



Our Ref: GOV180045
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Thank you for the opportunity to provide feedback on 'A Path Forward: Developing the Western Australian Government's Aboriginal Empowerment Strategy'.

The document is excellent and provides a realistic and workable way forward. I have some comments on the detail.

Program Evaluation

I strongly support and endorse section 4 'Investing more in preventative and early-intervention initiatives'. I consider that the key idea 'Robust evaluation of program evaluation to ensure effectiveness of investment' would be strengthened if it extended to include evaluating the consistency of each program with human rights principles.

From a human rights perspective, some past programs, such as those that resulted in the stolen generation, failed abjectly and issues have been raised in relation to some current federal and state programs. In this context, I recommend that the need for programs to comply with human rights principles is explicitly stated.

In addition, it could be specified that research and an evidence-based approach are used as part of developing and evaluating programs.

As an example of the need for a research and evidence-based approach, consider the high incarceration rate of Aboriginal people. There is no commonly accepted explanation for this. One possible contributing factor is that Aboriginal people have a higher rate of hearing impairment than the general population.

At this point the following quote from an Australian Law Reform Commission Report 'Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples' (ALRC Report 133 March 2018), included in my feedback provided in July 2018 on the discussion paper 'An office for advocacy and accountability in Aboriginal affairs in Western Australia', bears repeating:

"Hearing impairment among adult Aboriginal and Torres Strait Islander prisoners is estimated to be extremely high—affecting between 80-95% of Aboriginal and Torres Strait Islander prisoners. This can result in communication difficulties when engaged with the criminal justice system, particularly where English is a

second or third language. Hearing loss can also compound other forms of disadvantage regularly experienced by Aboriginal and Torres Strait Islander people, including unemployment and poor school performance, thus making entry into the criminal justice system more likely.” (paragraph 2.41)

A topic for research and evidence-based program evaluation could be: Would greater investment in reducing hearing impairment in Aboriginal children and adults contribute in the longer term to reducing incarceration rates?

An independent office

The document ‘A Path Forward’ refers to an independent office, and because there may be different understandings of what that entails, I recommend that when referring to an independent office, the meaning is clarified.

The intended meaning is, I believe, that a statutory office is created by legislation and the occupant of that office has independence in performing the functions allocated to that office by legislation.

Some people may be of the view that the officeholder requires a stand-alone agency to ensure independence in performing the statutory functions. Accordingly, this may give rise to an expectation that an independent agency is to be created, i.e. the office that supports the statutory officeholder as a stand-alone agency.

However, there are many examples in Western Australia and other states of statutory officeholders who are not the CEO of an independent stand-alone agency. I would recommend a model that allows the statutory officeholder to focus on statutory responsibilities without the distraction of managing the administrative and compliance functions that come with a stand-alone agency.

Substantive Equality

Your letter of 16 January 2020 invited information about potential implementation, and the Policy Framework for Substantive Equality (the Policy Framework) may be relevant to this.

In 2005 under the Premiership of Geoff Gallop, the government sought to redress cumulative disadvantage through the introduction of the Policy Framework which required government agencies to consider whether in the delivery of their services there was systemic discrimination, in particular institutional racism, and then to remove those barriers in order to put in place more equitable delivery of services.

The Framework remains in place as Public Sector Commissioner’s Circular 2015-01 ‘Implementation of the Policy Framework for Substantive Equality’. However, the small unit that existed in the Equal Opportunity Commission to guide the process was defunded and disbanded in 2014 and the mandated agencies were not provided any specific funding to ensure the objectives of the program were met. As a consequence, the objective of the program has not been achieved.

Although substantive equality now extends beyond addressing Aboriginal disadvantage, that remains a major objective. Issuing a revised Public Sector Commissioner's Circular that provides the new office a role in substantive equality and empowers it in regard to monitoring and requiring compliance may be a useful mechanism to further the objectives of the new office.

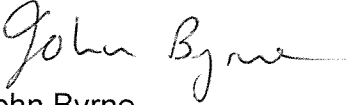
One way to proceed would be to require each government agency to consult with the new office and the Aboriginal community and identify for itself any services where the outcome for Aboriginal people is not as good as the outcome for the community overall. The agency should then publish that information with a program and performance measures to address the difference in outcomes, and report annually on progress.

Concluding Comments

Thank you again for the opportunity to comment.

I do not request any confidentiality for this letter or its contents.

Yours sincerely


John Byrne
Commissioner for Equal Opportunity

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