



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Legal and Constitutional Affairs Committee

Inquiry into a Process to Review Bills for their Impact on First Nations Territorians

May 2024

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Chair's Preface

On 17 May 2023, the Legislative Assembly referred the matter of a process to review Bills introduced into the Assembly for their impact on First Nations Territorians to the Committee for inquiry and report by May 2024. As set out in the inquiry terms of reference, the Committee was tasked with, but not limited to, consideration of the preferred body to conduct the review of Bills, and a requirement for Statements of Compatibility against prescribed measures of self-determination.

Development of a process to review Bills for their impact on First Nations Territorians was supported and welcomed by all those that made submissions to the inquiry. As the Committee heard, it is consistent with the commitment by all Australian Governments under the *National Agreement on Closing the Gap* to fundamentally change the way policies and programs that impact on the lives of Aboriginal and Torres Strait Islander people are developed and implemented.

As highlighted in this report, there was no clear consensus as to the preferred body to conduct the review of Bills for their impact on First Nations Territorians. Rather, the Committee heard that several different review mechanisms could be effective, and all have their advantages and disadvantages. The inquiry did, however, identify several factors considered to be fundamental to the effectiveness of any review body; irrespective of the form it may take.

While the inquiry provided an opportunity to explore potential mechanisms to ensure the rights and views of First Nations Territorians are taken into consideration when laws are being made, it was evident that progressing the development of a model of legislative review requires further consultation with Aboriginal peoples and their representative organisations across the Northern Territory.

Nevertheless, the Committee has made several recommendations as to how the development of a process to review Bills for their impact on First Nations Territorians might be progressed, and how the Assembly and Government can refine their processes to more adequately take into account the potential impact of proposed legislation on First Nations Territorians.

On behalf of the Committee, I thank the member for Mulka, Mr Yingiya Mark Guyula MLA, for bringing this important matter to the attention of the Assembly. I also thank all those who provided submissions and appeared before the Committee at public hearings. Their advice and commentary was particularly insightful and of great assistance to the Committee. Finally, I thank my fellow Committee members for their bipartisan approach to the inquiry.



Hon Dheran Young MLA
Chair

Committee Members

	Hon Dheran Young MLA: Member for Daly	
	Party	Territory Labor
	Parliamentary Position	Speaker
	Committee Membership	
	Standing	Legal and Constitutional Affairs (Chair) House (Deputy Chair) Standing Orders
	Mr Manuel Brown MLA: Member for Arafura	
	Party	Territory Labor
	Parliamentary Position	Government Whip
	Committee Membership	
	Standing	House Legal and Constitutional Affairs (Deputy Chair)
	Ms Marie-Claire Boothby MLA: Member for Brennan	
	Party	Country Liberals
	Committee Membership	
	Standing	Legal and Constitutional Affairs Standing Committee on the ICAC
		Mr Steve Edgington MLA: Member for Barkly
Party		Country Liberals
Committee Membership		
Standing		Legal and Constitutional Affairs
		Ms Lauren Moss MLA: Member for Casuarina
	Party	Territory Labor
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	Standing	Legal and Constitutional Affairs
	On 24 November 2023 Member for Johnston, Hon Joel Bowden MLA and Member for Fannie Bay, Hon Brent Potter MLA, were discharged from the Committee and Member for Arnhem, Hon Selena Uibo MLA, and Member for Arafura, Mr Manuel Brown MLA were appointed to the Committee. On 31 January 2024 Member for Arnhem, Hon Selena Uibo MLA, was discharged from the Committee and Member for Casuarina, Ms Lauren Moss was appointed to the Committee.	

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Acknowledgments

The Committee acknowledges the individuals and organisations that provided written submissions and attended the public hearings to provide evidence. The Committee notes that their advice and commentary was particularly insightful and of great assistance to the Committee.

Acronyms and Abbreviations

AGD	Northern Territory Department of the Attorney-General and Justice
AJA	Aboriginal Justice Agreement
ALA	Australian Lawyers Alliance
APO NT	Aboriginal Peak Organisations Northern Territory
CLA	Civil Liberties Australia
CLC	Central Land Council
CtG	Closing the Gap
DCMC	Department of the Chief Minister and Cabinet
DITT	Department of Industry, Tourism and Trade
LCAC	Legal and Constitutional Affairs Committee
LDM	Local Decision Making
NAAJA	North Australian Aboriginal Justice Agency
NLC	Northern Land Council
NT ADC	Northern Territory Anti-Discrimination Commission
NTECAA	Northern Territory Executive Council on Aboriginal Affairs
NT Health	Northern Territory Department of Health
PRIS	Preliminary Regulation Impact Statement
RIC	Regulation Impact Committee
RIS	Regulation Impact Statement
RMF	Regulation-Making Framework

Terms of Reference

On 17 May 2023, the Legislative Assembly referred the matter of *a process to review Bills introduced into the Assembly for their impact on First Nations Territorians* to the Legal and Constitutional Affairs Committee (LCAC) for inquiry and report back to the Assembly by May 2024.¹

The inquiry is to consider, but not be limited to:

- The preferred body to conduct such a review, such as a statutory body composed of First Nations Territorians, or an Assembly committee advised by First Nations Territorians, and
- A requirement for a Statement of Compatibility against prescribed measures of self-determination, that will indicate the degree to which the Bill:
 - affirms and enhances the right of the First Nations peoples of the Northern Territory to enjoy, practice and benefit from their traditional law, culture and autonomy;
 - is based on consultation, according to First Nation law and custom, and reflects the principle of free, prior and informed consent;
 - is consistent with the principles underlying the Northern Territory Government's Local Decision Making (LDM) Policy Framework for communities to have control over their own affairs in order to enhance First Nation people's rights of self-governance;
 - is consistent with the Northern Territory Government's commitments to Closing the Gap;
 - is compatible with the United Nations Declaration on the Rights of Indigenous Peoples; and other international instruments to which Australia is a party, including the right of self-determination in Article 1 of the International Covenant on Civil and Political Rights, and Article 1 of the International Covenant on Economic, Social and Cultural Rights.

¹ Legislative Assembly of the Northern Territory, *Minutes of Proceedings*, Wednesday 17 May 2023, <https://territorystories.nt.gov.au/10070/910183>, p.499

Recommendations

Recommendation 1

The Committee recommends that the Government assign the NT Executive Council on Aboriginal Affairs as the lead agency to facilitate meaningful community engagement with Aboriginal peoples and their representative organisations across the Northern Territory on the development of a body, and associated processes, to review Bills for their impact on First Nations Territorians.

Recommendation 2

The Committee recommends that the Legislative Assembly require any member introducing a Bill to table a statement on whether the Bill is:

- 1) Compatible with the rights and freedoms recognised or declared by the following international instruments:
 - a) the International Convention on the Elimination of all Forms of Racial Discrimination 1965
 - b) the International Covenant on Economic, Social and Cultural Rights 1966
 - c) the International Covenant on Civil and Political Rights 1966
 - d) the Convention on the Elimination of All forms of Discrimination Against Women 1979
 - e) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984
 - f) the Convention on the rights of the Child 1989
 - g) the Convention on the rights of Persons with Disabilities 2006
 - h) the Declaration of Rights of Indigenous Peoples 2007
- 2) Consistent with the *National Agreement on Closing the Gap*.

Recommendation 3

The Committee recommends that the Government amend the Cabinet process to include a requirement for agencies to submit an Impact Statement demonstrating how the proposal aligns or does not align with the guiding principles of the Government's Local Decision-Making Framework and Aboriginal Justice Agreement.

Recommendation 4

The Committee recommends that, for transparency and accountability, the Government table associated Impact Statements when introducing Bills in the Assembly.

Recommendation 5

The Committee recommends that, taking into consideration the evaluation of Closing the Gap Impact Statements, the Government:

- 1) Develop training and resources to assist agencies in the development of Impact Statements to ensure Local Decision-Making and Aboriginal Justice Agreement implications are captured and considered appropriately.
- 2) Mandate relevant training for all public servants involved in the development of legislative proposals and associated Impact Statements.

Recommendation 6

The Committee recommends that, in developing the Aboriginal Engagement Model, the Government takes into consideration the evidence provided to this inquiry.

Recommendation 7

The Committee recommends that the Government review agency resources and address constraints that inhibit effective engagement with First Nations Territorians and their representative organisations.

1 Introduction

Background to the Inquiry

- 1.1 As set out in the Terms of Reference, the impetus for this inquiry was a motion moved by the Independent member for Mulka, Mr Yingiya Mark Guyula MLA, which was agreed to by the Legislative Assembly on 17 May 2023.²
- 1.2 Following referral of the matter, the Committee resolved to develop a discussion paper to provide potential submitters with an overview of the Northern Territory context regarding the passage and review of legislation and models of legislative review currently in place elsewhere in Australasia. Tabled in the Legislative Assembly on 26 July 2023, the Committee's *Discussion Paper: A Process to Review Bills for their Impact on First Nations Territorians (Discussion Paper)* incorporated a number of questions relating to the main issues for consideration that the Committee was particularly interested in obtaining feedback on (see Appendix 1).³

Conduct of the Inquiry

- 1.3 On 31 July 2023, the Committee called for submissions by 29 September 2023. The call for submissions was advertised via the Legislative Assembly website, Facebook,  (previously Twitter) and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations to seek submissions.
- 1.4 As detailed in Appendix 2, the Committee received 11 submissions to the inquiry. Following consideration of the submissions, the Committee held public hearings in Darwin on 16 February and 12 March 2024 (see Appendix 3). A supplementary submission was also received from the Central Land Council following their appearance before the Committee at the March public hearings.

Report Structure

- 1.5 Chapter 2 provides an overview of submitter's comments regarding the questions posed in the Committee's *Discussion Paper* and the various mechanisms of legislative review proposed in submissions to the inquiry.
- 1.6 Chapter 3 provides a summary of issues associated with the development of a process to review Bills for their impact on First Nations Territorians that were raised in submissions and public hearings.

² Legislative Assembly of the Northern Territory, *Parliamentary Record Debates and Questions* Wednesday 17 May 2023, <https://territorystories.nt.gov.au/10070/930771>, pp. 6585 - 6612

³ Legal and Constitutional Affairs Committee (LCAC), *Discussion Paper: A Process to Review Bills for their Impact on First Nations Territorians*, July 2023, <https://parliament.nt.gov.au/committees/list/LCAC/IFNT#DP>

- 1.7 Chapter 4 sets out the Committee's conclusions and recommendations as to how the development of a process to review Bills for their impact on First Nations Territorians might be progressed and how the Assembly and Government can refine their processes to more adequately take into account the potential impact of proposed legislation on First Nations Territorians.

2 Models of Legislative Review

- 2.1 The following discussion provides an overview of potential options for legislative review mechanisms as contemplated by the inquiry terms of reference, and submitter's comments regarding the issues raised for consideration in the Committee's *Discussion Paper* (see Appendix 1).

Legislative Review Body – Functions and Form

- 2.2 All of the submissions received supported the introduction of a process to review Bills for their impact on First Nations Territorians. As the Central Land Council (CLC) pointed out:

This inquiry is an opportunity to explore mechanisms to ensure that Aboriginal people's voices are heard and their rights upheld, when laws are being made. It is about making sure the NT's laws work to the benefit, not the detriment of Aboriginal people.⁴

- 2.3 The Australian Lawyers Alliance (ALA) suggested that:

the establishment of a new body and/or process for reviewing Bills to assess their impact on First Nations Territorians is essential. First and foremost, this reform aligns with the Northern Territory Government's Closing the Gap commitments.

Further, since the Northern Territory Parliament is unicameral, the ALA submits that additional oversight, consultation, and review in relation to the impact on First Nations Territorians is crucial – especially in the absence of cross-party legislative scrutiny committees.⁵

- 2.4 Submitters also agreed that all Bills and subordinate legislation should be subject to review. Acknowledging that not all Bills would necessarily have a direct impact on First Nations Territorians, the Department of the Attorney-General and Justice (AGD) and the Northern and Central Land Councils (Land Councils) favoured a two-stage review process.⁶ As the Land Councils suggested:

All bills and subordinate legislation should be subject to initial consideration by the review body as to whether they may directly or indirectly have an impact on Aboriginal people or their country.

Bills and supported legislation that are assessed as having a potential impact would be referred for a full review, and those assessed as not having any such impact would not need to be referred for full review.

Examples of legislation that would ordinarily not need to be reviewed include:

- Bills affecting policy areas where Aboriginal people, as a group, are not significantly interested or disadvantaged (examples could include current bills before the Assembly involving regulation of architects, fuel price disclosure, and the Independent Commissioner Against Corruption).

⁴ Central Land Council (CLC), Supplementary Submission No. 9a, p. 2.

⁵ Australian Lawyers Alliance (ALA), Submission No. 4, p. 5; See also North Australian Aboriginal Justice Agency (NAAJA), Submission No. 6, pp.7-8 regarding unicameralism.

⁶ Department of the Attorney-General and Justice (AGD), Submission No.5, p. 5; Northern and Central Land Councils (Land Councils), Submission No. 9, p.6; see also ALA, Submission No. 4, p. 7 and Aboriginal Peak Organisations NT (APO NT), Submission No. 10, p. 2.

- Bills making purely technical amendments with no impact on Aboriginal people's interests.
- Bills to amend legislation for consistency, as a consequence of the passage of other legislation.

The Land Councils support a model that empowers the review body to also comment on the policy objectives of the legislation, which as the discussion paper notes exists in some other jurisdictions.⁷

2.5 However, concerns were raised regarding the point at which proposed legislation should be subject to review with the North Australian Aboriginal Justice Agency (NAAJA) and the Northern Territory Department of Health (NT Health) of the opinion that the review process should commence prior to the introduction of a Bill into the Assembly.⁸ For example, NAAJA suggested that the review body should:

provide views on policy issues and on proposed law reform at the earliest possible stages of the law-making process and well in advance of the introduction of Bills into the Legislative Assembly. This is critical to ensuring that Aboriginal peoples are not merely heard in relation to Bills introduced into the Legislative Assembly but have the genuine opportunity to influence decision-making in relation to those Bills.⁹

2.6 The CLC also noted that:

Early engagement with Aboriginal people and their representative organisations to inform the design of policy and legislation is essential – and consistent with the Northern Territory government's commitments under the National Agreement on Closing the Gap.¹⁰

2.7 As detailed in the sub sections below, there was no clear preference as to the most appropriate body to review legislation for its impact on First Nations Territorians. Rather, as the Land Councils and others acknowledged, several different models could be effective, and all have their advantages and disadvantages. There was also broad agreement that the development of a review body and associated processes must be achieved in close collaboration with First Nations Territorians.

2.8 AGD also noted that:

Regardless of the model, the underlying question of whether, or how a legislative proposal could directly or indirectly affect First Nations Territorians would require a robust assessment that had the capacity to pinpoint unexpected consequences, advocate for and against those impacts with the use of practical and local knowledge and be backed by data to supplement any knowledge gaps that may have been overlooked within the policy development phase. Such an assessment would necessarily incorporate impacts on CtG [Closing the Gap] commitments, influences on LDM [Local Decision-Making] capacity, and alignment with the AJA [Aboriginal Justice Agreement].¹¹

⁷ Land Councils, Submission No. 9, p. 6

⁸ NAAJA, Submission No. 6, p.14; Northern Territory Department of Health (NT Health), Submission No. 7, p. 1-2

⁹ NAAJA, Submission No. 6, p. 14

¹⁰ CLC, Supplementary Submission No. 9a, p. 3

¹¹ Department of the Attorney-General and Justice (AGD), Submission No. 5, p. 4

Statutory Body

- 2.9 NAAJA and ALA indicated that their preferred approach was for a statutory body composed of First Nations Territorians elected by local First Nations communities. As ALA submitted:

The key to successful outcomes arising from future legislation with regard to the impact on First Nations Territorians is for a body providing advice on the Bills that will become law to be removed from politics, including party politics, as much as possible. While any statutory body would be established by the Legislative Assembly of the Northern Territory, its composition and daily operations should be independent from the Legislative Assembly and government.¹²

- 2.10 Although a statutory body, given its legislative basis, ‘provides a high level of certainty and validity’ as AGD pointed out ‘that status equally influences the ability to refine its role and functions, or to explore alternative options for its ongoing involvement.’¹³ While Mr Guyula MLA, favoured a statutory body, he also acknowledged the potential disadvantages of such an approach:

Ideally, the body must act as a conduit and not assume the authority to speak for all First Nations People but rather take a middle ground cross-cultural role of facilitation. The body should be a safe space where many languages are welcome, and listening is prioritised so that the complex concepts of two world views can be explored and better understood. This will require a flexible structure and approach that can grow and evolve as needed to meet the needs of a new cross-cultural space connecting First Nations People with the parliament. Essentially, this body should be about creating a space for different world views to be conveyed to and understood by the parliament.

There is some risk that a statutory body may be too rigid and defined and could assume the role of speaking on behalf of the people rather than having the flexibility that will ensure that local decision-making and the authority of elders and leaders in our Nations is respected. However, if a statutory body could assume a facilitatory role as a conduit between communities and parliament, the clear benefit would be that it holds an autonomous space from the parliament and the membership could be determined from outside the parliament.¹⁴

- 2.11 Mr Greg Marks also questioned whether a statutory body would be the best option:

The Northern Territory is a unique, large, nuanced, and diverse jurisdiction, especially in respect of Indigenous Territorians. Notably, there is a widespread and strong attachment to traditional law, values, and ways of making decisions. If consultation and engagement is to be meaningful it [the review body] has to accommodate this variety and strength of traditional modes of decision-making.

This is well reflected in the Local Decision-Making Guiding Principles. However, it would be difficult to accommodate this situation in a statutory body, whether elected or appointed. With the best will in the world statutory bodies tend towards inflexibility. It is difficult to envision a statutory body that could respond to the likely wide range of disparate circumstances that may exist in respect of Bills. ... some Bills may be of concern to First Nations

¹² ALA, Submission No. 4, pp. 8-9

¹³ AGD, Submission No. 5, p. 5

¹⁴ Mr Yingiya Mark Guyula MLA, Submission No. 11, p. 3

people Territory-wide, but others may have significant local or regional impacts.¹⁵

2.12 As AGD pointed out, these types of factors would need to be considered when developing the required enabling legislation:

That enabling Act would need to contain provisions that clearly set out membership eligibility, and processes guiding what, and how, the body will consider, and how it would present its findings (and to whom). A broader policy base would need to be developed to support the body, and the Act. Those policies would necessarily entail consideration of how membership would be determined, to ensure proper and full representation of First Nations Territorians, along with the nature, scope, and support mechanisms that would underpin the review process.¹⁶

2.13 While incorporating a broader remit than that contemplated by the inquiry terms of reference, the ALA suggested that consideration should be given to the First Nations Voice to the South Australian Parliament and associated enabling legislation (the *First Nations Voice Act 2023 (SA)*), as a potential model for the Northern Territory. As ALA pointed out:

- a. The SA First Nations Voice is described as “a direct and independent line of communication for First Nations people to South Australia’s Parliament and the government” and is part of the Government of South Australia’s commitment to implementing the *Uluru Statement from the Heart*.
- b. There are two tiers within the SA First Nations Voice: Local First Nations Voices and the State First Nations Voice. Both tiers are described as “independent of control by the Crown or any Minister or officer of the Crown.”
 - i. Local First Nations Voices are elected by First Nations communities and must reflect gender diversity. ...
 - ii. The State First Nations Voice “consists of the joint presiding members of each Local First Nations voice.”
- c. The *First Nations Voice Act 2023 (SA)* outlines the requirements for the Local first Nations Voices and the State First Nations Voice, as well as how the State First Nations Voice can interact with the South Australian Government.
 - i. There is flexibility, however, for the Local First Nations Voices “to decide how it will engage with communities as well as the government agencies the State Voices wants to connect with and the matters they wish to engage on.”
 - ii. The State First Nations Voice is to be notified of the introduction of Bills into South Australia’s Parliament and is entitled to address Parliament in relation to those Bills.
- d. In relation to reporting and accountability: the State First Nations Voice is required to deliver an annual report to Parliament summarising its operations for the previous year, and the First Nations Voice legislation will be reviewed after three years of operation by a First Nations person or organisation.¹⁷

¹⁵ Mr Greg Marks, Submission No. 3, p.2

¹⁶ AGD, Submission No. 5, p. 5

¹⁷ ALA, Submission No. 4, pp. 9-10

Advisory Body

- 2.14 In addition to a statutory body composed of First Nations Territorians, the inquiry terms of reference require the Committee to consider the merits of an Assembly committee advised by First Nations Territorians. As noted by AGD, the main difference between these two approaches is:

the absence of a legislative framework providing the advisory body with solid, visible imprimatur. ... The primary distinction between the two options is, therefore, the degree of formality surrounding the body's establishment and operation, including the body's influence (perceived or actual) and the ability to refine the body's composition, role and functions ...¹⁸

- 2.15 The Committee notes that there have been two instances in the NT where advisory committees, composed primarily of members external to parliament, have been established to provide advice to a parliamentary committee. In 2004 a Statehood Steering Committee was established to provide advice to the LCAC regarding engaging Territorians about the constitutional development of the Northern Territory. In 2011 a Northern Territory Constitutional Convention Committee was appointed to advise the LCAC on the implementation of the Statehood program and the holding of a Constitutional Convention. In both cases, the membership of these advisory bodies included the Chair and two other members of the LCAC.¹⁹

- 2.16 Noting that a conventional parliamentary committee 'would appear to take matters too much out of the hands of First Nations people and communities', Mr Marks suggested that a hybrid arrangement such as that outlined above, 'could provide for local, regional, or Territory-wide input depending on the likely impact of the legislation.'²⁰ However, given that the membership of the advisory committee would need to change depending on the Bills under consideration, Mr Marks acknowledged that there are inherent difficulties in such an approach.²¹

- 2.17 Similarly, Mr Guyula MLA noted that while an advisory committee would be preferable over a conventional committee model:

This may not go far enough as the membership of a body that is responsible for determining a measure of self-determination should be entirely composed of First Nations People. Ideally, no members of parliament would be part of the committee – to ensure that there is genuine oversight and capacity to speak freely without being constrained by party politics.²²

- 2.18 Moreover, as NAAJA pointed out:

By their nature, committees tend to operate for the life of each Parliament. While committees are easy to establish, they are also easy to dismantle and their terms of reference and processes too easily subject to change.

In comparison, although statutes can be amended or indeed repealed, the process to do so should ideally be subject to safeguards such as public

¹⁸ AGD, Submission No. 5, p.6

¹⁹ LCAC, *Discussion Paper: A Process to Review Bills for their Impact on First Nations Territorians*, <https://parliament.nt.gov.au/committees/list/LCAC/IFNT#DP>, pp. 12-13

²⁰ Mr Greg Marks, Submission No. 3, p. 3

²¹ Mr Greg Marks, Submission No. 3, p. 3

²² Mr Yingiya Mark Guyula MLA, Submission No. 11, p. 3

debate and community consultation. A statute that is workable does not need to be renewed with each Parliament.

However, the most critical difference between the two options is that a statutory body means that Aboriginal people can speak directly to Parliament, which is not the case with an Assembly Committee advised by Aboriginal peoples. This risks dilution and/or misinterpretation of the views expressed.²³

- 2.19 Acknowledging that establishing a statutory body is a significant undertaking, ALA submitted that consideration could be given to either establishing a designated governance committee, or expanding the remit of an existing governance committee, to provide advice on and review Bills for their impact on First Nations Territorians. It was further suggested that 'the Aboriginal Justice Unit would be an appropriate lead agency to facilitate such advice from First Nations Territorians to the Legislative Assembly.'²⁴
- 2.20 The Committee also heard that the Northern Territory Executive Council on Aboriginal Affairs (NTECAA) could potentially fulfil a similar role. The Department of the Chief Minister and Cabinet (DCMC) advised that NTECAA is Co-chaired by the Minister for Aboriginal Affairs and Dr John Paterson (lead convenor of Closing the Gap in the NT) representing the Aboriginal Peak Organisations of the NT (APO NT). Membership of the NTECAA also includes representatives from the Central and Northern Land Councils, Aboriginal Housing NT, the Aboriginal Medical Services Alliance of the NT, the NT Indigenous Business Network, and NAAJA. In addition, depending on the agenda, the Chief Executive Officer of the relevant government agency also attends meetings to respond to any queries.²⁵
- 2.21 Established to provide oversight and monitoring of the implementation of Closing the Gap in the NT, DCMC advised the Committee that although the NTECAA has not considered or provided any specific feedback on proposed legislation, it would be within its remit to do so and would be an option worth exploring.²⁶
- 2.22 The Northern Territory Anti-Discrimination Commission (NT ADC) advised the Committee that, subject to appropriate resourcing, it considered it was well placed to host a First Nations advisory body:

Operationally, the Commissioner already has the function to examine proposed legislation and regulations and report on those to the Minister on any inconsistencies with our *Anti-Discrimination Act*. We propose that this process could be expanded to report on any inconsistencies with international human rights instruments, the local decision-making framework, [and] Closing the Gap commitments ...

We already have experience hosting an entity that scrutinises compliance with human rights in the area of mental health and disability through our Community Visitor Program. We propose a similar service for the review of bills in this context by hosting either identified positions internally or a First

²³ NAAJA, Submission No. 6, pp. 15-16

²⁴ ALA, submission No. 4, p.11

²⁵ Department of the Chief Minister and Cabinet (DCMC), Committee Transcript, Friday 16 February 2024, p.35

²⁶ DCMC, Committee Transcript, Friday 16 February 2024, pp. 35, 38; see also DCMC Answers to Questions Taken on Notice, p. 1

Nations committee within the commission and provide our expertise in human rights and discrimination law to guide and enhance the work of a First Nations body.²⁷

- 2.23 Noting the importance of establishing appropriate scrutiny mechanisms in a unicameral parliament, NT ADC also pointed out that it is crucial that the review body is external from both parliament and government agencies:

An independent body such as the ADC ensures transparency and accountability by also bringing credibility and independence and expertise to this very important work. ...

A body hosted through the commission would be less risk than establishing a brand-new statutory body from scratch and would allow more flexibility in its governance, while also providing more stability, consistency, and independence than an advisory committee to a Legislative Assembly committee.²⁸

- 2.24 As is currently the case in relation to the NT ADC's review of legislation under section 13(b) of the *Anti-Discrimination Act 1992*, it was suggested that First Nations legislative review reports would be forwarded to the relevant Minister with the expectation that the Minister would make the report publicly available. It was also agreed that another option would be for such reports to be forwarded to a Bill scrutiny committee for consideration.²⁹ With regards to the latter, the Committee notes that while the LCAC is responsible for the review of subordinate legislation pursuant to Sessional Order 10, neither its remit nor that of any other Assembly committee currently extends to the review of Bills.

Bill Scrutiny Committees

- 2.25 As highlighted in the Committee's *Discussion Paper*, in Australasia, the Federal Parliament and the parliaments of the Australian Capital Territory, New South Wales, Victoria, Queensland and New Zealand currently refer all Bills to a parliamentary committee for inquiry and report.³⁰ For a period during the 13th Assembly (August 2017 to July 2020), all Bills introduced in the Northern Territory, unless deemed urgent, were referred to a Bill scrutiny committee for inquiry and report.
- 2.26 Similar to the unicameral parliaments of the Australian Capital Territory, Queensland and New Zealand, the Northern Territory implemented a consultative inquiry approach to all Bills by default. The main advantage of such an approach is that it provides an opportunity for interested individuals and organisations to have input in the legislative process. As is the case in Queensland, Bills were examined for their compliance with the fundamental

²⁷ Northern Territory Anti-Discrimination Commission (NT ADC), Committee Transcript, Friday 16 February 2024, p. 41

²⁸ NT ADC, Committee Transcript, Friday 16 February 2024, p. 41

²⁹ NT ADC, Committee Transcript, Friday 16 February 2024, p. 43

³⁰ LCAC, *Discussion Paper: A Process to Review Bills for their Impact on First Nations Territorians*, <https://parliament.nt.gov.au/committees/list/LCAC/IFNT#DP>, pp. 10-12

legislative principles set out in section 4 of the *Legislative Standards Act 1992* (Qld) (see Appendix 8).³¹

- 2.27 A number of submitters supported the reintroduction of Bill scrutiny committees in addition to an appropriate process to review Bills specifically for their impact on First Nations Territorians. As Mr Guyula MLA pointed out:

The scrutiny committees allow for members of the public, businesses, peak bodies, organisations, and communities to actively contribute to parliament scrutiny and debate. I support the reintroduction of these committees to address the serious issues of lack of parliamentary oversight and transparency.

However, I do not think that the reintroduction of scrutiny committees by itself goes far enough for the purpose of including First Nations People to provide insight and comment about the impact of bills on our people. Rather this should be specifically appointed so that the function can be properly fulfilled.³²

- 2.28 Mr Guyula MLA further explained that:

A conventional committee of parliament does not meet the needs of understanding self-determination from a grassroots perspective as it is constrained by membership directly from the parliament. The body created to undertake scrutiny must not reflect the current committee arrangement whereby Government members are the majority of committee members and drive the outcomes of a committee process.³³

- 2.29 The CLC expressed a similar view:

While they were imperfect, the scrutiny committees that existed during the 13th Assembly provided an important safeguard against poor legislation and a valuable means for stakeholders, including land councils and other Aboriginal organisations, to have input into legislation.

Given the absence of a House of review in the NT parliament, the CLC considers that a minimum outcome of this inquiry should be the re-establishment of parliamentary scrutiny committees as essential mechanisms to improve the accountability and transparency of the legislature. This is consistent with basic, good governance and consistent with other unicameral parliaments in Australia and New Zealand.

In addition, we strongly recommend further consultation with the land councils, other Aboriginal representative bodies, and community members to develop options for an appropriate body to review bills for the impact on First Nations Territorians specifically.³⁴

- 2.30 Noting that any review of the impacts of proposed legislation on First Nations Territorians must be Aboriginal led, the Land Councils were of the view that:

If a Legislative Assembly committee proves to be the preferred model for a review body, checks need to be put in place to ensure the body remains Aboriginal-led in the event of the Assembly having minimal or no Aboriginal members.³⁵

³¹ LCAC, *Discussion Paper: A Process to Review Bills for their Impact on First Nations Territorians*, <https://parliament.nt.gov.au/committees/list/LCAC/IFNT#DP>, pp. 10-12

³² Mr Yingiya Mark Guyula MLA, Submission No. 11, pp. 2-3

³³ Mr Yingiya Mark Guyula MLA, Submission No. 11, p. 3

³⁴ CLC, Committee Transcript, 12 March 2024, pp. 2-3; see also Land Councils, Submission No. 9, p. 4

³⁵ Land Councils, Submission No. 9, p. 5

- 2.31 While acknowledging the importance of scrutiny committees in the legislative process, NT Health raised concerns regarding the burden such committees place on Agency representatives that may be required to appear before the committee:

While NT Health supports transparent legislation, the scrutiny committee process may affect the practice of the Legislature by removing the scrutiny from the sponsoring Member and placing that scrutiny on Agency representatives.³⁶

As set out in the section below, while NT Health expressed its preference for a model that assessed proposed legislation for impacts on First Nations Territorians prior to introduction in the Assembly, it nevertheless agreed that the two models were not mutually exclusive.³⁷

Regulation-Making Framework Model

- 2.32 NT Health supported a process whereby Bills are assessed for their potential impact on First Nations Territorians prior to their introduction in the Assembly. Noting that such an approach ‘would deliver improved policies and laws by encouraging early and ongoing consideration of impacts on First Nations Territorians’, it was suggested that a process similar to the Government’s Regulation-Making Framework (RMF) could be established.³⁸
- 2.33 Administered by the Department of Industry, Tourism and Trade, the RMF is a formal mechanism designed to ensure the potential impacts of regulation are appropriately assessed and communicated to Government prior to decisions being made as part of the Cabinet submission process. The aim being to ‘reduce unnecessary impacts on business and the community of inefficient regulation, including excessive business red tape, unwarranted compliance burdens and restrictions on competition.’³⁹
- 2.34 The RMF requires that a Preliminary Regulation Impact Statement (PRIS), identifying likely impacts, consultation processes and policy options associated with regulatory proposals, is submitted to the Regulation Impact Committee (RIC) and assessed for compliance with best practice regulation-making principles as agreed by the Council of Australian Governments. Chaired by the Department of Industry, Tourism and Trade, the RIC also includes officers from the Departments of Treasury and Finance, Chief Minister and Cabinet, and Attorney-General and Justice.⁴⁰
- 2.35 If the RIC is satisfied that the proposal reliably demonstrates the necessity for the regulatory intervention, is in the public interest and is unlikely to have a significant impact, a PRIS certificate stating the level of compliance with RMF

³⁶ NT Health, Submission No. 7, p. 2

³⁷ NT Health, committee Transcript, 16 February 2024, p. 7

³⁸ NT Health, Submission No. 7, pp. 1-2

³⁹ Department of Industry, Tourism and Trade (DITT), *Regulation-Making Framework*, Northern Territory Government, Darwin, January 2021,

https://industry.nt.gov.au/_data/assets/pdf_file/0011/725906/regulation-making-framework.pdf, p.7

⁴⁰ DITT, *Regulation-Making Framework*, Northern Territory Government, Darwin, January 2021, https://industry.nt.gov.au/_data/assets/pdf_file/0011/725906/regulation-making-framework.pdf, p.7

requirements will be issued for inclusion in the Cabinet Submission. However, if the PRIS does not satisfy the RMF assessment criteria and it is determined that the impacts of the regulation are material, a full Regulatory Impact Statement (RIS) must be prepared before the proposal can proceed.⁴¹

2.36 Building on the analysis in the PRIS, the RIS is a more detailed consideration of 'the problem, objectives, options, impacts, benefits and consultation, and outlines a strategy to implement and review the preferred option.'⁴² As with the PRIS, following assessment a certificate will be issued noting the level of compliance with RMF requirements that must be attached to the Cabinet Submission.⁴³

2.37 In proposing a model akin to the RMF, NT Health suggested that an independent committee incorporating 'representatives from government departments, Indigenous organisations and subject matter experts'⁴⁴ could be established to assess whether regulatory proposals are:

- consistent with the principles underlying the Northern Territory Government's Local Decision-Making Policy Framework; and
- consistent with the Northern Territory Government's commitments to Closing the Gap; and
- consistent with the United Nations Declaration on the Rights of Indigenous Peoples and other international instruments to which Australia is a party.⁴⁵

2.38 It was further noted that proposals could also be assessed for their alignment with the guiding principles of the NT Aboriginal Justice Agreement as set out in Appendix 6.⁴⁶ NT Health also acknowledged that 'further thought would have to be given to how to involve the public and how public submissions could be made.'⁴⁷

2.39 As the cabinet process is confidential and regulatory impact statements are not made public in the Northern Territory, the Committee asked whether any thought had been given to incorporating a mechanism whereby members not part of Cabinet could be advised of issues identified during the assessment process, how they were considered, and how they have been addressed. NT Health indicated that the responsible Minister has the opportunity to advise the Assembly of such when introducing a Bill and members can then ask questions or seek clarification during the consideration in detail stage.⁴⁸

⁴¹ DITT, *Regulation-Making Framework*, Northern Territory Government, Darwin, January 2021, https://industry.nt.gov.au/_data/assets/pdf_file/0011/725906/regulation-making-framework.pdf, pp.8-9

⁴² DITT, *Regulation-Making Framework*, Northern Territory Government, Darwin, January 2021, https://industry.nt.gov.au/_data/assets/pdf_file/0011/725906/regulation-making-framework.pdf, p.8

⁴³ DITT, *Regulation-Making Framework*, Northern Territory Government, Darwin, January 2021, https://industry.nt.gov.au/_data/assets/pdf_file/0011/725906/regulation-making-framework.pdf, pp.8-9

⁴⁴ NT Health, Committee Transcript, 16 February 2024, p. 3

⁴⁵ NT Health, Submission No. 7, p.1

⁴⁶ NT Health, Committee Transcript, 16 February 2024, p. 3

⁴⁷ NT Health, Committee Transcript, 16 February 2024, p. 6

⁴⁸ NT Health, Committee Transcript, 16 February 2024, p. 6

Review of Subordinate Legislation

- 2.40 As noted in the Committee's *Discussion Paper*, the review of subordinate legislation by parliamentary committees is a long held and well-established practice in all Australasian parliaments. In the Northern Territory, the LCAC is currently responsible for reviewing instruments of a legislative or administrative character which are required by statute to be tabled in the Assembly and which the Assembly may disallow or disapprove.⁴⁹
- 2.41 Similar to other jurisdictions, Standing Order 176(3) requires that all subordinate legislation is examined to ensure that, amongst other things, they do not exceed the powers conferred by an Act and do not unduly trespass on personal rights and liberties (see Appendix 7).⁵⁰ This review does not consider the policy of the legislation but is a formal review conducted with the assistance of an independent legal advisor.
- 2.42 A number of submitters were of the view that subordinate legislation should also be subject to review for their impact on First Nations Territorians. While noting their 'in principle' support, AGD pointed out that:

It is generally known that legislative detail is increasingly being delegated to subordinate legislation, and in particular, regulations. The implication is that this trend shifts the location, and thus scrutiny of, the substantive elements of the law away from the parliament. As the Discussion Paper notes, while the Committee conducts reviews of legislative and administrative instruments, that function is limited to validity against the parent Act. There is a certain argument that enquiries should incorporate delegated legislation, however the need to explore delegated legislation in such detail is minimised where there is sufficient examination of the head power and its implications.⁵¹

Timeframe for Review of Legislation

- 2.43 Timeframes for the scrutiny of Bills in the unicameral jurisdictions of Australasia are set out in the parliament's Standing Orders. In Queensland, the committee must report to the Assembly within six months. However, the Assembly may vary the report date to a period of not less than six weeks. In practice, most Bills are reported on within approximately two months.⁵²
- 2.44 Up until 31 August 2023, the reporting timeframe for Bill reviews in the Australian Capital Territory was two months from the presentation of the Bill, except for Bills introduced in the last sitting week of the calendar year where committees were required to report within three months of the Bill's presentation. Following a

⁴⁹ LCAC, *Discussion Paper: A Process to Review Bills for their Impact on First Nations Territorians*, <https://parliament.nt.gov.au/committees/list/LCAC/IFNT#DP>, p. 13

⁵⁰ Legislative Assembly of the Northern Territory, *Standing Orders – in force as of 21 April 2016*, 4th Edition, Legislative Assembly of the Northern Territory, Darwin, 2016, https://parliament.nt.gov.au/data/assets/pdf_file/0005/377789/Standing-Orders-4th-Edition-as-at-25-July-2023.pdf, p. 51

⁵¹ AGD, submission No. 5, p.7

⁵² LCAC, *Discussion Paper: A Process to Review Bills for their Impact on First Nations Territorians*, <https://parliament.nt.gov.au/committees/list/LCAC/IFNT#DP>, p. 11

recent review of the Standing Orders, these time frames have now been increased to three and four months respectively.⁵³

2.45 In New Zealand, Standing Orders provide that committees must report within six months of the Bill being referred to it or such other time as determined by the House or the Business Committee.⁵⁴ In the Northern Territory, the reporting timeframe for Bill scrutiny committees in the 13th Assembly was tied to the sittings of the Assembly and effectively provided for a minimum of approximately two months from the date of referral and considerably longer in some instances depending on the sitting pattern.⁵⁵

2.46 In the absence of the Bill scrutiny committees, Standing Order 147 requires that following the second reading speech, debate on the Bill must be adjourned for at least one month to allow for public discussion.⁵⁶ As such, AGD commented that the eight-week reporting timeframe for the Bill Scrutiny Committees:

generated mixed results, equally delaying passage of Bills, while adding to the Department's workload. That is not to say there is no benefit from a scrutiny committee process. The AGD generally welcomed and engaged in the process as it promoted accountable government. If a committee process were considered, the AGD would tend to favour a more nuanced approach that factored the complexity of the matter under consideration against the competing legislative priorities and resource capacity of government.⁵⁷

2.47 Picking up on concerns raised during the hearings that a scrutiny process would delay the passage of Bills, in their supplementary submission the CLC noted that in their view:

ensuring that bills are subject to public debate and scrutiny would ultimately increase the efficiency of the legislative process by contributing to fairer, more appropriate and effective legislation. The expertise of the land councils, and other representative Aboriginal organisations, is an asset, not a hindrance, to the legislative process.⁵⁸

2.48 While the timeframe for the review of Bills will, to some extent, depend on the nature of the review process that is ultimately settled on, ALA pointed out that, at the end of the day:

⁵³ Standing Committee on Administration and Procedure, *Review of the Standing Orders and Continuing Resolutions of the Tenth Assembly*, Volumes 1, Legislative Assembly for the Australian Capital Territory, Canberra, August 2023, https://www.parliament.act.gov.au/_data/assets/pdf_file/0007/2276314/Report-10-Review-of-Standing-Orders-10-Assembly-Volume-1.pdf, pp. 23-24; see also Legislative Assembly for the Australian Capital Territory, *Standing Orders and continuing resolutions of the Legislative Assembly for the Australian Capital Territory, as at 21 March 2024*, Legislative Assembly for the Australian Capital Territory, Canberra, 2023, <https://www.parliament.act.gov.au/parliamentary-business/in-the-chamber/standing-orders>, pp. 52-3

⁵⁴ LCAC, *Discussion Paper: A Process to Review Bills for their Impact on First Nations Territories*, <https://parliament.nt.gov.au/committees/list/LCAC/IFNT#DP>, p. 11

⁵⁵ LCAC, *Discussion Paper: A Process to Review Bills for their Impact on First Nations Territories*, <https://parliament.nt.gov.au/committees/list/LCAC/IFNT#DP>, p. 10

⁵⁶ Legislative Assembly of the Northern Territory, *Standing Orders – in force as of 21 April 2016*, 4th Edition, Legislative Assembly of the Northern Territory, Darwin, 2016, https://parliament.nt.gov.au/_data/assets/pdf_file/0005/377789/Standing-Orders-4th-Edition-as-at-25-July-2023.pdf, p. 41

⁵⁷ AGD, Submission No. 5, p. 6

⁵⁸ CLC, Supplementary Submission No. 9a, p. 3

A culturally competent acknowledgement of First Nations' consultative and decision-making processes needs to be balanced against the need for the business of the Legislative Assembly to be conducted in a timely manner.⁵⁹

As the Land Councils advised, there must be sufficient time to conduct a meaningful review with a degree of flexibility to allow the review body to extend or reduce the timeframe as required. For example, it was suggested that the length of time required for the review process would vary depending on the nature and complexity of the proposed legislation, and the level of consultation that was involved in its development. The Land Councils also indicated that, in principle, the timeframes of between six weeks and six months currently in place in other jurisdictions 'would seem to be a reasonable range.'⁶⁰

2.49 NAAJA expressed a similar view noting that:

it is essential that the body is given enough time for representatives to obtain information and advice, consult and provide their views. If sufficient time is not provided, there is a risk that the body would be tokenistic, and not have the genuine opportunity to influence decision-making in relation to Bills and the policies underlying those Bills. Influence, not merely being heard, is essential to the self-determination of Aboriginal peoples and the success of any Indigenous Voice to Parliament.

Timeframes are likely to be more manageable if the body is able to provide views on policy issues and proposed laws at the earliest possible stages of the law-making process, well in advance of the introduction of Bills into the Legislative Assembly.⁶¹

2.50 In relation to subordinate legislation, the Committee notes that pursuant to section 63C of the *Interpretation Act 1978*, it has 12 sitting days following the tabling of subordinate legislation in the Assembly to review and report any matters of concern to the Assembly. Depending on the sittings calendar, this effectively provides a minimum of eight weeks for review and in most cases significantly longer.

Statements of Compatibility

2.51 As is the case in a number of other parliaments in Australasia, during the 13th Assembly (August 2017 to July 2020) statements of compatibility with human rights, as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), were required to be tabled alongside the Explanatory Statement for all Bills introduced in the Northern Territory. The Committee notes that the Federal Parliament, Victoria and Queensland also require statements of compatibility to be prepared for legislative instruments that are subject to disallowance.⁶²

2.52 In addition to a consideration of human rights, the inquiry terms of reference contemplate a requirement for statements of compatibility against prescribed measures of self-determination, that will indicate the degree to which the Bill:

⁵⁹ ALA, submission No. 4, p. 7

⁶⁰ Land Councils, Submission No. 9, p. 7

⁶¹ NAAJA, submission No. 6, p. 16

⁶² LCAC, *Discussion Paper: A Process to Review Bills for their Impact on First Nations Territorians*, <https://parliament.nt.gov.au/committees/list/LCAC/IFNT#DP>, pp. 8-10

- affirms and enhances the right of the First Nations peoples of the Northern Territory to enjoy, practice and benefit from their traditional law, culture and autonomy;
- is based on consultation, according to First Nation law and custom, and reflects the principle of free, prior and informed consent.
- is consistent with the principles underlying the Northern Territory Government's *Local Decision-Making Policy Framework* (see Appendix 5), and its commitments to *Closing the Gap* (see Appendix 6).

2.53 The majority of submissions supported a requirement for statements of compatibility to be tabled alongside explanatory statements for all Bills and subordinate legislation introduced in the Assembly. In relation to Bills, AGD noted that:

While that requirement is not present for the current 14th Assembly, the measure provided a useful impetus in policy development, which continues through Bills presented to this current Assembly. The development of Statements of Compatibility is equally informed by, and further informs the work associated with, developing the actual proposal. Best practice would arguably see this work undertaken regardless of a formal requirement to develop a statement.

That said, mandating a Statement of Compatibility would institutionalise a level of assurance that the principles underlying LDM [Local Decision Making], CtG [Closing the Gap], and the AJA [Aboriginal Justice Agreement] have been considered. Such a mandate will require Government and public servants to understand and properly contemplate the requirements of LDM, CtG and the AJA and provide evidence that appropriate matters have been considered.

As with the processes of the 13th Assembly, Statements could be tabled for transparency, and would address to some extent the concerns raised in the Productivity Commission's 2023 draft report on its *Review of the National Agreement on Closing the Gap*, that most jurisdictions were fairly uncoordinated in the transformation type commitments under CtG, amongst other things. Additional government resources, including training and skills development would, however, be required for Statements of Compatibility of the like contemplated by the ToR, to properly capture LDM, CtG and AJA implications.⁶³

2.54 While agreeing that it is important to identify and assess proposals for compatibility with Human Rights, NT Health expressed the view that:

a framework similar to the RMF would provide a more rigorous assessment than a Statement of Compatibility process.

Statements of Compatibility rely on Agencies to identify whether a proposal impacts on human rights. NT Health considers a committee of independent members who have the relevant skills and qualifications to assess issues that may impact on First Nation Territorians would provide a better assessment of policy than Agency identification. An independent assessment would produce better policy and more effective legislation.⁶⁴

⁶³ Department of the Attorney-General and Justice (AGD), Submission No. 5, p. 7, see also AGD, Committee Transcript, 16 February 2024, p. 14

⁶⁴ NT Health, Submission No. 7, p. 2

2.55 Acknowledging the potential value of statements of compatibility, the Land Councils submitted that:

there is a risk it could become a meaningless ‘tick the box’ exercise, creating more bureaucracy with no positive outcomes. To avoid this, there must be well thought out guidelines on the preparation of the statement, and the review body must be set up in such a way that it can effectively consider and assess the statement against those guidelines.⁶⁵

2.56 The Land Councils further suggested that statements of compatibility should refer to both process and impact:

For example, the statement might address whether the legislation was co-designed with Aboriginal stakeholders ‘from the very beginning’ (as per principle 4 of the Local Decision-Making Guiding Principles Framework), as well as considering whether clauses in the Bill potentially limit human rights (e.g. assessing compatibility with the United Nations Declaration on the Rights of Indigenous Peoples).⁶⁶

2.57 Reflecting the comments made by AGD, the Land Councils also expressed the view that to make a genuine contribution to CtG commitments, statements of compatibility should:

guide the development of the legislation, with government staff considering the requirements of the statement at the start of the process of developing the legislation. Best practice would involve planning appropriate consultation and considering the possible impacts of the proposed legislation on Aboriginal people from the outset. Legislative drafting processes should engage with the statement of compatibility, and there should be a standing obligation on drafters to minimise impacts on Aboriginal people’s human rights and self-determination. When the statement of compatibility is presented with a bill, the review body should consider if this has occurred or if the statement has been prepared as an afterthought.⁶⁷

In addition, it was noted that resources would need to be developed to provide guidance on how to both assess compatibility and review statements of compatibility.⁶⁸

2.58 As noted previously, the terms of reference propose that statements of compatibility should be assessed against ‘prescribed measures of self-determination’. However, as the Land Councils pointed out:

While it is important to include measures of self-determination, limiting the statement to these measures may mean that certain bills that have a substantial impact on Aboriginal Territorians – but do not directly relate to principles of self-determination – would not be appropriately assessed.

For example, the NT Government recently passed the *Food Amendment Act 2023* as part of a new regime to licence and regulate stores in remote Aboriginal communities. Such legislation should be subject to the review process but may not be easily assessed as compatible or incompatible with ‘prescribed measures of self-determination.’⁶⁹

⁶⁵ Northern and Central Land Councils (Land Councils), Submission No. 9, p. 7

⁶⁶ Land Councils, Submission No. 9, p. 7

⁶⁷ Land Councils, Submission No. 9, pp. 7-8

⁶⁸ Land Councils, Submission No. 9, pp. 8-9

⁶⁹ Land Councils, Submission No. 9, p. 8

- 2.59 In support of statements of compatibility against prescribed measures of self-determination, Mr Marks questioned whether the requirement to consider consistency with the Government's CtG commitments was 'necessary or appropriate', noting that:

An examination of this requirement may tend to reduce the focus on self-determination, and instead lead the Statement more into areas of social justice. The Statement of Compatibility as drafted has a strong and proper focus on self-determination. A Closing the Gap criterion may dilute that focus. I believe this criterion needs careful consideration as to its exact applicability in this context.⁷⁰

- 2.60 Mr Marks did, however, support the inclusion of a requirement regarding compatibility with the LDM guiding principles:

These Principles, already in existence and in use, will provide a framework for the mechanisms for ascertaining Indigenous people's responses to proposed legislation. The Principles have the potential to assess views directly at the local level and not necessarily rely on existing organisations.⁷¹

- 2.61 In addition to assessing whether a Bill is compatible with the human rights of First Nations Territorians, the Land Councils suggested that:

the drafting of 'prescribed measures' be guided by the rights contained within:

- The *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth);
- The *Native Title Act 1993* (Cth);
- The *Aboriginal Land Act 1976* (NT);
- The United Nations Universal Declaration of Human Rights; and
- The United Nations Declaration on the Rights of Indigenous Peoples.

The prescribed measures should also reflect the Local Decision-Making Guiding Principles and Closing the Gap commitments – both priority reforms and any relevant socio-economic targets, to ensure impacts on Aboriginal Territorians are comprehensively captured.⁷²

- 2.62 In a similar vein, ALA submitted that:

in the absence of a legislative human rights act/charter in the Northern Territory, a set of rights and expectations would need to be produced against which Bills could be assessed for the production of Statements of Compatibility. That set of rights and expectations must be produced in consultation with First Nations Territorians and must include principles from the *United Nations Declaration on the Rights of Indigenous Peoples*; principles from International law and covenants; rights derived from Australia's common law and judicial determinations; and the Northern Territory's Closing the Gap commitments.⁷³

- 2.63 In relation to CtG commitments, the Committee notes that in July 2021 the Northern Territory Government amended the Cabinet process to include a Closing the Gap Impact Statement to ensure that agencies consider the impact of their policies on First Nations Territorians. As outlined by the Department of the Chief Minister and Cabinet (DCMC):

⁷⁰ Mr Greg Marks, Submission No. 3, p. 1

⁷¹ Mr Greg Marks, Submission No. 3, p. 2

⁷² Land Councils, Submission No. 9, p. 8

⁷³ Australian Lawyers Alliance (ALA), Submission No. 4, p. 12

The impact statement requires NT Government agencies to demonstrate how policies and reforms outlined in their Cabinet submissions align with the National Agreement on Closing the Gap, and how they support the NT's performance against the socioeconomic targets in the agreement.

It is worth noting that all government-initiated draft legislation goes through the Cabinet process, so the impact statement compels agencies to assess and demonstrate the impacts of draft legislation on Aboriginal people through that process. If the responsible agency believes there are no impacts for whatever kind of policy proposal they are putting up, they have to adequately justify why they think there is no impact on Aboriginal people.

Part of the Cabinet submission template also requires information on what engagement there has been with Aboriginal people and organisations on the policy proposal being put forward in the Cabinet submission.⁷⁴

- 2.64 DCMC also advised that the Office of Aboriginal Affairs has developed guidance materials and a CtG online training module to assist agencies in the development of impact statements. In-person training has also been provided to agency secretariats to ensure there is an understanding of the new requirements at an agency level and facilitate their capacity to actively support staff in the preparation of Cabinet submissions.⁷⁵ While strongly encouraged, DCMC advised that the training module is not mandatory and noted that it would like to see 'an uplift in the number of people doing this training.'⁷⁶
- 2.65 The Committee heard that where impacts are identified, the Office of Aboriginal Affairs is responsible for assessing CtG impact statements and providing feedback and advice to agencies as to where they might need to be strengthened before proposals are finalised and submitted for consideration by Cabinet.⁷⁷ However, as NT Health pointed out, the capacity for agencies to identify potential impacts depends on 'whether the officer tasked with the Cabinet submission has undertaken the training and looked at the guidelines.'⁷⁸
- 2.66 DCMC further advised that, through the Office of Aboriginal Affairs, they were currently undertaking an evaluation of the requirement for CtG impact statements and noted that their findings thus far indicated that:
- agencies require additional support and training to really understand the Closing the Gap priority reforms and how to practically apply them in their policy proposals and to reflect that in their Cabinet submissions.⁷⁹
- 2.67 As indicated previously, in addition to Bills, the Federal Parliament and the Parliaments of Victoria and Queensland require statements of compatibility to be prepared for legislative instruments that are subject to disallowance.⁸⁰ Submitters were generally supportive of extending the requirement for statements of compatibility to include subordinate legislation. As noted in relation to Bills, AGD was of the view that in addition to the principles underlying the Northern Territory

⁷⁴ Department of the Chief Minister and Cabinet (DCMC), Committee Transcript, 16 February 2024, p. 33

⁷⁵ DCMC, Committee Transcript, 16 February 2024, p. 37

⁷⁶ DCMC, Committee Transcript, 16 February 2024, p. 37

⁷⁷ DCMC, Committee Transcript, 16 February 2024, pp. 35-36

⁷⁸ NT Health, Committee Transcript, 16 February 2024, p. 8

⁷⁹ DCMC, Committee Transcript, 16 February 2024, p. 33

⁸⁰ LCAC, *Discussion Paper: A Process to Review Bills for their Impact on First Nations Territorians*, <https://parliament.nt.gov.au/committees/list/LCAC/IFNT#DP>, pp. 8-10

Government's Local Decision-Making Policy Framework and commitments to closing the Gap, statements of compatibility for subordinate legislation should also outline alignment with the guiding principles of the Aboriginal Justice Agreement.⁸¹

⁸¹ AGD, submission No. 5, p.8

3 Issues Raised in Evidence to the Committee

- 3.1 As set out below, a number of issues associated with the development of a process to review Bills for their impact on First Nations Territorians were raised during the course of the inquiry.

Scope of the Inquiry

- 3.2 NAAJA submitted that the terms of reference for the inquiry were unduly narrow and recommended that an NT Aboriginal Voice should be established that could make representations to the Parliament and Executive on any matter relating to Aboriginal peoples and not just proposed legislation.⁸² Civil Liberties Australia (CLA) also favoured the establishment of an NT Voice to Parliament modelled on the proposed federal 'Voice' to the Australian Parliament.⁸³ Similarly, ALA supported a broader remit and suggested that consideration be given to a model along the lines of the SA First Nations Voice.⁸⁴
- 3.3 While acknowledging the importance of reviewing legislation introduced in the Assembly for its impacts on First Nations Territorians, NAAJA also suggested that if Aboriginal people are to have a genuine opportunity to influence decision-making in relation to Bills, the review body should have a role in providing feedback and advice on proposed policies and legislation at the earliest possible stage of the law-making process:

Including Aboriginal people in the development of legislation supports Aboriginal self-determination, is in line with government's commitment on Closing the Gap and respects the dignity, experience and wisdom of our people. As we saw in the development of the burial and cremation legislation, engaging with Aboriginal people early and in genuine partnership can also contribute to high-quality legislation as well as saving the government valuable time and money.⁸⁵

NAAJA further noted that, ideally, Aboriginal people should be involved in the development, drafting, implementation, monitoring and subsequent evaluation of legislation.⁸⁶

- 3.4 The Land Councils expressed similar views noting that:

the easiest and best way to minimise negative outcomes and maximise positive outcomes is to engage with Aboriginal people and organisations when legislation is being drafted.

Both the perils of inadequate engagement with Aboriginal Territorians when drafting legislation and the benefits of early engagement are exemplified by the development of a new NT statutory scheme for burials and cremation.

When the Burial and Cremation Bill 2019 was introduced in Parliament, the NLC and other organisations raised concerns that it did not respect

⁸² NAAJA, Submission No. 6, pp. 2-3

⁸³ Civil Liberties Australia (CLA), Submission No. 2, p. 1

⁸⁴ ALA, Submission No. 4, pp. 9-10

⁸⁵ NAAJA, Committee Transcript, Tuesday 12 March 2024, p. 11

⁸⁶ NAAJA, Committee Transcript, Tuesday 12 March 2024, p. 12

Aboriginal laws and traditions. The NT Government subsequently withdrew the Bill.

The NT Government then worked with land councils and other key stakeholders through each stage of developing a new bill. The result of this collaborative process was legislation (the *Burial and Cremation Act 2022*) that met the needs of government, while respecting Aboriginal rights, laws and traditions. The turnaround from draft legislation that was widely criticised to the passing of an Act with broad support shows what can be achieved through a collaborative approach.

Notably, if the NT Government had worked with land councils and other key stakeholders when drafting the initial bill, significant time and government resources would have been saved.⁸⁷

- 3.5 AGD also agreed that it was preferable to engage with Aboriginal people at the front end of the policy development stage and provided an overview of the extensive consultation process associated with the development of the community courts legislation.⁸⁸ However, the Committee heard that all too often agencies are constrained by timeframes, skills, and resources:

There are limitations on the ability to consult deeply with community, particularly around timeframes. The department is responsible for implementing policy of the government of the day. There are also resource challenges with that because (a) it takes a lot longer to do that and (b) there are a lot more resources that are involved in that.

It is always a challenge and we are limited. When I say 'limited', we are constrained by those factors and the expertise in doing that kind of thing. There is certainly room for improving in that respect.⁸⁹

- 3.6 Reiterating the importance of reviewing legislation for its impacts on First Nations Territorians, the Committee heard that it must not, however, be seen as a substitute for consultation. As Mr Marks pointed out in relation to statements of compatibility:

It should be noted that the existence of a requirement to produce a Statement of Compatibility for Bills will not reduce the responsibility on those members proposing legislation to actively and effectively seek Indigenous views.⁹⁰

Similarly, the CLC noted:

as we have highlighted throughout our contributions to this inquiry, the opportunity to comment on bills before parliament is not a substitute for early engagement with Aboriginal people and their representative organisations.⁹¹

Aboriginal Engagement Model

- 3.7 Related to the above discussion, DCMC advised the Committee that the Office of Aboriginal Affairs was working with APO NT representatives on the development of an Aboriginal Engagement Model.⁹² As outlined in the Government's *Closing the Gap NT Implementation Plan Annual Report 2021-22*,

⁸⁷ Land Councils, Submission No.9, pp. 3-4

⁸⁸ AGD, Committee Transcript, Friday 16 February 2024, pp. 12-13

⁸⁹ AGD, Committee Transcript, Friday 16 February 2024, p. 12

⁹⁰ Mr Greg Marks, Submission No.3, p.2

⁹¹ CLC, Supplementary Submission No. 9a, p. 3

⁹² DCMC, Committee Transcript, Friday 16 February 2024, p. 39

the model will complement the *Remote Engagement and Coordination Strategy* and provide guidance on how to 'engage with Aboriginal people on new policies and legislation at the policy-design phase through to finalisation.'⁹³

- 3.8 Responding to the Government's commitment to Priority Reform 3 of the *National Agreement on Closing the Gap* for systemic and structural transformation of mainstream government organisations, this initiative seeks to address transformation element 59f; namely to:

improve engagement with Aboriginal and Torres Strait Islander people

– Ensure when governments are undertaking significant changes to policy and programs that primarily impact on Aboriginal and Torres Strait Islander people, they engage fully and transparently. Engagements should be done in a way where Aboriginal and Torres Strait Islander people: have a leadership role in the design and conduct of engagements; know the purpose and fully understand what is being proposed; know what feedback is provided and how that is being taken account of by governments in making decisions; and are able to assess whether the engagements have been fair, transparent and open.⁹⁴

- 3.9 As stated in the *Cabinet Submission Guide* regarding the NT government's commitments under the *National Agreement on Closing the Gap*, once implemented, the Aboriginal Engagement Model will:

require NT Government agencies to give Aboriginal organisations and communities an opportunity to engage on the development of all policy and legislation early in the design phase, and if this opportunity is accepted, throughout the policy process until finalisation.⁹⁵

- 3.10 The importance of meaningful engagement was emphasised several times during the inquiry. While acknowledging the potential for consultation fatigue in a small jurisdiction, the Committee heard that it is not just a matter of communities being overburdened by the frequency of consultations. As NAAJA pointed out:

Our people are consulted on numerous things. In a community, sometimes government people are called seagulls – fly in, consult, fly out. A lot of Aboriginal people see that as a tick-a-box approach now, because there is a train of thought that the consultation is not genuine and that it is ticking a box, that people give their information freely, with goodwill, and that nothing is ever done, there is never any feedback and the lid is never closed.⁹⁶

The CLC made similar comments noting that all too often Aboriginal people and their representative organisations 'give their time and expertise only for that advice to be ignored and not acted upon.'⁹⁷

⁹³ Northern Territory Government, *Closing the Gap NT Implementation Plan Annual Report 2021-22*, Northern Territory Government, Darwin, 2022, https://aboriginalaffairs.nt.gov.au/_data/assets/pdf_file/0004/1182217/closing-the-gap-implementation-plan-annual-report-2022.pdf, p. 46

⁹⁴ Australian Government, *National Agreement on Closing the Gap*, July 2020, <https://www.closingthegap.gov.au/sites/default/files/files/national-agreement-ctg.pdf>, p. 12

⁹⁵ Department of the Chief Minister and Cabinet, *NT Government commitments under the National Agreement on Closing the Gap: A Cabinet Submission Guide*, Northern Territory Government, Darwin, March 2022, p. 6

⁹⁶ NAAJA, Committee Transcript, Tuesday 12 March 2024, p. 12

⁹⁷ CLC, Committee Transcript, Tuesday 12 March 2024, p. 8

Development of Legislative Review Model

- 3.11 As indicated previously, there was no clear preference as to the most appropriate body to review Bills for their potential impact on First Nations Territorians, with a number of submitters acknowledging that several different review mechanisms could be effective. However, in addition to ensuring that the legislative review model is designed in collaboration with Aboriginal people, the following considerations were raised as fundamental to the effectiveness of any review body irrespective of the form it may take.

Composition

- 3.12 As highlighted in the evidence provided to the Committee, it was generally agreed that any process to review Bills for their impact on First Nations Territorians must be Aboriginal led.⁹⁸ As NAAJA pointed out, the review body must also recognise and reflect ‘the diversity of Aboriginal peoples in the Northern Territory; especially in terms of language, law, culture, beliefs and practices.’⁹⁹ Composed of, and chosen by, First Nations Territorians from outside of the parliament, Mr Guyula MLA emphasised that the review body must provide an opportunity for Aboriginal people at the grass roots level to have input.¹⁰⁰
- 3.13 Given that the body will be required to review Bills across a broad range of subjects, it was suggested that the model needs to be sufficiently flexible to accommodate a pool of members with a range of expertise that can be drawn on depending on the topic of the Bill, the availability of members, and the communities affected.¹⁰¹

Functions

- 3.14 As set out in the inquiry terms of reference, the primary function of the review body is to provide a mechanism whereby First Nations Territorians are empowered to have a say regarding legislation that may affect them. To this end, the Land Councils submitted that the review of legislation should include consideration of the underlying policy objectives,¹⁰² and noted that:
- the review body must be empowered to have a meaningful impact on the legislative process and on the final content of bills, including recommending changes to proposed laws to reduce negative impacts and increase positive impacts for Aboriginal people.¹⁰³
- 3.15 As NAAJA pointed out, this necessarily requires that the body is empowered, and provided sufficient time, to:

⁹⁸ Land Councils, Submission No. 9, p. 5

⁹⁹ NAAJA, Submission No. 6, p. 3

¹⁰⁰ Mr Yingiya Mark Guyula MLA, Submission No. 11, p.4; NAAJA, Submission No. 6, p. 3

¹⁰¹ Land Councils, Submission No. 9, p. 6; Mr Yingiya Mark Guyula MLA, Submission No. 11, p. 4

¹⁰² Land Councils, Submission No. 9, p. 6

¹⁰³ Land Councils, Submission No. 9, p. 5

consult stakeholders including Aboriginal community leaders and representatives, obtain information and advice, and communicate their views to the Legislative Assembly.¹⁰⁴

It was also suggested that the body must have the capacity to determine ‘how it performs its functions, including how it gathers information, engages with the community and facilitates the communication of views.’¹⁰⁵

3.16 Importantly, the Land Councils further noted that:

Parliament must be required to give proper consideration to all recommendations made by a review body. If the recommendations are not implemented, Parliament must be required to explain why they are not being implemented.¹⁰⁶

The Committee notes that a similar mechanism was put in place when the Bill scrutiny committees were in operation during the 13th Assembly. In accordance with Sessional Orders, Government responses to Bill inquiry reports were provided during the second reading stage of a Bill:

On the order of the day for the second reading of a Bill being called on:

- (1) If a committee report on the Bill has recommended any amendments to the Bill, the Member in charge of the Bill may move that any or all of the amendments be adopted as part of the Bill and the question shall be put without amendment or debate.¹⁰⁷

3.17 While ALA suggested that the *First Nations Voice Act 2023* (SA) might be a potential model for the Northern Territory, the Committee notes that in relation to the review of Bills, the South Australian Parliament is not bound to consider the views of the State First Nations Voice.

3.18 As set out in section 39 of the Act, the State First Nations Voice is to be notified of each Bill introduced in the Legislative Council or Legislative Assembly. However, although section 40 provides that the First Nations Voice is then entitled to address the Parliament on any Bill that has been introduced, the Act does not include any specific provisions for the review of Bills and states that:

Nothing in this section prevents the relevant House from conducting its business (including, to avoid doubt, the consideration or passing of Bills about which the State First Nations wishes to address the House) prior to being addressed by the State First Nations Voice under this section.¹⁰⁸

3.19 In addition, NAAJA submitted that the body must be ‘governed by clear principles and processes that ensure transparency and fairness’; that reports of the review body are required to be published and made available to the broader community; and that provisions are included for the periodic evaluation of the model to ensure it remains fit for purpose.¹⁰⁹ In the context of discussions regarding the

¹⁰⁴ NAAJA, Submission No. 6, p. 4

¹⁰⁵ NAAJA, Submission No. 6, p. 3

¹⁰⁶ Land Councils, Submission No. 9, p. 6

¹⁰⁷ Select Committee on Opening Parliament to the People, *Green Paper on Parliamentary Reform*, Legislative Assembly of the Northern Territory, Darwin, October 2016, https://parliament.nt.gov.au/_data/assets/pdf_file/0011/379649/Green-Paper-on-Parliamentary-Reform.pdf, p. 24

¹⁰⁸ *First Nations Voice Act 2023* (SA), section 40(7)

¹⁰⁹ NAAJA, Submission No. 6, p. 4; see also CLC, Committee Transcript, Tuesday 12 March, p. 8

establishment of a Treaty and Truth Commission at the Commonwealth and NT levels, the Land Councils and Mr Guyula MLA suggested that consideration should also be given to how the review body will work alongside existing and future Aboriginal representative bodies.¹¹⁰

Productivity Commission Review

3.20 With regards to the latter comment, the CLC highlighted the findings of the Productivity Commission's recent *Review of the National Agreement on Closing the Gap* in relation to the requirement under clause 67 for signatories to:

identify, develop or strengthen an independent mechanism, or mechanisms, that will support, monitor, and report on the transformation of mainstream agencies and institutions.¹¹¹

3.21 Noting that there has been limited progress in establishing independent mechanisms in most jurisdictions, and taking into consideration the overall findings of the review, the Productivity Commission suggested that the mechanism should have a broader remit than that originally envisaged:

Covering all Priority Reforms and all aspects of governments' relationships with Aboriginal and Torres Strait islander people (subject to the role and remit of other Aboriginal and Torres Strait Islander bodies, such as elected bodies or truth-telling commissions).¹¹²

3.22 As the CLC pointed out, there is clearly a degree of alignment between the features the Commission considers would support the effectiveness of the independent mechanism and a potential process to review Bills for their impact on First Nations Territorians;¹¹³ including for example:

- being governed and led by Aboriginal and Torres Strait Islander people, chosen with input from Aboriginal and Torres Strait Islander people and communities
- having a legislative basis to help guarantee its ongoing existence and the power behind its functions
- having sufficient guaranteed funding so that it can build and maintain organisational capabilities, and determine its priorities without undue influence from governments ...
- having full control of its work program, so it can initiate its own inquiries, conduct its own research, benchmark performance, and review all relevant documents ...
- being able to require government organisations to provide information (with powers akin to those of auditors)
- being able to intervene in real time to support Aboriginal and Torres Strait Islander organisations that have concerns about the way in which government

¹¹⁰ Land Councils, Submission No. 9, p. 5; Mr Yingiya Mark Guyula MLA, Submission No. 11, p. 4

¹¹¹ Australian Government, *National Agreement on Closing the Gap*, July 2020, <https://www.closingthegap.gov.au/sites/default/files/files/national-agreement-ctg.pdf>, p. 13

¹¹² Productivity Commission, *Review of the National Agreement on Closing the Gap, Study Report, Volume 1*, Australian Government, Canberra, January 2024, <https://www.pc.gov.au/inquiries/completed/closing-the-gap-review/report/closing-the-gap-review-report.pdf>, pp. 22-3

¹¹³ CLC, Supplementary Submission No. 9a, p. 4

actions or decisions are affecting Aboriginal and Torres Strait Islander people or organisations

- operating with transparency, including freedom to hold public hearings and to publish its own reports and findings at a time of its choosing.¹¹⁴

Resources and Training

- 3.23 Ensuring the review body is appropriately resourced will necessarily affect its effectiveness and capacity to fulfil its functions. As highlighted by AGD, ongoing resourcing will be required for 'base administrative requirements, including secretariat functions, as well as the dedicated research and investigatory expertise required to review proposed legislation and develop evidence based recommendations.'¹¹⁵ NAAJA also noted that appropriate resourcing will be required for the membership selection process; provision of interpreters as required; and remuneration of representatives for their time and any associated travel and accommodation costs.¹¹⁶
- 3.24 Depending on the preferred model, consideration would also need to be given to resources Government agencies may require to facilitate their participation in the legislative review process. For example, as indicated previously, additional government resources, including training and skills development, would be required for those involved in the development of statements of compatibility to ensure human rights, LDM, CtG and AJA implications are properly captured.¹¹⁷

Next Steps

- 3.25 As highlighted in evidence to the Committee, further consultation with First Nations Territorians and their representative organisations is required to establish an appropriate legislative review process. The CLC expressed the view that:

the design of a future body should be a shared decision between Aboriginal representative organisations and the government. It should take into account other processes, including work to develop an independent mechanism to support, monitor and report on the transformation of government agencies and institutions as part of the National Agreement on Closing the Gap and work to progress the Treaty in the Northern Territory.¹¹⁸

- 3.26 In the absence of a statutory body dedicated to First Nations issues, Mr Guyula MLA, suggested that the inquiry should call for the return of the Northern Territory Treaty Commission as an appropriate office to progress development of a process to review Bills for their impact on First Nations Territorians:

¹¹⁴ Productivity Commission, *Review of the National Agreement on Closing the Gap, Study Report, Volume 1*, Australian Government, Canberra, January 2024, <https://www.pc.gov.au/inquiries/completed/closing-the-gap-review/report/closing-the-gap-review-report.pdf>, pp. 22-3

¹¹⁵ AGD, Submission No. 5, p. 5

¹¹⁶ NAAJA, Submission No. 6, p. 4; see also ALA Submission No. 4, pp. 7-8

¹¹⁷ AGD, Submission No. 5, p. 7

¹¹⁸ CLC, Committee Transcript, Tuesday 12 March 2024, p. 3

I believe it is important for First Nations people that the work of self-determination does not sit with the government. Rather, it should sit in an independent space that is focused on mediating between many diverse First Nation groups and government and transferring decision-making power back to the First Nations people.

As the process to review bills in parliament is part of the work of self-determination, I believe the treaty and truth commission may be the best space for the creation of a body to scrutinise bills that are introduced to parliament....

The question I ask of the committee is, if it is not the treaty and truth commission that does the work, then who is the appropriate independent body to continue the work that this committee has begun?¹¹⁹

- 3.27 NAAJA also noted that establishing a legislative review body is ‘an essential step towards self-determination for Aboriginal peoples in the Northern Territory’¹²⁰ and suggested that similar to the development of the First Nations Voice in South Australia, the Northern Territory Government should appoint an independent First Nations Commissioner to ‘lead meaningful community engagement on the development of the body’.¹²¹

¹¹⁹ Mr Yingiya Mark Guyula MLA, Committee Transcript, Friday 16 February 2024, p. 27

¹²⁰ NAAJA, Submission No. 5, p. 9

¹²¹ NAAJA Submission No. 5, p. 3

4 Conclusions and Recommendations

- 4.1 Development of a process to review Bills for their impact on First Nations Territorians was supported and welcomed by all those that made submissions to the inquiry. As the Committee heard, it is consistent with the commitment by all Australian Governments under the *National Agreement on Closing the Gap* to fundamentally change the way policies and programs that impact on the lives of Aboriginal and Torres Strait Islander people are developed and implemented. It was also acknowledged that it is consistent with the guiding principles of the Northern Territory Government's Local Decision-Making Framework and Aboriginal Justice Agreement.
- 4.2 As set out in the inquiry terms of reference, the Committee was tasked with, but not limited to, consideration of the preferred body to conduct the review of Bills, and a requirement for Statements of Compatibility against prescribed measures of self-determination. Following consideration of the evidence provided to the Committee, this Chapter sets out the Committee's conclusions and recommendations in relation to:
- progressing the development of a model of legislative review and building on the work undertaken by the Committee
 - the requirement for statements of compatibility
 - extending the requirement for Closing the Gap Impact Statements to include consideration of other key policy reforms
 - development of the Aboriginal Engagement Model, and
 - associated training and resource requirements.

Progressing the Development of a Model of Legislative Review

- 4.3 As highlighted in this report, there was no clear consensus as to the preferred body to conduct the review of Bills for their impact on First Nations Territorians. Rather, the Committee heard that several different review mechanisms could be effective, and all have their advantages and disadvantages. Nevertheless, the inquiry did identify several factors considered to be fundamental to the effectiveness of any review body; irrespective of the form it may take.
- 4.4 While the inquiry provided an opportunity to explore potential mechanisms to ensure the rights and views of First Nations Territorians are taken into consideration when laws are being made, it was evident that progressing the development of a model of legislative review requires further consultation with Aboriginal peoples and their representative organisations across the Northern Territory.
- 4.5 As emphasised throughout the inquiry, the Committee acknowledges that development of the review body and associated processes must be achieved in close collaboration with First Nations Territorians. Given the remit and membership of the NTECAA and its role in developing an independent

mechanism to support, monitor, and report on the transformation of mainstream agencies and institutions under the *National Agreement on Closing the Gap*, the Committee is of the view that it is well placed to take the lead in progressing the work commenced by the Committee and facilitate the community engagement required to identify the most appropriate model to review Bills for their impact on First Nations Territorians.

Recommendation 1

The Committee recommends that the Government assign the NT Executive Council on Aboriginal Affairs as the lead agency to facilitate meaningful community engagement with Aboriginal peoples and their representative organisations across the Northern Territory on the development of a body, and associated processes, to review Bills for their impact on First Nations Territorians.

Statements of Compatibility

- 4.6 The majority of submissions supported the re-introduction of a requirement for statements of compatibility with human rights to be tabled alongside explanatory statements when members introduce Bills in the Assembly. It was also agreed that Bills should be assessed for consistency with the *National Agreement on Closing the Gap* and the guiding principles underlying LDM and the AJA.
- 4.7 However, the Committee notes that requiring statements of compatibility to demonstrate consistency with specific NT government policies is problematic given that they are subject to change depending on the priorities of the government of the day. Then too, the Committee does not consider it would be appropriate to require non-government Bill sponsors to demonstrate consistency with government policies and priorities.
- 4.8 Concern was also raised that the proposed requirement for statements of compatibility against prescribed measures of self-determination, as contemplated in the inquiry terms of reference, would not necessarily be pertinent for all Bills. As the Committee heard, certain Bills may have a substantial impact on First Nations Territorians but may not directly relate to principles of self-determination.
- 4.9 Notwithstanding the above, the Committee is of the view that, as an interim measure until such time as a legislative review model is developed, a requirement for statements of compatibility with human rights and the *National Agreement on Closing the Gap* to be tabled when Bills are introduced in the Assembly would be beneficial. As noted in the Committee's *Discussion Paper*, the advantage of requiring statements of compatibility is that it provides early advice to the Parliament on the rights impacts of Bills and the reasons for those impacts and requires those developing the Bill to consider any possible rights implications before the Bill is introduced.

Recommendation 2

The Committee recommends that the Legislative Assembly require any member introducing a Bill to table a statement on whether the Bill is:

- 1) **Compatible with the rights and freedoms recognised or declared by the following international instruments:**
 - a) the International Convention on the Elimination of all Forms of Racial Discrimination 1965
 - b) the International Covenant on Economic, Social and Cultural Rights 1966
 - c) the International Covenant on Civil and Political Rights 1966
 - d) the Convention on the Elimination of All forms of Discrimination Against Women 1979
 - e) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984
 - f) the Convention on the rights of the Child 1989
 - g) the Convention on the rights of Persons with Disabilities 2006
 - h) the Declaration of Rights of Indigenous Peoples 2007
- 2) **Consistent with the *National Agreement on Closing the Gap*.**

Closing the Gap Impact Statements

- 4.10 In accordance with its commitment under the *National Agreement on Closing the Gap* to change the way government works to improve outcomes for Aboriginal people, in July 2021 Cabinet endorsed the introduction of a Closing the Gap Impact Statement to embed this change into the way the NT Government does business. The Committee heard that as part of the Cabinet process agencies are now required to demonstrate how submissions, including legislative proposals, align or do not align with the *National Agreement on Closing the Gap*.
- 4.11 Taking into consideration previous comments regarding statements of compatibility, the Committee is of the view that to further embed this change, agencies should also be required to demonstrate the extent to which Cabinet submissions are consistent with associated whole of government reforms such as LDM and the AJA. In the interests of transparency and accountability, the Committee also considers that the Government should table associated impact statements when introducing Bills in the Assembly.
- 4.12 The Committee acknowledges that training and skills development would be required to support the introduction of Impact Statements demonstrating consistency with LDM and AJA guiding principles. Further, the Committee notes that the development of training and guidance materials should take into consideration the findings of the Office of Aboriginal Affairs' evaluation of CtG Impact Statements.

- 4.13 Concerns were also raised about the uptake of training regarding CtG Impact Statements. As the Committee heard, while strongly encouraged there is currently no requirement for staff to complete the training which necessarily impacts on the quality and utility of the statements.

Recommendation 3

The Committee recommends that the Government amend the Cabinet process to include a requirement for agencies to submit an Impact Statement demonstrating how the proposal aligns or does not align with the guiding principles of the Government's Local Decision-Making Framework and Aboriginal Justice Agreement.

Recommendation 4

The Committee recommends that, for transparency and accountability, the Government table associated Impact Statements when introducing Bills in the Assembly.

Recommendation 5

The Committee recommends that, taking into consideration the evaluation of Closing the Gap Impact Statements, the Government:

- 1) Develop training and resources to assist agencies in the development of Impact Statements to ensure Local Decision-Making and Aboriginal Justice Agreement implications are captured and considered appropriately.**
- 2) Mandate relevant training for all public servants involved in the development of legislative proposals and associated Impact Statements.**

Development of Aboriginal Engagement Model

- 4.14 Consistent with the engagement principles in the *National Agreement on Closing the Gap*, the Committee heard that in July 2021 the Cabinet also endorsed the development of a model to engage with Aboriginal people on new policies and legislation. Currently under development by the Office of Aboriginal Affairs in partnership with APO NT, the Committee understands that it is intended that this initiative will require agencies to give Aboriginal organisations and communities an opportunity to engage on the development of all policy and legislation early in the design phase, and if this opportunity is accepted, throughout the policy process until finalisation.
- 4.15 While acknowledging that development of the Aboriginal Engagement Model has the capacity to address some of the concerns raised during this inquiry regarding meaningful engagement with First Nations Territorians on policies and legislative proposals, the Committee is of the view that it would be a lost opportunity if development of the Aboriginal Engagement Model failed to consider the evidence provided to this inquiry.

- 4.16 Noting the comments made in relation to constraints agencies face when it comes to engaging with First Nations Territorians, and similar findings of the Public Accounts Committee's 2023 *Inquiry into the Local Decision-Making Framework*¹²², the Committee is also concerned that the potential effectiveness of this measure may be compromised by the resources available to agencies.

Recommendation 6

The Committee recommends that, in developing the Aboriginal Engagement Model, the Government takes into consideration the evidence provided to this inquiry.

Recommendation 7

The Committee recommends that the Government review agency resources and address constraints that inhibit effective engagement with First Nations Territorians and their representative organisations.

¹²² Public Accounts Committee, *Inquiry into the Local Decision-Making Framework*, Legislative Assembly of the Northern Territory, Darwin, May 2023, <https://parliament.nt.gov.au/committees/list/PAC/LDM#Report>, p.88

Appendix 1: Discussion Paper Questions¹²³

In calling for submissions addressing the inquiry terms of reference, the Committee is particularly interested in obtaining your views on the following matters.

Review of Legislation

- Q1.** What do you consider to be the most appropriate body to review Bills introduced into the Legislative Assembly for their impact on First Nations Territorians?
- Q2.** Should all Bills be subject to review for their impact on First Nations Territorians? If not, who should decide which Bills should be subject to such a review?
- Q3.** What do you consider to be an appropriate timeframe for the review of Bills?
- Q4.** Should subordinate legislation be subject to review for their impact on First Nations Territorians?

Statements of Compatibility

- Q5.** Should statements of compatibility with the principles underlying the Northern Territory Government's *Local Decision Making Policy Framework* and commitments to *Closing the Gap* be required for Bills?
- Q6.** Should statements of compatibility with the principles underlying the Northern Territory Government's *Local Decision Making Policy Framework* and commitments to *Closing the Gap* be required for subordinate legislation?

Other Matters

- Q7.** Are there any other matters relating to the inquiry terms of reference that you would like to bring to the attention of the Committee?

¹²³ Legal and Constitutional Affairs Committee, *Discussion Paper: A Process to Review Bills for their Impact on First Nations Territorians*, Legislative Assembly of the Northern Territory, Darwin, July 2023, <https://parliament.nt.gov.au/committees/list/LCAC/IFNT#DP>, p.14

Appendix 2: Submissions

1. Civil Liberties Australia
2. Legislative Assembly for the Australian Capital Territory
3. Greg Marks
4. Australian Lawyers Alliance
5. Northern Territory Department of the Attorney-General and Justice
6. North Australian Aboriginal Justice Agency
7. Northern Territory Department of Health
8. Northern Territory Anti-Discrimination Commission
9. Northern and Central Land Councils
- 9a. Central Land Council – Supplementary Submission
10. Aboriginal Peak Organisations NT
11. Yingiya Mark Guyula MLA – Member for Mulka

Submissions can be accessed at:

<https://parliament.nt.gov.au/committees/list/LCAC/IFNT#Subs>

Appendix 3: Public Hearings

Darwin – 16 February 2024

Department of Health

- Claire Doyle: Senior Legislation Officer, Legal Services
- Rus Nasir: Acting Director First Nations Health and Wellbeing Division

Department of the Attorney-General and Justice

- Leonique Swart: Deputy Chief Executive Officer
- Hannah Clee: Principal Lawyer, Legal Policy
- Leanne Liddle: Director, Aboriginal Justice Unit
- Warren Jackson: Deputy Director, Aboriginal Justice Unit

Australian Lawyers Alliance

- Cathy Spurr: NT Branch Committee President

Legislative Assembly of the Northern Territory

- Yingiya Mark Guyula MLA: Member for Mulka
- John Greatorex: Linguistic and Cultural Interpreter

Department of the Chief Minister and Cabinet

- Tom Leeming: Deputy Chief Executive Officer, Policy and Reform
- Jean Doherty NT Health: Deputy Chief Executive Officer, Strategic and Corporate Services
- Shaneen Tilmouth: Acting Executive Director, Office of Aboriginal Affairs
- Kylie de Jesus Augusto: Acting Senior Director Cabinet Office and Secretariat Services

Darwin – 12 March 2024

Central Land Council

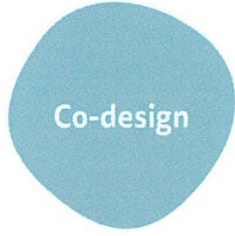
- Dr Josie Douglas: General Manager, Professional Services
- Kate O'Brien: Principal Legal Officer

North Australian Aboriginal Justice Agency

- Phil Brown: Acting Chief Executive Officer
- Leeanne Caton: Acting Deputy Chief Executive Officer
- Charlotte Grover Johnson: Manager, Law and Justice Projects

Hearing Transcripts, Tabled Papers and Answers to Questions Taken on Notice can be accessed at: <https://parliament.nt.gov.au/committees/list/LCAC/IFNT#Hearings>

Appendix 4: Local Decision-Making Guiding Principles¹²⁴

	Aboriginal people and communities understand their own needs and have the ability to develop their own solutions. They are leading decision making processes. We will respect culture and existing or traditional decision making processes. Aligns with APO NT Partnership Principle 8.
	We will respect connection to country. We recognise the importance of cultural fit. Our processes and expectations are adaptable to different locations, communities and services. We will recognise and value existing practice, capacity and outcomes in each location. We will develop cultural competency in dealing with individual communities. Aligns with APO NT Partnership Principles 2, 3, 6, 10.
	We will take the time to get it right. We will ensure culturally safe processes. Government will explore being genuinely flexible around funding and reporting cycles. Government will coordinate between agencies and processes, and will be responsive to local decision-making time-frames'. Wherever possible, we will provide the resources to build necessary capacity to engage meaningfully. We accept that things may go off-track, and will provide support mechanisms for these cases. Aligns with APO NT Partnership Principles 1, 2, 3, 4, 5.
	We commit to working alongside each other. We will not design something and come to community for input. We will design together from the very beginning. We will be open and transparent throughout the process. Aligns with APO NT Partnership Principles 4, 5, 7.
	We will transfer control from government to community throughout the process, where agreed. Wherever possible, we will be flexible with short term requirements, aligning them with the long-term vision. We will respect community views, and support community to reach their aspirations throughout the process. Aligns with APO NT Partnership Principle 7, 8, 9.

¹²⁴ Northern Territory Government, *Local Decision Making Framework Policy*, 2018, https://ldm.nt.gov.au/_data/assets/pdf_file/0006/791358/ldm-policy.pdf, p.16

Appendix 5: Closing the Gap Commitments¹²⁵

As highlighted in the Northern Territory's *Closing the Gap Implementation Plan 2021*, the NT Government, in partnership with Aboriginal Peak Organisations Northern Territory and the Local Government Association of the Northern Territory, has committed through the National Agreement on Closing the Gap to collectively address the four priority reforms areas as set out below:

Priority Reform One

Outcome – shared decision-making: Aboriginal and Torres Strait Islander people are empowered to share decision-making authority with governments to accelerate policy and place-based progress on Closing the Gap through formal partnership arrangements.

Target – There will be formal partnership arrangements to support Closing the Gap in place between Aboriginal and Torres Strait Islander people and governments in place in each state and territory enshrining agreed joint decision-making roles and responsibilities and where Aboriginal and Torres Strait Islander people have chosen their own representatives.

Priority Reform Two

Outcome – building the community-controlled sector: There is a strong and sustainable Aboriginal community-controlled sector delivering high quality services to meet the needs of Aboriginal people across the country.

Target – Increase the amount of government funding for Aboriginal programs and services going through Aboriginal community-controlled organisations.

Priority Reform Three

Outcome – Improving mainstream institutions: Governments, their organisations and their institutions are accountable for Closing the Gap and are culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people, including through the services they fund.

Target – Decrease in the proportion of Aboriginal and Torres Strait Islander people who have experiences of racism.

Priority Reform Four

Outcome – Aboriginal and Torres Strait Islander people have access to, and the capability to use, locally-relevant data and information to set and monitor the implementation of efforts to close the gap, their priorities and drive their own development.

Target – Increase the number of regional data projects to support Aboriginal and Torres Strait Islander communities to make decisions about Closing the gap and their development.

¹²⁵ Northern Territory Government, *Closing the Gap Northern Territory Implementation Plan, 2021*, https://aboriginalaffairs.nt.gov.au/data/assets/pdf_file/0008/1039814/closing-the-gap-implementation-plan-web.pdf

Appendix 6: Aboriginal Justice Agreement Guiding Principles¹²⁶

Implementation of the Aboriginal Justice Agreement will be guided and informed by these principles:

- Align with strategies already underway within government including the Northern Territory Government's *Everyone Together Aboriginal Affairs Strategy 2019-2029*.
- Establish and maintain respectful and collaborative relationships built on the foundations of mutual understanding and trust.
- Uphold the highest standards of honesty, integrity, transparency and accountability.
- Respect the diversity and histories of Aboriginal people and communities across the Northern Territory, accepting the unique needs, histories and strengths that must be considered in the co-design and delivery of strategies and policies.
- Respect and accept Aboriginal people's knowledge and connections to country, culture, kinship and language.
- Actively discourage stereotyping of Aboriginal people and the use of deficit labelling.
- Value and support Aboriginal leadership and local decision-making.
- Adhere to the highest standards of cultural competence and good practice in service delivery to Aboriginal Territorians.
- Ensure the Agreement's aims, commitments and actions continue to be founded on informed, evidence-based data and analysis.
- Ensure Aboriginal people are able to fully exercise their rights as Territorians.
- Acknowledge relevant human rights legislation and international instruments, charters, conventions and declarations.*

* *Australian Human Rights Commission Act 1986 (Cth)*; *Racial Discrimination Act 1975 (Cth)*; *International Convention on the Elimination of All Forms of Racial Discrimination 1965*; *International Covenant on Civil and Political Rights 1966*; *International Covenant on Economic, Social and Cultural Rights 1966*; *Convention on the Elimination of All Forms of Discrimination Against Women 1979*; *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984*; *Convention on the Rights of the Child 1989*; *Convention on the Rights of Persons with Disabilities 2006*; *Optional Protocol to the Convention Against Torture 2017*; *Declaration on the Rights of Indigenous Peoples 2007*.

¹²⁶ Department of the Attorney-General and Justice, *Northern Territory Aboriginal Justice Agreement 2021-2027*, https://justice.nt.gov.au/_data/assets/pdf_file/0005/1034546/nt-aboriginal-justice-agreement-2021-2027.pdf, p.9

Appendix 7: Review of Subordinate Legislation

Sessional Order 10

Subordinate Legislation and Publications Committee Duties Assigned to Legal and Constitutional Affairs Committee

The Assembly suspends the requirement to appoint a separate Subordinate Legislation and Publications Committee as required under Standing Order 176 and assigns all of the duties under that Standing Order to be undertaken by the Legal and Constitutional Affairs Committee as established under Standing Order 178.

Standing Order 176

Subordinate Legislation and Publications Committee

- (1) A Subordinate Legislation and Publications Committee must be appointed at the commencement of each Assembly to examine and report upon all instruments of a legislative or administrative character and other papers which are required by statute to be laid upon the Table.
- (2) The Committee must consist of five Members.
- (3) The Committee will, with respect to any instrument of a legislative or administrative character which the Legislative Assembly may disallow or disapprove, consider:
 - (a) whether the instrument is in accordance with the general objects of the law pursuant to which it is made,
 - (b) whether the instrument trespasses unduly on personal rights or liberties,
 - (c) whether the instrument unduly makes rights and liberties of citizens dependent upon administrative and not upon judicial decisions,
 - (d) whether the instrument contains matter which in the opinion of the Committee should properly be dealt with in an Act,
 - (e) whether the instrument appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made,
 - (f) whether there appears to have been unjustifiable delay in the publication or laying of the instrument before the Assembly, and
 - (g) whether for any special reason the form or purport of the instrument calls for elucidation.
- (4) The Committee, if it is of the opinion that an instrument should be disallowed or disapproved:
 - (a) will report that opinion and the grounds thereof to the Assembly before the end of the period during which any notice of the motion for disallowance of that instrument may be given to the Assembly, and
 - (b) if the Assembly is not meeting, may refer its opinion and the grounds thereof to the authority by which the instrument was made.

- (5) The Committee, if it is of the opinion that any matter relating to any paper which is laid upon the Table of the Assembly should be brought to the notice of the Assembly, may report that opinion and matter to the Assembly.
- (6) The Committee will inquire into and report, from time to time, on the printing, publication and distribution of publications or such matters as are referred to it by the Speaker or the Assembly.
- (7) For the purposes of this Standing Order, 'instrument of a legislative or administrative character' has the same meaning as that defined in the *Interpretation Act*.

Adopted 21 October 2020

Appendix 8: Fundamental Legislative Principles

Section 4, *Legislative Standards Act 1992* (Queensland)

4 Meaning of *fundamental legislative principles*

- (1) For the purposes of this Act, ***fundamental legislative principles*** are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law.
- (2) The principles include requiring that legislation has sufficient regard to –
 - (a) rights and liberties of individuals; and
 - (b) the institution of Parliament
- (3) Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation –
 - (a) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
 - (b) is consistent with principles of natural justice; and
 - (c) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
 - (d) does not reverse the onus of proof in criminal proceedings without adequate justification; and
 - (e) confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and
 - (f) provides appropriate protection against self-incrimination; and
 - (g) does not adversely affect rights and liberties, or impose obligations, retrospectively; and
 - (h) does not confer immunity from proceeding or prosecution without adequate justification; and
 - (i) provides for the compulsory acquisition of property only with fair compensation; and
 - (j) has sufficient regard to Aboriginal tradition and island custom; and
 - (k) is unambiguous and drafted in a sufficiently clear and precise way.
- (4) Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill –
 - (a) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
 - (b) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and
 - (c) authorises the amendment of an Act only by another Act.
- (5) Whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation –

- (a) is within the power that, under an Act or subordinate legislation (the authorising law), allows the subordinate legislation to be made; and
- (b) is consistent with the policy objectives of the authorising law; and
- (c) contains only matter appropriate to subordinate legislation; and
- (d) amends statutory instruments only; and
- (e) allows the subdelegation of a power delegated by an Act only –
 - (i) in appropriate cases and to appropriate persons; and
 - (ii) if authorised by an Act.

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Dissenting Report

Steve Edgington MLA, Member for Barkly
Marie-Clare Boothby MLA, Member for Brennan

Dissenting report to the Legal and Constitutional Affairs Committee, for inquiry and report back to the Assembly by May 2024, a process to review Bills introduced into the Assembly for their impact on First Nations Territorians.

Firstly, we thank the Member for Mulka for the effort he has made attempting to find a process for reviewing Bills after they've been introduced to the Assembly and providing evidence and examples of the failure to genuinely consult and listen to the views and impacts of Bills when it comes to Aboriginal Territorians.

We also thank everyone who completed submissions to the Inquiry and also those who presented in person or via video link to answer the committee's questions during the process.

Thank you to the following contributors:

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After listening to all the feedback and answers to committee questions during this inquiry, there are varied views on an approach which attempts to achieve the Member for Mulka's objectives to have a process to review Bills introduced for their impact on First Nations Territorians.

Overall the inquiry highlights the failures of the Labor Government when it comes to applying the Local Decision Making Guiding Principles and the Remote Engagement and Coordination Strategy Values and Principals.

A clear message from the feedback is that First Nations Territorians don't feel heard about issues which they believe may be impactful or they feel they've not been given enough time to consider new legislation or changes to current legislation to offer feedback via their representative bodies.

Submissions to the inquiry cited best practice being the second iteration of the Burial and Cremation Act 2022 which was seen as a success due to the long lead in time and consultation of First Nations Territorians before the Bill was tabled in parliament.

There appears to be many representative bodies working in different spaces for the benefit or advancement of First Nations Territorians including within existing government agencies.

It could be argued that other groups of Territorians may feel and experience the same, yet this was not part of the terms of reference of this inquiry.

It remains unclear if a consensus in how a process could operate as a preferred model given the number of differing views of Aboriginal and First Nations Territorians and as an example the CLC said they'd need more time to offer a structure of reviewing legislation that would work for their 90 elected delegates across the Territory, which demonstrates the need to have strong engagement and time to consult before a Bill is tabled in Parliament.

Members of the Department of Attorney-General including the Aboriginal Justice Unit suggested that consultation fatigue was real in communities due to not feeling heard by governments, again this could be argued that other groups of Territorians may feel and experience the same.

The recommendations determined by this committee to recommend the NTG request a body of work to be undertaken by the NT Executive council further delays any progress of ensuring Aboriginal Territorians have a say in Bills before the house.

Adding more bureaucracy to an already burdensome system to try and compensate for Labor's failure to consult and engage First Nations Territorians during development of policy and legislation will further delay Territorians' right to feel heard.

The fundamental level of community engagement across all Territorians and information about upcoming Bills to be introduced should offer sufficient time for feedback and access to information in easily understood language for champions of the legislation (such as elected representatives) to explain to impacted Territorians in our democratic Westminster system.

The CLP believes the focus to ensure Territorians including First Nations Territorians are given opportunity to contribute to Bills prior to being tabled in Parliament should be the responsibility of the Minister taking carriage of the Bill.

Recommendation:

For government to follow the policy instruments already in place, such as, Closing the Gap Commitments, Local Decision Making Guiding Principles, the Remote Engagement and Coordination Strategy Values and Principles, and Statements of Compatibility which demonstrate that the consultation and engagement with First Nations Territorians should clearly be undertaken prior to tabling a Bill in parliament.

If Labor had chosen to follow these policy instruments there would have been no need for this Inquiry and, accordingly, no need for a process to review Bills that impact on First Nations Territorians.



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