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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

ELEVENTH ASSEMBLY

PUBLIC SECTOR (CLOSING THE GAP) LEGISLATION AMENDMENT BILL 2025

EXPLANATORY STATEMENT

**Presented by
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Public Sector (Closing the Gap) Legislation Amendment Bill 2025

The Bill **is not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

This explanatory statement relates to the Public Sector (Closing the Gap) Legislation Amendment Bill 2025 (the Bill) as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

The statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Overview of the Bill

The Bill amends the *Public Sector Management Act 1994* and the *Annual Reports (Government Agencies) Act 2004*. It seeks to legislate the ACT Government's commitments under the National Agreement on Closing the Gap (National Agreement) and to acquit essential actions 3.5 and 4.3 of the Productivity Commission's 2024 Review of the National Agreement on Closing the Gap (the Productivity Commission Review).

In 2020, the National Agreement was co-signed by all State and Territory governments, the Australian Local Government Association, and the Coalition of Aboriginal and Torres Strait Islander Peak Organisations. It comprises four priority reform areas, which articulate how governments will change the way they work with Aboriginal and Torres Strait Islander people and communities, and 17 socioeconomic targets that seek to improve life outcomes for Aboriginal and Torres Strait Islander people.

The National Agreement stipulates that the Productivity Commission will review implementation progress every three years, and that an Aboriginal and Torres Strait Islander-led review will be conducted within 12 months of each Productivity Commission Review. The report on the first Productivity Commission Review was released in January 2024.

Essential action 3.5 of that report recommends that responsibility for improving cultural capability and relationships with Aboriginal and Torres Strait Islander people should be embedded into public sector employment requirements. Essential action 4.3 recommends that a statement on Closing the Gap should be included in every government organisation's annual reporting requirements.

The Bill gives effect to these recommendations by:

- requiring all public servants to do their job in accordance with a new ‘closing the gap principle’, which includes demonstrating cultural capability and working to develop cultural capability in their workplace; implementing the principles of the National Agreement throughout their work; promoting cultural safety; and eliminating institutional racism in the administrative unit they work in; and
- requiring directors-general to report (in a form agreed by the Minister and the Aboriginal and Torres Strait Islander Elected Body) on the actions taken by their administrative unit to implement the priority reform areas of the National Agreement, the recommendations in the Productivity Commission Review, and the recommendations in the Aboriginal and Torres Strait Islander-led review.

While the Bill seeks to legislate the ACT Government’s obligations under the National Agreement, it particularly reflects the commitment under Priority Reform Three of the National Agreement to ‘systemic and structural transformation of mainstream government organisations to improve accountability and respond to the needs of Aboriginal and Torres Strait Islander people.’ This includes elements such as identifying and eliminating racism; embedding and practicing meaningful cultural safety; working in partnership with Aboriginal and Torres Strait Islander people; increasing accountability; and improving engagement with Aboriginal and Torres Strait Islander people.

Consultation on the proposed approach

Consultation on the Bill was conducted with the Aboriginal and Torres Strait Islander Elected Body, representatives from ACT Aboriginal community-controlled organisations (ACCOs), and other leaders in the ACT Aboriginal and Torres Strait Islander community. Relevant ministerial offices were also engaged during the drafting of the Bill.

Climate impact

There are no climate impacts anticipated under the Bill.

Consistency with human rights

Due consideration was given to the Bill’s compatibility with human rights per section 28 of the *Human Rights Act 2004* (HR Act).

There are no material limitations on human rights identified in this Bill. Several human rights are promoted in the Bill, and an assessment of these rights is detailed below.

Rights engaged

The Bill engages the following rights under the HR Act:

- Section 8 - Recognition and equality before the law
- Section 17 - Taking part in public life
- Section 27 - Cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities
- Section 27B - Right to work and other work-related rights

Rights promoted

The Bill promotes the following human rights:

Section 8 - Recognition and equality before the law

Section 8 of the HR Act provides that everyone has the right to enjoy their rights without distinction or discrimination of any kind.

The National Agreement ultimately seeks to ensure that Aboriginal and Torres Strait Islander people experience the same outcomes as non-Indigenous Australians. This includes outcomes like equal access to appropriate housing, healthcare and education. Given that the Bill centres on the Government's implementation of the National Agreement, it engages the right to recognition and equality before the law.

The Bill also promotes this right by requiring public servants to work to eliminate institutional racism, to develop cultural capability, and to promote cultural safety in the fulfilment of their role.

Section 17 - Taking part in public life

Section 17 of the HR Act provides that every citizen has the right to take part in the conduct of public affairs.

The Priority Reform areas in the National Agreement detail systemic changes that, if implemented successfully by governments, will increase the self-determination of Aboriginal and Torres Strait Islander people. This includes through increased representation and participation of Aboriginal and Torres Strait Islander people in decision-making that affects them, both in the ACT public sector, in the ACT Legislative Assembly, and beyond.

The Bill further promotes this right by requiring public servants to work to eliminate institutional racism, to develop cultural capability, and to promote cultural safety in undertaking their role. Doing so will reduce discrimination and provide a culturally safe environment that welcomes the participation of Aboriginal and Torres Strait Islander people in the public sector and in interactions with the public sector.

Section 27 - Cultural and other rights of Aboriginal and Torres Strait Islander peoples

Section 27 of the HR Act prescribes that Aboriginal and Torres Strait Islander people hold distinct cultural rights and must not be denied the right to maintain, control, protect and develop their culture.

The recognition and preservation of Aboriginal and Torres Strait Islander culture is central to the National Agreement, and so the Bill promotes this right by requiring public servants to implement the principles of the National Agreement and to develop the cultural capability of their administrative unit.

Section 27B - Right to work and other work-related rights

Section 27B of the HR Act prescribes that everyone has the right to work, and the right to the enjoyment of just and favourable conditions of work, without discrimination.

The Bill promotes this right by prescribing that a public servant must do their job in accordance with a 'closing the gap principle', which includes demonstrating their own cultural capability, working to develop the cultural capability of their administrative unit, implementing the principles of the National Agreement, promoting cultural safety, and working to eliminate institutional racism in their administrative unit.

By embedding these as threshold responsibilities for all public servants to undertake, the Bill will promote the right for Aboriginal and Torres Strait Islander people to enjoy just and favourable conditions of work.

Article 1 - The International Covenant on Economic, Social and Cultural Rights

While not explicitly a right contained in the HR Act, the Bill also promotes broader human rights such as the right to self-determination, articulated in the International Covenant on Economic, Social and Cultural Rights.

This right is a fundamental principle of the National Agreement, and is particularly achieved through governmental support for the capacity-building of ACCOs, the delivery of services to Aboriginal and Torres Strait Islander people by ACCOs, and shared decision-making through genuine partnerships. The Bill requires the Government to report annually on actions taken to implement the Priority Reform areas, which would ultimately require reporting on actions to fulfil these elements of self-determination; and requires public servants to implement the National Agreement to the extent that it relates to their job, which includes upholding the right to Aboriginal and Torres Strait Islander people's self-determination.

Clause notes

Part 1 Preliminary

Clause 1 Name of Act

This clause provides that the name of the Act will be the *Public Sector (Closing the Gap) Legislation Amendment Act 2025*.

Clause 2 Commencement

This clause provides that the Act will commence on the day after its notification day, which differs from the automatic commencement date as the notification day (s 75(1) *Legislation Act 2001*).

Clause 3 Legislation Amended

This clause identifies the legislation that will be amended:

- *Annual Reports (Government Agencies) Act 2004*
- *Public Sector Management Act 1994*

Part 2 Annual Reports (Government Agencies) Act 2004

Clause 4 New section 7E

This clause introduces new requirements for the Government to report on measures taken to implement the National Agreement. Directors-general must also specifically report on measures taken in relation to implementing the Priority Reform areas, and in response to the recommendations from the most recent Productivity Commission Review and the most recent Aboriginal and Torres Strait Islander-led review.

It prescribes that this information must be reported in a format agreed by the Minister and the Aboriginal and Torres Strait Islander Elected Body.

The clause also provides definitions for the *Aboriginal and Torres Strait Islander Elected Body* and the *National Agreement*.

Part 3 Public Sector Management Act 1994

Clause 5 Meaning of *public sector principles* new section 8 (1) (c)

This clause inserts the *closing the gap principle* within the existing meaning of *public sector principles*.

Clause 6 Section 8 (2)

This clause prescribes that a public servant must do their job in accordance with both the *best practice principle*, which predates the Bill, and the new *closing the gap principle*.

Clause 7 Section 8 (4)

This clause prescribes definitions for *Aboriginal and Torres Strait Islander cultural capability*, the *closing the gap principle*, and the *National Agreement*.

The definition of *Aboriginal and Torres Strait Islander cultural capability* is derived from the definition used in Queensland's *Public Sector Act 2022*. This approach was taken because the Productivity Commission Review recommended that other jurisdictions follow the Queensland model for these reforms.

The definition of the *closing the gap principle* prescribes five different actions that a public servant must fulfil in order to do their job in accordance with the principle: they must demonstrate cultural capability; work to develop the cultural capability of the administrative unit they are employed in; implement the principles of the National Agreement as they relate to their job and their administrative unit; promote cultural safety, as defined by the National Agreement; and work to eliminate institutional racism in their administrative unit.

The definition of the *National Agreement* explicitly includes any future agreement that may replace the current agreement, as stipulated at clause 13 of the National Agreement.