

Establishing an Aboriginal-led evaluation and review mechanism in Victoria

Discussion Guide 1

February 2019



VICTORIA
State
Government

Cover image: Hands. Photo by Hollie Johnson.

To receive the publication in an accessible format, email the Aboriginal Affairs secretariat at secretariat.AA@dpc.vic.gov.au or call 03 9651 2166.

Aboriginal readers are advised that this document may include photos, quotations and/or names of people who are deceased.

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Have your say – Quick guide

You are invited to provide feedback on this Discussion Guide to Aboriginal Affairs Policy Branch, Department of Premier and Cabinet (DPC). You can share your feedback in a range of ways, including in-person (see page 13).

Website	Complete an online survey at engage.vic.gov.au/aboriginal-led-accountability
Phone	Bonnie Matheson: (03) 9651 2166 Julia Braybrooks: (03) 9651 2177
Email	Bonnie or Julia at secretariat.AA@dpc.vic.gov.au
Post	Attention: Bonnie Matheson Aboriginal Affairs Policy, Department of Premier and Cabinet Level 3, 1 Treasury Place EAST MELBOURNE VIC 3002

Feedback on this Discussion Guide is open until 31 March 2019.

Questions in this Discussion Guide

1. What do you think are the most important design principles to guide the design of a future mechanism? (page 8)
2. Is there anything you would like to change, add or remove from the draft design principles? (page 8)
3. Are there different ways of designing the mechanism that we haven't captured? (pages 8-11)
4. Do you have a preferred mechanism option? If so which one?
5. What do you like or not like about each mechanism option? (pages 8-11)
6. Are we missing any other broad options for a mechanism? (pages 8-11)

Please note, your feedback will be reviewed by Aboriginal Affairs Policy Branch, DPC, and may be published publicly in part or in full. You / your organisation will not be identified in any publication without your permission, and can request to access their information any time. We will report back a summary of the feedback received.

Our commitment to Aboriginal-led accountability of government

During development of the Victorian Aboriginal Affairs Framework 2018-2023 (VAAF), Aboriginal Victorians told us that government alone cannot hold itself accountable for improving outcomes for Aboriginal Victorians. Government, Aboriginal organisations and government-funded organisations must be held accountable to community, by community.

The VAAF is the Victorian Government's overarching framework for working with Aboriginal Victorians, organisations and the wider community to drive action and improve outcomes.

The VAAF commits to establishing an Aboriginal-led evaluation and review mechanism (mechanism) to track government's progress against the VAAF. This includes evaluating and reviewing:

- government's efforts to achieve the goals, objectives and measures set out in the VAAF
- government action to enable Aboriginal self-determination.

"Government should be held accountable on the outcomes they deliver – the numbers speak for themselves."

VAAF community forum participant, Morwell

"All parties responsible for delivering outcomes involving Aboriginal people will be held accountable and subject to Aboriginal-led, independent and transparent oversight."

Self-determination guiding principle: Accountability, VAAF

Purpose of this document

The purpose of this Discussion Guide is to assist Aboriginal Victorians to lead the design of a new accountability mechanism to keep government accountable to community in Aboriginal affairs.

How Aboriginal Victorians will lead the design process

Aboriginal Victorians will:

- help decide the design principles for the mechanism
- lead the design of the mechanism, including its function, scope, membership and governance
- develop the mechanism's terms of reference in partnership with government.

As the mechanism may require changes to legislation and funding, government will need to approve the final mechanism.

See our [community engagement principles](#) in Appendix 1.



Djirri Djirri Dance Group performing at Smith Street Dreaming.
Photo by Mikaela Egan.

The conversation about Aboriginal-led accountability is not new

This Discussion Guide builds on what government heard throughout 2018 during community engagement for the VAAF. Examples of community's suggestions for how government can be held accountable to and by Aboriginal Victorians are set out in Appendix 2.

More detailed suggestions by community are provided in the VAAF Community Engagement Report, available at:

<https://www.vic.gov.au/aboriginalvictoria/policy/victorian-aboriginal-affairs-framework/victorian-aboriginal-affairs-framework-2018-2023.html>

The accountability challenge

There are a range of ways that government is already held accountable in Aboriginal affairs. You can read a description of these in Appendix 3.

However, Aboriginal Victorians told us during VAAF community engagement that none of the current accountability mechanisms met all of community's needs. In particular, participants stated that accountability in Aboriginal affairs should be:

- independent of government
- Aboriginal-led
- Aboriginal-focused
- resourced; and
- have mechanisms that make them accountable to communities / clients
- have power to hold government to account.

Draft design principles for an Aboriginal-led mechanism

Based on feedback provided by Aboriginal Victorians during VAAF community engagement, the below design principles have been identified to guide the design of an Aboriginal-led mechanism. These are a guide only, and subject to ongoing feedback from community.

1. Majority support for the mechanism among Aboriginal Victorians who participate in community engagement throughout 2019.
2. Majority Aboriginal membership.
3. Independent of government.
4. Power to hold government accountable.
5. Has or will have sufficient resources (human, physical, financial, data) to fulfil its functions.
6. Avoids unnecessary duplication with other investigative authorities, official bodies and statutory officers.
7. Enables and supports metropolitan and local participation and "grassroots" community representation.
8. Has a balance of relevant skills and/or experience and gender representation.
9. Has systems that make it accountable to Aboriginal communities.

Have your say

1. What do you think are the most important design principles to guide the design of a future mechanism?
2. Is there anything you would like to change, add or remove from the draft design principles?

Three broad options for an Aboriginal-led mechanism

In discussions with government to date, Aboriginal Victorians have broadly proposed three options for a mechanism. These may change as discussions continue, but provide a good starting point for discussion.

Option 1 Independent statutory body	Option 2 Community-led, place-based mechanism	Option 3 Existing Aboriginal accountability mechanism
An impartial and independent body which is given functions, powers and duties through legislation.	Aboriginal Victorians take on the new Aboriginal-led evaluation and review role in their local communities.	An existing mechanism takes on the new Aboriginal-led evaluation and review role.
Examples		
Koorie Ombudsman Aboriginal-led "watchdog" data agency Aboriginal Productivity Commission	Community assembly / Cabinet Aboriginal committee / council / panel Elders' voice or family-based governance group	Aboriginal Executive Council Other existing Aboriginal governance group/s

To understand what Aboriginal Victorians want in a mechanism, we have posed some questions on the following page. Community should not feel limited to discussing these questions or options for a mechanism. In talking through these questions, community may come up with new ideas for an Aboriginal-led mechanism.

Key questions	Examples
<p>Functions</p> <ul style="list-style-type: none"> What functions should the mechanism include? 	<ul style="list-style-type: none"> Monitoring and reporting to Ministers on implementation and effectiveness of strategies; spending; and/or breaches of human rights, legislative requirements or government commitments Researching and reviewing data and reports Promoting continuous improvement / innovation in policies, practices and services Complaints resolution Advising Ministers, government and services Promoting and advocating for the interests of Aboriginal Victorians Monitoring other government-funded organisations providing services to Aboriginal Victorians
<p>Community participation</p> <p>How would community members (including beyond organisations) be involved in the mechanism?</p>	<ul style="list-style-type: none"> Community engagement Community-led decision making / priority setting Metropolitan and local participation “Grassroots” community representation
<p>Powers to hold government accountable</p> <ul style="list-style-type: none"> What powers should the mechanism have? How would the mechanism’s powers relate to local government and Commonwealth government matters? How would the mechanism’s independence and impartiality be maintained? 	<ul style="list-style-type: none"> Conducting inquiries and investigations (self-directed or at a Minister’s recommendation) Requiring government’s response to reports tabled in Parliament Requesting and accessing relevant government information, documents or records Setting performance benchmarks Cultural safety audits across government Naming agencies/departments not meeting performance standards Legislative safeguards against a Minister’s power to intervene in the decisions of the mechanism

Membership	<ul style="list-style-type: none"> ▪ Designated Aboriginal positions ▪ One or multiple leaders ▪ Regional and metropolitan representation ▪ Male and female members ▪ Level of cultural authority required ▪ From Victoria ▪ Mix of industry and community backgrounds, skills and experiences ▪ Single role or statewide representation
Cultural safety	<ul style="list-style-type: none"> ▪ Cultural safety framework and strengths-based approach ▪ Staff training ▪ Trauma informed practice ▪ Aboriginal employment policy, including training, leadership and career development ▪ Interpreting services ▪ Aboriginal-led research design ▪ Accessible location/s of mechanism ▪ Coordination of community engagement
Keeping the mechanism accountable	<ul style="list-style-type: none"> ▪ Provision of activity and performance reports to Ministers, Parliament and the public (e.g. to existing Aboriginal governance groups and at annual general meetings of organisations) ▪ Record keeping procedures ▪ Internal complaints handling practices ▪ Publicly declared conflicts of interests ▪ Elected Aboriginal board for oversight ▪ Not co-locating with agencies which may become subject to inquiries or investigations
Avoiding duplication	<ul style="list-style-type: none"> ▪ Liaison and referrals between the mechanism and other investigative entities ▪ Co-location with relevant accountability mechanisms

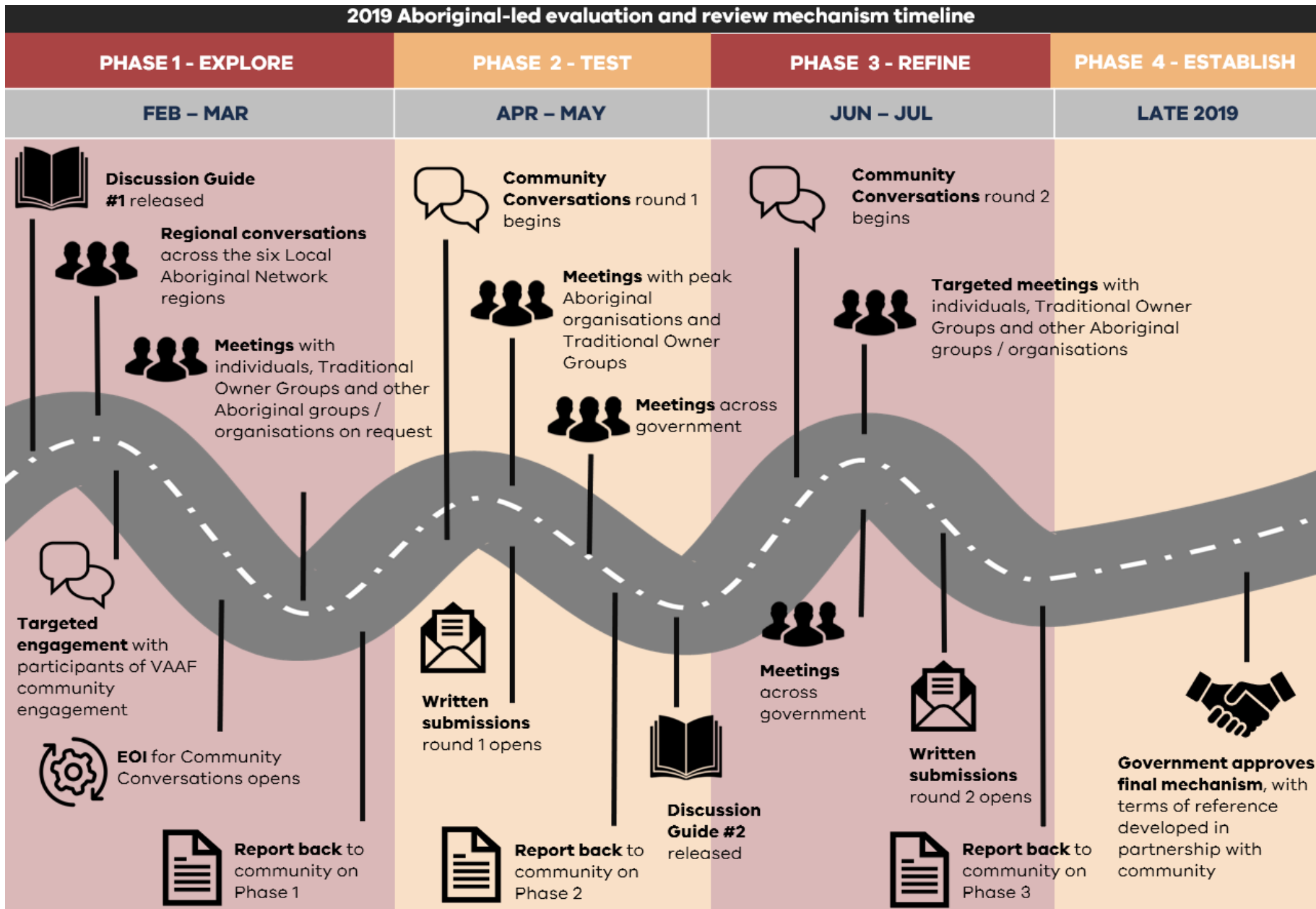
Have your say

3. Are there different ways of designing the mechanism that we haven't captured?
4. Do you have a preferred mechanism option? If so which one?
5. What do you like or not like about each mechanism option?
6. Are we are missing any other broad options for a mechanism?

Have your say

You can let us know what you think in the following ways:

Website	You can view community engagement opportunities, complete an online survey and register for updates at engage.vic.gov.au/aboriginal-led-accountability
Regional conversations	These conversations will be organised by DPC and open to Aboriginal community members, Aboriginal organisations, Traditional Owner Groups, other organisations delivering services to Aboriginal Victorians, and government departments. These will be held across the six Local Aboriginal Network (LAN) regions.
Community Conversations	If you'd like to hold your own conversations about the mechanism in your community, sign up via engage.vic.gov.au/aboriginal-led-accountability . We'll cover the costs up to \$500.
Meetings (on request and targeted)	Individuals, groups and organisations can request a meeting with Aboriginal Affairs Policy staff at DPC. We can hold these in a place that's convenient and comfortable for you, including face-to-face or via videoconference or teleconference. DPC will also set up meetings with particular groups and organisations.
Written submissions	You can provide written submissions via our website.
Phone	You can call the following staff in Aboriginal Affairs Policy, DPC: Bonnie Matheson: (03) 9651 2166 Julia Braybrooks: (03) 9651 2177
Email	Email Bonnie or Julia in Aboriginal Affairs Policy, DPC, at secretariat.AA@dpc.vic.gov.au
Post	You can post your feedback to the following address: Attention: Bonnie Matheson Aboriginal Affairs Policy, Department of Premier and Cabinet, Level 3, 1 Treasury Place, East Melbourne, VIC, 3002



Optional reading

We want to make sure you have all the information you need to make decisions around the Aboriginal-led evaluation and review mechanism.

You don't need to read this section to participate in conversations about the mechanism.

Appendix 1: Government’s community engagement principles

In engaging with Aboriginal Victorians on the mechanism we will follow these engagement principles:

- adhere to the VAAF self-determination guiding principles (see below)
- ensure community contributions lead the design of the mechanism
- communicate how community input affects decision-making
- have an agreed decision-making process
- clearly define the scope of the project
- ask community how they want to be involved
- go to where stakeholders are
- be timely
- minimise duplication of government engagement with community.

Self-determination guiding principles in the VAAF

HUMAN RIGHTS

Self-determination initiatives honour the norms set out in UNDRIP and Victoria’s *Charter of Human Rights and Responsibilities Act 2006*.

CULTURAL INTEGRITY

As First Nations peoples, the rich, thriving cultures, knowledge and diverse experiences of Aboriginal people, including where they fit with family, community and society, will be recognised, valued, heard and celebrated.

COMMITMENT

Aboriginal self-determination will be advanced and embedded through planned action that is endorsed by, and accountable to, all parties.

ABORIGINAL EXPERTISE

Government and agencies will seek out, value and embed Aboriginal culture, knowledge, expertise and diverse perspectives in policies and practice.

PARTNERSHIP

Partnerships will advance Aboriginal autonomy through equitable participation, shared authority and decision-making, and will be underpinned by cultural integrity.

DECISION-MAKING

Decision-makers will respect the right to free, prior and informed consent and individual choice and will prioritise the transfer of decision-making power to Aboriginal people in areas that impact their communities.

EMPOWERMENT

Aboriginal people will have autonomy and participation in the development, design, implementation, monitoring and evaluation of legislation, policies and programs that impact their communities.

CULTURAL SAFETY

Programs and services accessed by Aboriginal people will be inclusive, respectful, responsive and relevant, and informed by culturally safe practice frameworks.

INVESTMENT

Investment to support self-determination will be sustainable, flexible and appropriate to strengthen Aboriginal peoples’ aspirations and participation, including around economic participation, economic independence and building wealth.

EQUITY

Systemic and structural racism, discrimination and unconscious bias and other barriers to Aboriginal self-determination will be actively identified and eliminated.

ACCOUNTABILITY

All parties responsible for delivering outcomes involving Aboriginal people will be held accountable and subject to Aboriginal-led, independent and transparent oversight.

Appendix 2: What Aboriginal Victorians have already told us

During VAAF community engagement, we asked Aboriginal Victorians: “How should government be held accountable for improving outcomes for Aboriginal Victorians?” Community shared a range of ideas.

<p>Independent statutory body</p> <ul style="list-style-type: none"> ▪ Independent, legislated and resourced Aboriginal-led accountability institution with own-motion powers ▪ Aboriginal Productivity Commission or Koori/Aboriginal Ombudsman ▪ Independent Aboriginal-led “watchdog” data agency ▪ Commissioner for Aboriginal engagement 	<p>Community-led, place-based models</p> <ul style="list-style-type: none"> ▪ Locally and regionally based grievance mechanisms ▪ Local communities resourced to set research agenda and collect and analyse data ▪ Aboriginal Committee/ Council / Panel to oversee the VAAF ▪ Elders’ voice or family-based governance groups ▪ Local government Aboriginal Advisory Committee ▪ State body with links to communities ▪ Pooled, community-controlled funding ▪ Aboriginal community involvement during budget priority setting ▪ Local community protocols / plans developed by community ▪ Local service charters to guide agencies based on community expectations ▪ Community assembly / cabinet of local community members with funding and decision-making power
<p>KPIs, outcomes and penalties</p> <ul style="list-style-type: none"> ▪ KPIs and outcomes for government, organisations and service providers set by the local community ▪ Compensation for unmet targets / not meeting human rights paid into a “future fund” ▪ Bonuses/rewards for government departments who meet targets 	
<p>Parliamentary / law reform</p> <ul style="list-style-type: none"> ▪ Standalone Aboriginal affairs portfolio or Minister ▪ Quota for Aboriginal Members of Parliament and on local councils ▪ Voice to Parliament ▪ Aboriginal-identified positions on boards ▪ Bilateral Aboriginal affairs agreements ▪ Aboriginal representation at COAG 	



Aboriginal Flag.
Photo by Hollie Johnson

Appendix 3: Existing accountability mechanisms in Aboriginal affairs

Accountability currently occurs in a range of directions (see Figure 1).

Community members / clients holding government to account (Pathway A)

- Aboriginal Victorians (as community members and clients) keep government accountable through formal political mechanisms, such as elections, and informal ones, such as advocacy groups.

Government holding itself accountable to community members / clients (Pathway B)

- Government holds itself accountable to the public through a range of mechanisms such as outcomes frameworks, public reporting and Parliamentary committees.

Community members / clients holding government-funded service providers and organisations to account (Pathway C)

- Some government-funded service providers and organisations have existing mechanisms that make them accountable to the communities and clients they serve, such as open membership and community surveys.
- Community members and clients hold government-funded service providers and organisations accountable through demanding and monitoring service provision.

Independent statutory bodies and non-government organisations holding government accountable (Pathway D)

- Independent statutory bodies such as the Victorian Ombudsman and non-government organisations (NGOs) keep government accountable, for example through investigations and inquiries.

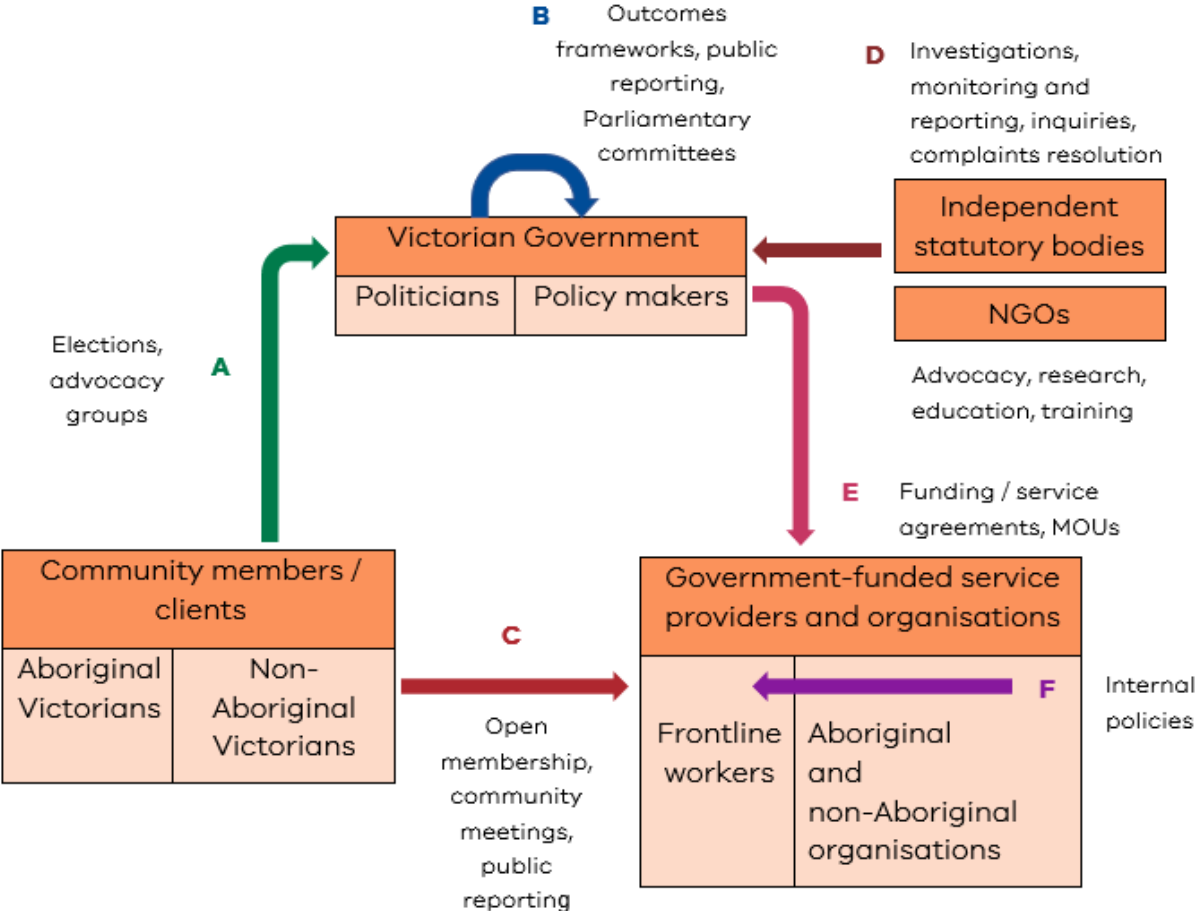
Government holding government-funded service providers and organisations to account (Pathway E)

- Government keeps government-funded service providers accountable through mechanisms such as funding agreements and memoranda of understanding.

Government-funded service providers and organisations holding frontline workers to account (Pathway F)

- Service providers and organisations have management tools and policies that provide frontline workers with responsibilities, training and resources.

Figure 1: Accountability pathways in Aboriginal affairs in Victoria



Adapted from the World Development Report (WDR) 2004¹

¹ World Bank, World Development Report 2004: Making Services Work for Poor People, Washington D.C, 2004. Available at: <https://openknowledge.worldbank.org/bitstream/handle/10986/5986/WDR%202004%20-%20English.pdf?sequence=1&isAllowed=y>

Examples of existing accountability mechanisms in Victoria, other states and territories, and internationally are described below.

Example accountability mechanisms	Description
Victoria	
Office of the Victorian Information Commissioner	The Office is an independent regulator with oversight of information access, information privacy, and data protection. Under the <i>Freedom of Information Act 1982</i> , members of the public have the right to apply for access to documents held by Ministers and agencies in Victoria including departments, statutory agencies, hospitals, schools, TAFEs and universities.
Parliamentary committees	Parliamentary committees hold inquiries and seek community views on a range of issues. For example the Public Accounts and Estimates Committee checks on the actions and spending of government agencies.
Aboriginal Executive Council (AEC)	The AEC, comprising executive-level representatives from 11 peak and statewide Aboriginal organisations, provides sector-specific advice on whole of government self-determination reform.
Commissioner for Aboriginal Children and Young People	The Commissioner provides independent scrutiny and oversight of services for children and young people, particularly those in the out-of-home-care, child protection and youth justice systems.
Treaty Advancement Commissioner	The Commissioner's role is to establish the Aboriginal Representative Body by mid-2019. The Representative Body will help create the framework for treaty negotiations.
Aboriginal caucus (various)	There are a range of Aboriginal governance structures which include an Aboriginal caucus including the Dhelk Dja Partnership Forum, Aboriginal Justice Forum and the Aboriginal Strategic Governance Forum.
Auditor-General's Office	The Auditor-General is an independent officer of the Victorian Parliament who provides assurance to Parliament and the community about how effectively public sector agencies are using public money and providing services.

Ombudsman	The Ombudsman investigates complaints received from citizens about the administrative actions of state government departments, local councils, most statutory authorities and some private bodies. This includes complaints about breaches of the <i>Charter of Human Rights and Responsibilities Act 2006</i> . The Ombudsman can also conduct investigations to examine systemic failures and maladministration in the public sector.
Independent Broad-based Anti-corruption Commission	The Commission's purpose is to prevent and expose public sector corruption and police misconduct. Complaints about breaches of the <i>Charter of Human Rights and Responsibilities Act 2006</i> in relation to police misconduct can be made to the Commission.
Public Sector Commission	The Commission has a range of legislated functions such as collecting and reporting on whole of government data, conducting inquiries, and monitoring and reporting on compliance with public sector values and codes of conduct.
Mental Health Complaints Commissioner	The Commissioner is an independent, specialist body that safeguards rights, resolves complaints about public mental health services and recommends improvements.
Office of the Health Complaints Commissioner	The Commissioner is an independent and impartial statutory body that resolves complaints about health services and the handling of health information, investigates providers and monitors and reviews trends in complaints data.
Victorian Equal Opportunity and Human Rights Commission	The Commission provides information, education and training about equal opportunity, racial and religious vilification and the <i>Charter of Human Rights and Responsibilities Act 2006</i> .
Disability Services Commissioner	The Commissioner is an independent oversight body resolving complaints and promoting the right of people with a disability to be free from abuse.

Commonwealth

Prime Minister's Indigenous Advisory Council	The Council's role is to advise the Commonwealth Government on practical changes which can be made to improve the lives of Indigenous peoples.
Aboriginal and Torres Strait Islander Social Justice Commissioner	The Commissioner at the Australian Human Rights Commission advocates on Aboriginal social justice issues and promotes community understanding and respect for the rights of Aboriginal and Torres Strait Islander peoples.
Commonwealth Ombudsman	The Ombudsman investigates complaints from people who believe they have been treated unfairly or unreasonably by a Commonwealth Government agency. Its office has a dedicated Indigenous call line and interpreter services.
Australian National Audit Office	The Office provides a range of audit and assurance services to the Parliament and Commonwealth public sector entities and statutory bodies. Some of the current audits include 'Evaluating Indigenous programs' and 'Closing the Gap in Indigenous disadvantage'.
Productivity Commission (including Indigenous Commissioner)	The Commission provides independent research and advice on economic, social and environmental issues. It produces the Report on Government Services, Overcoming Indigenous Disadvantage report and Indigenous Expenditure Report. The Indigenous Commissioner will play a role in evaluating policies and programs impacting Aboriginal and Torres Strait Islander people.

New South Wales

Deputy Ombudsman, Aboriginal Programs	The Deputy Ombudsman provides independent monitoring and assessment of OCHRE (NSW Government's plan for Aboriginal affairs). The Deputy Ombudsman has broad oversight of other government agencies and funded services, and can take up individual complaints about unfair treatment, lack of access to a service and other issues. Evaluations of OCHRE initiatives are conducted by the University of New South Wales and the NSW Government's Centre for Education Statistics and Evaluation.
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Local-decision making	The NSW Government and Aboriginal regional alliances enter into agreements that commit parties to jointly addressing agreed priorities, including timeframes, responsibilities and measures of success. Regional alliances are delegated greater powers and budgetary control once capacity is demonstrated.
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South Australia

Commissioner for Aboriginal Engagement	The Commissioner is the public advocate for engagement between the broader community and Aboriginal people. They investigate and advise on systemic barriers to Aboriginal people's access and full participation in government, non-government and private services.
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Aboriginal Regional Authority Policy	The SA Government commits to consulting, negotiating and engaging with Aboriginal Regional Authorities in policy, programs and service delivery.
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Western Australia

Office for advocacy and accountability in Aboriginal affairs (proposed)	WA Government has proposed establishing an Office for advocacy and accountability in Aboriginal affairs to strengthen government's accountability to Aboriginal Western Australians, and advocate for Aboriginal people's interests in government policy and performance.
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WA Aboriginal Advisory Council	The Council, which consists of Aboriginal-only membership, meets up to six times a year to provide advice to the WA Government on a range of policy matters.
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Australian Capital Territory

Aboriginal and Torres Strait Islander Elected Body	The Body is a democratically elected voice for Aboriginal and Torres Strait Islander peoples living in the ACT.
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Estimates proceedings	ACT Parliament has enacted provisions allowing members of the Aboriginal and Torres Strait Islander Elected Body to sit with the parliamentary committee for questioning of agencies.
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Northern Territory

Aboriginal Affairs Sub-Committee of Cabinet	The Sub-Committee provides expert advice to government about key priorities in Aboriginal affairs. Membership includes Aboriginal community members appointed by an expression of interest process.
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Local-decision making	Local Decision Making is a NT Government commitment to provide opportunities to transfer government service delivery to Aboriginal people and organisations based on their community aspirations.
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Tasmania

Tasmanian Regional Aboriginal Communities Alliance	The Alliance was developed to provide a mechanism to engage and advise the Tasmanian Government at all levels regarding Aboriginal affairs. Eligible full members are Aboriginal Community Controlled Organisations in Tasmania.
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International

Samediggi / Sami Parliament, Norway	The Sami Parliament is an independent body that deals with matters specifically concerning the Sami people. The Norwegian government consults the Sami Parliament when issues affect Sami interests. The Department of Sami and Minority Affairs allocates funding to the Sami Parliament to distribute funds according to its own priorities.
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Social audits (various)	At one end of the continuum, social audits are a process which enables organisations and agencies to assess and demonstrate their social, community and environmental impacts and limitations. At the other end of the social audit spectrum, communities hold organisations to account through tools such as budgetary audits and community score cards. ²
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² Banerjee, Upala Devi, UNESCO Office Bangkok and Regional Bureau for Education in Asia and the Pacific, Social audits for strengthening accountability: building blocks for human rights-based programming - Practice note, Bangkok, 2007. Available at <http://unesdoc.unesco.org/images/0015/001570/157021e.pdf>