



**LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY**

**Legal and Constitutional Affairs Committee**

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# **Discussion Paper**

## **A Process to Review Bills for their Impact on First Nations Territorians**

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**July 2023**



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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 Legal and Constitutional Affairs Committee for inquiry and report by May 2024.

This discussion paper is the Committee's first step in the inquiry process. It provides a brief overview of the Northern Territory context regarding the passage and review of legislation and models of legislative review currently in place elsewhere in Australasia. A number of questions relating to the main issues for consideration, and which the Committee invites responses to, are provided at the end of this paper.

The Committee trusts that this paper will be a catalyst for suggestions and debate on how the Assembly can refine its processes to more adequately take into account the potential impact of proposed legislation on First Nations Territorians.






I encourage you to forward your ideas and responses to the discussion paper questions to the Committee by Friday 29 September 2023.



**Mr Brent Potter MLA**

**Chair**

## Committee Members

	<b>Mr Brent Potter MLA:</b> Member for Fannie Bay	
	<b>Party</b>	Territory Labor
	<b>Parliamentary Position</b>	Acting Deputy Speaker
	<b>Committee Membership</b>	
	Standing	Legal and Constitutional Affairs (Chair) Public Accounts (Deputy Chair) Standing Committee on the ICAC (Deputy Chair)
	<b>Mr Dheran Young MLA:</b> Member for Daly	
	<b>Party</b>	Territory Labor
	<b>Parliamentary Position</b>	Deputy Speaker
	<b>Committee Membership</b>	
	Standing	House (Deputy Chair) Legal and Constitutional Affairs (Deputy Chair) Public Accounts Committee
	<b>Mr Joel Bowden MLA:</b> Member for Johnston	
	<b>Party</b>	Territory Labor
	<b>Parliamentary Position</b>	Government Whip
	<b>Committee Membership</b>	
	Standing	Legal and Constitutional Affairs Public Accounts (Chair)
	<b>Ms Marie-Clare Boothby MLA:</b> Member for Brennan	
	<b>Party</b>	Country Liberals
	<b>Committee Membership</b>	
	Standing	Legal and Constitutional Affairs Standing Committee on the ICAC
	<b>Mr Steve Edgington MLA:</b> Member for Barkly	
	<b>Party</b>	Country Liberals
	<b>Committee Membership</b>	
	Standing	Legal and Constitutional Affairs

# 1 Introduction

## Inquiry 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.

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 peoples 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.

## Purpose of Discussion Paper

- 1.1 The purpose of this discussion paper is to seek input on options for a process to review Bills introduced in the Assembly for their impact on First Nations Territorians. To this end, Chapter 2 provides a brief overview of the Northern Territory context and models of legislative review currently in place elsewhere in Australasia. Issues for consideration and specific questions for response by submitters are set out in Chapter 3.

## Making a Submission

- 1.2 The Committee encourages interested individuals and organisations to make submissions, including information, feedback and comments on the matters and specific questions outlined in this discussion paper.
- 1.3 The closing date for submissions is **Friday 29 September 2023**. Submissions should be forwarded via email to: [LA.Committees@nt.gov.au](mailto:LA.Committees@nt.gov.au).
- 1.4 Guidelines for making a submission, appearing as a witness to a committee hearing, and procedures for the protection of witnesses can be found at: <https://parliament.nt.gov.au/committees/get-involved>.
- 1.5 If you would like to receive updates on this and other committee inquiries please go to: <https://parliament.nt.gov.au/committees/subscribe>.
- 1.6 Should you require any further information, please contact the Secretary to the Committee, Julia Knight on 08 8901 4149 or by email at: [LA.Committees@nt.gov.au](mailto:LA.Committees@nt.gov.au)

## 2 Models of Legislative Review

### Northern Territory Context

- 2.1 In considering a process for the review of Bills introduced in the Legislative Assembly for their impact on First Nations Territorians, it is useful to consider the context within which such a process would operate and the legislative review mechanisms currently in place.

### *Passage of Bills*

- 2.2 The process for the passage and review of Bills is set out in Chapters 12 and 13 of the Assembly's Standing Orders.<sup>1</sup> The key points in how the Assembly passes a Bill are:
- Member introduces the Bill (Bill read a first time), gives a 'second reading speech' explaining the purpose of the Bill, and tables an Explanatory Statement describing the purpose of each clause of the Bill.
  - Debate on the Bill is then adjourned for at least one month to allow public discussion.
  - Members debate the purpose of the Bill (second reading debate) and vote on whether they think it is a good idea (second reading of the Bill).
  - If the second reading is agreed, the Assembly may consider the Bill clause by clause and make any amendments. When all amendments have been considered, the Assembly agrees that the Bill should become law (agrees the Bill be read a third time).

### Other Models

#### *Statements of Compatibility*

- 2.3 In addition to the Explanatory Statement, a number of parliaments require a Member introducing a Bill to provide a statement on whether the Bill is compatible with human rights and, if it is not, the justification for the incompatibility.
- 2.4 This process had its genesis in jurisdictions, such as the United Kingdom, Victoria and the Australian Capital Territory, that were introducing Human Rights legislation.<sup>2</sup> Despite the absence of a Bill of Rights, in 2012 the requirement for statements of compatibility was also introduced into the Federal Parliament by way of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).<sup>3</sup>
- 2.5 For the purposes of this Act, Human Rights are defined as:

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<sup>1</sup> Legislative Assembly of the Northern Territory, *Standing Orders – in force as of 21 April 2016*, 3<sup>rd</sup> Edition, <https://parliament.nt.gov.au/business/standing-and-sessional-orders>, pp. 40-46

<sup>2</sup> See for example, *Human Rights Act 1998* (UK), s19; *Human Rights Act 2004* (ACT), s 37; *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 28; *Human Rights Act 2019* (Qld), s 38

<sup>3</sup> *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), s 8



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 done at New York on 21 December 1965 ([1975] ATS 40);
- (b) the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966 ([1976] ATS 5);
- (c) the International Covenant on Civil and Political Rights done at New York on 16 December 1966 ([1980] ATS 23);
- (d) the Convention on the Elimination of All Forms of Discrimination Against Women done at New York on 18 December 1979 ([1983] ATS 2);
- (e) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 10 December 1984 ([1989] ATS 21);
- (f) the Convention on the Rights of the Child done at New York on 20 November 1989 ([1991] ATS 4);
- (g) the Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006 ([2008] ATS 12).<sup>4</sup>

- 2.6 As is the case in Victoria and Queensland,<sup>5</sup> the Federal Parliament also requires statements of compatibility to be prepared for legislative instruments that are subject to disallowance.<sup>6</sup>
- 2.7 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 also required for all Bills introduced in the Northern Territory. While the Federal model is the most comprehensive in relation to the instruments against which statements of compatibility are required, the Committee notes that there is currently no requirement for an assessment of a Bill's compatibility with the United Nations Declaration on the Rights of Indigenous Peoples.
- 2.8 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 a Bill to give consideration to any possible rights implications before the Bill is introduced.
- 2.9 The disadvantage is that it places an additional administrative burden on the proposer of a Bill. However, in instances where a Bill clearly does not impact on human rights, this burden would not be great. In those instances where a Bill may have such an impact, it is appropriate that the proposer analyses those impacts and be required to justify them.
- 2.10 In relation to the review of Bills introduced in the Assembly for their impact on First Nations Territorians, the Committee notes that the inquiry terms of reference contemplate the requirement for statements of compatibility to not only consider compliance with Human Rights instruments but to address the extent to which Bills are consistent with the principles underlying the Northern Territory

<sup>4</sup> *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), s 3

<sup>5</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 21(1)(ha); *Human Rights Act 2019* (Qld), s 41

<sup>6</sup> *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), s 9

Government's *Local Decision Making Policy Framework* and its commitments to *Closing the Gap*. For reference, the Local Decision Making Guiding Principles are provided at Appendix 1 and the priority reforms the Government has committed to regarding Closing the Gap are provided at Appendix 2.

### **Bill Scrutiny Committees**

- 2.11 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.
- 2.12 All of these parliaments require that Bills undergo a formal review of their impact on rights and liberties of individuals and the institution of Parliament. Where statements of compatibility are required, this review also considers the extent to which Bills are compatible with the relevant Human Rights legislation. However, for some parliaments this scrutiny is limited to a technical review conducted with the assistance of in-house or external legal advisors.
- 2.13 The advantage of this approach is that the review process can generally be accommodated within existing parliamentary processes and timeframes. However, it does not provide an opportunity for external stakeholders to make submissions or appear before the committee, and does not usually consider the policy objectives of a Bill.
- 2.14 At the Federal level, all Bills are also considered by Bill Selection Committees. In each case, the Committee's role is to recommend to the relevant House which Bills should be referred to a committee for detailed inquiry and public consultation into whether the Bill should be passed or amended, at what stage of their passage they should be referred, and the date by which the committee should present its report.<sup>7</sup>
- 2.15 The other unicameral parliaments of Australasia (Queensland, New Zealand and the Australian Capital Territory) have implemented a consultative inquiry approach to all Bills by default. In Queensland, all Bills, unless declared urgent, are referred to a portfolio committee prior to the second reading debate. As provided for under section 93 of the *Parliament of Queensland Act 2001*, each portfolio committee is responsible for examining Bills and items of subordinate legislation in its portfolio area in relation to:
  - the policy to be given effect by the legislation; and

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<sup>7</sup> Parliament of Australia, House of Representatives Committees, Selection Committee, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Selection/Role\\_of\\_the\\_Committee](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Selection/Role_of_the_Committee); Parliament of Australia, Senate Committees, Selection of Bills Committee, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Selection\\_of\\_Bills/Role\\_of\\_the\\_Committee](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Selection_of_Bills/Role_of_the_Committee)

- the application of fundamental legislative principles<sup>8</sup> to the legislation (see Appendix 3); and
  - matters arising under the *Human Rights Act 2019* (Qld); and
  - for subordinate legislation – its lawfulness.
- 2.16 The Standing Orders<sup>9</sup> provide that portfolio committees may examine a Bill by calling for and receiving submissions; holding public hearings and taking evidence from witnesses; and engaging expert or technical assistance and advice. A report by a portfolio committee may recommend whether the Bill should be passed and may recommend amendments to the Bill that are relevant to the subject matter of the Bill. While the Standing Orders provide that the committee must report to the Assembly within six months, the Assembly may vary the report date on a Bill to a period of not less than 6 weeks. In practice, most Bills are reported on within approximately two months.
- 2.17 In New Zealand, the procedure for the referral and consideration of Bills is similar to that in Queensland. Once a Bill has been referred, the committee has six months to examine and report on the Bill, or such other time as determined by the House or the Business Committee. Following examination of the Bill, the Committee may recommend whether the Bill should be passed and may recommend amendments that are relevant to the subject matter of the Bill, are consistent with the principles and objects of the Bill, and otherwise conform to the Standing Orders and the practice of the House. Amendments recommended by the majority of the committee and agreed to by the House, or amendments recommended unanimously by the committee, are adopted as part of the Bill for its second reading.<sup>10</sup>
- 2.18 In the Australian Capital Territory, all Bills stand referred to the relevant standing committee for inquiry and report following their introduction in the Assembly. Any amendments to be proposed by any Member to any Bill must also be referred to the committee for consideration and report before they can be moved unless the amendment is deemed to be urgent, minor or technical in nature or is in response to comment made by the committee.<sup>11</sup> Committees are required to report within two months from the presentation of the Bill, except for Bills introduced in the last sitting week of the calendar year where the committee is required to report within

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<sup>8</sup> *Legislative Standards Act 1992* (Qld), section 4(1) provides that 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.

<sup>9</sup> Legislative Assembly of Queensland, *Standing Rules and Orders of the Legislative Assembly*, <https://documents.parliament.qld.gov.au/assembly/procedures/StandingRules&Orders.pdf>, pp. 29-32

<sup>10</sup> New Zealand Parliament, *How a Bill becomes law*, <https://www.parliament.nz/en/visit-and-learn/how-parliament-works/how-laws-are-made/how-a-bill-becomes-law/>

<sup>11</sup> Legislative Assembly for the Australian Capital Territory, *Companion to the Standing Orders*, second edition 2022, <https://www.parliament.act.gov.au/parliamentary-business/in-the-chamber/standing-orders/companion-2nd-ed>, pp. 375-78

3 months. Unlike Queensland and New Zealand, the committee does not inquire into or comment on the policy objectives of the legislation.<sup>12</sup>

- 2.19 As indicated previously, for a period of time during the 13th Assembly all Bills introduced in the Northern Territory were required to be accompanied by both an explanatory statement and a statement of compatibility with Human Rights. In addition, all Bills, unless deemed urgent, were referred to a Bill scrutiny committee for inquiry and report. Initially, the Assembly established two subject based scrutiny committees – the Economic Policy Scrutiny and the Social Policy Scrutiny committees. Following an internal review, in November 2019 these committees were replaced by the Legislation Scrutiny Committee.<sup>13</sup>
- 2.20 These committees examined Bills for their compliance with the fundamental legislative principles like those set out in the Queensland *Legislative Standards Act 1992* (see Appendix 3). To facilitate consultation, the date by which the Bill scrutiny committees were required to report effectively provided a minimum of approximately eight weeks from the date of referral in which to finalise the inquiry and report back to the Assembly. Depending on the sitting pattern of the Assembly in many instances the timeframe available to the committees was considerably longer.
- 2.21 The main advantage of the consultative approach to Bill scrutiny is that it provides an opportunity for interested individuals and organisations to have input in the legislative process. However, given that meaningful consultation requires time, one of the primary challenges of the consultative model is achieving a balance between the time allocated for the review of Bills and the passage of legislation in a timely manner. In a small jurisdiction, consultation fatigue and the capacity for organisations to make submissions and be available to attend public hearings is a further challenge.

### **Advisory Committees**

- 2.22 While the Committee is not aware of any examples of statutory bodies that have been established to scrutinise legislation, as contemplated in the Committee's inquiry terms of reference, there have been two instances in the Northern Territory where committees composed primarily of members external to parliament have been established to provide advice to a parliamentary committee.
- 2.23 In 2004 a Statehood Steering Committee (SSC) was established to provide advice to the LCAC regarding engaging Territorians about the constitutional

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<sup>12</sup> Legislative Assembly for the Australian Capital Territory, "Standing Committee on Justice and Community Safety (Legislative Scrutiny Role), [https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees/JCS\\_Scrutiny](https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees/JCS_Scrutiny)

<sup>13</sup> An overview of the operation of the Economic Policy, Social Policy and Legislation Scrutiny Committees is available in the committees' Annual Reports available on the respective committee's webpage via the following links. For the Economic Policy Scrutiny Committee: <https://parliament.nt.gov.au/committees/previous/EPSC>. For the Social Policy Scrutiny Committee: <https://parliament.nt.gov.au/committees/previous/spsc>. For the Legislation Scrutiny Committee: <https://parliament.nt.gov.au/committees/previous/LSC>

development of the Northern Territory. Reporting to the LCAC the membership of the SSC included the Chair and two other members of the LCAC and a number of community based representatives that were considered to have a strong commitment in matters concerning the Northern Territory's ongoing constitutional development that is tied to a future grant of Statehood. The SSC remained in operation until December 2010 when it presented its final report

- 2.24 In 2011 the Assembly implemented recommendation 2 of the SSC's final report by providing for the appointment of a Northern Territory Constitutional Convention Committee (NTCCC) to advise the LCAC on the implementation of the Statehood program and the holding of a Constitutional Convention. Similar to the SSC, the NTCCC comprised the Chair and two members of the LCAC and a number of expert representatives. The NTCCC remained in operation until the end of the 11th Assembly in August 2012.
- 2.25 This model could be adapted to provide advice from culturally appropriate First Nations Territorians.

## Review of Subordinate Legislation

- 2.26 The review of subordinate legislation (rules, regulations and by-laws) by parliamentary committees is a long held and well established practice in all Australasian parliaments. The rationale being that unlike primary legislation, subordinate legislation is not generally subject to debate, scrutiny or amendment in the Chamber.
- 2.27 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. Similar to other jurisdictions, Standing Order 176(3)<sup>14</sup> 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. This review does not consider the policy of the legislation but is a formal review conducted with the assistance of an independent legal advisor.

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<sup>14</sup> Legislative Assembly of the Northern Territory, *Standing Orders – in force as of 21 April 2016*, 3<sup>rd</sup> Edition, Legislative Assembly of the Northern Territory, Darwin, 2016  
<https://parliament.nt.gov.au/business/standing-and-sessional-orders>, p. 51

### 3 Issues for Consideration

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?

***Thank you for your interest in this inquiry***



## Appendix 1: Local Decision Making Guiding Principles<sup>15</sup>



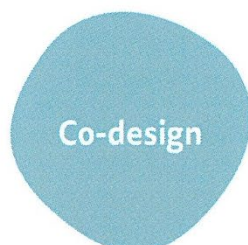
Aboriginal people and communities understand their own needs and have the ability to develop their own solutions. They are leading decision making processes. We will respect culture and existing or traditional decision making processes. Aligns with APO NT Partnership Principle 8.



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.

<sup>15</sup> Northern Territory Government, *Local Decision Making Framework Policy*, 2018, [https://ldm.nt.gov.au/\\_data/assets/pdf\\_file/0006/791358/ldm-policy.pdf](https://ldm.nt.gov.au/_data/assets/pdf_file/0006/791358/ldm-policy.pdf), p.16

## Appendix 2: Closing the Gap Commitments<sup>16</sup>

As highlighted in the Northern Territory's Closing the Gap Implementation Plan, 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.

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<sup>16</sup> 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](https://aboriginalaffairs.nt.gov.au/data/assets/pdf_file/0008/1039814/closing-the-gap-implementation-plan-web.pdf)



## Appendix 3: 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.