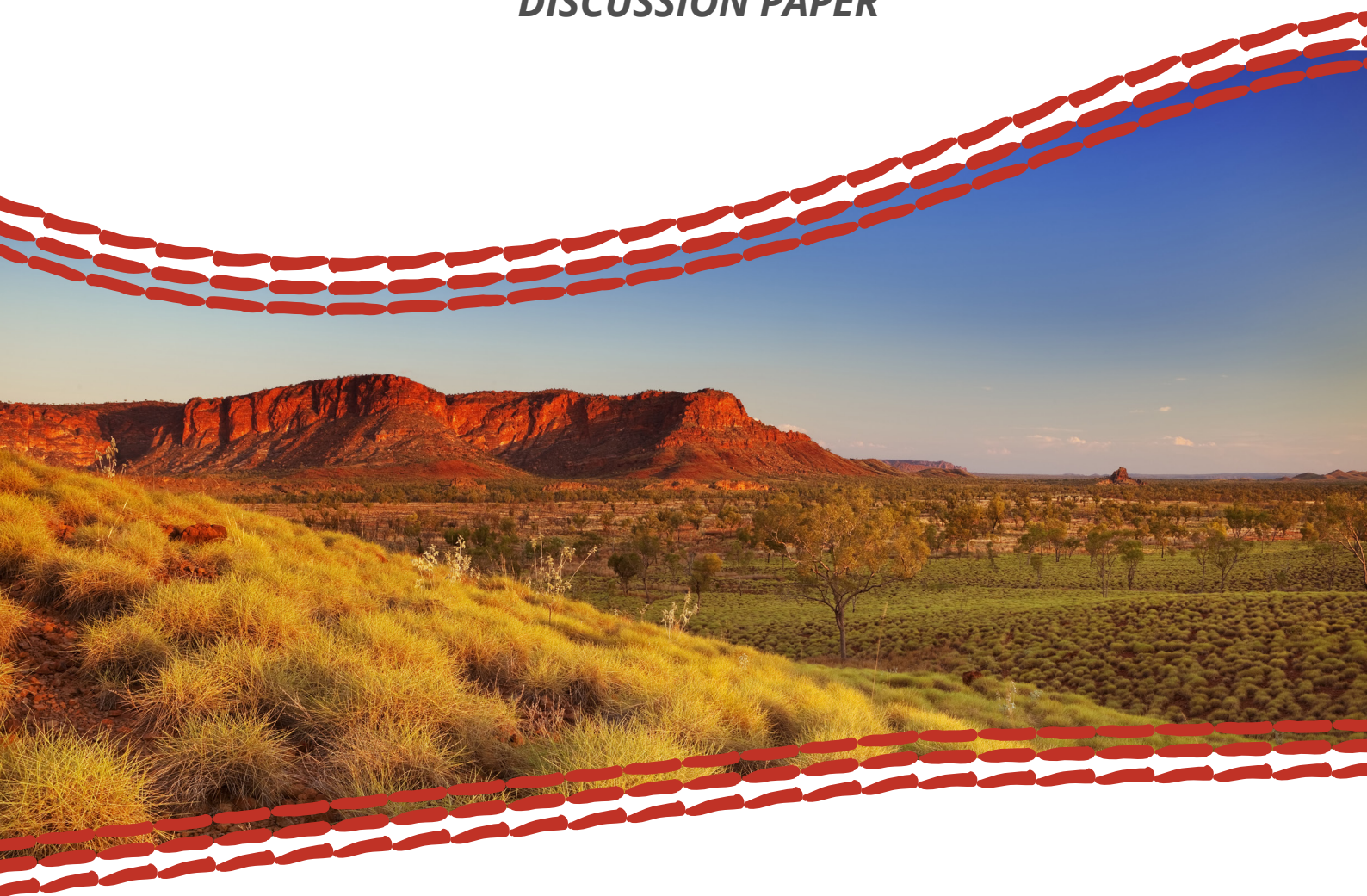




An office for advocacy and accountability in Aboriginal affairs in Western Australia

DISCUSSION PAPER



June 2018

Department of the Premier and Cabinet

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Making a submission

We invite written submissions in response to this discussion paper.
Please send submissions to AboriginalPolicy@dpc.wa.gov.au or

Director, Aboriginal Policy Unit
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2 Havelock Street
West Perth, Western Australia 6005

Submissions are open until 7 September 2018.

Please note that, unless confidentiality is requested, the views expressed in submissions may be published in part or in full and will be subject to Freedom of Information laws. A summary report outlining the submissions received will be produced after the close of submissions.

Trouble reading this document?

If you have trouble reading this document and would like us to share the information with you in another way, please call the Aboriginal Policy Unit on:

(08) 6552 5444

Focus questions

(please refer to page 12)

1. What are your views about the outline of the office's basic features on pages 10 - 12? Does it miss out anything important? Is anything included that shouldn't be?
2. What should be the formal name of the office?
3. How should Aboriginal people and organisations be involved in the appointment process of the office-holder? Who should be involved?

Introduction

This discussion paper outlines a proposal for a new statutory office to strengthen government's accountability to Aboriginal Western Australians and to advocate for Aboriginal people's interests in government policy and performance.

The office would be independent from the Government of the day, have statutory powers and work with a specific focus on Aboriginal people and the issues that matter to them.

The purpose of the discussion paper is to:

- explain why the Western Australian Government thinks there should be an office for advocacy and accountability in Aboriginal affairs,
- describe some of its basic features, and
- seek feedback about the proposal (page 10).

Submissions received in response to this paper, and feedback from face-to-face consultations, will inform a model for the new office that will be considered by the Government. It is anticipated that new funding and supporting legislation will be required, therefore the proposal will be contingent on budgetary and Parliamentary processes.

Our commitment to accountability and transparency

In 2017, the Government embarked on a suite of reforms to improve how the public sector works across the board.

The Government commissioned an independent Service Priority Review to drive reform of government service delivery, accountability and efficiency. The Review's final report identified structural and systemic weaknesses in the State's public sector, and set out a blueprint for reform to achieve better outcomes.

A major finding of the report was the need for greater accountability and transparency across government, and better alignment of government services to community needs. On Aboriginal affairs in particular, the report noted that the existing systems and structures sometimes allow the public sector to continue doing what it has always done despite poor or worsening outcomes. The report recommended a number of actions for improvement, which are now part of the Government's broader public sector reform program to be implemented in 2018 and beyond.

The Government also made sweeping changes to the number and structure of government departments. Among the changes was the abolition of the Department of Aboriginal Affairs, whose functions were shifted to other State government departments, and establishment of an Aboriginal policy function in the Department of the Premier and Cabinet. Moving Aboriginal policy into a central agency ensures that Aboriginal issues are given the highest priority and embedded in the Government's core policy agenda. While these changes are important, there remains a gap in the State's institutional framework – there is no independent entity with the express function of holding Ministers and agencies accountable for improving opportunities for Aboriginal people.

This gap has been addressed in various ways in other jurisdictions: South Australia's Commissioners for Aboriginal Engagement; Victoria's Treaty Commissioner; New South Wales' Deputy Ombudsman for Aboriginal Programs; and the Government Champions program in Queensland (and, until recently, a similar program in the Northern Territory). Although the particular solutions differ, together they demonstrate a widespread recognition of the same basic challenge, and the need for systemic reforms to tackle it.

The proposal in this discussion paper for a new independent office for accountability and advocacy in Aboriginal affairs is progressing the Government's reform agenda. Taken in isolation, the impact of any one of these initiatives is likely to be modest. But together, the Government expects them to drive real change in the lives of Aboriginal people, and improve how the public sector works across the board.

Why we think there should be a new accountability and advocacy office

The argument for establishing a new office for accountability and advocacy begins with the frank recognition that government is not serving Aboriginal people as well as it should. There are many reasons for this, but one significant reason is structural: Aboriginal people make up a small proportion of the State's population, which translates to a low level of influence in formal electoral politics. Other geographic and historical factors reinforce this situation. As a consequence, Aboriginal people's interests are vulnerable to chronic government underperformance and sudden policy changes. This contributes to continuing poor social and economic outcomes.

Aboriginal people in Western Australia have been telling the government for a long time about what the government can do to work better with and for Aboriginal people. Over the years, many different consultation processes, reviews, and reports, including the Service Priority Review, have consistently shown the government's contribution to Aboriginal people's well-being can be improved with:

- better coordination across agencies and levels of government
- better policy implementation and more customer-focused service delivery
- stronger, more systematic engagement with Aboriginal people
- more effective and coordinated use of data and evaluation.

A strong and transparent accountability framework is fundamental to all of these, by keeping decision-makers focused on getting the best outcomes.

There are many accountability institutions in Western Australia. The most fundamental is the electoral system, where government policies and performance are judged at the ballot box. Others include Parliamentary committees, the Opposition and other political parties. Some are specialist accountability agencies tasked with ensuring the integrity of government systems and processes: these include the Ombudsman, Office of the Auditor General, and Inspector of Custodial Services. Others, such as the Commissioner for Children and Young People, contribute to accountability by advocating for particular individuals or groups.

Accountability for outcomes in Aboriginal affairs is about policy settings, service delivery, expenditure, and genuine engagement. Getting these right requires political and bureaucratic commitment over a sustained period of time, in the context of historic and cyclical causes of disadvantage.

We believe the system will be enhanced if the interests and priorities of Aboriginal people are promoted by a permanent dedicated entity with statutory powers and independence from the Government of the day.

Outcomes for Aboriginal people in Western Australia

Despite great diversity among Aboriginal people in Western Australia, on average there is a significant gap between the life outcomes of Aboriginal and non-Aboriginal people.

There are areas where gradual but solid improvements are being made, such as the rate of Aboriginal people with Year 12 qualifications and university degrees. However, significant challenges remain – particularly in remote areas. On average across the State, a range of socio-economic and health outcomes for Aboriginal people are not improving as much as they should, and in some cases are getting worse. The statistics on the next page give some examples.

There are multiple and complex causes, and an accountability and advocacy office will not on its own resolve them. However, we believe greater accountability and advocacy will contribute positively to the kind of political and policy environment needed for lasting change.

Aboriginal influence and participation in electoral politics

Aboriginal people make up a small proportion of the Western Australian and Australian populations. This makes it harder to influence government policy through the electoral system.

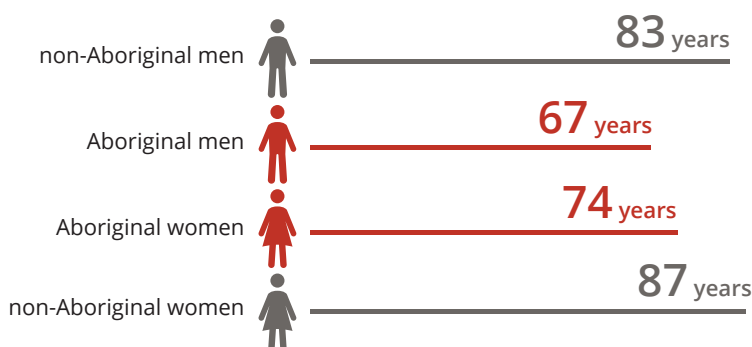
Other factors that work to reduce the influence of Aboriginal people on the political system are:

- Geographic dispersion across large distances dilutes Aboriginal people's potential electoral power, and makes cooperative action more difficult.
- Cultural diversity and political decentralisation mean there are multiple players and viewpoints rather than a single unified voice.
- Local issues in regional or remote areas are less visible to decision-makers.
- Additional barriers are faced by people who are not fluent in English or have low levels of "mainstream" education, including literacy.
- Some Aboriginal people may be dissuaded from participating in decision-making structures or processes they perceive as alien or unwelcoming.

These impediments to political participation and influence are even more serious in light of the kinds of statistics shown on the opposite page. People who have more contact with the health system, the prison system, the child protection system, and the social security system are more likely to be affected by government policy and performance. Aboriginal people on average are more impacted by what government does, but less able to influence it.

Life expectancy

Average life expectancy is much less for Aboriginal people than non-Aboriginal.

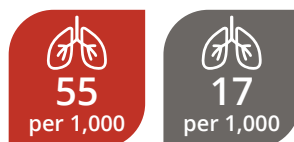


Health

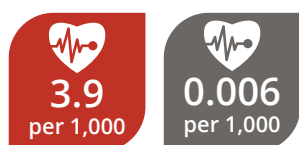
Rates of diabetes, rheumatic heart disease, respiratory disease and perinatal mortality are all much higher for Aboriginal people.



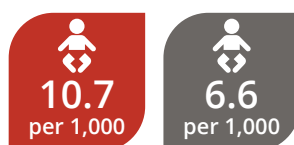
Diabetes



Respiratory disease



Rheumatic heart disease



Perinatal mortality

Housing

Overcrowded housing exacerbates a range of health and social problems



25%

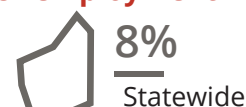
of Aboriginal people are in overcrowded housing, increasing to 34% in remote areas

Prison

The imprisonment rate is 4.1% for Aboriginal people and 0.2% for non-Aboriginal people.



Unemployment



Children in out-of-home care



Sources

Perinatal mortality; Rheumatic heart disease; Respiratory disease; Overcrowding: Australian Health Ministers' Advisory Council, 2017, *Aboriginal and Torres Strait Islander Health Performance Framework 2017 Report*, AHMAC, Canberra.

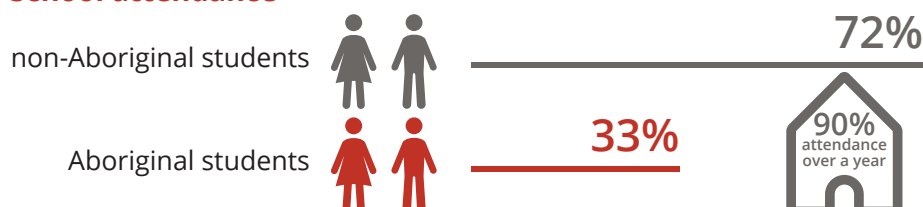
Overcrowding: Australian Institute of Health and Welfare 2017. *Aboriginal and Torres Strait Islander Health Performance Framework 2017 report: Western Australia*.

Life expectancy; School attendance; Prison: Aboriginal Policy Unit Data Warehouse, DPC.

Unemployment: 2016 Census.

Children in out-of-home care: Australian Institute of Health and Welfare 2017. *Child protection Australia 2015–16*. Child Welfare series no. 66.

School attendance



The institutional accountability gap

Western Australia has a range of important and valuable institutions that contribute to government accountability beyond the electoral system. Some are independent of government, some have statutory power, and some focus specifically on Aboriginal issues and interests. However, none of them have all three. This can be thought of as the institutional “accountability gap” in Aboriginal affairs.



The need for enhanced accountability in Aboriginal affairs has been addressed in various ways in other jurisdictions:

- South Australia has a Commissioner for Aboriginal Engagement to investigate and advise on systemic barriers to Aboriginal people’s access and full participation in government, non-government and private services; and act as the public advocate for engagement between Aboriginal people and the broader community. The role is expressly independent but is not supported by legislation.
- Victoria has a Commissioner for Aboriginal Children and Young People working alongside the Principal Commissioner for Children and Young People to perform a range of statutory functions. These include providing independent scrutiny and oversight of services for children and young people, advocating for their needs and interests within government, supporting and regulating organisations that work with children and young people, and conducting both systemic and individual inquiries. Victoria has also established a temporary Treaty Advancement Commissioner tasked with establishing an Aboriginal Representative Body to negotiate with the State Government on a Statewide treaty. That role involves consulting Aboriginal Victorians, providing research and advice on the treaty process, and communicating progress on the treaty process to Aboriginal and non-Aboriginal Victorians.
- New South Wales has a Deputy Ombudsman for Aboriginal Programs. This position is specified in the legislation that establishes the Ombudsman. Its role is to monitor and report on the efficiency and effectiveness of service

delivery within the framework of the NSW Government's plan for Aboriginal Affairs, Opportunity, Choice, Healing, Responsibility, Empowerment (OCHRE).

- Queensland has instituted a Government Champions program in which individual Ministers and CEOs of State Government agencies are linked with specific Indigenous communities to work in collaborative partnership towards improving life outcomes. Until recently, a similar program existed in the Northern Territory.

This brief summary shows significant variation in the approaches developed in each State or Territory. But while the solutions differ, together they demonstrate a widespread recognition of the same basic challenge, and the need for systemic reforms to tackle it.

Existing oversight or advocacy entities

Our system of government has long recognised that the electoral system cannot guarantee accountability in all areas by itself. It is too blunt a tool to deal with the many varied aspects of government action and decision-making, and may not always protect the interests of minorities and other vulnerable groups.

The Western Australian public sector has several entities that provide oversight over government or advocate for the interests of specific groups in society. Those agencies include the Ombudsman, Office of the Auditor General, Commissioner for Children and Young People, Inspector of Custodial Services, Equal Opportunity Commission, and Director of Equal Opportunity in Public Employment.

At the Commonwealth level, the accountability entities include the Australian Human Rights Commission, Commonwealth Ombudsman, Australian National Audit Office and Productivity Commission.

These entities all have independence from the Government, allowing them to scrutinise and criticise (some) government decisions and actions. They also have statutory powers and an institutional "insider" status that allow them to seek information, access high-level officials, and make authoritative statements on the public record. These are important tools for strengthening accountability and advocating for the interests of vulnerable people.

However, most of the generalist oversight entities work primarily from an administrative or technical perspective, focusing mainly on public sector efficiency, effectiveness, consistency and compliance with legislation. The Ombudsman's jurisdiction does not extend to decisions made by Ministers or Cabinet, and the Office of the Auditor General's role does not allow it to examine the merits or assumptions underlying government policy. These agencies are not well-placed to deal with contentious issues that involve balancing the interests of different sectors of society, or diverse ideological or cultural perspectives, or competing claims on public resources. But many of the Aboriginal-specific issues requiring the strongest advocacy involve questions of this kind.

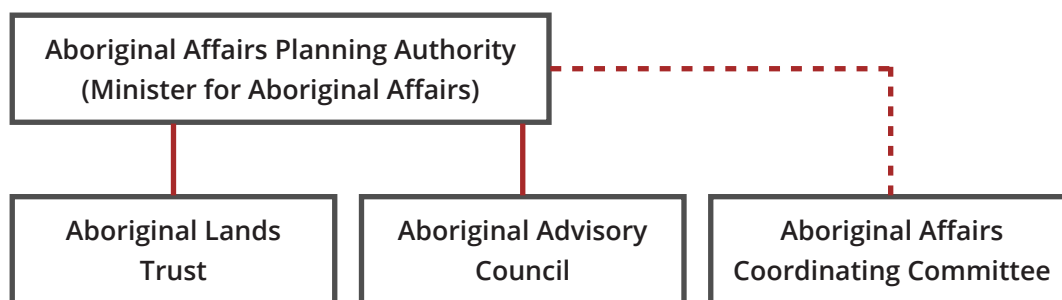
Also, none of these entities have an exclusive focus on Aboriginal interests and priorities. While they do work that benefits Aboriginal people, their other responsibilities necessarily prevent them from targeting resources and attention on the full range of Aboriginal-specific issues.

Aboriginal-specific government entities

Since the early years of the State's European settlement there have been formal institutions focused on Aboriginal people: Aborigines Protection Board (1886–1905), Chief Protector of Aborigines (1905–36), Commissioner for Native Affairs (1936–63) and Department of Native Welfare (1963–72). These institutions had the stated purpose of promoting Aboriginal people's welfare, but created paternalistic power structures that limited Aboriginal people's freedom and independence. They were not a positive contribution to government accountability.

The *Aboriginal Affairs Planning Authority Act 1972* shifted the emphasis towards Aboriginal empowerment and self-determination. The Act established two Aboriginal-membership entities – the Aboriginal Lands Trust and the Aboriginal Advisory Council. The Trust's role is to hold, manage, use and develop land for the benefit of Aboriginal people. The Council's role is to advise the Aboriginal Affairs Planning Authority on matters relating to the interests and well-being of Aboriginal people. The Authority, which is constituted by the Minister for Aboriginal Affairs, has the general function of promoting the "economic, social and cultural advancement" of Aboriginal Western Australians.

The *Aboriginal Affairs Planning Authority Act 1972* also established the Aboriginal Affairs Coordinating Committee to coordinate the activities of all persons and bodies providing services and assistances to Aboriginal people. It consists of the CEOs of several government departments and the Chair of the Aboriginal Advisory Council.



Despite serving valuable roles, these entities do not address the need for accountability and advocacy in Aboriginal affairs because they serve other statutory functions and are not independent of the Government of the day.

At the Commonwealth level, the Aboriginal and Torres Strait Islander Social Justice Commissioner plays a role similar to that envisaged for a Western Australian office for accountability and advocacy. However, while the national Commissioner does engage on State-specific issues, it cannot deliver the sustained and in-depth scrutiny and advocacy required at the State level or develop the necessary close working relationships with Aboriginal communities and organisations in Western Australia.

Aboriginal non-government organisations

Western Australia has a vibrant sector of Aboriginal community controlled organisations, involved in policy and political advocacy as well as service delivery and cultural maintenance and promotion.

They provide a voice for Aboriginal people. Without them, accountability and advocacy in the State would be far weaker. However, these organisations do not have the function of providing comprehensive system-wide accountability:

- Almost all of the organisations have “day jobs” that compete for resources and energy with advocacy work. Some may be reluctant to criticise government for fear of losing the funding that clients depend on.
- The large number of organisations can work against a collective ability to gain traction – “cut through” is difficult amongst so many voices.
- Non-government organisations cannot always obtain information about government policies or programs, and do not have the ability to conduct official inquiries or make official reports on the public record.

These factors limit how effective Aboriginal non-government organisations can be in holding government to account.

Temporary reviews and inquiries

The institutional accountability gap in Aboriginal affairs has been partly filled in the past by temporary reviews and inquiries, often prompted by a crisis situation. These include the 1991 Royal Commission into Aboriginal Deaths in Custody, 2002 Gordon Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities and 2009-11 Indigenous Implementation Board.

These reports have gained the attention of decision-makers, Aboriginal people and the wider community, and have led to findings and recommendations to achieve better outcomes. However, they lacked the permanency to ensure that changes are made by successive governments. The result is a steady accumulation of reports and recommendations without lasting improvements in outcomes.

Summary – Why a new accountability and advocacy entity?

The Western Australian Government believes that the existing system is not serving Aboriginal people as well as it should. Getting better outcomes will take time, much longer than the electoral cycle. The commitment to long-term reform will be strengthened by a robust accountability framework. We believe the system would be significantly improved by the presence of an influential and independent entity with the resources to pay close attention to what government is doing and the power to shine a spotlight on policies or practices that fail to contribute to better outcomes for Aboriginal people.

We want to hear from you

The Western Australian Government believes there should be a new office for accountability and advocacy in Aboriginal affairs.

We believe the government's efforts to strengthen accountability will be most effective if they are designed with input from the people they are intended to serve – Aboriginal people, communities and organisations. We also welcome the views of the wider community, including community services and advocacy organisations, industry bodies, and government agencies at Commonwealth, State and local levels.

We want to hear from you. We want to know whether you support the general idea of a new office for accountability and advocacy in Aboriginal affairs. If so, your responses to the questions below will help us develop the most appropriate model for the new office.

A. Function of the new office

The new office's job would be to hold the Government accountable, and provide system-level advocacy, across government activities affecting Aboriginal people. It would also work to ensure that the Government understands and responds to the views and interests of Aboriginal people.

There are many ways the office may do this, including:

- **monitoring** the effectiveness and efficiency of service delivery
- **identifying** opportunities to improve services, with collaborative input from government agencies and Aboriginal organisations
- **assessing** the consistency of policy and performance with human rights, legislative requirements and government commitments
- **assessing** the evidence base for government decisions and policies
- **monitoring** and reporting on government implementation of previous reviews and recommendations
- **helping** government agencies engage better with Aboriginal people, and Aboriginal organisations engage better with government
- **assessing** government agencies' evaluation practices, and raising the public profile of evaluation results
- **promoting** relevant research and helping set the research agenda
- **engaging** with the public sector and general public to promote success stories, examples of good practice and positive partnerships.

The day to day work of the office may involve conducting investigations and formal inquiries, writing reports and submissions, working with Ministers and public servants, maintaining lines of communication to organisations and agencies across the State, and engaging with the public through press releases, opinion pieces, and social media.

In order to avoid duplicating the work of other agencies, and focus on the activities where it can be most effective, we do not envisage the proposed office would have a role in investigating complaints (like the Ombudsman) or

advocating for individual cases (like the Chief Mental Health Advocate). We consider that these functions are best handled by existing agencies who have expertise and resources to focus on their respective areas of specialty. Instead, we see the accountability and advocacy office's function operating at a system-wide level. This strategic function would include working collaboratively with the agencies that do handle individual cases.

Similarly, there may be scope for the new office to refer or recommend particular matters to be addressed by entities such as the Office of the Auditor General. If necessary, these referral arrangements can be included in the supporting legislation.

B. Business of the new office

We think the office should be responsive to the needs and priorities of Aboriginal people. Instead of being limited to a particular subject matter (such as health, land, culture, or services), the office should be free to determine which issues relevant to the interests and well-being of Aboriginal Western Australians to focus on. This may include tackling difficult areas (such as housing and children in care) as well as promoting strengths and opportunities (such as economic development, language and culture). The office would be expected to develop its priority areas in collaboration with Aboriginal organisations, as well as government agencies, other non-government organisations, and technical specialists.

This broad scope would inevitably involve some overlap with other accountability agencies, such as the Ombudsman, Commissioner for Children and Young People, and Inspector of Custodial Services. This should be seen as a strength, as the office would be able to draw from the other agencies' expertise and vice versa.

We believe the office's scope should not be limited to State Government issues. It should also be free to speak about Commonwealth and local government policies and performance, and about how the three levels of government work together.

C. Structure and powers of the new office

We believe the following elements will best support the office's objectives:

Structure

- The office should be a new entity rather than adapting an existing one.
- The office's powers and functions should be set out in legislation.
- The holder of the office should be an Aboriginal person.
- The office should be accountable to Parliament and independent of any Minister. Accountability to Parliament may be through a mechanism such as a Standing Committee.
- The term of office should be five years with the possibility of reappointment, and removal from office should require Parliamentary approval.
- The office should not be subject to Ministerial directions, but the Minister should have a limited power to refer specific matters to the office.

- There should be a mechanism for the Minister to request information from the office.
- Remuneration should be set by the Salaries and Allowances Tribunal, and protected from reduction during the term of office.

Powers

- The office should have the power to table reports in Parliament at any time.
- The office should have powers to obtain documents and information.

1. What are your views about this outline of the office's basic features?

Does it miss anything important? Is anything included that shouldn't be?

D. Name of the new office

We believe the name of the office should be determined in consultation with Aboriginal people. The Government wants to adopt a name that works best for Aboriginal people and reflects the role and structure of the office.

Previous discussions of this idea and examples from other jurisdictions have suggested names including "Commissioner for Accountability in Aboriginal Affairs", "First Nations Voice", or "Advocate for Aboriginal people". We think the name could be drawn from Aboriginal languages, although the Government will need to use a name that respects the diversity of languages throughout the State.

2. What should be the formal name of the office?

E. Appointment process

We believe Aboriginal people and organisations should have a role in the appointment process for the new office. This is important to encourage appointees to be responsive to the interests and priorities of Aboriginal people.

There are many Aboriginal organisations in Western Australia, including community councils, native title prescribed bodies corporate, land councils, and service-providers. Some have a representative membership structure and others do not. At present, there is no single Statewide representative structure, and many of the regional structures that exist are limited to specific issues such as land rights or health.

We would like your views on which organisations should have a role in the appointment process, and what that role should be.

3. How should Aboriginal people and organisations be involved in the appointment process of the office-holder. Who should be involved?

Summary – Your views matter

The Western Australian Government is committed to working more effectively with Aboriginal people to improve social, economic, cultural and health outcomes. We believe strengthening government accountability is an important part of achieving that objective, in combination with other measures this Government is developing.

This discussion paper proposes the establishment of a new independent office to hold government accountable for policy and performance affecting Aboriginal people, and ensure that the Government understands and responds to the views and interests of Aboriginal people.

However, if you believe there are other better ways of addressing the issues outlined in this discussion paper, we will listen to your views and take them seriously. This Government's aim is to make the system work better for Aboriginal people, and we recognise there is more than one way of doing this.

If there is to be a new office established, we are interested in your views about the role it would play; its powers, structure and scope; and its place in the wider structure of government. We want your input on the formal name of the office, and the process for appointing the officeholder.

The proposal for a new office for accountability and advocacy is just one step along a journey towards better outcomes for Aboriginal people, and the Western Australian Government welcomes you to join us on that journey.

