversation with Queensland about their proposal—so I might go to Mr Young.

Mr Young: I think the amended version as proposed, which would apply only to the SES, is closer but it does still vary. The Queensland model places the obligation on the entity or, in effect, the DG of that entity. It does not have the same compliance implications that the private member’s bill has. So there are still some significant differences. I think the government submission highlighted that Queensland model and the Productivity Commission’s recommendations that underpinned it as being ones that we would have regard to in making recommendations. Just while I am speaking, I can provide the answer to that other question.

MS TOUGH: That would be great.

Mr Young: The minimum period of consultation would be no less than two weeks. But, as I said, that would be for a narrow, low impact.

MS TOUGH: Thank you.

MS CARRICK: There is a saying that, “Don’t let the perfect be the enemy of the good”. I think that is the right way around.

Ms Stephen-Smith: Yes; unless you are the Chief Minister.

Mr Moyle: It works both ways.

Ms Stephen-Smith: It works both ways; that is right.

MS CARRICK: Your submission calls for debate on the bill to be deferred, but you also say that you support the principle of it. Sure, you would have drafted it differently, but it does the job at the moment. There are always opportunities in the future where omnibus bills are done and things are tweaked. The issue is that it does the job and, having said that, it could be debated and passed. Do you know what I am trying to say? I haven't verbalised a question, but you know what I am getting at.

Ms Stephen-Smith: I would be very happy—probably the public servants are not going to be so happy—to see this bill debated before the end of this year, and I am absolutely confident that it will pass the Legislative Assembly. As I said, the government, the Labor Party, absolutely supports the principle, and we will make it as good as we can, in consultation with Mr Emerson and taking into account any recommendations from the committee and the feedback that we have had through submissions. We will work as fast as we need to to align with the Legislative Assembly's timeframe—over which, again, we have no control.

But the committee still needs to consider the submissions, hearings and report and give time for Mr Emerson and potentially the government to respond to that report, and I just do not think that that can be achieved by the time that Mr Emerson's current slot comes up in before the end of this month. But, again, it is up to the Assembly how it organises its business. If the mood of the Assembly is that we want this debated by the end of the year, the government has no issue with debating this by the end of the year.

MS CARRICK: Okay; thank you.

THE CHAIR: Excellent. On that note, the committee would like to thank the minister and all officials for attending today's hearing. I am not sure if there were any questions taken on notice, but you all know the procedure is to get your answers back to Hansard five days after receiving the uncorrected proof. Thank you for attending.

Short suspension.

EMERSON, MR THOMAS, Member for Kurrajong, ACT Legislative Assembly
McGRADY, MS PAULA, former Deputy Chair, ACT Aboriginal and Torres Strait
Islander Elected Body
TONGS, MS JULIE, Chief Executive Officer, Winnunga Nimmityjah Aboriginal
Health and Community Services

THE CHAIR: Good afternoon and welcome to the final session of the Standing Committee on Public Accounts and Administration's hearing into Mr Emerson's Public Sector (Closing the Gap) Amendment Bill 2025. I thank Mr Emerson for attending today and welcome Ms Tongs and Ms McGrady. Please note that, as a witness, you are protected by the parliamentary privilege and bound by its obligations. You must tell the truth. Giving false or misleading evidence will be treated as a very serious matter and may be considered contempt of the Assembly. Mr Emerson, would you like to start with a short statement before we go to questions?

Mr Emerson: Yes; thank you. I thank committee members, and especially thank Ms McGrady and Ms Tongs for joining us to provide evidence today. They have asked whether I could offer an opening statement. There is a bit of detail in it as I would like to have the opportunity to respond to the government's submission, and then they could add their contributions.

The big picture is that we are not asking the government to adopt a new policy position but to follow through and be accountable to the policies they have already adopted. The bill does that by embedding closing the gap as a whole-of-government priority, with all senior public servants taking responsibility for that, which should be, as the Productivity Commission has made clear, reflected in their KPIs and employment requirements, to actually get the change that has been committed to through multiple agreements. Why now? There is an urgent need for more accountability. There have been agreements, reviews and reports, many of which have said the same thing, and the statistics show that the commitments made through the national agreement have not been fulfilled and that it is having an impact.

The gap remains wide in the ACT. Aboriginal and Torres Strait Islander children are 12½ times more likely to be in out-of-home care than non-Indigenous children in the ACT. Aboriginal and Torres Strait Islander young people are 14.3 times more likely to be in youth detention. Aboriginal and Torres Strait Islander adults are 22.3 times more likely to be incarcerated, and this is the largest gap in the country. Forty-eight point six per cent of Aboriginal and Torres Strait Islander homelessness services' clients are experiencing persistent homelessness in the ACT, which is also the highest rate in the country. And only 24.1 per cent of Aboriginal and Torres Strait Islander children in the ACT are developmentally on track in all five domains, compared to 43.8 per cent of non-Indigenous children. This is the second-lowest rate in Australia and has decreased from a rate of 41 per cent in 2009, while the closing the gap target is 55 per cent by 2031. So there are real consequences to inaction.

A fair bit of the testimony provided today has been in relation to when this bill needs to be debated. There are human consequences to not passing this piece of legislation urgently. There is a human impact on the people represented by those statistics—the people living in the gap—and on Aboriginal and Torres Strait Islander staff, as we heard from the most recent witnesses.

The committee has, of course, read the submissions. Fifteen of 18 of the submissions call for the bill to pass without raising any concerns; they are entirely supportive. I note that includes the Productivity Commission, which made the recommendations that the bill is based upon. Multiple submitters note the overwhelming level of support for the bill from our local Aboriginal and Torres Strait Islander community, including the Elected Body. In their submission, ACTCOSS said:

... the Elected Body's recommendation to pass the Bill is not just a policy suggestion—it is an expression of the leadership role already recognised in ACT law. By listening to and acting on this advice, the Assembly has the opportunity to give meaningful effect to its own commitments. Passing the Bill would not only support self-determination in principle but demonstrate it in practice.

If you look at the open letter which was included with my submission, combined with all the other submissions, a total of 35 Aboriginal and Torres Strait Islander community leaders have publicly indicated their support, including multiple current and former members of the Elected Body, Ngunnawal elders, and over 10 Aboriginal-led organisations, both local and national. The bill is also supported by two former ACT Chief Ministers, one Labor and one Liberal, plus a former Independent ACT health minister, so we have someone sitting in the middle as well. I have even received a letter of support from Emma Rawson-Te Patu—who is a proud Maori woman and President of the World Federation of Public Health Associations—which I would like to table for the committee's benefit.

THE CHAIR: That has been received.

Mr Emerson: Thank you. I found the ACT government's submission a little bit confusing. This has been reflected in some of what the committee members have asked questions about today. To me, the government's position is still not entirely clear. They start by calling for debate to be deferred so they can prepare amendments in partnership with the Aboriginal and Torres Strait Islander Elected Body, the broader Aboriginal and Torres Strait Islander community, ACTPS employees, and unions, but today both the Elected Body and the other witness representing the Aboriginal and Torres Strait Islander community have indicated they are not supportive of deferring the debate and that they have not been consulted in the 3½ months since the bill was introduced.

Further, the government's submission does not offer a clear set of recommendations, as Ms Carrick has pointed to, as to what the amendment should actually be. The government indicated earlier today that they would have drafted this bill differently if it were up to them. It was up to them. The reason we are here is that they did not draft it. I would also note that, in its submission, the Productivity Commission has, as I have said, indicated support for how this bill has been drafted. That is an important point.

My office and I have repeatedly engaged with the government and offered to work collaboratively on constructive amendments, if needed, to pass this bill. Their request for more time is galling, frankly, in the face of the Elected Body's submission, which states:

Time has become a weaponised currency in the ACT Government's slow response to the needs of Aboriginal and Torres Strait Islander peoples.

The clearest case the government makes for a specific amendment is for the closing the gap principle to apply only to SES members to begin with. As the committee knows, and as the minister acknowledged earlier, I have already prepared an amendment which would give effect to that and provided it to all parties in the Assembly prior to this inquiry commencing. They have also called for a delayed commencement date, which is perhaps understandable and I am open to it, although I imagine that Aboriginal and Torres Strait Islander community members would find it incredibly frustrating, given the government first saw the Productivity Commission recommendations that this bill gives effect to last February and agreed to them last June, and that those recommendations are intended as a way of getting governments on track to implement the national agreement. They are not entirely new ideas; they are just saying, “These are the things you need to do to actually follow through with the agreement you signed up to five years ago.” In other words, the preparatory implementation work needed to give meaningful effect to the provisions in this bill, which has been a topic of conversation today, should have commenced five years ago when the agreement was signed.

The submission makes two contradictory points. Mr Milligan, I think you picked up on this during the government’s appearance. I know I am speaking a lot, but I think it is important to cover off on these points, if that is okay. The two points are: one, a lot of work is already underway that is relevant to this bill; and, two, the government is not ready for the passage of this bill. For instance, in its submission, the government asserts:

... the Bill has been introduced without sufficient understanding of the work already underway to support implementation of Essential Action 3.5.

But in the whole-of-government annual report on the National Agreement on Closing the Gap—mentioned earlier by Minister Stephen-Smith—which was tabled in the Assembly on 25 June, which is the day before this bill was introduced, Essential Action 3.5 from the Productivity Commission review is only mentioned once, where the government says:

This has not been implemented yet.

The ACT Government has agreed to this essential action, consistent with the details identified by the Productivity Commission.

So, if there is extensive work underway already, why was that not reported on in the annual report, delivered the day before this bill was introduced?

The government submission also claims that Essential Action 4.3 is already given effect through the annual reports directions—this is the other essential action this bill gives effect to—but Essential Action 4.3 is also mentioned only once in the government’s annual report on the national agreement, from 25 June this year, where it says:

This has not been implemented yet in accordance with the Joint Council agreed position.

It notes:

Some work has progressed in terms of requiring each directorate to include a statement but further work to meet stated requirements is needed.

Later, it says:

The exact criteria that the Closing the Gap statements must meet should be designed by Aboriginal and Torres Strait Islander organisations and peak bodies ...

which is what this bill requires.

This final point is key. The Elected Body's submission indicates—and the government submission seemingly overlooks it for some reason—that this bill would amend the Annual Reports Act to require the government to report, in a format agreed by the Aboriginal and Torres Strait Islander community, via the Elected Body. That is not something that has already been done with the annual reports directions. Without it, the risk is that we continue to see what the Productivity Commission describes as “laundry lists” of what the government is already doing and reporting that do not reflect genuine shared decision-making, which is core to the national agreement.

I am open to sensible amendments. I have already shown that. I am happy to prepare them myself if I need to—I have probably done that—but now is not the time for further delay. It is time for urgent action and real accountability. In my view, it is disappointing that, in their submission, the ACT government have sought to delay debate on this bill. Indeed, there is very little evidence that giving the government more time, in and of itself, is likely to lead to better outcomes. In this context, the final reflection in the government's submission is telling, where they state that the objectives of the bill “could be achieved in a way that is less onerous”. Why should that be our aim when the gap remains as wide as it is here in the ACT? The feedback I have received is that it would be deeply harmful to the Aboriginal and Torres Strait Islander community in the ACT if the Assembly agreed with the ACT government's suggestion that the best approach is to kick accountability further down the road and delay debate on this bill.

Given the requirements in the bill to promote cultural safety that we can legislate this month, I imagine it would be harmful also to people like Mr Moyle, the head of the ACT Office of Aboriginal and Torres Strait Islander Affairs, who disclosed to this committee—and it was a very courageous disclosure—that his current workplace is the most culturally unsafe he has ever encountered.

I will pass to Julie for her to share her reflections.

Ms Tongs: I acknowledge that I have read and agree with the privilege statement. I also acknowledge the chairperson, James Milligan, as well as Fiona Carrick, Caitlin Tough, and, of course, Thomas Emerson and Paula McGrady.

I will read an extract from the Social Justice Commissioner's report, when Mick Dodson was the Social Justice Commissioner. To me, this says absolutely everything about the way we feel on the ground. He said:

We cannot afford to keep drifting ...

In part the unfinished business is the myriad of reports, commissions, inquiries and studies we as a nation have conducted over decades. We've had health reports, housing reports, education reports, welfare reports, community violence reports, law reform reports, economic development reports, employment and unemployment reports, Social Justice Commissioner reports, death in custody reports, the taking of children away reports, the list is almost endless... and on top of this we've had assessments, evaluations, pilots, trials, umpteenth policies and policy approaches. And all of this paperwork would comfortably fill a couple of modest suburban libraries. And, it's on the shelf where most of them have stayed. They've stayed there unread, unfinished, their recommendations unimplemented, and they're very much unloved.

That is how we feel. I am not prepared for us to continue like this—for the government to constantly kick our issues down the road and prolong and prolong and prolong. The more they prolong it, the more likely it is not going to happen. It is time for action. We do not need any more reports or reviews. The government have had ample time. They signed this agreement six years ago. What have they done in the last six years?

Mr Emerson put the amendment to the Assembly 3½ months ago and there has not been any consultation. They are more worried about consulting with the unions than they are worried about consulting with our community. Every time something comes up around First Nations' issues, it is always put in the too-hard basket. It is my hope that we can actually now move on it and that the debate happens. If the government think that the date that is set down for the debate is too soon, then maybe one of the government people will change and go with Mr Emerson, so that we can extend it out a couple of weeks or a month. Thank you.

Ms McGrady: I acknowledge the privilege statement. If this bill is delayed in any way, shape or form, it can absolutely be very harmful to people we represent in the community—the very disadvantaged in the community. As a member of the Elected Body for seven years and being a very strong advocate for our community—not just with the Elected Body but also as a community person, as an Aboriginal woman—I know we are very exhausted; we are very tired. This is a bill that we can all work towards. We need to work towards it together quicker. Think about where the gaps are widening. Think about child development, adult incarceration and out-of-home care. The most saddening part of that is the suicide rate. When I talk about our babies, I talk about all our babies. I talk about our babies that are in other states and territories that are committing suicide.

In my experience, I see that nothing much has moved. Nothing much has moved at all. It has to be more than shared decision-making. It has to be true to the word “shared”. If we do not feel that we have a voice at the table, then how long do we have to wait? How many more babies are going to die? How much more is the gap going to widen? I speak from experience—personal, professional and community experience—and what I am seeing is not moving quickly enough.

I talked ad nauseam about closing the gap and the four priority reforms when I was on the Elected Body. If those at the top do not filter that through down to everybody who makes a decision on our people, we have failed. We have not failed, but the system has failed. The voice of the people right at the bottom needs to matter more than the voice

at the top. If that voice at the top is not looking after the voices at the bottom, the people at the bottom, we are failing.

I am 100 per cent strongly in support of this bill, because we have not had this much attention, where our voice can matter in a space like the Assembly, the local government. We can set a precedent. We can do something amazing. I really hope we do not find any barriers along the way, because we cannot keep having barriers. I am tired; I am exhausted. I am a community person at this table and I am seeing what is not happening. I really want this to be very powerful, and I think it will be. I am thankful for this bill. It is something that we are united on as a community. We need this. This is us, as an Aboriginal community, saying, “This is what we need.”

THE CHAIR: Thank you very much. We will go straight to some questions. Since introducing the bill, what specific issues have you encountered with the bill, and how have you addressed them?

Mr Emerson: The concern that has been raised around the scope of the application of the new closing the gap principle is sensible. The argument that was put to me by some community members, but especially members of the Assembly, was that you could imagine a situation where an SES member might provide a direction to a more junior staff member that could be in conflict with the closing the gap principle, and that junior staff member might then find themselves in a situation of wanting to follow the direction but could potentially be in violation of the new principle if they did follow that direction. I can understand that potential conflict.

It is tricky to balance the desire from the community for all government employees to be bound by this new principle. That was the main issue that was raised on what my amendment seeks to address. There is a potential solution by passing an amended version of the bill, where the scope of the closing the gap principle is narrowed to SES members and statutory office holders, as the amendment would require, but revisiting it, perhaps with a post-commencement review 18 months after the bill commences. We could review the legislation and consider whether it makes sense at that point. There is an opportunity to expand the scope once more to address any concerns that might emerge on the back of it only being applied to around 350 public sector employees who would be bound by that principle.

I note that there are two other existing public sector principles: the best practice principle, to which all public servants are bound, and the merit and equity principle, which applies only to the head of service. That is related to employment—that employment decisions are based on the merit and equity of staff. Of course, the head of service does not make every employment decision, but it is her responsibility to ensure that principle is fulfilled across the service. If we amend it, it would narrow it to the SES. You would have the head of service responsible for the merit and equity principle, the SES would be responsible for the closing the gap principle, and all public servants would be responsible for the best practice principle. To me, that made sense as a constructive amendment to start with, and we can revisit it later.

THE CHAIR: This is the first bill that you have brought forward in this place.

Mr Emerson: Yes.

THE CHAIR: Earlier in her session, the minister said that, typically, you bring forward an exposure draft and then seek feedback and input to make all the amendments and changes before tabling a formal bill. That is how we normally go through the process. It is typically proved to us to be a smoother process, because you can iron out as many of the problems as possible, and then, when you present the bill, you are good to go. Do you think that, if you had the time again, you would do an exposure draft and iron everything out so that it does not create tension and does not create the burden on the community to have to appear at a committee and give evidence? All that could have been ironed out first and we could get on with the bill.

Mr Emerson: I would potentially do it differently next time, but I genuinely thought the bill would be uncontentious, given it is based on two recommendations from the Productivity Commission that were already agreed to by the ACT government. I am surprised that we are here. I am surprised that we are debating the detail of the bill, when, if you read the recommendations that have been agreed, it has been drafted in a way that is incredibly tight to those recommendations. Earlier, I touched on what the annual report says in relation to the status of those recommendations. I also sought information through the annual reports hearings at the beginning of the year about the status of those recommendations. I have submitted questions, including questions on notice during the estimates process as well, about the status of the recommendations of the Productivity Commission.

So it is not that I have not engaged on the matter. In fact, in March, I believe, or it might have been in February, in an annual reports hearing, I asked the head of the then Community Services Directorate if any legislation was being prepared by the government to fulfill Essential Action 3.5 and was told no, or she was not aware of any. So it is not completely out of the blue. I have done some digging, but, like I said, I thought it would be uncontentious. I actually think it is uncontentious.

THE CHAIR: Yes. The government has raised the concern that it may take time to get everything put in place to implement this bill in the workplace. I have worked with both of you young ladies in the past, having this portfolio of Indigenous affairs, and there have been a lot of times where processes were put in place, and they have not worked out well. And it impacts that community, and then it creates another ball of problems, right?

So, are we of the understanding that it is probably really important to ensure that we get that framework—if that is what they call it—put in place so that the reporting measures are going to be accurate and there is accountability and there is training and there is awareness and there is support and all that to get it right so it does not impact the community as much down the track? My question is: are you supportive of potentially allowing a little bit of time for that development before the implementation of the bill, if it is successful?

Mr Emerson: Yes, I am sympathetic to a delayed commencement. We will see what Paula and Julie have to say about that. I mentioned earlier that there might be some frustration that the government is not ready, given how much evidence they have provided through their submission and the hearing, and they are doing all this work. But, personally, I am sympathetic, and I would rather see it implemented effectively

and through an implementation framework that has been consulted closely on with the Aboriginal and Torres Strait Islander Elected Body. Paula, what is your view?

Ms McGrady: Yes, my view is the same, because, at the end of it, when we talk about everything legislatively, every time we talk government talk, I always think about the people—the people that this is going to most affect. So the more that we can get this, yes absolutely, done the right way, the better, but we have to have a timeframe on this, and we have to make sure that there is an end date there. We cannot leave this open because we cannot afford to.

Ms Tongs: I have been doing this job for 28 years and I have never seen it as bad as it is now. I just find it very distressing, very depressing, and I just feel like all the government does is pay lip service to us. We do not get consulted about changes when they change our contracts and our KPIs or whatever they are. The thing is that we get issued with a contract. We have to meet our KPIs; we have to meet our targets, otherwise we do not get funded. Yet, where is the accountability for governments in all of this? We get whacked with the big stick. We get \$15 million a year to do what we do at Winnunga. We do 100 reports to governments a year—100 reports for \$15 million. That is just outrageous. All we do is report, and then the government says we need more time. We have been here for 250 years. They have had how long to do this?

We need to have our self-determination in all of this. You know, the government gave us \$17 million—between the Commonwealth and the ACT—to build our building in Narrabundah. We managed that build. We worked on a construction site. We came in on budget and on time during COVID. And yet we are not trusted. I do not feel we are trusted with a budget. We should be determining the priorities. It should be about how we do that with the clients that walk through our door—how we determine that. We need to be able to co-design, but we are powerless. The government has the power, we do not. And we talk about co-design and working together and everything, but at the end of the day, there is a rule of power, and we are never going to have that same level of power, but there needs to be accountability mechanisms in place to hold these governments responsible. Do not sign up to agreements if you are not going to deliver.

I am over it. There is a report for everything; there is a plan for everything; there is a strategy for everything. And you just get through one that has not been implemented, and they are rolling out the next one. It needs to stop. We want action. If you are going to implement one thing, implement the Closing the Gap agreement and stop all these other reviews, reports and consultations. We are consulted to death. We are over consultation. We want action.

MS CARRICK: The government does support the bill in principle, as the minister said, and they appear to have really quite minor changes. When asked, they said that it was about having the name of the documents in the bill because they might change in the future. These are very minor changes, so do you think you would be able to work with the government in a timely way to make a few tiny tweaks and have it come to the Assembly for debate?

Mr Emerson: I think so. I have indicated that both to them and also to every other member of the Assembly who has shown some interest in the bill. As mentioned earlier, I have already prepared an amendment to address concerns raised by others. I think it

would be a mistake to remove the reference to the national agreement from the bill. The minister earlier mentioned model consultation on the Disability Inclusion Act, a bill which was introduced by Suzanne Orr last term and came into effect, I think, this year or last year. That refers directly to the National Disability Strategy, so it is another example of a piece of legislation that is dependent on a national strategy document. And the difference with the national agreement is the significant governance framework and, already, consultation has been discussed that is around that. So I think it would be a mistake to amend that now; there is quite a lot of power in keeping it in.

MS CARRICK: You could leave it in there and then just put in a comma and “or subsequent documents”.

Mr Emerson: And there is a line in the bill that references that any replacement agreement is captured by the legislation that is drafted. And I would also note that the specifics of the Productivity Commission recommendation were that we are following the Queensland model and that:

The Australian, territory and other state governments should ensure that the employment requirements of all public sector CEOs, executives and employees require them to continually demonstrate how they have sought to—

And one of the items is “support the principles outlined in the National Agreement on Closing the Gap”, so it is reflective of the Productivity Commission review as well.

The short story is that, okay, we can work on a delayed commencement date. We already have an amendment to reduce the scope to begin with, and then a post-implementation review to consider whether that scope reduction made sense and if there is anything that needs to be revisited. Those are three things that I would be quite open to working with, and I am happy to bring the amendments myself. I think it would be damaging, though—and we have heard that from both Paula and Julie and other witnesses today—to defer the debate and not get this passed when there is so much community support from our local Aboriginal and Torres Strait Islander community.

MS CARRICK: When you talk about delayed commencement—and Ms McGrady said we want to have a date so it is not off in the never-never—what sort of a delayed commencement date would you consider?

Mr Emerson: I think there is merit in the 1 July 2026 date that you have mentioned today, just to align with other reporting requirements and so on. That seems reasonable. It is plenty of time. And as has also been discussed, this is not about suddenly bringing something in that is used to whack all the public servants in the head who are not fulfilling the principle. That is why it is a new public sector principle. There are public sector values and there is a public sector conduct section in the Public Sector Management Act. The reason that this is drafted as a new principle is it indicates continual improvement and uplift of the entire public service. Yes, there is an accountability piece to that, but it is not focused primarily on whether an individual is being racist or not. Their responsibility is to work correctly and be able to demonstrate that they are working on eliminating institutional racism within their administrative unit, just as one example.

MS CARRICK: You mentioned continuous improvement just then. If the processes and tools—the implementation that the government puts in place—is not perfect on day one, are you willing to accept that and work with the processes being improved over time after 1 July 2026?

Mr Emerson: I think so. I do not see this bill as fixing everything, but it does give members of the Assembly, but, more importantly, members of the community, a clear legal obligation to point to when they get feedback, or, where there are also members of the public service, feedback from senior officials who say, “Actually, that is not really my responsibility,” or what is the consequence if this takes another three months for us to commence, say, phase 3 of the ACT agreement, which you also asked about earlier. It gives a clear hook for community members to have some real accountability. And I would expect continual improvement along the way. I do note a response to an estimates question taken on notice from the Chief Minister, where he indicated that there is currently no mandatory whole-of-government training on cultural capability or systemic racism specifically. Training will not fix everything, but there is a pretty clear starting point there that I think the government could have implemented—and probably should already have implemented—to start giving effect to this.

MS CARRICK: I assume that, once they start, lessons will be learned and they will improve the training as they go.

Mr Emerson: It is about making it a clear focal point and requirement to begin with for senior executives, saying, “This is part of your job, and this is not something that is optional—that it is only the responsibility of the Office of Aboriginal and Torres Strait Islander Affairs, or the Cultural Transformation Branch and CMTEEDD,” who provided evidence earlier. They are clearly doing a lot of work in this area. But it is saying that there has to be system-wide change, and that is only possible if the individuals who are system-wide are responsible for that and see it as part of their day-to-day work, not something that is optional.

MS CARRICK: Have you worked with the minister’s office to sort out any of the issues they might have?

Mr Emerson: We have engaged and indicated a keenness to work together collaboratively and address any issues. As I said, we have already prepared one amendment on the basis of that. I have provided my response today to the government’s submission—which I only saw last week—which raised the other issues, but those issues had not been raised with us. Actually, the delayed commencement had been raised earlier, and I believe that in a conversation I indicated an openness to that. The reason there is not a delayed commence built into the bill is that we did not know when it would be debated. It was hard to determine when this is going to be passed to set the timeline for when it made sense to commence. But I kind of anticipated that that might be brought forward as a potential amendment.

MS CARRICK: Okay, thank you.

MS TOUGH: Just going back to the naming of the national agreement in the bill, I think what the minister was trying to say was that, in the annual reports section of the

bill, it was about the specific clauses—the numbered clauses—being named. I think the concerns being raised by the minister, were around how a specific clause is mentioned. I guess maybe rather than saying “the national agreement or subsequent agreement”, it might be “subsequent clause”. I do not know the technical detail, but I think that where she was getting at is in the issues around the names.

Mr Emerson: Sure. I think that it is better legislatively to just remove reference to the clauses. They identify things like the four priority reforms. I think everyone knows what that means when it is referred to. There are only for four priority reforms in the National Agreement on Closing the Gap.

MS TOUGH: Yes, I think it was just technical things there.

MR EMERSON: I do not have an issue with those, but I do think it is important to retain the connection to that agreement.

MS TOUGH: Yes, I do not think there is any debate about the connection. I think it was more the technical issue.

Mr Emerson: Okay, thank you. Sure.

MS TOUGH: That is all right. I wanted to talk about the work being done in the public service, and I appreciate that the amendment on the table is around restricting it to the SES. A lot of the grunt work is done by staff lower than SES, so I am interested how the bill will change the work of the SES and then the extension that has on the work of the entire public service. Do you have an example of the type of situation where the Closing the Gap principle would effect a difference?

Mr Emerson: The expectation would be that SES members, if the amended version is passed, not only demonstrate cultural capability in their own work but develop the cultural capability of the administrative unit that they work in; implement the principles of the national agreement in their own work; and work to eliminate institutional racism. There would be a responsibility for this to be happening across the service. That is obviously going to have an impact—we would hope that it would have an impact!—on other public servants, but if there is a concern raised about the requirements not being fulfilled, the legal responsibility sits with the manager, the person in the decision-making position, as opposed to the junior staff member following instructions.

If this bill is passed—and I think Paula touched on this—we think that this can be a really positive thing. This is about empowering government officials to play their part in delivering on the promise to close the gap in their work, and making it clear what that actually looks like. So, developing cultural capability means being supported by your employer to develop that capability in order to be able to work confidently cross-culturally, and create an environment of cultural safety both in the workplace and then also in the provision of services that are available to community members.

Promoting cultural safety is using that cultural capability, again, to ensure that all fellow public servants are able to work in an environment and those services are culturally safe and, importantly, responsive to the unique needs of Aboriginal and Torres Strait Islander people. We know that currently that is not the case, as evidenced by the data.

An individual does not need to be racist—individually racist or overtly racist—for a system to produce racist outcomes. And these gaps are not small deviations, they are massive gaps, and that is a clear indication that current services are not catering to the unique needs of Aboriginal and Torres Strait Islander people.

When it comes to eliminating institutional racism, that means critically engaging with the work one is doing to ensure that you are not perpetuating a system that perpetuates that disadvantage, and actually knowing that you can, as an individual, push back when decisions are being made that have those kinds of consequences. For instance, Julie has mentioned the example of funding and acquitting funding in a way that actually does not align with the commitment to self-determination, which is one of the key principles, of course, of the National Agreement on Closing the Gap. It might be helpful, though, if Paula and Julie speak about culturally safe service provision and the lack thereof in your relevant sectors.

MS TOUGH: Yes. Can I just add—and it might help with answering the question touching on what Ms McGrady said earlier—can you give an example of how you see this making those on-the-ground changes? What on-the-ground changes do you hope will come from this?

Ms McGrady: In answering that I think we would expect that all public servants would be doing these things now. I think for us it is about seeing transparent accountability and care and attention to those issues around racism—those issues around where we are lagging in closing the gap. There is an expectation, yes, that everyone should go to work, feel safe, culturally safe—all of that—but it just means that the introduction of this bill will mean that transparent accountability.

MS TOUGH: Did you want to add anything, Ms Tongs?

Ms Tongs: Yes. I think the question that was asked to Mr Moyle today, who is a First Nations SES officer, is a prime example of institutional racism—him feeling culturally unsafe in the workplace. He is a senior public servant, and he feels like that. Imagine what his staff underneath him and the rest of the staff feel. I know that I feel it all the time. When I meet with people you can tell their body language—their demeanour. It is awful and I very rarely sit in meetings anymore.

I have just got so much to do at Winnunga--trying to hold it together, trying to hold our families together, trying to make sure that we are compliant with our contracts, with our funding, with everything else—that we do not get time. This is the second time in 28 years that I have been to an Assembly inquiry. I do not have the time. There are two of us at Winnunga that do the work around the advocacy, the media—and it is myself and Jon Stanhope. I do not have sections and branches, you know. I do not have all these people to support us. I have my EA.

THE CHAIR: You are on *Hansard* now.

Ms Tongs: This is why I do not understand why it takes so long. The thing for me is that policy is driven from the bottom up but when you get to the top it is up to them to implement—and I am not just talking about senior bureaucrats, either. Where is the Chief Minister in all of this? I feel that the Chief Minister has a responsibility to take

action, or to make a statement, or to do something, and that has never ever happened in this space.

I am not a supporter of reconciliation—I call it, “Hug a Blackie”—because I think that it has lost its meaning. When Senator Patrick Dodson, was the chairperson of reconciliation, it was true reconciliation. As soon as it became corporatised, it lost what the intent was and now we have a Reconciliation Day and all of this. That is to make, I guess, the politicians and others feel good about themselves; it does not make me or my community feel any better about ourselves, because our people are still dying in custody, our babies are still dying, and our kids are being removed. Not a lot has changed; it has actually got worse, and we need leadership, and we need it now. We do not want to have to wait another five or six years and have this conversation again. I will not be around in five or six years—I will be long gone—but at the end of the day, I hope that this happens in my lifetime.

Mr Emerson: Can I try to be helpful?

MS TOUGH: Yes.

Ms Tongs: Sorry.

Mr Emerson: No, I am not saying you are not being helpful! “Can I try to be helpful?”—I mean, come on, Julie! In responding to the question about what is the change on the ground, in my submission I have mentioned some of the stories that have come to me that I think are indicative of the lack of cultural safety in service provision.

One example is an Aboriginal woman who had contacted me. I had a meeting with her, and she said that she had suffered through years of abuse and control in a romantic relationship. She had feared seeking support because the government might take her children—of course, there is a unique historical context to that fear—so she did not seek support for many years, and when she did seek support, the government did take her kids. The kinds of fears that can emerge—that is my understanding; you are the experts—include not seeking support from government services for fear of the government treating you differently. Those are perhaps justified fears because of historical circumstances and ongoing injustices and differences, whereas I have never feared contacting the government for help. I have never thought, “If I call the police, will they think I am the perpetrator instead of the victim?” These are not things that are in my in my psyche, but they are.

Another example that Julie shared is the young Aboriginal man in the Alexander Maconochie Centre being asked through the cell window to try to resuscitate his cellmate, who was also his cousin; and after his cousin’s death—resuscitation was unsuccessful—being moved to the cell in which his uncle died. That is pretty traumatic, regardless, but in terms of having specific spiritual beliefs in relation to deceased family members, I think it is particularly unsafe culturally. So those examples abound, but they can be hard for people like me to come up with because my experience is just free of them.

MS TOUGH: I appreciate you putting those experiences on the record. Yes, it is very much appreciated. Just following on, what do you think the government could do to

support effective implementation of the bill, and do you conceive of any risks should the bill commence without an implementation plan in place?

Ms Tongs: Well, I think that it needs to be debated, and we need to then work out the rest, and it does need to be ready to go on 1 July 2026. I think there has been plenty of time already. If we keep pushing out, pushing out, like I have said, it is never going to happen. The government says “in-principle” support. Well, let us turn that in principle support into a bill.

MS CARRICK: An act.

Mr Emerson: Actual support.

Ms Tongs: An act. That is right—that actually means something. You have all these bills and acts for disability and everybody else. Here we are, the First Nations people, and we have to sit here and justify why we need this bill. This is what I do every day—justify our existence, and why we need this. Others tick the box, and everything happens. We cannot do that. We have to justify our being, every day of the week, and it wears you down.

If it is in an act then people know what their responsibilities are. With racism, with what was happening with the Jewish community and everything else, there was legislation to stop that. Where is our legislation? There is no legislation to stop people being racist towards my mob.

These are examples. As I said, we have to justify ourselves every step of the way. It is like people do not believe us. They ask for our advice; they do not take it. Don’t ask me; if you are not going to take our advice, don’t ask me for it. At the end of the day, I am sick of us providing advice when it is just a matter of saying, “Yes, we’ll tick that box, we’ve been able to speak to her, we’ve validated that we’ve had a meeting and we’ll just go away for the next three or six months and we’ll come back and tick the box when we have to.”

Ms McGrady: It is soul-destroying for us. People talk about intergenerational trauma all the time. We live it. We relive it. We are sick of reliving it. We are sick of our voices not being taken seriously. It is very sad that we are sitting here today, after so much progression, and asking for something that will make it more accountable and more transparent for all of us, and so that our voice does matter. We have to think of our next generation, and that is what we are focused on all the time. If we go down the trajectory of where we are going now, without this bill, what will it look like for the next generation of young people?

All the trailblazers before us played a role in us being able to sit at this table and feel like we are welcome in this space, and for us to feel that, “Yes, you can run for local government.” There is that aspect, as well. That is really empowering, because even though we might not get in, I might get in, and our children see that. Our children think, “Wow! I can do that.” It has to start with something like this. It is so that, if somebody questions something, we can say, “Look, there’s transparency. We’re not hiding anything.” We, combined, and our community, want this, and we know that this could do something really great. We need a chance for it to happen, because if we do not,

what are we left with? We will be going down that same road.

Mr Emerson: The implementation work is really the purpose of the bill. These are commitments that were already made—to develop cultural capability, implement principles of the national agreement, promote cultural safety, and work to eliminate institutional racism. In the national agreement, the third sentence identifies ongoing institutional racism. Priority reform No 3 in that agreement is to transform government organisations.

There are six elements to that, the first of which is to identify and eliminate racism—to identify and call out institutional racism, discrimination and unconscious bias in order to address these experiences. As opposed to simply being the work needed to fulfil the requirements legislated by the bill, that implementation work, hopefully, will be incredibly powerful in fulfilling the agreement that has been committed to.

I will go to the reason that we have not copied the Queensland model directly, where they are requiring all reframing entities—essentially, our directorates—to produce reframing relationship plans, and that chief executives would be responsible for those plans, for auditing them annually and updating them annually. We have already heard today how sick people are of new plans, so we did not want to legislate a requirement for additional plans when we have the Elected Body, and our own ACT agreement, with its action plans. This is about following through on what is already there.

Personally, I think the work that will go into implementation—and I note the Elected Body said earlier that they want to engage in that process—will be a huge part of the uplift and a really positive thing, in terms of the outcomes that we are seeking when it comes to Closing the Gap.

MS TOUGH: With the implementation process, and after the implementation process, once it is fully implemented, it has commenced and everything is up and running, where someone does not meet their obligations under the act—it is found, through a performance process or whatever process is implemented, that they do not meet that obligation—I am assuming that any member of the community could bring forward a complaint saying someone has not met their obligation.

Do you see that being different from where it is made internally in the public service compared to where it is a member of the community? If it is a process where, say, two SES are up against each other in a budget process, someone brings forward a bid for a Closing the Gap proposal, but it does not get up, in the broader picture of the budget process—maybe other Closing the Gap proposals do—do you see a risk in that SES officer having someone complain? Maybe they are trying to do the work and someone else made the decision to stop them. Where do you see it operating in practice? Do you see any risks with it operating in the future?

Mr Emerson: That is a great question. I am sure those conflicts will arise, as they do in government decision-making processes. The existing public sector principle, the best practice principle, requires public servants to behave in a way that is efficient, effective and collaborative. I am sure there are many examples of that principle being violated or decisions being made that do not meet it or where there is conflict. I think the existing act has that general uplift; it is about what our aim is, what our intention is, as a public

service.

Early on—it has not come up so much today, which I think is a positive thing—there were, privately, some concerns raised by some members. If you are promoting cultural safety, cultural safety in the national agreement can only be gauged by the recipient of the service, the Aboriginal and Torres Strait Islander person receiving the service, which is appropriate. It would be pretty rich for me to say that I run a culturally safe office, and Paula comes in and says, “Actually, it’s not,” and I then say, “That’s not up to you.” There is no other way, really, but that might give rise to disputes and misconduct processes.

I sought a briefing with the Public Sector Standards Commissioner about that. He gave me permission to share what he had shared with me. He has read the bill unamended, the original version. He is not stressed at all about the new principle giving rise to an increase in misconduct investigations.

MS TOUGH: That is good, because there is that concern that someone will be doing their absolute best to uphold the principles, and someone is unhappy about or disagrees with what they have done; there are those risks. That could be anyone in any job, if someone is unhappy with what you are doing, obviously.

Ms Tongs: Welcome to our world!

MS TOUGH: We all get it in our jobs, but there is that risk that someone would find another avenue and try to use this in a perverse way that is not intended.

Mr Emerson: If it is used vexatiously, the accountability mechanisms we have in place are able to manage that. His feedback was that when there is any kind of concern raised, the responsible manager would form a preliminary assessment. That could lead to counselling the staff member or performance management. That happens before a formal investigation occurs. Sometimes, even if something goes to him from, say, a community member—because most referrals, I think, are coming from within the public service and they have already gone through a process—he will often say, “Okay, in the first instance, before I investigate, I’ll ask the responsible manager to do their own investigation.” He indicated that, in just under 40 per cent of the matters that come to him, he actually investigates them. In the majority of the misconduct claims that relate to disrespectful behaviour—your boss loses the plot when they should not, and that sort of stuff—they are not a failure to fulfil the best practice principle, for instance. That was reassuring for me.

MS TOUGH: That is reassuring.

Mr Emerson: Equally, it is important to have the accountability and to be able to raise those concerns, which is what is lacking without the bill.

THE CHAIR: That brings us to the end of this session. Thank you, Mr Emerson, for coming along, and Ms Tongs and Ms McGrady, for attending today. I do not think that any questions have been taken on notice. On behalf of the committee, I would like to thank everyone who attended today, through this committee process, and who provided their experience and knowledge on this very important bill going forward.

I also want to thank broadcasting and Hansard for, as usual, the amazing support that they have provided. If any members of this committee wish to put any questions forward, please upload them to the parliamentary portal as soon as possible, and no later than five business days from today. This meeting is now adjourned.

The committee adjourned at 4.44 pm.