Law Council
OF AUSTRALIA

Inquiry into racism, hate and violence directed at Aboriginal and Torres Strait Islander people

Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs

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- the Law Society of Western Australia

for their contributions to the preparation of this submission.

Recommendations

Recommendation 1

The Australian Government, with State and Territory governments, should implement the outstanding recommendations of the Royal Commission into Aboriginal Deaths in Custody.

Recommendation 2

The Australian Government, with State and Territory governments, should implement the outstanding recommendations of Australian Law Reform Commission's Pathways to Justice Report with respect to police accountability.

Recommendation 3

The Australian Government, with State and Territory governments, should fully implement domestically the Optional Protocol to the Convention Against Torture.

Recommendation 4

The Australian Government should establish an appropriately constituted and properly resourced Federal Judicial Commission.

Recommendation 5

The Australian Government should provide adequate and predictable funding for First Nations-led research and data on incidents of racism, hate and violence to underpin responses to this issue.

Recommendation 6

The Australian Government should implement the recommendations of the 2024 statutory review of the *Online Safety Act 2021* (Cth), in particular with respect to the inclusion of a definition of "online hate material", as well as stronger penalties and enforcement powers.

Recommendation 7

The Australian Government should implement the Australian Human Rights Commission's National Anti-Racism Framework.

Recommendation 8

The Australian Government should establish a national truth-telling commission consistent with Makarrata as envisaged by the Uluru Statement from the Heart.

Recommendation 9

The Australian Government should refer an inquiry to the Australian Law Reform Commission into legal frameworks relating to racism and racially motivated hate and violence, with a view to their harmonisation across Federal, State and Territory laws.

Recommendation 10

The Australian Government should ensure adequate training and resources to support the enforcement of legal protections against racism, hate and violence, with careful regard to the prevalence and nature of these incidents as they affect First Nations Australians.

Recommendation 11

The Australian Government should engage with First Nations peoples to develop a National Action plan to formally, meaningfully and comprehensively implement the United Nations Declaration on the Rights of Indigenous Peoples in Australia, including through legislative reform.

Recommendation 12

The Australian Government should enact a Federal Human Rights Act.

Recommendation 13

The Australian Government should review its reservation to Article 20 of the International Covenant on Civil and Political Rights and its interpretative declaration to Article 4(a) of the Convention on the Elimination of All Forms of Racial Discrimination.

Recommendation 14

The Australian Government should ensure funding to support First Nations communities and organisations to address racism.

Recommendation 15

The *Racial Discrimination Act 1975* (Cth) should be amended to cover intersectional discrimination.

Recommendation 16

The Australian Government should ensure adequate and predictable funding for the Australian Human Rights Commission's advocacy and complaint handling functions, including to support culturally safe complaints processes for First Nations people.

Recommendation 17

The Australian Government should ensure adequate and predictable funding for First Nations legal assistance and access to justice (including for civil justice needs), including through the National Access to Justice Partnership.

Introduction

1. The Law Council thanks the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs (the **Committee**) for the opportunity to provide a submission to its inquiry into racism, hate and violence directed at Aboriginal and Torres Strait Islander people.[1]

2. As confirmed by numerous Federal bodies and inquiries over the years, First Nations Australians have long experienced racial discrimination, hatred and violence.[2] This is a serious human rights problem which is causing significant harm for First Nations individuals, families and communities. It directly undermines the rule of law (including equality before the law), trust in institutions and social inclusion. It is also contributing to systemic inequalities and injustices for First Nations peoples compared to the rest of the Australian population.

3. Given its systemic nature, this issue also cannot be considered or addressed in isolation from historical and ongoing impacts of colonisation. As recently observed in a report produced for the Australian Human Rights Commission (**AHRC**):

> *Racism is a deeply entrenched and pervasive issue that continues to significantly impact First Nations peoples in Australia. This systemic problem has roots that extend back to the colonisation of Australia, where First Nations peoples were subjected to dispossession, violence, and policies of assimilation that sought to erase their cultures and identities. Historical and ongoing discrimination has led to substantial disparities in health, education, and justice outcomes for First Nations communities, creating a cycle of disadvantage that persists to this day.*[3]

4. The Law Council is deeply concerned by several recent events highlighting the gravity of this problem, including:

   - the attack by far-right extremists on Camp Sovereignty;[4]

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1 For the purposes of this submission, we have used the term "First Nations" to refer to Aboriginal and Torres Strait Islander peoples.

2 See for example Human Rights and Equal Opportunity Commission, "Racist Violence: Report of the National Inquiry into Racist Violence in Australia", 27 March 1991, 38-46, <https://humanrights.gov.au/__data/assets/file/0016/50542/NIRV.pdf>; Royal Commission into Aboriginal Deaths in Custody, "National Report – Volume 1", Commonwealth of Australia (15 April 1991), [1.4.14], <https://www.austlii.edu.au/au/other/IndigLRes/rciadic/>; Fiona Allison and Jodie Luck, "Rethinking Access to Racial Justice: Race Discrimination and First Nations Peoples", (2020) 159 *Precedent* 8; Hannah McGlade, "The International Prohibition of Racist Organisations: An Australian Perspective" (2000) 7(1) *Murdoch University Electronic Journal of Law* 1.

3 Australian Human Rights Commission, "An Anti-Racism Framework: Voices of First Nations Peoples" (Report, August 2025), 13 <https://humanrights.gov.au/__data/assets/file/0019/47314/National_anti-racism_framework_first_nations_consultations.pdf>.

4 See for example Australian Broadcasting Corporation, "Calls for Inquiry into Camp Sovereignty Attack after Melbourne March for Australia Rally" (2 September 2025), <https://www.abc.net.au/news/2025-09-02/iat-camp-sovereignty-follow/105722830>. On 15 May 2026, the Minister for Home Affairs announced that the group allegedly responsible for the attack, formerly the "National Socialist Network" and now known as "White Australia", would be designated as a terrorist organisation. See *Criminal Code (Prohibited Hate Group – White Australia) Regulations 2026* (Cth). See also Dechlan Brennan, "Neo-Nazi Group which Allegedly Attacked Camp Sovereignty Declared Terrorist Organisation", *National Indigenous Times* (15 May 2026), <https://nit.com.au/15-05-2026/24303/neo-nazi-group-which-allegedly-attacked-camp-sovereignty-declared-terrorist-organisation>.

- an improvised explosive device thrown into a crowd at a protest in support of First Nations Australians in Perth, for which terror charges have since been laid;[5] and
- findings in the AHRC's "Respect at Uni" report indicating that "81.0 per cent of First Peoples respondents report experiencing racism (direct and indirect) at university".[6]

5. The extent and prevalence of racism, violence and hate towards First Nations peoples also highlights the disjunct between Australia's international human rights commitments and its domestic practices, in particular the lack of progress to implement the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**).[7] The recent statement of the United Nations Committee on the Elimination of Racial Discrimination (**UNCERD**), which expressed a number of serious concerns with the treatment of First Nations children in Australia's criminal justice system, illustrates this disjuncture in a particularly stark manner and calls upon the Australian Government to fully respect its international law obligations and standards to which it is a party.[8]

6. The recommendations in this submission are intended to address this disjuncture and other gaps in the Australian Government's implementation of outstanding recommendations of Federal inquiries and reports regarding racism, hate and violence towards First Nations Australians, including in the criminal justice system.

7. A key recommendation, which cuts across the Law Council's responses to all Terms of Reference for this inquiry, is the Australian Government's implementation of the AHRC's National Anti-Racism Framework. This submission refers to the recommendations of that Framework throughout.

8. Consistent with Australia's obligations under international human rights treaties and commitments under the UNDRIP, the Law Council recognises[9] that First Nations Australians:

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5 Australian Federal Police, "Man Charged with Terrorism Offence under Operation Dumfries" (Media release, 5 February 2026), <https://www.afp.gov.au/news-centre/media-release/man-charged-terrorism-offence-under-operation-dumfries>.

6 Australian Human Rights Commission, "Respect at Uni: Study into Antisemitism, Islamophobia, Racism and the Experience of First Nations People" (Report, February 2026), 17 <https://humanrights.gov.au/media/documents-files-PDFs/strategic-communications/Racism-at-UniReport.pdf>.

7 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007).

8 Committee on the Elimination of Racial Discrimination, *Statement 1 (2026): Overrepresentation of Indigenous Children in Australia's Criminal Justice System* (Advance unedited version, 29 April 2026) <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FSWA%2FAUS%2F11498&Lang=en>.

9 Law Council of Australia, "Policy Statement on Indigenous Australians and the Legal Profession" (February 2010), 2 <https://lawcouncil.au/publicassets/f56b7bd7-e1d6-e611-80d2-005056be66b1/1002-Policy-Statement-Indigenous-Australians-and-the-Legal-Profession.pdf>.

- have the right to self-determination[10] and to recognition and protection of their distinct culture and identities;[11] and
- have a right to be consulted about and participate in decision-making concerning legislative and policy changes affecting their rights and interests.[12]

9. The right to self-determination must be central to this inquiry. Addressing racism directed at First Nations peoples, including through the Committee's recommendations, will require sustained national leadership, institutional accountability and genuine partnership with First Nations communities.

10. The Law Council also highlights the value of hearing directly from First Nations individuals and communities in this inquiry, and affording their views appropriate weight and consideration, including to avoid entrenching any existing systemic, conscious or unconscious biases. The Committee's own processes, including in respect of submissions and the format of public hearings, should be designed to ensure cultural safety and support inclusion to be most effective.

11. Meaningful consultation is critical not only to ensuring that the Committee develops an accurate and nuanced understanding of First Nations peoples' experiences of racism, hate and violence, but also that its recommendations are appropriately grounded in, and respond to, those experiences. Where the Committee identifies opportunities for law and policy reform, there must be proper consultation with First Nations Australians in the development and implementation of such reforms.[13]

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[10] Common Article 1 of the *International Covenant on Civil and Political Rights*, adopted 16 December 1966, General Assembly Resolution 2200A (XXI), and the *International Covenant on Economic, Social and Cultural Rights*, adopted 16 December 1966, General Assembly Resolution 2200A (XXI); *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007), Article 4.

[11] *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007), Articles 8, 11 and 15.

[12] Ibid, Articles 18 and 27.

[13] See further Law Council of Australia, "Best Practice Legislative Development Checklist" <https://lawcouncil.au/publicassets/54c598e1-9263-f011-94b6-005056be13b5/2025%2006%2025%20_%20FD%20_%20Best%20Practice%20Legislative%20Development%20Checklist.pdf?55c598e1-9263-f011-94b6-005056be13b5>.

Term of Reference 1

Racism, hate and violence towards First Nations Australians

Nature, prevalence and impact

12. Racism directed at First Nations peoples is both systemic and interpersonal. It manifests explicitly and implicitly in social, professional and institutional contexts, in government practices and policies, and within public and private systems and structures. This spans a wide range of settings including policing, the justice system, employment, education, housing, healthcare, and public discourse (including and especially online).

13. Experiences of racial hostility are not confined to isolated incidents but form a continuous background to daily life,[14] which in turn shapes expectations and engagement across systems and institutions, including First Nations Australians' access to opportunity and ability to exercise their rights.

14. 35 years ago, the then Human Rights and Equal Opportunity Commission (HREOC) found that racist violence against First Nations Australians was "widespread" and "endemic".[15] The Law Council is deeply concerned by the lack of progress to address this matter, as reflected in reports of growing levels of racism directed at First Nations Australians, including over the past decade.

15. The findings of the 2024 Australian Reconciliation Barometer indicated that:

    - First Nations people are experiencing racism at an increasing rate, with 54% of First Nations respondents having experienced racism in 2024 compared with 39% in 2014;
    - younger First Nations people are disproportionately affected, with 63% of 18–24 year-olds and 68% of 25–34 year-olds reporting that they experienced at least one form of racial prejudice in the six months prior;
    - rates of physical violence towards First Nations peoples have increased, having been reported by 23% of respondents in 2024 compared with 14% in 2014.

16. Call It Out is a First Nations racism register, led by the Jumbunna Institute for Indigenous Education and Research in partnership with the National Justice Project, which collates reports of racism and discrimination against First Nations Australians and presents both quantitative data and firsthand accounts in annual reports. In the Call It Out Racism Register 2024–2025, "negative or ignorant attitudes of stereotyping" was the most prevalent form of racism reported (30 per cent), followed by verbal abuse and hate speech (17 per cent), bullying, threats or intimidation

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[14] See for example Reconciliation Australia, "2024 Australian Reconciliation Barometer: Racism and First Nations Peoples" (Web page, 18 June 2025) <https://www.reconciliation.org.au/publication/2024-australian-reconciliation-barometer-racism-and-first-nations-peoples/#:~:text=Reports-,2024%20Australian%20Reconciliation%20Barometer:%20Racism%20and%20First%20Nations%20Peoples,compared%20to%2039%25%20in%202014>

[15] Human Rights and Equal Opportunity Commission, "Racist Violence: Report of the National Inquiry into Racist Violence in Australia", 27 March 1991, 69, 121 <https://humanrights.gov.au/__data/assets/file/0016/50542/NIRV.pdf>.

(12 per cent), discriminatory laws, policies, or practices (12 per cent), and failure to recognise cultural rights or protocols (11 per cent).[16] While reports made were in respect of a diverse range of settings,[17] social media and online platforms were the most commonly reported locations for incidents of racism (22 per cent), followed by workplaces (11 per cent) and educational settings (10 per cent).[18] Notably, however, the Register's figures do not wholly reflect (and therefore may underrepresent) the true prevalence of racism experienced by First Nations Australians, given that it only reflects reports made to the Register.

17. Racism, hate and violence contribute to significant harm for First Nations peoples,[19] including psychological trauma, suicidal ideation, homelessness, marginalisation, reduced participation in institutions and diminished confidence in the rule of law, with enduring intergenerational effects on family structures and wellbeing.[20] Such harms may be direct and overt, or subtle and indirect, including through behaviours such as micro-aggressions that contribute to cultural and psychological harm. As will be explored later in this section, the impacts of racism through the criminal justice system—especially given current rates of First Nations incarceration and deaths in custody—can be catastrophic.

Systemic racism

18. The AHRC defines "systemic racism" as:

> *… the way a society or institution's cultural norms, laws, ideologies, policies, and practices result in inequitable treatment and outcomes. Systemic racism involves entire systems, for example, legal, health, criminal justice, and the structures that support these. Institutional and structural racism are forms of systemic racism.*[21]

19. On a structural level, the need for systemic change is recognised in the National Agreement on Closing the Gap[22] through its Priority Reforms, particularly those directed at transforming government organisations and shared decision-making, and socio-economic targets, which reflect an acknowledgement of systemic inequities. If left unaddressed, these factors can and will further entrench disadvantage and expose First Nations people to heightened risks of harm, including (and indeed especially) through contact with the criminal justice system.

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16 Fiona Allison et al, "The Call It Out Racism Register 2024-2025: Everywhere I go no matter where, if it's around non-Indigenous people I feel a hate vibe. It feels like I'm being watched", Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney (Report, 2025), 109 <https://callitout.com.au/wp-content/uploads/2025/11/Jumbunna-Call-It-Out-Annual-Report-2024-2025.pdf>

17 Ibid, 110.

18 Ibid.

19 Ibid, 112.

20 See for example Yin Paradies, "Colonisation, Racism and Indigenous Health", 2016) 33(1) *Journal of Population Research* 83; Mandy Truong and Edward Moore, *Racism and Indigenous Wellbeing, Mental Health and Suicide* (Research Paper, 26 May 2023), <https://www.aihw.gov.au/reports/indigenous-mental-health-suicide-prevention/racism-and-indigenous-wellbeing-mental-health-and/abstract>; Davi M Macedo et al, "Effects of Racism on the Socio-Emotional Wellbeing of Aboriginal Australian Children" (2019) 18(1) *International Journal for Equity in Health* 132.

21 Australian Human Rights Commission, "Key Racism Terms" (Web page, 2026) <https://humanrights.gov.au/know-your-rights/rights-of-individuals/race-discrimination/guides,-tools-and-resources/key-racism-terms>.

22 For an overview of the Closing the Gap Agreement, see Closing the Gap, "National Agreement on Closing the Gap" (Web page, undated) <https://www.closingthegap.gov.au/national-agreement>.

20. The lack of progress on Closing the Gap targets (indeed, backsliding in respect of some targets) demonstrates inequities that continue to be experienced by First Nations Australians compared to the rest of the population.[23] The Committee should consider the role and extent of systemic racism in the design, operation and implementation of existing laws and policies, and within organisations and institutions, in contributing to these outcomes.

21. We note that consultations with First Nations Australians to inform the AHRC's development of a National Anti-Racism Framework identified systemic racism as "the predominant theme, deeply embedded in legislative frameworks, government practices, and societal norms", and that this "form of racism manifests in policies and practices that perpetuate unfair treatment and disadvantage towards First Nations peoples".[24] In the course of its inquiry, Yoorrook also "heard testimony from individuals and institutions alike, laying bare the persistence of structural racism in spaces where safety and opportunity should have lived".[25]

22. The first recommendation of the National Anti-Racism Framework itself includes acknowledgment of the "systemic and structural nature of racism, including the historical and ongoing impacts of settler colonisation on First Nations peoples".[26]

23. While there are examples to be found across a range of sectors, the Law Council's response to the inquiry's first Term of Reference focuses on the experiences of First Nations adults and children in the criminal justice system, which is an acute concern for its constituent bodies and Indigenous Legal Issues Committee. We suggest that their significant overrepresentation in the criminal justice system, which in turn underpins the growing number of First Nations deaths in custody, should be a key issue for consideration in this inquiry.

The criminal justice system

24. The Committee should consider institutionally driven factors for the disproportionate and devastating impacts of the criminal justice system on First Nations communities outlined in this section, including through systemic racism and discrimination. This area reflects a significant disconnect between Australia's international obligations and the degree to which these obligations have been implemented in domestic law, policy and practice.[27]

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[23] See Productivity Commission, "Closing the Gap Information Repository – Dashboard" (July 2025) <https://www.pc.gov.au/closing-the-gap-data/dashboard/>.

[24] Australian Human Rights Commission, "An Anti-Racism Framework: Voices of First Nations Peoples" (Report, 2024), 10 <https://humanrights.gov.au/__data/assets/pdf_file/0026/25469/Final-Report_National-Anti-Racism-Framework,-First-Nations-Consultations,-Australian-Human-Rights-Commission.pdf>.

[25] Yoorrook Justice Commission, "Yoorrook: Truth be Told" (19 June 2025), 155 <https://cdn.craft.cloud/06ad3276-b3d9-4912-bcbb-37795aade9a8/assets/documents/Yoorrook_OPR_Accessible_Print.pdf>.

[26] Australian Human Rights Commission, "The National Anti-Racism Framework: A Roadmap to Eliminating Racism in Australia" (Report, November 2025), 15 <https://humanrights.gov.au/resource-hub/race/anti-racism-framework>.

[27] See for example Law Council of Australia, Submission to Office of the High Commissioner for Human Rights, *Fourth Cycle Universal Periodic Review of Australia* (16 July 2025) <https://lawcouncil.au/publicassets/6bba6d3e-ef68-f011-94b7-005056be13b5/4693%20-%20S%20-%20AUS%20Universal%20Periodic%20Review%20-%204th%20Cycle.pdf>.

25. The issue of First Nations overrepresentation in the criminal justice system cannot be overcome until it is properly confronted and addressed across all stages of the criminal justice system—including police, detention, legal and court systems—and considered in the context of dispossession, colonisation and structural inequality. It must also be accompanied by First Nations-led systemic, holistic and evidence-based reforms that divert First Nations adults and children away from the criminal justice system and into therapeutic and culturally safe interventions that reduce recidivism and improve outcomes for their communities, for which the Law Council has regularly advocated.[28]

Policing

26. A primary issue for First Nations peoples in relation to the criminal justice system continues to be systemic racism in policing of First Nations people and communities. Complaints against police officers were an "overwhelming feature of the evidence" provided in the HREOC's 1991 inquiry into racist violence affecting First Nations Australians,[29] and this issue has been identified on many occasions since. The Final Report of the Royal Commission into Aboriginal Deaths in Custody (**RCIADIC**) also stated in 1991 that the "aspect of the relations between Aboriginal and non-Aboriginal

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[28] See for example Law Council of Australia, Submission no 195 to Senate Legal and Constitutional Affairs References Committee, *Inquiry into Australia's Youth Justice and Incarceration System* (22 October 2024), [45] – [81], <https://lawcouncil.au/publicassets/d2f05c83-b895-ef11-94ab-005056be13b5/4609%20-%20S%20-%20Australias%20youth%20justice%20and%20incarceration%20system.pdf>; Law Council of Australia, Submission no 112 to Senate Legal and Constitutional Affairs References Committee, *Inquiry into Australia's Youth Justice and Incarceration System* (23 December 2025), [17], [48] – [49], [55] – [58], [66], [89] – [101], <https://lawcouncil.au/publicassets/ed843b00-1cf8-f011-94c3-005056acd090/4776%20-%20S%20-%20Australias%20Youth%20Justice%20and%20Incarceration%20System%20%202nd%20Inquiry.pdf>; Law Council of Australia, Submission to Office of the High Commissioner for Human Rights, *Fourth Cycle Universal Periodic Review of Australia* (16 July 2025), [14] – [17], [22] – [24], <https://lawcouncil.au/publicassets/6bba6d3e-ef68-f011-94b7-005056be13b5/4693%20-%20S%20-%20AUS%20Universal%20Periodic%20Review%20-%204th%20Cycle.pdf>; Law Council of Australia, Submission to Special Rapporteur on the Rights of Indigenous Peoples, *Call for Input – Country Visit to Australia* (23 March 2026), <https://lawcouncil.au/publicassets/73d3f3c8-d736-f111-94c5-005056acd090/4823%20-%20S%20-%20Call%20for%20Input%20Country%20Visit%20to%20Australia.pdf>; Law Council of Australia, Policy Statement on Child Justice Reform (12 May 2025), <https://lawcouncil.au/publicassets/28e8958f-52bf-f011-94bf-005056acd090/Policy%20Statement%20on%20Child%20Justice%20Reform.pdf>; Law Council of Australia, "Law Council Welcomes SCAG's Commitment to Addressing National Issues", (Media release, 15 August 2025), <https://lawcouncil.au/media/media-releases/law-council-welcomes-scag-s-commitment-to-addressing-national-issues>; Law Council of Australia, "Upholding Human Rights of First Nations People Vital to Closing the Gap" (Media release, 9 December 2023), <https://lawcouncil.au/media/media-releases/upholding-human-rights-of-first-nations-people-vital-to-closing-the-gap>; Law Council of Australia, "Welcome Investment in First Nations Justice" (Media release, 25 October 2022), <https://lawcouncil.au/media/media-releases/welcome-investment-in-first-nations-justice>.

[29] Human Rights and Equal Opportunity Commission, "Racist Violence: Report of the National Inquiry into Racist Violence in Australia", 27 March 1991, 79 <https://humanrights.gov.au/__data/assets/file/0016/50542/NIRV.pdf>.

people … where the relationship was at its worst" was in "the relations between Aboriginal people and the police forces of the dominant society".[30] It noted that:

> *… far too much police intervention in the lives of Aboriginal people throughout Australia has been arbitrary, discriminatory, racist and violent. There is absolutely no doubt in my mind that the antipathy which so many Aboriginal people have towards police is based not just on historical conduct but upon the contemporary experience of contact with many police officers.*[31]
>
> … The challenge for police departments is to accept that there is a basis for Aboriginal resentment and suspicion about police conduct and to consider the Aboriginal perspective when devising policing strategies.[32]

Decades later, the final recommendations of the RCIADIC are yet to be fully implemented.

27. There have been several recent reports on the relationship between First Nations and police. Important findings and recommendations include:

- criminalisation of people who are experiencing poverty, homelessness or mental health conditions. This includes the enforcement of public nuisance and "street sweeping" laws, offensive behaviour, obstructing police, shoplifting and fare evasion, which are disproportionately aimed at First Nations Australians;
- inflexible and unreasonable exercises of prosecutorial discretion, especially by police prosecutors;
- First Nations youth in particular tend to be prosecuted rather than cautioned – they are more likely to be arrested than non-Indigenous children even after other factors such as the offence, offending history and background factors are taken into account; and
- bail conditions are applied inflexibly and punitively.[33]

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[30] Royal Commission into Aboriginal Deaths in Custody, "National Report – Volume 1", Commonwealth of Australia (15 April 1991), [1.4.15], <https://www.austlii.edu.au/au/other/IndigLRes/rciadic/>.

[31] Royal Commission into Aboriginal Deaths in Custody, "National Report – Volume 2", Commonwealth of Australia (15 April 1991), [13.2.3], <https://www.austlii.edu.au/au/other/IndigLRes/rciadic/>.

[32] Ibid, [13.2.11].

[33] See for example Standing Senate Committee on Finance and Public Administration, Parliament of Australia, *Inquiry into Aboriginal and Torres Strait Islander Experience of Law Enforcement and Justice Services* (Final Report, 13 October 2016), <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Legalassistanceservices/~/media/Committees/fapa_ctte/Legalassistanceservices/c05.pdf>; Australian Law Reform Commission, "Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples" (Report, December 2017), <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/>; Law Council of Australia, "The Justice Project Part 1 – Aboriginal and Torres Strait Islander People" (August 2018), <https://lawcouncil.au/files/web-pdf/Justice%20Project/Final%20Report/Aboriginal%20and%20Torres%20Strait%20Islander%20People%20%28Part%201%29.pdf>.

28. To give some more recent illustrations of this issue:

- In New South Wales, First Nations adults make up three per cent of the population.[34] However, between January and December 2025, First Nations people made up 19 per cent of police searches, 25 per cent of taser deployments, 19 per cent of move-on directions, 40.8 per cent of bail compliance checks, and 27.6 per cent of Apprehended Domestic Violence Order compliance checks.[35]

- In Queensland, several recent legislative reforms, including the *Making Queensland Safer Act 2024* (Qld) (**MQSA**) and the *Police Powers and Responsibilities (Jack's Law) Amendment Act 2023* (Qld) (**Jack's Law**), have caused concerns about their application to First Nations people.[36] The MQSA was accompanied by a statement acknowledging that its measures would override the *Human Rights Act 2019* (Qld) and have a disproportionate impact on First Nations children.[37] A similar statement accompanied the more recent *Expanding Adult Crime, Adult Time and Taking a Strong Stance on Drugs and Anti-Social Behaviour Amendment Bill 2026*.[38] The expansion of police powers under Jack's Law has also raised concerns for legal practitioners in Queensland where evidence has identified that scanning was "inconsistently used across stereotypes and cultural assumptions", with no demonstrated reduction in offending.[39]

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34 Australian Bureau of Statistics, "New South Wales: Aboriginal and Torres Strait Islander Population Summary" (1 July 2022), <https://www.abs.gov.au/articles/new-south-wales-aboriginal-and-torres-strait-islander-population-summary>.

35 NSW Bureau of Crime Statistics, "BOCSAR Policing Activity Tool" (December 2025) <https://policingactivitytool.bocsar.nsw.gov.au>.

36 See for example Andrew Messenger, "Expanded 'Jack's Law' police powers could lead to further 'surveillance and harassment' of some Queenslanders, expert warns", *The Guardian* (11 June 2025) <https://www.theguardian.com/australia-news/2025/jun/11/expanded-jacks-law-police-powers-could-lead-to-further-surveillance-and-harassment-of-some-queenslanders-expert-warns>.

37 Government of Queensland, "Making Queensland Safer Bill 2024 – Statement of Compatibility" (2024), <https://www.legislation.qld.gov.au/view/html/bill.first.hrc/bill-2024-043>. See also Queensland Law Society, Submission no 114 to Justice, Integrity and Community Safety Committee, Parliament of Queensland, *Inquiry into the Making Queensland Safer Bill 2024*, 3 December 2024, <https://www.qls.com.au/content-collections/submissions/2024/making-queensland-safer-bill-2024>; Queensland Law Society, Submission no 14 to Justice, Integrity and Community Safety Committee, Parliament of Queensland, *Inquiry into Police Powers and Responsibilities (Making Jack's Law Permanent) and Other Legislation Amendment Bill 2025* (15 April 2025), <https://www.qls.com.au/getmedia/35650918-feac-44e9-91f1-ed71670ad535/5102-QLS-SUBMISSION-POLICE-POWERS-AND-RESPONSIBILITIES-(MAKING-JACK-S-LAW-PERMANENT)-AND-OTHER-LEGISLATION-AMENDMENT-BILL-2025.pdf>.

38 Justice, Integrity and Community Safety Committee, Parliament of Queensland, *Inquiry into the Expanding Adult Crime, Adult Time and Taking a Strong Stance on Drugs and Anti-Social Behaviour Amendment Bill 2026* (Report, March 2026), vi, <https://www.parliament.qld.gov.au/Work-of-the-Assembly/Tabled-Papers/docs/5826t0481/5826t481.pdf>.

39 Queensland Law Society, Submission no 14 to Justice, Integrity and Community Safety Committee, Parliament of Queensland, *Inquiry into Police Powers and Responsibilities (Making Jack's Law Permanent) and Other Legislation Amendment Bill 2025* (15 April 2025) <https://www.qls.com.au/getmedia/35650918-feac-44e9-91f1-ed71670ad535/5102-QLS-SUBMISSION-POLICE-POWERS-AND-RESPONSIBILITIES-(MAKING-JACK-S-LAW-PERMANENT)-AND-OTHER-LEGISLATION-AMENDMENT-BILL-2025.pdf>.

- In Victoria, the 2023 Victorian Government Aboriginal Affairs Report noted that "over policing of First Peoples in Victoria continues to be an issue", and that this is "compounded by the disproportionate number of Aboriginal women denied bail, the impacts of structural racism in the criminal justice system, and past and current laws and policies that disproportionately impact First Nations women".[40] The same report notes that "Aboriginal men were 6.9 times more likely to be processed by police than non-Aboriginal men".[41]

- On 3 August 2024, the then Commissioner of the Northern Territory Police issued an apology to First Nations people for "past harms and injustices caused by members of the Northern Territory Police".[42]

29. The Call It Out Racism Register 2024–2025 included several reports of racism by police forces across Australia, including through the use of police discretion in implementing zoning and move-on laws, with police-based racial profiling of First Nations young people singled out in some instances.[43] It had a particular focus on police responses to First Nations victims of crime, and in particular, noted actions including:

> *… failure to investigate assaults, as well as dehumanising practices such as invasive searches, excessive force, unnecessary use of arrest, racist abuse and targeting, and institutional neglect of a duty of care. Institutional actions, such as police extinguishing fires at Camp Sovereignty, exemplified systemic racism and bias in law enforcement. Historic patterns of exclusion, such as barring young people from public places like swimming pools, were also referenced.*[44]

30. It is also important to recognise the disproportionate impact of police practices specifically on First Nations women.[45] In its Pathways to Justice report, the ALRC recognised the consequences of "punitive policing and arrest practices against Aboriginal and Torres Strait Islander women",[46] citing the death in custody of Ms Dhu in Western Australia as "illustrat[ing] the escalating impacts that minor offending can result in when combined with racial stereotypes, assumptions, and discrimination by

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40 Government of Victoria, "Aboriginal Affairs Report 2023" (2024), 138 <https://www.firstpeoplesrelations.vic.gov.au/sites/default/files/2024-07/VIC-GOV_Aboriginal-Affairs-Report_2023.pdf>.

41 Ibid, 142. "Processed" means being arrested or cautioned, or receiving a summons.

42 Northern Territory Police, Fire and Emergency Services, "An Apology to Aboriginal Territorians" (3 August 2024), <https://pfes.nt.gov.au/police/publications/apology>.

43 Fiona Allison et al, "The Call It Out Racism Register 2024-2025: Everywhere I go no matter where, if it's around non-Indigenous people I feel a hate vibe. It feels like I'm being watched", Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney (2025), 29 <https://callitout.com.au/wp-content/uploads/2025/11/Jumbunna-Call-It-Out-Annual-Report-2024-2025.pdf>.

44 Ibid, 111.

45 See for example Law Council of Australia, "The Justice Project Final Report Part 1 – Aboriginal and Torres Strait Islander People" (August 2018), 68 <https://lawcouncil.au/files/web-pdf/Justice%20Project/Final%20Report/Aboriginal%20and%20Torres%20Strait%20Islander%20People%20%28Part%201%29.pdf>.

46 Australian Law Reform Commission, "Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples" (Report, December 2017), [11.65] <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/>.

police".[47] In the final report of its inquiry into missing and murdered First Nations women and children, the Senate Legal and Constitutional Affairs References Committee observed that "multiple submitters and witnesses highlighted cases throughout Australia where First Nations women and children have been murdered or disappeared and, they argued, the police response has been inadequate and/or demonstrated systemic racism".[48]

31. Concerns regarding police responses to domestic violence in First Nations communities have been documented at length, including misidentification of First Nations women as perpetrators, rather than victim-survivors, resulting in action being taken against women who are most in need of protection.[49] The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability documented similar concerns for First Nations women with disability.[50]

32. In summary, the problem of over-policing of First Nations people and communities, which was identified at least as long ago as 1991, has not been satisfactorily addressed. There remains a clear need to address how over-policing, and police practices, contribute to racial inequality amounting to systemic racism.

Imprisonment and deaths in custody

33. The overrepresentation of First Nations people in custody has ongoing serious impacts for individuals, families and communities, especially considering highly concerning reports of conditions in detention.[51] Those conditions include strip searching (particularly for women and children),[52] isolation practices, watchhouse detention, lack of healthcare, and conditions for First Nations women (including those relating to pregnancy, birth and motherhood).

34. The rate of imprisonment for First Nations adults across the country in 2025 was over 14 times higher than for those who do not have a First Nations background.[53] From

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47 Ibid [11.66]. On Ms Dhu's death, see further Suvendrini Perera and Hannah McGlade, "Report of the Inquest into the Death of Ms Dhu (Perth, 16 December 2016): Judgment" in Nicole Watson and Heather Douglas (ed), *Indigenous Legal Judgments: Bringing Indigenous Voices into Judicial Decision Making* (Routledge, 2021), 297 <https://www.taylorfrancis.com/reader/download/d504ca57-c8b3-4c5c-aeef-19d6ad2abfc1/chapter/pdf?context=ubx>.

48 Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Inquiry into Missing and Murdered First Nations Women and Children* (Final Report, August 2024), 49 <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/FirstNationswomenchildren>.

49 Ibid, 84-91.

50 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final Report, Chapter 8 (Criminal Justice and People with Disability), 263-265.

51 See recently, for example, Ombudsman NT, "Watch House Investigation Report" (Report, November 2025), <tabled-paper-573-report-watch-house-investigation-report-own-motion-investigation-intoconditions-for-territory-prisoners-in-northern-territory-police-force-watch-hou.pdf.; Queensland Police Service, "Watch-House Review" (Report, July 2025), <https://www.police.qld.gov.au/sites/default/files/2025-07/QPS%20Watchhouse%20Review%202025_1_0.pdf>.

52 See for example Human Rights Law Centre, Flat Out and FIGJAM, "Ending Strip Searching in Australian Prisons" (Report, March 2026), <https://www.hrlc.org.au/reports/end-strip-searching/>.

53 Australian Institute of Health and Welfare, "Closing the Gap Targets: Key Findings and Implications" (6 March 2025), 391, <https://www.aihw.gov.au/reports/indigenous-australians/closing-the-gap-targets-key-findings-implications/contents/overview>.

30 June 2024 to 30 June 2025, the number of First Nations prisoners increased by 10 per cent (1,561) to 17,432. Over the same period, the imprisonment rate for First Nations prisoners increased from 2,318 to 2,500 prisoners per 100,000 First Nation adults.[54] On 30 June 2025 First Nations prisoners accounted for 37 per cent of all prisoners.[55] 76 per cent had experienced prior adult imprisonment.[56]

35. On 4 March 2026, the Australian Bureau of Statistics reported that the First Nations imprisonment rate was 2630 persons per 100,000 adult Aboriginal and Torres Strait Islander population. This was an increase from 2600 in the September quarter 2025 and 2474 in the December quarter 2024.[57] The rate of unsentenced First Nations Australians in the prison population is also increasing: from 27 per cent to 39 per cent from 2015 to 2024, and from 37 per cent to 50 per cent for First Nations women specifically from 2018 to 2024.[58]

36. First Nations women are the fastest growing prison population in Australia. The AHRC has reported that First Nations women are:

- imprisoned 21.2 times the rate of non-Indigenous women;
- over 5 times more likely to be charged for minor, non-violent offences and receive harsher sentences than non-Indigenous women; and
- 15.7 times more likely than non-Indigenous women to be held in custody while awaiting trial. This is also higher than the rate experienced by Aboriginal and Torres Strait Islander men.[59]

37. According to the Australian Institute of Health and Welfare, First Nations children and young people made up 60 per cent of all those in detention nationally on an average night in the June quarter 2025, beginning at age 10.[60] They were 22 times as likely to be in detention as their non-Indigenous peers.[61] As of July 2022, First Nations people constitute over 75 per cent of detainees between 10–12 years old.[62]

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54 Australian Bureau of Statistics, "Prisoners in Australia" (11 December 2025) <https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release>.

55 Ibid.

56 Ibid.

57 Australian Bureau of Statistics, "Corrective Services, Australia" (Web Page, 4 March 2026) <https://www.abs.gov.au/statistics/people/crime-and-justice/corrective-services-australia/latest-release>.

58 See Standing Council of Attorneys-General, "Bail and Remand Working Group Final Report" (July 2025), 8, <https://www.ag.gov.au/sites/default/files/2025-11/scag_bail-and-remand-reform-working-groupfinal-report.PDF>.

59 Australian Human Rights Commission, "Statistics about Aboriginal and Torres Strait Islander Women and Girls" (Fact Sheet, April 2024), <https://humanrights.gov.au/human-rights-education/stats-and-facts-about-discrimination/statistics-about-aboriginal-and-torres-strait-islander-women-and-girls>.

60 Australian Institute of Health and Welfare, "Youth Detention Population in Australia 2025: First Nations" (Web Page, 10 December 2025) <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2025/contents/first-nations-young-people>.

61 Australian Institute of Health and Welfare, "Youth Justice" (Web page, 12 May 2026) <https://www.aihw.gov.au/reports/australias-welfare/youth-justice>.

62 Leigh Haysom, "Raising the Minimum Age of Criminal Responsibility to 14 Years", (2022) 58(9) *Journal of Paediatrics and Child Health* 1504, 1504.

38. In 2025—almost 35 years since the final report of the RCIADIC—there was the highest number of First Nations deaths in custody since 1979–80.[63] Between 1 July 2024 and 30 June 2025, First Nations prisoner deaths accounted for 29 per cent of all deaths in prison custody, the highest proportion since 2002–03.[64] 42 per cent of First Nations people who died in custody were unsentenced.[65]

39. There is very little accountability for the individuals and organisations involved in these deaths. Only one person has been convicted in relation to the death in custody of a First Nations person since the RCIADIC's final report.[66] As previously noted in this submission, the recommendations of the RCIADIC are also yet to be fully implemented.

40. There is also an historical failure to provide adequate health care in detention. A 2020 study found that incarcerated First Nations women "experienced institutional racism and discrimination in the form of not being listened to, stereotyping, and inequitable healthcare compared with non-Indigenous women in prison and the community".[67] The study also found that "Aboriginal women in prison experience multiple barriers to accessing culturally safe healthcare … Whilst some women in our study reported improvements in the management of health conditions and benefit from taking regular medication in prison, the vast majority of women shared experiences of not having their health needs met".[68]

41. These issues have received and are receiving international scrutiny of Australia's human rights compliance record. In her 2017 visit to Australia, the then Special Rapporteur on the Rights of Indigenous Peoples observed that the "extraordinarily high rate of incarceration of Aboriginal and Torres Strait Islanders, including women and children, [was] a major human rights concern", and that youth detention "prima facie raise[d] concerns over racial discrimination in the administration of justice".[69] The same year, the UNCERD also expressed its "[deep] concern about the high proportion of indigenous children in contact with the criminal justice system", their "ill-treatment" and "the conditions in which they are held".[70]

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63 Australian Institute of Criminology, "Deaths in Custody in Australia 2024-25" (Report, 2025) 6 <https://www.aic.gov.au/publications/sr/sr57>.

64 Ibid, 9.

65 Ibid, 11.

66 Kirstie Wellauer and Joanna McCarthy, "Australia Records Highest Number of Indigenous Deaths in Custody Since 1979", Australian Broadcasting Corporation (10 December 2025) <https://www.abc.net.au/news/2025-12-10/largest-number-of-indigenous-deaths-in-custody-since-1979/106121828>. See also Aboriginal Legal Service NSW / ACT, "Historic Day for Justice as Police Officer Benedict Bryant Found Guilty in Death of Aboriginal Teen" (Media release, 28 November 2025) <https://www.alsnswact.org.au/benedict-bryant-guilty>.

67 Sacha Kendall et al, "Incarcerated Aboriginal Women's Experiences of Accessing Healthcare and the Limitations of the 'Equal Treatment' Principle", (2020) 19 *International Journal for Equity in Health* 48, 48.

68 Ibid, 57.

69 United Nations Human Rights Council, "Report of the Special Rapporteur on the Rights of Indigenous Peoples on her Visit to Australia", UN Doc A/HRC/36/46/Add.2 (8 August 2017), [66] <https://docs.un.org/en/A/HRC/36/46/Add.2>.

70 United Nations Committee on the Elimination of Racial Discrimination, "Concluding Observations on the Eighteenth to Twentieth Periodic Reports of Australia", UN Document CERD/C/AUS/CO/18-20 (26 December 2017), [25], <https://digitallibrary.un.org/record/3843103?v=pdf>.

42. More recently, communications have been lodged with the UN Human Rights Committee concerning First Nations deaths in custody,[71] and to the UNCERD under its Early Warning and Urgent Action procedure concerning First Nations children in the criminal justice system.[72] In April 2026, the UNCERD accepted that communication, and called upon the Australian Government to, inter alia:

- "fully respect its international law obligations and standards, in particular those arising from the [International Convention on the Elimination of All Forms of Racial Discrimination]" (**CERD**)[73];
- "strengthen its efforts in combatting structural discrimination, including addressing its root causes";
- "intensify and accelerate its efforts to eliminate racial discrimination against Indigenous children, including its institutional and systemic dimensions";
- conduct a "human rights-based review of its legislative framework, particularly at the States and Territories level, to repeal legislations with possible discriminatory effects and prevent any further discriminatory impact on the rights of Indigenous children";
- "review its legislative framework on law enforcement to explicitly prohibit racial profiling by law enforcement officials and to avoid over policing and ensure that law enforcement operations are conducted in a non-arbitrary and non-discriminatory manner";
- "adopt measures to improve detention conditions in accordance with international standards and ensure that Indigenous children deprived of their liberty have access to medical care, legal counsel, adequate food and social services and to their families"; and
- "implement effectively its policies on addressing the overrepresentation of Indigenous children in the criminal justice system, particularly the National Agreement on Closing the Gap".[74]

43. In its Fourth Cycle Universal Periodic Review, a Working Group of the United Nations Human Rights Council also made 332 recommendations to the Australian Government, several which raised the need to address systemic racism and discrimination towards, and inequalities experienced by, First Nations Australians, with a focus on the criminal justice system.[75]

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71 National Justice Project, "Leetona Dungay Takes Her Fight for Accountability to the International Stage" (12 January 2024), <https://www.justice.org.au/leetona-dungay/>.

72 Megan Davis and Hannah McGlade, "International Convention on the Elimination of All Forms of Racial Discrimination – Early Warning and Urgent Action Submission" (May 2025) <https://www.hrlc.org.au/app/uploads/2025/04/United-Nations-CERD-complaint_youth-justice-in-Australia.pdf>.

73 *International Convention on the Elimination of All Forms of Racial Discrimination*, adopted 21 December 1965, UN General Assembly Resolution 2106 (XX), entry into force 4 January 1969.

74 Committee on the Elimination of Racial Discrimination, *Statement 1 (2026): Overrepresentation of Indigenous Children in Australia's Criminal Justice System* (Advance unedited version, 29 April 2026) 2-3 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FSWA%2FAUS%2F11498&Lang=en>.

75 United Nations Human Rights Committee, "Report of the Working Group on the Universal Periodic Review – Australia", UN Document A/HRC/62/13 (28 January 2026).

The need for oversight and accountability

44. To address the connection between justice frameworks and racial inequality demonstrated in the above analysis, there is a clear need for improved institutional oversight and accountability.

Policing and detention

45. The Law Council recognises that many police officers work hard to protect the community as a whole from harm and put themselves at risk while doing so. However, the issue of how police officers exercise their powers in relation to First Nations people has been extensively documented and identified previously, including through several recommendations of the RCIADIC.

46. A report commissioned by the Australian Government in 2018 on the implementation of the RCIADIC recommendations found that 78 per cent had been fully or mostly implemented, 16 per cent had been partially implemented, and 6 per cent had not been implemented.[76] However, this report has been the subject of criticism, including for its methodology. A paper by the Centre for Aboriginal Economic Policy Research (**CAEPR**) in 2021 argued that the report was a "misrepresentation of the facts of the Australian Government's response to the recommendations of the RCIADIC",[77] and that the "Australian Government [had] failed to take the necessary leadership to coordinate implementation with States and Territories, in consultation with First Nations representatives (see RCIADIC Recommendation 1), and implement recommendations relevant to its own jurisdiction such as in relation self-determination".[78] According to the CAEPR report, recommendations that have yet to be fully implemented include:

- with respect to oversight:
  - Recommendation 1—to agree a process between Federal, State and Territory Governments (in consultation with the then Aboriginal and Torres Strait Islander Commission) "by which adoption or otherwise of recommendations and the implementation of the adopted recommendations will be reported upon on a regular basis".
- with respect to overrepresentation:
  - Recommendation 62—to reduce the rate of Aboriginal children in the criminal justice system.

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[76] Deloitte Access Economics, "Review of the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody" (Report, 23 October 2018) <https://www.niaa.gov.au/sites/default/files/documents/publications/rciadic-review-report.pdf>.

[77] T Anthony et al, "30 Years On: Royal Commission into Aboriginal Deaths in Custody Recommendations Remain Unimplemented", CAEPR Working Paper no 140/2021 (Centre for Aboriginal Economic Policy Research, Australian National University, April 2021) <https://cipr.cass.anu.edu.au/files/docs/2025/6/WP_140_Anthony_et_al_2021_0.pdf>.

[78] Ibid.

- with respect to police and criminal justice practices:
  - Recommendation 89—that governments "monitor legislation and criminal justice practice to ensure that defendants are entitled to bail".
  - Recommendations 239 and 240—that police should proceed by way of caution rather than arrest for First Nations people, especially for young people.
- with respect to conditions in detention:
  - Recommendation 127—that police services "should move immediately in negotiation with Aboriginal Health Services and government health and medical agencies to examine the delivery of medical services to persons in police custody".
  - Recommendation 150—that healthcare in correctional institutions "should be of an equivalent standard to that available to the general public".
  - Recommendation 165—that police and corrective services "should carefully scrutinise equipment and facilities provided at institutions with a view to eliminating and/or reducing the potential for harm".
- with respect to self-determination and community-led programs:
  - Recommendation 188—that governments "negotiate with appropriate Aboriginal organisations and communities to determine guidelines as to the procedures and processes which should be followed to ensure that the self-determination principle is applied in the design and implementation of any policy or program or the substantial modification of any policy or program which will particularly affect Aboriginal people".
  - Recommendation 203—"that the highest priority be accorded to the facilitation of social, economic and cultural development plans by Aboriginal communities".

47. CAEPR's overarching recommendation is as follows:

> *We support the development of national independent monitoring of the implementation of the recommendations of RCIADIC. A monitoring body should be led by First Nations people who are involved in devising strong terms of reference that draw on community concerns, and a rigorous methodology centred on input from Aboriginal and Torres Strait Islander peoples, organisations and peak bodies to establish whether governments are making real progress towards meeting the recommendation*.[79]

48. Consistent also with Recommendation 36 of the AHRC's National Anti-Racism Framework,[80] the Law Council agrees that the Australian Government should establish an independent oversight mechanism to "monitor and report on the status

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[79] Ibid, 16.
[80] See further the response to Term of Reference 3 in this submission.

of the implementation of the Royal Commission into Aboriginal Deaths in Custody".[81] This mechanism could also consider and address the systemic issues which result in deaths in custody, including by scrutinising trends and patterns, monitoring recommendations in the coronial jurisdiction and ensuring accountability of governments and institutions in implementing those recommendations.

49. In its Pathways to Justice report, the ALRC recommended with respect to policing that:

- Recommendation 14-1—"Commonwealth, State and Territory governments should review police procedures and practices so that the law is enforced fairly, equally and without discrimination with respect to Aboriginal and Torres Strait Islander peoples".[82]
- Recommendation 14-2—"To provide Aboriginal and Torres Strait Islander people and communities with greater confidence in the integrity of police complaints handling processes, Commonwealth, State and Territory governments should review their police complaints handling mechanisms to ensure greater practical independence, accountability and transparency of investigation".[83]
- Recommendation 14-3—"Commonwealth, State and Territory governments should introduce a statutory requirement for police to contact an Aboriginal and Torres Strait Islander legal service, or equivalent service, as soon as possible after an Aboriginal and Torres Strait Islander person is detained in custody for any reason—including for protective reasons. A maximum period within which the notification must occur should be prescribed".[84]
- Recommendation 14-4—A number of initiatives were suggested "to further enhance cultural change within police that will ensure police practices and procedures do not disproportionately contribute to the incarceration of Aboriginal and Torres Strait Islander peoples", including "providing specific cultural awareness training for police being deployed to an area with a significant Aboriginal and Torres Strait Islander population".[85]

50. These recommendations are also yet to be fully implemented.[86] The ALRC itself provides a summary of implementation of its reports and notes, in respect of the

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[81] Australian Human Rights Commission, "The National Anti-Racism Framework: A Roadmap to Eliminating Racism in Australia" (Report, November 2025), 20 <https://humanrights.gov.au/resource-hub/race/anti-racism-framework>.

[82] Ibid, 17.

[83] Ibid.

[84] Ibid.

[85] Ibid, 18.

[86] For the Law Council's previous statements on these matters please see Law Council of Australia, "One Year On, Government Fails to Respond to ALRC's Indigenous Over-Incarceration Report" (Media release, 28 March 2019), <https://lawcouncil.au/media/media-releases/one-year-on-government-fails-to-respond-to-alrcs-indigenous-over-incarceration-report>; Law Council of Australia, "Time for a Government Response to Pathways to Justice Report" (Media release, 25 March 2021), <https://lawcouncil.au/media/media-statements/time-for-a-government-response-to-pathways-to-justice-report>; Law Council of Australia, "Justice Gap must be Bridged", (Media release, 17 March 2022), <https://lawcouncil.au/media/media-releases/justice-gap-must-be-bridged>; Law Council of Australia, "Report Card Warns of Human Rights Failures" (Media release, 25 July 2025), <https://lawcouncil.au/media/media-releases/report-card-warns-of-human-rights-failures>.

Pathways to Justice report, some improvements to custody notification in Western Australia in relation to Recommendation 14-3.[87]

51. The Senate Standing Committee on Legal and Constitutional Affairs also made recommendations on policing in 2024 its inquiry into missing and murdered First Nations women and children. Recommendation 2 was that:

> *… the Attorney-General tasks the Police Ministers Council to review existing police practices in each jurisdiction, consider the learnings from each jurisdiction and aim to implement and harmonise best police practices across Australia by no later than 31 December 2025, with the goal of ensuring all interactions with First Nations people are consistent and of a high standard, including standards of cultural awareness and safety. In performing this role, the committee recommends that the following practices and procedures be considered:*
>
> - *ongoing and mandatory cultural awareness training for all employees (that is, both sworn and civilian members);*
> - *training courses developed and led by First Nations people, including components on lived experience, trauma*-informed practice and effective communication;
> - *recruitment, support and promotion of First Nations people, including to senior management positions; and*
> - *appropriate guidelines for the review of past cases involving disappeared and murdered First Nations women and children where families are seeking review*.[88]

52. The Australian Government response to the Senate Standing Committee's report noted this recommendation, identifying that any further action would require the agreement of each State and Territory.[89] Based on meeting documents of the Police Ministers Council,[90] it would appear that the Attorney-General has not yet tasked the Council as recommended.

53. Consistent with Recommendation 37 of the AHRC's National Anti-Racism Framework,[91] and as the Law Council has frequently advocated, the Australian Government should also fully implement its obligations under the Optional Protocol to the Convention Against Torture (OPCAT) to strengthen the protection of First Nations Australians in detention.[92] Despite Australia having ratified OPCAT on 21 December

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87 Australian Law Reform Commission, "Implementation" (Web page, last updated 6 March 2025) <https://www.alrc.gov.au/implementation-final-reports/>.

88 Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Inquiry into Missing and Murdered First Nations Women and Children*, Parliament of Australia (Final Report, August 2024), Recommendation 2, [7.34] <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/FirstNationswomenchildren/Report/List_of_recommendations>.

89 See Australian Government, "Australian Government Response to the Senate Legal and Constitutional Affairs References Committee report: Missing and murdered First Nations women and children" (November 2024) 15 <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/FirstNationswomenchildren/Government_Response>.

90 See Department of Home Affairs, "Police Ministers Council" (April 2026) <https://www.homeaffairs.gov.au/help-and-support/how-to-engage-us/committees-and-fora/police-ministers-council>.

91 Ibid.

92 *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 4 February 2003, 2375 UNTS 237 (entry into force 22 June 2006).

2017,[93] it still has not been fully implemented domestically. To support this, the Australian Government should establish an intergovernmental agreement on funding in relation to a National Preventative Mechanism. Importantly, OPCAT's implementation must also be culturally appropriate through the operations, systems and policies of relevant detention oversight bodies if it is to be effective for First Nations Australians.[94]

54. The National Anti-Racism Framework included a range of other relevant justice recommendations, including:

- to raise the minimum age of criminal responsibility to 14 years in all jurisdictions, without exception (Recommendation 35)—a position long supported by the Law Council;[95]
- an external audit to investigate systemic racism, including police misconduct and negligence, and to develop "holistic reforms to institutional practices across all stages of the justice process from initial contact with law enforcement through to post-prison release" (recommendation 38); and
- funding for community-specific approaches to diversion and rehabilitation in the justice system (recommendations 39 and 40).[96]

55. The Law Council also recognises that some efforts have been made to address concerns about policing of First Nations communities. For example:

- The ACT Government has produced a "Policing Strategy for Engagement with First Nations People and Communities", which applies from 2023 to 2028.[97] This document recognises that ACT Policing has "had a history of poor engagement with First Nations people and communities must be addressed and improved upon to ensure it better serves and meets the needs of these citizens",[98] and sets out "nine key principles for engagement have been based

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93 Australian Human Rights Commission, "Implementing OPCAT in Australia" (Web page, June 2020) <https://humanrights.gov.au/resource-hub/by-resource-type/publications/rights-and-freedoms/policy-reports-rights-and-freedoms/implementing-opcat-australia-2020>.

94 See for example Victorian Aboriginal Legal Service, "The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (Fact Sheet, July 2022) <https://www.vals.org.au/wp-content/uploads/2022/07/OPCAT-fact-sheet-July-2022-1.pdf> 2.

95 See for example Law Council of Australia, "Recommendation to Raise Minimum Age of Criminal Responsibility Welcome" (Media release, 23 August 2024), <https://lawcouncil.au/media/media-releases/recommendation-to-raise-minimum-age-of-criminal-responsibility-welcomed>; Law Council of Australia and Australian Medical Association, "Policy Statement – Minimum Age of Criminal Responsibility" (last updated 10 October 2023), <https://lawcouncil.au/publicassets/20fb2a76-c61f-ea11-9403-005056be13b5/AMA%20and%20LCA%20Policy%20Statement%20on%20Minimum%20Age%20of%20Criminal%20Responsibility.pdf>; Law Council of Australia, "Adult Punishment for Children is a Shameful Social Failure" (Media release, 12 May 2025), <https://lawcouncil.au/media/media-releases/adult-punishment-for-children-is-a-shameful-social-failure>.

96 Australian Human Rights Commission, "The National Anti-Racism Framework: A Roadmap to Eliminating Racism in Australia" (Report, November 2025), 20, <https://humanrights.gov.au/resource-hub/race/anti-racism-framework>.

97 ACT Policing, ""Policing Strategy for Engagement with First Nations People and Communities, 2023-2028", <https://police.act.gov.au/__data/assets/pdf_file/0007/273949/Signed-ACT_Policing_Strategy_for_Engagement_with_First_Nations_People_and_Communities.pdf>.

98 Ibid, 5.

on consultation with First Nations people and communities supported by research undertaken by the Australian Institute of Health and Welfare".[99]

- The NSW Police Force issued an "Aboriginal Strategic Direction" in 2024.[100] Priority 3 of this Direction is entitled "Safety and Wellbeing of Aboriginal Young People" and notes that "Aboriginal youth are over-represented in the criminal justice system".[101] This direction also creates an "Aboriginal Strategy and Coordination Team", which consists of "multidisciplinary administrative officers who all identify as Aboriginal and are actively engaged in their respective communities".[102]

Other parts of the justice system

56. While the recommendations discussed above focus on police and conditions in detention, the Law Council notes that oversight and accountability are important and relevant to all components of the justice system more broadly, including the legal profession and the courts.

57. In addition to requirements under Federal, State and Territory anti-discrimination laws, solicitors have an ethical duty and professional responsibility to not engage in conduct which constitutes discrimination in the course of, or in connection with, legal practice or their profession (Rule 42 of the Australian Solicitors' Conduct Rules 2022 (**ASCRs**)).[103] Solicitors also have fundamental ethical duties to:

    - act in the best interests of their client, and be honest and courteous in all dealings in the course of legal practice, avoiding any compromise to their integrity and professional independence and comply with the law (Rule 4.1); and
    - not engage in conduct, in the course of legal practice or otherwise that is likely to a material degree to be prejudicial to, or diminish public confidence in, the administration of justice, or bring the profession into disrepute (Rule 5.1.2).

58. Similar requirements exist for members of the Bar. For example, the *Legal Profession Uniform Conduct (Barristers) Rules* (NSW) provide in Rule 123(1)(a) that a barrister "must not in the course of, or in connection with, legal practice or their profession, engage in conduct which constitutes … discrimination". The NSW Bar Association has also produced a Model Best Practice Guideline on Harassment, Discrimination and Bullying.[104]

59. Complaints of conduct that breach professional rules of this kind may be made to State or Territory regulators of the legal profession.

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[99] Ibid, 7.
[100] NSW Police Force, "Aboriginal Strategic Direction" (2024) <https://www.police.nsw.gov.au/__data/assets/pdf_file/0003/481215/Aboriginal_Strategic_Direction.pdf>.
[101] Ibid, 18.
[102] Ibid, 25.
[103] The current version of the Australian Solicitors Conduct Rules developed by the Law Council can be found at <https://lawcouncil.au/files/pdf/2023%20Nov%20-%20ASCR%20website%20version.pdf>. The version applicable in Uniform Law jurisdictions (New South Wales, Victoria and Western Australia) can be found at <https://legislation.nsw.gov.au/view/whole/html/inforce/current/sl-2015-0244>.
[104] NSW Bar Association, "Model Best Practice Guideline on Harassment, Discrimination and Bullying" (24 March 2022) <https://nswbar.asn.au/uploads/pdf-documents/A_Harassment_Discrimination_BPG.pdf>.

60. It is also essential to the promotion of the rule of law and the Australian constitutional system that there be a strong, independent and transparent judiciary. This requires a well-understood means of addressing complaints about the Federal judiciary, including in relation to any allegations of bias (whether in relation to First Nations people or otherwise) as they arise, in an independent, structured, fair and timely manner. The Law Council strongly supports the establishment of an appropriately constituted and properly resourced Federal Judicial Commission to perform this function.[105] This was also a key recommendation of the ALRC's 2021 inquiry into Judicial Impartiality and the Law on Bias.[106] Notwithstanding in-principle agreement by the Australian Government to this recommendation,[107] the Law Council is disappointed that the recommendation has not been progressed.

The need for data to support effective responses

61. When considering options to combat racism, hate and violence targeted at First Nations people, strengthened and nationally consistent data collection will be crucial to understand the full extent of the issue and inform effective legal and policy responses. The Law Council recommends expanded funding for First Nations-led research to this end.

62. To give one example, while the National Hate Crimes Database is a valuable resource, the Australian Institute of Criminology notes that data "does not allow for disaggregation by specific hate motivations of offences", and that it is "working with data providing agencies to expand the scope of the data available on the dashboard".[108] In the 2026–27 Budget, $9 million was allocated over five years from 2025–26 (and $1.2 million per year ongoing) to continue and accelerate implementation of the database and complete associated scoping requirements.[109] Consideration should be given to how to expand and disaggregate data on the dashboard to better document instances where such offences are directed at First Nations Australians (or indeed at any other racial minority).

63. The AHRC also notes that "data on racism in Australia is limited, inconsistent across jurisdictions, and often ad-hoc",[110] and has called for a "national, comprehensive approach to collecting data for anti-racism purposes that embeds Indigenous Data Sovereignty and Indigenous Data Governance and a human rights-based approach"

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[105] See further Law Council of Australia, "Policy Statement – Principles Underpinning a Federal Judicial Commission" (25 March 2023), <https://lawcouncil.au/resources/policies-and-guidelines/policy-statement-principles-underpinning-a-Federal-judicial-commission>.

[106] Australian Law Reform Commission, "Judicial impartiality and the Law on Bias" (ALRC Report 138, December 2021) <https://www.alrc.gov.au/wp-content/uploads/2022/08/ALRC-Judicial-Impartiality-138-Final-Report.pdf>.

[107] Australian Law Reform Commission, "Implementation" (Web page, undated) <https://www.alrc.gov.au/implementation-final-reports/>.

[108] Australian Institute of Criminology, "National Hate Crimes Database" (reference period 1 October 2024 to 30 September 2025), <https://www.aic.gov.au/statistics/national-hate-crimes-database>.

[109] Australian Government, "Budget Measures – Budget Paper no 2" (12 May 2026), 69 <https://budget.gov.au/content/bp2/download/bp2_2026-27.pdf#:~:text=%E2%80%93%20%249.0%20million%20over%20five,national%20hate%20crimes%20and%20incidents>.

[110] Australian Human Rights Commission, "The National Anti-Racism Framework: A Roadmap to Eliminating Racism in Australia" (Report, November 2025), 13, <https://humanrights.gov.au/resource-hub/race/anti-racism-framework>.

as part of the National Anti-Racism Framework.[111] Accordingly, in relation to the justice system, recommendation 45 of the Framework is that "Australian governments support comprehensive, community-led data collection consistent with the principles of Indigenous Data Sovereignty on interactions with the justice system, including arrests, outcomes of justice, and the experiences of individuals within court processes". More broadly, recommendations 58 to 63 also relate to collection of data relating to experiences of racism, in a culturally appropriate manner, which should be given close consideration by this Committee.

Recommendation 1

The Australian Government should implement the outstanding recommendations of the Royal Commission into Aboriginal Deaths in Custody.

Recommendation 2

The Australian Government, with State and Territory governments, should implement the outstanding recommendations of Australian Law Reform Commission's Pathways to Justice Report with respect to police accountability.

Recommendation 3

The Australian Government, with State and Territory governments, should fully implement domestically the Optional Protocol to the Convention Against Torture.

Recommendation 4

The Australian Government should establish an appropriately constituted and properly resourced Federal Judicial Commission.

Recommendation 5

The Australian Government should provide adequate and predictable funding for First Nations-led research and data on incidents of racism, hate and violence to underpin responses to this issue.

[111] Ibid.

Term of Reference 2

The effect of online platforms on the reach, prominence and harm caused by racism and hate directed at First Nations people

Racism in online platforms

64. Online platforms have significantly increased the reach, permanence and intensity of racist abuse directed at First Nations people. Digital spaces often facilitate coordinated harassment, misinformation and dehumanising commentary, particularly targeting First Nations leaders, advocates, journalists and legal professionals.[112] The emergence of algorithmic systems that reproduce bias have increased both the visibility and impact of racism,[113] while gaps in data collection, oversight and accountability continue to blur its full effects, particularly in regional and remote communities. The psychological and professional impacts of sustained online abuse are considerable.

65. In 2018, researchers at Macquarie University found that 88 per cent of First Nations respondents to their study had seen racism towards First Nations people on social media.[114] Of those respondents, 21 per cent reported having received threats from other users, and 17 per cent indicated that these had impacted their "offline" lives.[115]

66. Similarly, a 2019 study found that racism frequently features in online comments sections, even on mainstream media sites. A survey of 2900 comments using text analysis software found that comments tend to replicate and amplify racist themes, creating an echo chamber that reinforces racial vilification and abuse online. Those targeted by racism online report feelings of fear, helplessness, sadness, worry, anger and disappointment.[116]

67. The Call It Out Racism Register 2024–2025 found:

    - "reports describing more public incidents described use of hate speech or symbols in the workplace and online social media posts, including comments referencing the Ku Klux Klan or lynching of First Nations people …"[117]

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[112] See for example Douglas Smith and Sarah Collard, "Indigenous Australians Share the Racist Messages they Receive Online: 'No-One's Feeling Safe'", *The Guardian* (7 March 2026) <https://www.theguardian.com/australia-news/ng-interactive/2026/mar/06/indigenous-australians-racist-social-media-messages-ntwnfb>.

[113] See for example Office of the United Nations High Commissioner for Human Rights, "Racism and AI: Bias from the Past Leads to Bias in the Future"" (Web page, 30 July 2024) <https://www.ohchr.org/en/stories/2024/07/racism-and-ai-bias-past-leads-bias-future>.

[114] Bronwyn Carlson and Ryan Frazer, "Social Media Mob: Being Indigenous Online", Macquarie University (2018), 12 <https://research-management.mq.edu.au/ws/portalfiles/portal/85013179/MQU_SocialMediaMob_report_Carlson_Frazer.pdf>.

[115] Ibid.

[116] All Together Now, "Social Commentary and Racism in 2019" (Report, 2019) <https://alltogethernow.org.au/wp-content/uploads/2019/11/Social-Commentary-and-Racism-2019-1.pdf>.

[117] Fiona Allison et al, "The Call It Out Racism Register 2024-2025: Everywhere I go no matter where, if it's around non-Indigenous people I feel a hate vibe. It feels like I'm being watched", Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney (2025), 24 <https://callitout.com.au/wp-content/uploads/2025/11/Jumbunna-Call-It-Out-Annual-Report-2024-2025.pdf>.

- "threats or incitement to inflict physical harm were also reported—arising both online and in-person";[118] and
- "online incidents were sometimes reported as provoking and encouraging real-life incidents of violence—and First Nations young people are a common target in this context".[119]

68. In March 2026, the Online Hate Prevention Institute reported that it had:

> *… investigated five social media platforms: X/Twitter, Facebook, Instagram, TikTok and LinkedIn … This data represents content related to January 26 across a number of categories / types of hate. Social media posts that were racist against First Nations people accounted for 71 per cent of the data collected. Racism against non-First Nations people made up 8 per cent of the social media posts, 7 per cent of the posts featured other types of hate, 6 per cent included disinformation about the referendum, 5 per cent provided examples of violent extremism, 2 per cent were antisemitic, 0.5 per cent were Islamophobic, and 0.5 per cent of the data captured targeted the LGBTIQ+ community.*[120]

69. It is also important to note that there is a growing threat of organised ideologically motivated online extremism. The final report of the Senate Standing Committee on Legal and Constitutional Affairs' inquiry into right-wing extremism in Australia, handed down in December 2024, notes as follows:

> *Mainstream social media platforms and social networking sites remain an important space for right-wing extremists to congregate and organise, and represent opportunities for right-wing extremists within the Australian context to gain exposure to mainstream online discourse, which can afford opportunities to bring about the mainstreaming of extremist discourses. Right-wing extremists are active on a range of mainstream social media platforms, such as YouTube and TikTok, as well as mainstream social networking sites such as Facebook, Instagram and X (previously Twitter)*.[121]

70. Associate Professor Kristy Campion has also observed that:

> *Historically, the most visible facet of the Australian extreme right has been the ethnocentric milieu, which comprises neo-Nazism and other forms of fascism, white supremacy and white nationalism. Organised groups remain prominent both online and offline. For example, online groups such as the Nationalist Socialist Movement Australia (NSMA), part of the United States (US)'s Nationalist Socialist Movement, have been issuing ideological statements aimed at recruiting new members by warning of declining white demographics and of the risk of being "slaughtered" by a new "non white majority"*.[122]

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[118] Ibid, 25.
[119] Ibid, 26.
[120] Online Hate Prevention Institute, "Racism Towards First Nations People on January 26" (6 March 2026) <https://ohpi.org.au/racism-towards-first-nations-people-on-january-26/>.
[121] Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Inquiry into Right-Wing Extremism in Australia* (Final report, December 2024), [5.34] <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/RWExtremists23/Report/Chapter_5_-_Extremism_and_the_online_environment>.
[122] Kristy Campion, "Right-Wing Extremism in Australia: Current Threats and Trends in a Diverse and Diffuse Threatscape" (2024) 16(3) *Counter Terrorist Trends and Analyses* 1, 1.

Bias in artificial intelligence and algorithmic systems

71. The Law Council's constituent bodies have also raised concerns relating to the bias within Artificial Intelligence (**AI**) and algorithmic systems used by online platforms. AI tools are trained on datasets that reflect existing societal prejudices,[123] including racist and deficit-based narratives about First Nations peoples. As a result, these systems can reproduce and amplify bias through inaccurate or culturally unsafe responses, reinforcement of stereotypes, and disproportionate suppression or moderation of First Nations voices. As AI becomes more embedded in social media, education, workplaces and public decision-making, the failure to address algorithmic bias risks embedding systemic racism in automated and authoritative forms that are difficult to detect and challenge.

72. This issue presents specific risks in the criminal justice system, including in bail and sentencing decisions.[124] The Law Council has previously addressed this issue in several contexts.[125] AHRC reflected our views as far back as 2021 in its Final Report on Human Rights and Technology,[126] as follows:

> *The use of AI in the criminal justice system engages several human rights, including the right to equality and non-discrimination, the right to equality before the law, personal security and liberty, the right to privacy, the right to a fair and public hearing, the right to procedural fairness, and the presumption of innocence.*
>
> *Where these risk assessment tools use machine learning, there is a significant risk of algorithmic bias, unless this problem has been effectively addressed through the design of the relevant tool. A common problem is that a particular racial or ethnic group may have experienced disproportionate scrutiny by police over a long period of time, which in turn contributes to members of that group being convicted at a disproportionate rate for particular crimes. Where those statistics are used in training data to create risk assessment tools, these tools are likely to "learn" that members of that group are more likely to commit crime.*[127]

Regulation of Online Hate

73. The *Online Safety Act 2021* (Cth) provides important safeguards from abusive and harmful content for users of online platforms. Part 2 of the Act creates the office of

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[123] See for example Matthew G Hanna et al, "Ethical and Bias Considerations in Artificial Intelligence / Machine Learning", (2025) 38(3) *Modern Pathology* 100686 <https://www.sciencedirect.com/science/article/pii/S0893395224002667>.

[124] See for example Mirko Bagaric and Dan Hunter, "Criminal Law and Justice in the Machine Learning Era", (2019) 41(5) *The Bulletin – Journal of the Law Society of South Australia* 8, 9 <https://www.lawsocietysa.asn.au/Common/Uploaded%20files/Bulletin/LSB_June_2019_Web.pdf>.

[125] Law Council of Australia, Submission to the Australian Human Rights Commission, 'Human Rights and Technology', 25 October 2018; Law Council of Australia, Submission to the Department of Industry, Innovation and Science, 'Artificial Intelligence: Australia's Ethics Framework', 28 June 2019; Law Council of Australia, Submission to the Select Committee on Adopting Artificial Intelligence, 'Inquiry into the opportunities and impacts of the uptake of artificial intelligence technologies in Australia', 20 May 2024; Law Council of Australia, Submission to the Department of Industry, Science and Resources, 'Introducing mandatory guardrails for AI in high-risk settings: Proposals Paper', 9 October 2024.

[126] Australian Human Rights Commission, "Human Rights and Technology" (Final Report, 2021), 28 <https://humanrights.gov.au/resource-hub/by-resource-type/publications/technology-and-human-rights/final-report-human-rights-and-technology>.

[127] Ibid, 43.

the eSafety Commissioner and establishes its functions including the promotion of online safety, administration of a complaints system for cyber bullying and abuse, and coordination of relevant Federal government activities.

74. The eSafety Commissioner's website includes a First Nations section, which includes guidance and resources to deal with online hate and abuse.[128] It also provides a link by which such abuse can be reported to the Commissioner. Possible outcomes of a complaint include "removal of harmful content, issuing a notice requiring the person responsible to refrain from further cyberbullying and/or apologise, issuing fines or penalties for services or platforms that don't remove content, [and] further legal action".[129]

75. In the Law Council's view, more needs to be done to ensure access to corrective action through the Online Safety Act, and in this inquiry, the Committee should consider how this could be most effectively achieved for First Nations Australians. In its submission to inform the 2024 statutory review of the Online Safety Act, the Law Council recognised that "the Act itself does not provide for corrective action in respect of online material that amounts to hateful content targeting a particular individual or group, on account of a specific shared characteristic (eg religion, ethnic background, culture, disability, age, or gender identity) or those with intersectional characteristics (eg, gender *and* race)".[130] Indeed, the final report of the statutory review recognised that:

> *The complaint schemes were not seen as adequately addressing the scope and volume of online abuse experienced … Key issues include the high threshold for removing harmful material (particularly for adult cyber abuse), the cumulative harm arising from the volume, scope and persistence of online abuse, and failure to address abuse targeting a group or individual based on protected characteristics (online hate).*[131]

The review ultimately recommended that the Online Safety Act should:

> *… include a definition of online hate material. The definition should acknowledge that online hate involves an attack against a person or people that is based on a protected characteristic and can include dehumanisation. Notably, the definition of online hate material should not include views regarding ideas, concepts or institutions. The definition should also consider potential exclusions (for example where material is posted for artistic, scientific or journalistic purposes).*[132]

76. As alluded to in that recommendation, the Law Council notes that when considering potential reforms, it is important to protect individuals from online harm in a balanced

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[128] eSafety Commissioner, "Online Hate and Abuse" (Web page, last updated 23 February 2026) <https://www.esafety.gov.au/first-nations/online-hate-and-abuse>.

[129] eSafety Commissioner, "What You Can Report to E-Safety" (Web page, last updated 13 January 2026) <https://www.esafety.gov.au/report/what-you-can-report-to-esafety>.

[130] Law Council of Australia, "Submission to Delia Rickard PSM, Reviewer", *Statutory Review of the Online Safety Act 2021* (2 July 2024), [48] <https://lawcouncil.au/publicassets/a852a953-d038-ef11-94a3-005056be13b5/4550%20-%20S%20-%20Statutory%20Review%20of%20the%20Online%20Safety%20Act.pdf>.

[131] Delia Rickard PSM, *Report of the Statutory Review of the Online Safety Act 2021* (Report, October 2024) 82 <https://www.infrastructure.gov.au/department/media/publications/report-statutory-review-online-safety-act-2021>.

[132] Ibid, 22.

and proportionate way considered also in light of the need to protect rights to freedom of expression, as enshrined in Article 19 of the International Covenant on Civil and Political Rights.[133] That right may itself be limited as provided for by law and when necessary, including "to protect the rights or reputations of others, national security, public order, or public health or morals".[134]

77. In its response to the Online Safety Act review, the Australian Government "noted" this recommendation,[135] and added that it requires "further consideration" as it appears to require a "response to individual incidents and/or users, rather than the systemic approach of the duty of care".[136]

78. While social media companies have implemented moderation policies, the Law Council has received feedback that the current regulatory environment remains fragmented and enforcement is inconsistent.[137] The first recommendation of the Joint Select Committee on Social Media and Australian Society's 2024 report following its inquiry into social media was that:

> *… the Australian Government consider options for greater enforceability of Australian laws for social media platforms, including amending regulation and legislation, to effectively bring digital platforms under Australian jurisdiction.*[138]

79. The 2024 review of the Online Safety Act also recommended:

- that the Act should enable the regulator to issue a removal notice for material that has met the requirements for removal under a prior complaint, where the regulator becomes aware that the material has been reposted,[139] which the Australian Government supports;[140]
- that the Act should include additional powers to require an end user to stop posting cyber abuse about an Australian adult in an end-user notice, subject to

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[133] International Covenant on Civil and Political Rights, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976), Article 19.
[134] Ibid, Article 19(3).
[135] Australian Government, "Government Response to the Independent Review of the *Online Safety Act 2021*" (14 April 2026), 8 <https://www.infrastructure.gov.au/sites/default/files/documents/govt-response-to-the-independent-review-online-safety-act-2021.pdf>.
[136] Ibid, 6.
[137] See also Joint Select Committee on Social Media and Australian Society, Parliament of Australia, *Social Media: The Good, the Bad and the Ugly* (Report, November 2024), Chapter 5, <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Social_Media_and_Australian_Society/SocialMedia/Final_report/Chapter_5_-_Regulation_of_social_media_platforms>.
[138] Ibid xi.
[139] Delia Rickard PSM, *Report of the Statutory Review of the Online Safety Act 2021* (Report, October 2024) 22 <https://www.infrastructure.gov.au/department/media/publications/report-statutory-review-online-safety-act-2021>.
[140] Australian Government, "Government Response to the Independent Review of the *Online Safety Act 2021*" (14 April 2026), 8 <https://www.infrastructure.gov.au/sites/default/files/documents/govt-response-to-the-independent-review-online-safety-act-2021.pdf>.

a civil penalty for non-compliance,[141] which the Australian Government only noted in its response;[142] and

- increased penalties for social media companies, including with respect to the maximum civil penalty that may be imposed by a court,[143] and penalties for non-compliance with removal notices.[144] The Australian Government supports these recommendations.[145]

80. The above recommendations should also be considered in connection with Recommendation 12 of the National Anti-Racism Framework, which is that:

> *Australian governments introduce effective legal protections against online hate, with particular attention given to regulation and enforcement against, and liability of, digital platforms. These protections should be informed by consultation with First Nations and other negatively racialised communities.*[146]

Recommendation 6

The Australian Government should implement the recommendations of the 2024 statutory review of the *Online Safety Act 2021* (Cth), in particular with respect to the inclusion of a definition of "online hate material", as well as stronger penalties and enforcement powers.

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[141] Delia Rickard PSM, *Report of the Statutory Review of the Online Safety Act 2021* (Report, October 2024) 22 <https://www.infrastructure.gov.au/department/media/publications/report-statutory-review-online-safety-act-2021>.

[142] Australian Government, "Government Response to the Independent Review of the *Online Safety Act 2021*" (14 April 2026), 8 <https://www.infrastructure.gov.au/sites/default/files/documents/govt-response-to-the-independent-review-online-safety-act-2021.pdf>.

[143] Delia Rickard PSM, *Report of the Statutory Review of the Online Safety Act 2021* (Report, October 2024) 23 <https://www.infrastructure.gov.au/department/media/publications/report-statutory-review-online-safety-act-2021>..

[144] Ibid.

[145] Australian Government, "Government Response to the Independent Review of the *Online Safety Act 2021*" (14 April 2026), 11 <https://www.infrastructure.gov.au/sites/default/files/documents/govt-response-to-the-independent-review-online-safety-act-2021.pdf>.

[146] Australian Human Rights Commission, "The National Anti-Racism Framework: A Roadmap to Eliminating Racism in Australia" (Report, November 2025), 17 <https://humanrights.gov.au/resource-hub/race/anti-racism-framework>.

Term of Reference 3

Initiatives that are effective in combatting racism targeted at First Nations people and reduce individual and collective harm

81. A range of legal and policy tools should be considered as part of an effective response to combatting racism targeted at First Nations peoples.

A National Anti-Racism Framework

82. The AHRC's National Anti-Racism Framework provides comprehensive recommendations for Australian governments to eliminate racism towards First Nations Australians. The purpose of the Framework is to "serve as a central reference point for a whole of society approach to eliminating racism",[147] and to act "as a roadmap for governments, non-government organisations, businesses, and civil society organisations to take anti-racist action across sectors".[148] The Framework is a national action plan covering all levels of government, and calls for a national understanding of racism and that cultural safety for First Nations peoples should "guide all actions".[149]

83. As noted earlier, the Law Council recommends that the Australian Government implement and operationalise this Framework, and relevant recommendations of that Framework are referred throughout with respect to the inquiry's Terms of Reference. The Framework includes as an overarching recommendation that the Australian Government "lead a national response to eliminating racism that begins with truth-telling for First Nations peoples and embeds their right to self-determination".[150] The Law Council emphasises that self-determination, as recognised by common Article 1 of the International Covenant on Civil and Political Rights (**ICCPR**) and the International Covenant on Economic, Social and Cultural Rights (**ICESCR**) and Article 3 of the UNDRIP, all of which have been ratified or endorsed by Australia, is crucial to address racism directed at First Nations people, including to ensure a greater degree of trust in solutions developed through these processes.

84. The Law Council also emphasises the importance of ensuring adequate and predictable funding for the AHRC to support its advocacy and policy functions directed at addressing racism targeted at First Nations Australians and other racial groups.

The need for Truth-Telling

85. As noted in the introduction to this submission, the harms of racism across a range of settings, including in the criminal justice system, occur against the broader context of colonisation, violence, dispossession and entrenched structural inequality which continue to affect the lives of First Nations peoples today, and are sustained by

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[147] Australian Human Rights Commission, "The National Anti-Racism Framework: A Roadmap to Eliminating Racism in Australia" (Report, November 2025), 10 <https://humanrights.gov.au/resource-hub/race/anti-racism-framework>.
[148] Ibid.
[149] Ibid, 11.
[150] Ibid, 10.

systemic racism. First Nations peoples' experiences of racism, and any responses to address this issue, cannot be considered separately from that context.

86. In this respect, an independent process of national truth-telling will be an important mechanism.[151] The Uluru Statement from the Heart includes a call for Makarrata, which is:

> *… the culmination of our agenda: the coming together after a struggle. It captures our aspirations for a fair and truthful relationship with the people of Australia and a better future for our children based on justice and self-determination.*
>
> *We seek a Makarrata Commission to supervise a process of agreement*-making between governments and First Nations and Truth-Telling about our history.[152]

87. Subject to reviewing the detail of any proposals, the Law Council has an in-principle position of support for the establishment of a Federal Makarrata Commission, which would supervise agreement-making (Treaty) and Truth-Telling processes as envisaged by the Uluru Statement from the Heart.[153] Consistent with this position, the Law Council recommends that, in this inquiry, the Committee reiterate its previous recommendation for an independent process of truth-telling and agreement making.[154]

88. Yoorrook illustrates the potential impact of truth-telling processes between First Nations, government and wider communities.[155] Yoorrook sought to identify systemic injustices, both historical and ongoing.[156] To this end, it heard evidence in formal and informal settings from First Nations peoples, community organisations, government bodies, courts, senior officials and Ministers of the Victorian Government. In May 2023, for instance, the Hon Jaclyn Symes MP, then Victorian Attorney-General, provided a statement, which included the following:

> *I acknowledge the fact that the justice system has both recently and historically been a site of exclusion and oppression, whether through laws that were*

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[151] For a recent call for a Truth Commission, see Scottie Campbell, "Truth-Telling is a Human Right, and Australia has a Legal Duty to Deliver it", *National Indigenous Times* (28 April 2026) <https://nit.com.au/28-04-2026/23932/truthtelling-is-a-human-right-and-australia-has-a-legal-duty-to-deliver-it>. However, we acknowledge this is not a universally held view. For example, Professor Megan Davis has expressed the view that globally, there is no evidence to support the proposition that community views about Indigenous issues or racism are altered by truth-telling processes. See for example Paige Taylor, "Uluru Statement Architect Megan Davis Argues there is 'No Evidence' for Truth-Telling", *The Australian* (27 May 2026), <https://www.theaustralian.com.au/nation/uluru-statement-architect-megan-davis-argues-there-is-no-evidence-for-truthtelling/news-story/6a89db92a68c4ba91b4e25c365d6e1be?btr=bda8bbd5bb25fe291d31cc0986bffb23>.

[152] Referendum Council, "Uluru Statement from the Heart" (2017) <https://ulurustatement.org/the-statement/view-the-statement/>.

[153] Referendum Council, "Uluru Statement from the Heart" (2017) <https://ulurustatement.org/the-statement/view-the-statement/>.

[154] Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, Parliament of Australia, *Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia* (Report, November 2023), Recommendation 4.

[155] Yoorrook Justice Commission, "About the Yoorrook Justice Commission" (Web page, 2025) <https://www.yoorrook.org.au/about-yoorrook/about-yjc>.

[156] Yoorrook Justice Commission, "About Yoorrook" (Web page, 2025) <https://www.yoorrook.org.au/about-yoorrook>

> *specifically targeted at Aboriginal peoples, laws that were unequally applied to them, or through the refusal to enact specific laws for the advancement of Aboriginal peoples or engage Aboriginal peoples in the design of laws that affect them. I acknowledge that this has resulted in entrenched systemic and structural racism within the justice system and broader institutions of government.*
> *I acknowledge also that the impact and structures of colonisation are far-reaching and intergenerational and are continuing to affect Aboriginal peoples' interactions with the criminal justice system.*[157]

The Yoorrook Final Report was handed down on 1 July 2025,[158] and includes 100 recommendations.

89. Ultimately, the success (or failure) of any Federal Truth-telling Commission will depend, at least in part, on the Commission itself being accepted by First Nations peoples as a legitimate expression of self-determination, noting that it is on that basis that the Uluru Statement has its foundational legitimacy.

Legal frameworks

90. A range of civil and criminal legal protections against racism will be relevant to this inquiry, including across Federal, State and Territory regimes. At the Federal level, this includes protections under the *Racial Discrimination Act 1975* (Cth) and as well as criminal offences and procedural mechanisms found in both the *Criminal Code Act 1995* (Cth) (the **Criminal Code**) and the *Crimes Act 1914* (Cth). However, in Australia's federal structure, criminal law and policing are primarily State and Territory responsibilities.

91. The Law Council has heard concerns about the selective enforcement and prosecution of racial vilification offences. For example, the Aboriginal Legal Rights Movement has reported that no prosecution has ever taken place under the *Racial Vilification Act 1996* (SA).[159]

92. There also remain differences between Federal, State and Territory frameworks which may produce inconsistent outcomes. For example, in a comparison of Federal and NSW laws, Katharine Gerber and Luke McNamara identified differences including coverage of "ethno-religious" grounds, relevant harm thresholds, and whether incitement forms part of the relevant tests.[160] Gerber and McNamara also noted concerns in respect of the "operational scope of Australia's anti-vilification laws", including that "while they are capable of catching gross expressions of racism, more subtle and sophisticated forms of racism may go under the radar".[161] This is

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[157] Yoorrook Justice Commission, "Witness Statement of the Hon Jaclyn Symes" <https://yoorrookjusticecommission.org.au/document-library/witness-statement-of-the-hon-jaclyn-symes-attorney-general>

[158] Yoorrook Justice Commission, "Truth Be Told" (Report, 1 July 2025) <https://www.yoorrook.org.au/reports-and-recommendations/reports>.

[159] Aboriginal Legal Rights Movement, "Unfinished Business: Royal Commission into Aboriginal Deaths in Custody" (Report, July 2025), 42 <https://www.alrm.org.au/wp-content/uploads/2025/09/ALRM-Unfinished-Business-RCIADIC-FINAL-17.7.25V4.pdf>.

[160] See Katharine Gelber and Luke McNamara, "Anti-Vilification Laws and Public Racism in Australia: Mapping the Gaps Between the Harms Occasioned and the Remedies Provided", (2016) 39(2) *University of NSW Law Journal* 488.

[161] Ibid, 503.

despite the fact that "moderate behaviours, especially cumulatively over time, are just as capable of causing harm to targets as gross epithets".[162]

93. State and Territory laws relating specifically to racial vilification are fragmented and do not always cover the same ground. For example, in NSW, only "public acts" can be caught by section 93Z of the *Crimes Act 1900* (NSW), and the term "public act" is also defined in subsection 93Z(5). Section 52A of the *Criminal Code Act 1899* (Qld) is also restricted to "public acts". On the other hand, Part 1 Division 2D of the *Crimes Act 1958* (Vic) includes no such restriction.

94. Developing a more complete picture of how racial vilification and violence is criminalised across Australian jurisdictions is further complicated by the availability of offences of general application that might apply to the same conduct. An important difference is that offences of general application rarely require proof of the motivation of the accused to secure a conviction. The motivation of the accused instead becomes important at sentencing.

95. In a recent review of the effectiveness of section 93Z of the *Crimes Act 1900* (NSW) to address serious racial and religious vilification, the NSW Law Reform Commission identified that general offences are "more familiar to police, are easier to prove and have higher maximum penalties". This may explain why there have been few charges under more specific hate crimes laws.[163]

96. In addition to higher courts that hear indictable offences, States and Territories also maintain summary jurisdictions. These lower courts hear the overwhelming majority of criminal matters in Australia.[164] Summary offences carry lower maximum penalties than indictable offences. Findings of fact (including guilt) are made by magistrates rather than juries, and cases in these courts are largely prosecuted by the relevant State or Territory police force rather than the independent public prosecution agencies of that jurisdiction.[165] Taking Victoria as an example, the *Summary Offences Act 1966* (Vic) contains offences that may relevantly cover hate motivated conduct directed at First Nations Australians that takes the form of:

- interpersonal violence ("common assault");[166]
- public disorder ("disorderly conduct");[167] or
- offensive language or behaviour ("obscene, indecent, threatening language and behaviour etc in public").[168]

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[162] Ibid, 504.

[163] NSW Law Reform Commission, "Report no 151 – Serious Racial and Religious Vilification" (September 2024) 8, see also Chapter 3 <https://lawreform.nsw.gov.au/documents/Publications/Reports/Report_151_Serious_racial_and_religious_vilification.pdf>.

[164] For example, 521,632 criminal cases were finalised across Australia in 2024-25 in a manner that did not involve transferring a case to another court level. Of these case finalisations, 16,268 were finalised in higher courts and 479,991 were finalised in the Magistrates' Court. See Australian Bureau of Statistics, "Table 2: Defendants Finalised, Summary Characteristics by Court Level, States and Territories, 2024-25", *Criminal Courts, Australia, 2024-25 Financial Year* (29 April 2026) <https://www.abs.gov.au/statistics/people/crime-and-justice/criminal-courts-australia/2024-25>.

[165] For example, in the Australian Capital Territory all criminal offences are prosecuted by the Director of Public Prosecutions.

[166] *Summary Offences Act 1966* (Vic) section 23.

[167] Ibid, section 17A.

[168] Ibid, section 17.

97. A consequence of majority of offences in Australia being prosecuted summarily is that the discretion to bring charges and prosecute offences resides to a significant extent with the police prosecution service of the relevant State or Territory.

98. It will also be important that law reforms to better protect against racist hate do not have a disproportionate negative impact on those groups they are intended to benefit. The NSW Law Reform Commission has recently cautioned that "[e]xpanded criminalisation comes with risks and is not always the best tool to achieve social policy aims", with specific reference to the potential impacts on Aboriginal people.[169]

99. Considering these differences between racial vilification laws (both civil and criminal) across Australia, and noting that such laws are of general application, the Law Council recommends that the ALRC undertake a review of legal frameworks relating to racism and racially motivated hate and violence, with a view to harmonising Federal, State and Territory laws. Any ALRC review must involve close consultation with First Nations communities, for which the findings from this inquiry will be important. The ALRC would also need to consult other racial and other culturally diverse groups affected by such laws. We note, for example, that the Royal Commission on Antisemitism and Social Cohesion is considering similar issues for Jewish Australians. An ALRC review may provide an appropriate mechanism for addressing cross-jurisdictional complexity while facilitating broader consultation across with affected groups, informed by the findings of this Committee and the Royal Commission on Antisemitism and Social Cohesion, among other reports.

100. In light of recent moves to incorporate mandatory sentencing as part of hate crime laws,[170] the Law Council also takes this opportunity to reiterate its regularly repeated objection to mandatory sentencing sentences for any criminal offence.[171] The ALRC observed the disproportionate impacts of mandatory sentencing on First Nations people in its Pathways to Justice report.[172]

101. Finally, the Law Council recommends as part of this inquiry that the Australian Government ensure adequate training and resources to support the enforcement of

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[169] NSW Law Reform Commission, "Report no 151 – Serious Racial and Religious Vilification" (September 2024), 8 <https://lawreform.nsw.gov.au/documents/Publications/Reports/Report_151_Serious_racial_and_religious_vilification.pdf>.

[170] See for example Australian Human Rights Commission, "Explainer: New National and NSW Hate Crime Laws" (Web page, 19 February 2025) <https://humanrights.gov.au/about-us/news/explainer-new-national-and-nsw-hate-crime-laws>.

[171] See for example Law Council of Australia, "Policy Discussion Paper on Mandatory Sentencing" (May 2014), <https://lawcouncil.au/publicassets/f370dcfc-bdd6-e611-80d2-005056be66b1/1405-Discussion-Paper-Mandatory-Sentencing-Discussion-Paper.pdf>; Law Council of Australia, "Mandatory Sentencing Fact Sheet" (undated), <https://lawcouncil.au/publicassets/f670dcfc-bdd6-e611-80d2-005056be66b1/1405-Factsheet-Mandatory-Sentencing-Factsheet.pdf>; Law Council of Australia, "Call to Parties" (March 2025), 16-17, <https://lawcouncil.au/publicassets/2ee42ba0-b70d-f011-94b2-005056be13b5/Law%20Councils%20Call%20To%20Parties%202025.pdf>. See also Greg McIntyre SC, "You Know What Creates Unsafe Communities? Mandatory Sentencing", *Canberra Times*, 4 January 2025.

[172] Australian Law Reform Commission, "Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples" (Report, December 2017) 30 <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/>.

existing legal protections against racism, hate and violence, with careful regard to the prevalence and nature of these incidents as they affect First Nations Australians.

Implementation of human rights commitments

102. Since announcing its support for UNDRIP in 2009, the Australian Government has not incorporated it into domestic law, nor supported it through a national implementation framework. This is notwithstanding the Committee's recommendations in November 2023, with which the Law Council agrees, that the Australian Government should:

- ensure its approach to developing legislation and policy on matters relating to First Nations Australians is consistent with the UNDRIP; and
- develop a National Action Plan, in consultation with First Nations Australians, that outlines its approach to implementing the UNDRIP.[173]

103. In addition, legislation is not routinely assessed for compliance with UNDRIP, and awareness of its content and implications remains low. This is again notwithstanding the Committee's previous recommendation, supported by the Law Council, that the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) be amended to include the UNDRIP in the definition of 'human rights' so that it is formally considered by the Parliamentary Joint Committee on Human Rights (**PJCHR**) in legislative scrutiny.[174] The PJCHR has since also made this recommendation.[175]

104. The failure to translate international commitments under UNDRIP into enforceable domestic frameworks, education and accountability structures significantly undermines their effectiveness, including as part of the response to racism, hate and violence towards First Nations Australians.

105. As also recently recommended by the PJCHR,[176] the Law Council has long called for the implementation of a Federal Human Rights Act[177] which, among its many

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[173] Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, Parliament of Australia, *Inquiry into the Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia* (Report, November 2023), xix <https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000083/toc_pdf/InquiryintotheapplicationoftheUnitedNationsDeclarationontheRightsofIndigenousPeoplesinAustralia.pdf>.

[174] Ibid, xx.

[175] Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia's Human Rights Framework* (Report, May 2024), xxvi <https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000210/toc_pdf/InquiryintoAustralia'sHumanRightsFramework.pdf>.

[176] See Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia's Human Rights Framework* (Report, May 2024) <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework/Report/Chapter_2_-_Background_to_human_rights_protections_in_Australia>.

[177] See for example Law Council of Australia, "Call to Parties" (March 2025), 28, <https://lawcouncil.au/publicassets/2ee42ba0-b70d-f011-94b2-005056be13b5/Law%20Councils%20Call%20To%20Parties%202025.pdf>; Law Council of Australia, "Technological and Societal Changes Make a Human Rights Act as Important as Ever", (Media release, 10 December 2024), <https://lawcouncil.au/media/media-releases/technological-and-societal-changes-make-a-human-rights-act-as-important-as-ever>; Law Council of Australia, "A Federal Human Rights Act is Just Right" (Media release, 30 May 2024), <https://lawcouncil.au/media/media-releases/a-Federal-human-rights-act-is-just-right>, Law Council of Australia, "Federal Human Rights Charter" (Policy

benefits, would support efforts to combat racism. As explained in a previous Law Council submission to the Senate Legal and Constitutional Affairs References Committee, a Federal Human Rights Act:

> *… would establish a strong ethos of respect for the fundamental rights of all Australians across the public and private sectors, including in areas in which systemic racial discrimination has been found, such as within police, prisons, courts, aged care, disability, child services, schools and hospitals. It would also foster a better parliamentary understanding of human rights, and, by extension, certain federal laws such as the Racial Discrimination Act 1975 (Cth).*[178]

106. The Law Council's position is that a Federal Human Rights Act should enact into domestic legislation obligations under the core human rights treaties to which Australia is a party. The Law Council's Federal Human Rights Charter Policy Position states, in relation to the UNDRIP:

> *The Law Council would also support the inclusion of the rights in the [UNDRIP], if Indigenous peoples support such an inclusion. The starting point for the Act should be the international formulation of those rights, adapted as appropriate to the Australian context.*[179]

107. UNDRIP's implementation and the enactment of a Federal Human Rights Act would also be consistent with recommendations 8 and 9 of the AHRC's National anti-Racism Framework.[180]

108. It should also be noted that Australia retains its interpretive declaration in relation to reservation to Article 20 of the ICCPR[181] and Article 4(a) of the Convention on the Elimination of All Forms of Racial Discrimination (CERD).[182]

109. Article 20(2) of the ICCPR provides that "[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law". The text of Australia's reservation is as follows:

Position, November 2020), <https://lawcouncil.au/publicassets/c517fdbd-9a28-eb11-9436-005056be13b5/Law%20Council%20of%20Australia%20-%20Federal%20Human%20Rights%20Charter.pdf>.

178 Law Council of Australia, Submission to Senate Legal and Constitutional Affairs References Committee, *Inquiry into the Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia* (24 June 2022) 17, <https://lawcouncil.au/publicassets/fbfd761e-43fe-ec11-945c-005056be13b5/2022%2006%2024%20-%20S%20-%20Inquiry%20into%20the%20Application%20of%20the%20UNDRIP%20in%20Australia.pdf>.

179 Law Council of Australia, Federal Human Rights Charter Policy Position (November 2020), 2-3 <https://www.lawcouncil.asn.au/files/pdf/policy-statement/Law%20Council%20of%20Australia%20%20Federal%20Human%20Rights%20Charter.pdf>.

180 Australian Human Rights Commission, "An Anti-Racism Framework: Voices of First Nations Peoples" (Report, 2024), 16, <https://humanrights.gov.au/__data/assets/pdf_file/0026/25469/Final-Report_National-Anti-Racism-Framework,-First-Nations-Consultations,-Australian-Human-Rights-Commission.pdf>.

181 United Nations, "United Nations Treaty Collection - International Covenant on Civil and Political Rights" (Web page, undated), <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en#EndDec>.

182 United Nations, "United Nations Treaty Collection – International Convention on the Elimination of All Forms of Racial Discrimination" (Web page, undated) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=_en#EndDec>.

> *Australia interprets the rights provided for by Articles 19, 21 and 22 as consistent with Article 20; accordingly, the Commonwealth and the constituent States, having legislated with respect to the subject matter of the article in matters of practical concern in the interest of public order (ordre public), the right is reserved not to introduce any further legislative provision on these matters.*
>
> *Australia has a Federal constitutional system in which legislative, executive and judicial powers are shared or distributed between the Commonwealth and the constituent States. The implementation of the treaty throughout Australia will be effected by the Commonwealth, State and Territory authorities having regard to their respective constitutional powers and arrangements concerning their exercise.*[183]

110. Article 4(a) of the CERD provides that States Parties "[s]hall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof". The text of Australia's interpretive declaration is as follows:

> *The Government of Australia ... declares that Australia is not at present in a position specifically to treat as offences all the matters covered by article 4(a) of the Convention. Acts of the kind there mentioned are punishable only to the extent provided by the existing criminal law dealing with such matters as the maintenance of public order, public mischief, assault, riot, criminal libel, conspiracy and attempts. It is the intention of the Australian Government, at the first suitable moment, to seek from Parliament legislation specifically implementing the terms of article 4*(a).[184]

111. The UNCERD has previously called for Australia to reconsider its position and withdraw its interpretive declaration with respect to Article 4(a) noting that it "negatively impacts the sanctioning of racial hatred and redress for victims", including for First Nations people.[185] The same recommendation was made during Australia's Second Cycle Universal Periodic Review in 2015.[186]

112. The Law Council has previously stated that Australia should consider withdrawing its declaration on Article 4(a) of the CERD and its reservation to Article 20 of the ICCPR,[187] and it reiterates that recommendation here.

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[183] Ibid.

[184] United Nations, "United Nations Treaty Collection – International Convention on the Elimination of All Forms of Racial Discrimination" (Web page, undated) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=_en#EndDec>.

[185] United Nations Committee on the Elimination of Racial Discrimination, "Concluding Observations on the Eighteenth to Twentieth Periodic Reports of Australia", UN Doc CERD/C/AUS/CO/18-20 (26 December 2017), [9] – [10], <https://digitallibrary.un.org/record/3843103?v=pdf>.

[186] United Nations Human Rights Council, "Report of the Working Group on the Universal Periodic Review – Australia", UN Doc A/HRC/31/14 (13 January 2016), 15 <https://www.ag.gov.au/sites/default/files/2020-03/UPR-Report-of-the-Working-Group.pdf>.

[187] Law Council of Australia, Submission no 150 to Parliamentary Joint Committee on Intelligence and Security, *Review of the Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023* (14 August 2023), [39] <https://lawcouncil.au/publicassets/642fdfa1-2542-ee11-948a-005056be13b5/4409%20-%20S%20-%20Counter-terrorism%20Hate%20Symbols.pdf>.

Broader campaigns, including education and training

113. The Law Council recommends that funding be provided to support First Nations communities and their campaigns as part of the national response to address racism, hate and violence towards them. The Law Council drew particular attention ahead of the 2026–27 Federal Budget to:

> *… the need for dedicated resourcing to ensure that all forms of hate crime and hate speech are understood and acted upon, in light of their concerning prevalence across different communities. While we do not underestimate the impact on any one community, our Indigenous Legal Issues Committee has particularly emphasised the need to recognise and address the very real and present impact of hate crimes and hate speech against First Nations people across Australia, as their realities are too often overlooked in law, policy and program responses. Resourcing to better equip national responses to address racism is vital in this context.*
>
> *The expertise of First Nations persons, and other communities impacted by racism and hate crimes, should be sought to guide any such responses regarding their own communities.*[188]

114. The 2026–27 Budget included public awareness measures to address social cohesion, including racism,[189] though the extent to which these measures will address racism, extremism and hate towards First Nations Australians specifically is unclear.

115. The AHRC's National Anti-Racism Framework highlights that "stronger racial literacy across society is essential" to ensure Implementation Plans under it "can properly address racism in all forms".[190] In consultations to inform the Framework, "First Nations experts addressed the lack of public awareness on the harms and violence experienced by Aboriginal and Torres Strait Islander communities since colonisation", and that "the lack of public awareness has created a barrier to fostering understanding of, and solidarity with, Aboriginal and Torres Strait Islander communities".[191]

116. The Law Council encourages the Committee to pay close attention to education and public awareness recommendations of the Framework in order to improve racial literacy and culturally safe service delivery across different sectors and services nationwide. Recommendation 29 of the Framework adds that "Australian governments and education providers co-design and incorporate into curricula

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[188] Law Council of Australia, Submission to the Treasury, *2026-27 Pre-Budget Submission* (6 February 2026), 19 <https://lawcouncil.au/publicassets/e85e0368-1bc4-f011-94c0-005056acd090/4759%20-%20S%20-%20Disability%20Discrimination%20Act%20Review.pdf>.

[189] Including, for example, $32.6 million in 2026-27 for public awareness campaigns to strengthen Australia's national security and social cohesion and $20.0 million over four years from 2026-27 to the Department of Education to extend and expand the Together for Humanity program to address social cohesion, including antisemitism and racism, through face-to-face intercultural programs and educational resources for teachers: see Commonwealth of Australia, *Budget 2026-27: Budget Paper No. 2* (12 May 2026) 68 <https://budget.gov.au/content/bp2/download/bp2_2026-27.pdf>.

[190] Australian Human Rights Commission, "The National Anti-Racism Framework: A Roadmap to Eliminating Racism in Australia" (Report, November 2025), 26 <https://humanrights.gov.au/resource-hub/race/anti-racism-framework>.

[191] Ibid.

nationally consistent anti-racism resources and educational materials for staff and students".[192]

117. From the perspective of the Australian legal profession, the Law Council recognises that cultural competence is crucial in legal services delivery. Across the legal profession, there are legal professional education initiatives and resources to address cultural competence, unconscious bias and discrimination relating to First Nations people, including through Continuing Professional Development (**CPD**) modules, in addition to relevant professional standards set out in the ASCRs, as previously noted. For example, the Victorian Bar Association delivers a CPD session on First Nations cultural competency training to barristers and readers,[193] and the Queensland Law Society delivers a Cultural Competency Course focused on First Nations history.[194]

118. More broadly, the Committee should consider the role of civics education to support improved public awareness across the general Australian population, both through the formal curriculum but also through both traditional and social media for maximum public exposure. As stated in the Interactive Dialogue with the Special Rapporteur on the rights of Indigenous Peoples at the 60th session of the UN Human Rights Council, the Law Council considers that:

> *Civics education, including about Australia's legal system and First Nations peoples' history, is necessary to combat misinformation and disinformation, and to support the effective implementation and protection of First Nations peoples' rights in Australia.*[195]

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[192] Ibid, 19.

[193] A copy of this presentation can be found at: <https://www.google.com/search?q=Victorian+Bar+Association+delivers+a+CPD+session+on+First+Nations+cultural+competency+training&sca_esv=6240a4551174a4e8&rlz=1C1GCEA_enAU1165AU1171&sxsrf=ANbL-n7tZy9x3vpWuX4s_Xwwh_8CEjotTw%3A1778480244639&ei=dHQBaurOJs_e2roPm9aj2Q8&ved=0ahUKEwjq2OKZy7CUAxVPr1YBHRvrKPsQ4dUDCBE&uact=5&oq=Victorian+Bar+Association+delivers+a+CPD+session+on+First+Nations+cultural+competency+training&gs_lp=Egxnd3Mtd2l6LXNIcnAiXlZpY3RvcmlhbiBCYXIgQXNzb2NpYXRpb24gZGVsaXZlcnMgYSBDUEQgc2Vzc2lvbiBvbiBGaXJzdCBOYXRpb25zIGN1bHR1cmFsIGNvbXBldGVuY3kgdHJhaW5pbmcyBBAjGCdIugdQAFiaBXAAeACQAQCYAb8BoAH2B6oBAzAuNrgBA8gBAPgBAZgCA6AC3AOYAwCSBwMwLjOgB_MWsgcDMC4zuAfcA8IHBTAuMi4xyAcJgAgB&sclient=gws-wiz-serp#fpstate=ive&vld=cid:862a2597,vid:B0IU6jKqtVs,st:0>.

[194] Queensland Law Society, "Cultural Competency Course" (Web page, undated) <https://shop.qls.com.au/store/courses/cultural-competency-course/>.

[195] Law Council of Australia, "Oral Statement in the Interactive Dialogue with the Special Rapporteur on the Human Rights of Indigenous Peoples" (24 September 2025) <https://lawcouncil.au/publicassets/c9ed3db4-d89c-f011-94be-005056acd090/2025%2009%2012%20_%20SP%20_%20HRC%2060%20Report%20of%20Special%20Rapporteur%20on%20the%20Human%20Rights%20of%20Indigenous%20Peoples.pdf?caed3db4-d89c-f011-94be-005056acd090>.

Recommendation 7

The Australian Government should implement the Australian Human Rights Commission's National Anti-Racism Framework.

Recommendation 8

The Australian Government should establish a national truth-telling commission consistent with Makarrata as envisaged by the Uluru Statement from the Heart.

Recommendation 9

The Australian Government should refer an inquiry to the Australian Law Reform Commission into legal frameworks relating to racism and racially motivated hate and violence, with a view to their harmonisation across Federal, State and Territory laws.

Recommendation 10

The Australian Government should ensure adequate training and resources to support the enforcement of legal protections against racism, hate and violence, with careful regard to the prevalence and nature of these incidents as they affect First Nations Australians.

Recommendation 11

The Australian Government should engage with First Nations peoples to develop a National Action plan to formally, meaningfully and comprehensively implement the United Nations Declaration on the Rights of Indigenous Peoples in Australia, including through legislative reform.

Recommendation 12

The Australian Government should enact a Federal Human Rights Act.

Recommendation 13

The Australian Government should review its reservation to Article 20 of the International Covenant on Civil and Political Rights and its interpretative declaration to Article 4(a) of the Convention on the Elimination of All Forms of Racial Discrimination.

Recommendation 14

The Australian Government should ensure funding to support First Nations communities and organisations to address racism.

Term of Reference 4

The threat posed by ideologically motivated extremism towards First Nations people and the role of intelligence and law enforcement agencies in protecting the community from that threat

119. There is increasing concern globally about the role and increase of ideologically motivated extremism, including white supremacist movements, in targeting minority communities.[196] The actions of these organisations have often been interpreted as falling short of terrorism.[197] First Nations people are regular targets of such ideologies, particularly in online environments where misinformation and racial grievance narratives circulate unchecked.[198] In the 2025 Annual Threat Assessment, the Australian Security Intelligence Organisation (**ASIO**) expressed concern that the threats posed by nationalist and racist violent extremists will continue and that these groups will try and popularise their views.[199]

120. Responses to these risks require careful balancing of public safety, civil liberties and community trust. Engagement with First Nations leaders and organisations will be essential in ensuring responses are effective and culturally appropriate.

121. Noting that several recent instances of race hate towards First Nations Australians are the subject of ongoing investigations, in this submission we provide the following general observations on the relevant powers, legal and regulatory frameworks for intelligence and law enforcement agencies in protecting First Nations communities from ideologically motivated extremism.

122. At the outset, the Law Council notes that "ideologically motivated extremism" is not defined in Australian law. Conduct that might fall within the description of "ideologically motivated extremism" may be investigated using Federal national security or counterterrorism laws if actions or intentions to act are suspected to have met the relevant thresholds to enliven those powers.

Security Intelligence

123. As set out in section 4 of the *Australian Security Intelligence Act 1979* (Cth) (**ASIO Act**), ASIO has a broad mandate for:

> *… the protection of, and of the people of, the Commonwealth and the several States and Territories from …*
> *(iii) politically motivated violence; [and]*
> *(iv) promotion of communal violence.*[200]

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[196] Baramadagal Darug Tribal Governing Council, Questions on Notice to the New South Wales Legislative Council, *Measures to Combat Right-Wing Extremism in New South Wales* (3 March 2026) 3.
[197] Julian Droogan and Jade Hutchinson, "Right-Wing Extremism in Australia" in Rohan Gunaratna and Katalin Petho-Kiss (eds) *A Research Agenda for Far-Right Violence and Extremism* (Edward Elgar Publishing, 2024) 181, 203.
[198] Ibid, 185-186.
[199] Mike Burgess, *ASIO Annual Threat Assessment 2025* (Speech, 19 February 2025) <https://www.oni.gov.au/news/asio-annual-threat-assessment-2025>.
[200] *Australian Security Intelligence Organisation Act 1979* (Cth) section 4 (definition of "security").

124. Relevantly, "politically motivated violence" is defined broadly in section 4 of the ASIO Act. It includes both "acts or threats of violence or unlawful harm that are intended or likely to achieve a political objective", and terrorism offences under the Criminal Code.[201] ASIO therefore does not have a mandate to investigate all forms of ideologically motivated extremism. Instead, ideologically motivated extremism can only be investigated as a matter of security when there are acts of or of a risk of political violence or violence directed at endangering the peace, order or good government of the Commonwealth.

125. Under ASIO's Ministerial Guidelines, "politically motivated violence" can include "ideologically motivated violent extremism", which in turn is defined as "support for violence to achieve political outcomes or in response to specific political or social grievances".[202]

126. Additionally, under the ASIO Act, the head of security concerned with the "promotion of communal violence" is defined in section 4 of the ASIO Act as "activities that are directed to promoting violence between different groups of persons in the Australian community so as to endanger the peace, order or good government of the Commonwealth".[203] However, the Ministerial Guidelines do not offer further guidance as how this it to be interpreted.

Terrorism

127. Criminal offences concerned with terrorism are another framework relevant to ideologically motivated extremism. The broad suite of Federal terrorism offences and the extraordinary powers available to law enforcement and ASIO to investigate them are enlivened through the definition of a "terrorist act" at section 100.1 of the Criminal Code. The Independent National Security Legislation Monitor (**INSLM**) is currently reviewing this definition.

128. What distinguishes a "terrorist act" from other serious criminal offences that may relate to the same conduct are the "motive" and "purpose elements" of the definition of a "terrorist act", which respectively read:

> *(b) the action is done or the threat is made with the intention of advancing a political, religious or ideological cause; and*
>
> *(c) the action is done or the threat is made with the intention of:*
>
> *(i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country; or*
>
> *(ii)* intimidating the public or a section of the public.[204]

These motivations are not defined in the Criminal Code, and therefore their ordinary meaning applies. We note that violence directed towards First Nations people would

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[201] *Australian Security Intelligence Organisation Act 1979* (Cth) section 4 (definition of "politically motivated violence", paragraph (ba)).

[202] Guidelines to be Observed by the Australian Security Intelligence Organisation in the Performance of its Functions and the Exercise of its Powers (4 March 2025), Appendix A, 27. <https://www.aph.gov.au/Parliamentary_Business/Tabled_Documents/9760>.

[203] *Australian Security Intelligence Organisation Act 1979* (Cth) section 4 (definition of "promotion of communal violence".)

[204] *Criminal Code Act 1995* (Cth) section 100.1 (definition of "terrorist act").

need to be interpreted through the lens of "political, religious or ideological cause" by investigators in order to enliven this element. A related question is whether "racism" constitutes an ideology for the purposes of this offence, and whether it is sufficiently clear on the face of the legislation that it does. In its current review of this definition, the INSLM has acknowledged the absence of a "settled consensus on what 'ideological' means" and is concerned with respect to "investigations and prosecutions, including in the context of a rise in violence associated with nationalist and racist violent extremism".[205]

129. The purpose element also requires proof that the conduct in question is intended to "intimidate[e] the public or a section of the public". This element further distinguishes a terrorist act from other forms of serious violence by requiring an intention to intimidate others beyond the primary victims of the conduct in question.

130. While these elements appear to raise the threshold for conviction for a terrorist act under section 101.1 of the Criminal Code, this definition needs to be read in the context of its function in enabling a broad range of additional offences that have significantly lower thresholds for conviction, while enlivening extraordinary investigative powers where a terrorism offence is suspected. Examples of such offences of broad application include:

- any act in preparation for or planning a terrorist act;[206]
- collecting or making a document connected with the preparation of engagement in, or assistance in, a terrorist act;[207] or
- possessing a thing connected with the preparation of a terrorist act.[208]

131. In summary, both ASIO and law enforcement have an expansive framework of powers and investigatory tools through which to intervene in extremist behaviours provided their activities are capable of meeting the thresholds set out in legislation. The Law Council does not support lowering these thresholds.

The role of intelligence and law enforcement agencies

132. The Committee should consider how the roles of intelligence and law enforcement agencies are defined across existing Federal, State and Territory laws, before identifying whether any gaps, overlaps or inconsistencies should be addressed through law reform or other measures to better protect First Nations Australians. It is also important to consider those laws alongside other frameworks regulating racial vilification (including under civil and criminal laws), recognising that anti-terrorism and intelligence laws have an exceptional role that brings exceptional powers with them.

133. There are vast, expansive powers and offences which are currently available to intelligence, law enforcement and other government agencies. In addition to the security intelligence and terrorism frameworks outlined above, these powers are found across a number of other statutes including the Crimes Act and the Criminal

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[205] Jake Blight, "Defining Terrorism: Ideological", Independent National Security Legislation Monitor (10 March 2026), <https://www.inslm.gov.au/publications/defining-terrorism-ideological>.
[206] *Criminal Code Act 1995* (Cth) section 101.6.
[207] *Criminal Code Act 1995* (Cth) section 101.5(2).
[208] *Criminal Code Act 1995* (Cth) section 101.4(2).

Code,[209] espionage and foreign interference laws, the *Telecommunications (Interception and Access Act) 1997* (Cth), the *Surveillance Devices Act 2004* (Cth) and the *Migration Act 1958* (Cth) (through visa cancellation and refusal powers).[210] At the Federal level, several recent law reforms have expanded other criminal offences, as well as the role and powers of law enforcement and intelligence agencies in addressing conduct including ideologically motivated extremism.[211]

134. Against an ever-expanding national security framework governing intelligence and law enforcement, it is important that such laws remain clear and certain in their application. The implementation of such laws should limit the effects of the discretionary application of intrusive and rights-limiting powers.

135. Care must also be taken not to undermine the rule of law through these powers, particularly where they are overly reliant on police, executive and prosecutorial discretion. In the present inquiry, this issue needs to be considered in light of the relationships between Australia's justice system and First Nations Australians addressed in response to Term of Reference One, including issues of over-policing. Oversight, safeguards against misuse or overreach of powers, and cultural reform remain essential when considering the role of intelligence and law enforcement agencies in protecting First Nations communities from harm.

136. The Law Council is also concerned by a number of recent laws that have been rushed through parliaments, resulting in a lack of clarity and an uncertain constitutional basis. The passage of the *Combatting Antisemitism, Hate and Extremism (Criminal and Migration Laws) Act 2026* (Cth) was marked by a lack of consultation with community organisations, as noted in the Law Council's submission on the Exposure Draft Bill.[212] Laws in New South Wales that restricted the right to protest were similarly enacted on an urgent basis with little consultation, and resulted in fears of restrictions on Survival Day protests.[213] On 20 April 2026, the NSW Court of Appeal found that various legislative amendments made by the *Terrorism and Other Legislation Amendment Act 2025* (NSW) were unconstitutional because they

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[209] See for example *Crimes Act 1914* Part 1AA Divisions 3A, 4 and 4B; Part 1AE; Part 1C Division 2 Subdivision B; Part 1AA Division 3. See also *Criminal Code Act 1995* Divisions 72, 80 and 90; Part 5.3.

[210] See in particular section 501 of the *Migration Act 1958* and following sections, and Public Interest Criteria 4001 to 4003, set out in Schedule 4 to the *Migration Regulations 1994*.

[211] See for example, the *Surveillance Legislation Amendments (Identify and Disrupt) Act 2021* (Cth); *Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Act 2023* (Cth); *Privacy and Other Legislation Amendment Act 2024* (Cth); *Criminal Code Amendment (Hate Crimes) Act 2025* (Cth); *Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Act 2023* (Cth); *Combatting Antisemitism, Hate and Extremism (Criminal and Migration Laws) Act 2026* (Cth).

[212] Law Council of Australia, Submission no 95 to Parliamentary Joint Committee on Security and Intelligence, Parliament of Australia, *Review of the Exposure Draft Legislation: Combatting Antisemitism, Hate and Extremism Bill 2026* (15 January 2026), [4] – [6] <https://lawcouncil.au/publicassets/1b45fe02-75f2-f011-94c2-005056acd090/4772%20-%20S%20-%20Combatting%20Antisemitism%20%20Hate%20and%20Extremism%20Bill%202026.pdf>. See also Hannah McGlade, "If governments are serious about addressing racist hate, they must start listening to Aboriginal people", *National Indigenous Times* (20 January 2026), <https://nit.com.au/19-01-2026/22199/if-governments-are-serious-about-addressing-racist-hate-and-violence-in-australia-they-must-start-listening-to-aboriginal-people>.

[213] Aboriginal Legal Service NSW/ACT, "Restrictions on Public Assemblies Must Not Silence the Voices of Aboriginal People" (Media release, 23 December 2025) <https://www.alsnswact.org.au/restrictions_on_public_assemblies>.

impermissibly burdened the implied freedom of political communication under the Australian Constitution.[214]

137. For any law reform—following thorough consideration of existing Federal, State and Territory legislation—it will be crucial to ensure:

- adequate stakeholder consultation, including with First Nations communities, to propose and consider options, identify unintended consequences and develop necessary safeguards;
- compliance with the Australian Constitution and relevant jurisprudence;
- compatibility with Australia's international obligations, including to ensure appropriate balance between protections against harm and rights to a fair trial, and to freedom of expression and assembly; and
- sufficient training and resourcing to support the implementation of reforms, both by relevant bodies and through community education, supported by review or oversight to evaluate their effectiveness, so that they remain appropriate and proportionate and that the community is confident that those provisions are put to proper use.[215]

138. Finally, and consistently with its responses to other Terms of Reference for this inquiry, the Law Council encourages the Committee to consider other evidence-based, non-legal approaches alongside law reform and enforcement action—including community education, supports, counter-radicalisation programs, improved reporting avenues and data collection—when identifying effective approaches to address ideologically motivated extremism and its harms to First Nations Australians.

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[214] See *Jarrett v NSW* [2026] NSWCA 62.

[215] See further Law Council of Australia, "Best Practice Legislative Development Checklist" <https://lawcouncil.au/publicassets/54c598e1-9263-f011-94b6-005056be13b5/2025%2006%2025%20_%20FD%20_%20Best%20Practice%20Legislative%20Development%20Checklist.pdf?55c598e1-9263-f011-94b6-005056be13b5>.

Term of Reference 5

The effectiveness of avenues for reporting and responding to racism

139. A person who has been discriminated against on the basis of race may make a complaint to the AHRC under the *Australian Human Rights Commission Act 1986* (Cth). The Law Council recommends sufficient funding for the AHRC to undertake its complaints functions. In its recent 2026–27 pre-Budget submission, the Law Council called for an increase in funding to the AHRC, "particularly for increased provision of conciliators, and to improve efficiency for mediation and pre-mediation processes in discrimination matters".[216] The overall funding for the AHRC for 2026–27 was reduced to $67,532,000, from $76,957,000 in 2025–26.[217]

140. The Law Council has received feedback that many First Nations Australians are not fully aware of their rights in legal and institutional settings. Many First Nations Australians also report a lack of trust in existing mechanisms for reporting racism and seeking remedies for such conduct. While existing redress mechanisms are available for individuals who experience unlawful discrimination, these are therefore limited in their utility to address intersectional discrimination (explained further below). This form of anti-discrimination law is also inadequate for addressing systemic or structural discrimination because it focuses only on isolated acts of discrimination,[218] and so remedies are largely confined to individual claimants. However, the AHRC still also retains a role in promoting systemic change through its advocacy functions—for example, through the publication of resources for organisations and business owners to help them prevent discrimination and promote diversity.[219]

Lack of trust in existing mechanisms

141. The Law Council's Justice Project recognised that "systemic discrimination, in addition to the law in Australia contributing to the criminalisation of Aboriginal and Torres Strait Islander communities, deaths in custody and the denial of political rights, have created a profound and ongoing distrust in the Australian system".[220]

142. Evidence suggests that First Nations Australians are reluctant to use or trust existing mechanisms to address claims of racism. The AHRC, in its 2022 Scoping Report for its Anti-Racism Framework, notes that "historical interactions with institutions that

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[216] Law Council of Australia, Submission to the Treasury, *2026-27 Pre-Budget Submission* (6 February 2026), 17 <https://lawcouncil.au/publicassets/e85e0368-1bc4-f011-94c0-005056acd090/4759%20-%20S%20-%20Disability%20Discrimination%20Act%20Review.pdf>.

[217] Australian Government, "Portfolio Budget Statements 2026-27, Budget Related Paper no 1.2 – Attorney-General's Portfolio" (12 May 2026), 62, <https://www.ag.gov.au/system/files/2026-05/2026-27-ag-portfolio-pbs.PDF>.

[218] See also the comments on intersectionality under Term of Reference 3 in this submission.

[219] Australian Human Rights Commission, "Guides for Organisations and Business Owners" (Web page, undated), <https://humanrights.gov.au/resource-hub/resources-for-organisations-businesses>.

[220] See for example Law Council of Australia, "The Justice Project Final Report Part 1 – Aboriginal and Torres Strait Islander People" (2018), 29 <https://lawcouncil.au/files/web-pdf/Justice%20Project/Final%20Report/Aboriginal%20and%20Torres%20Strait%20Islander%20People%20%28Part%201%29.pdf>.

failed to protect the rights of Aboriginal and Torres Strait Islander peoples have discouraged them from reporting incidents".[221] It discussed the problems with existing complaint mechanisms for all claims of racism as follows:

> *The key barriers to reporting racism can be broadly categorised into external and internal barriers. External barriers include fear of consequences of reporting, such as retaliation by the offender, exacerbating an already vulnerable situation or relationship, or bolstering support for perpetrators' online profile and cause; lack of trust in official agencies, such as possible discrimination by the police or likelihood of having their cases dismissed or ignored; and accessibility issues. External barriers are interlinked with internal barriers, which include internalising negative experiences of racist incidents or reporting into hopelessness or normalisation of hate, and the lack of awareness of one*'s rights and reporting avenues.[222]

143. The Law Council has received feedback from legal practitioners that First Nations people rarely make formal discrimination complaints due to a range of factors, including lack of awareness about the existence of complaint mechanisms and how to make a complaint, lack of culturally appropriate supports, lack of faith in the process and remedies available, and the significant time taken for a complaint to be finalised.[223]

144. The Call It Out Racism Register 2024–2025 notes that this register is itself a "critical, culturally safe alternative to mainstream complaints mechanisms, allowing people to report racism without fear of reprisal or dismissal".[224] The report also finds that many First Nations people do not use existing formal complaints mechanisms due to beliefs that they will be ineffective, unsafe or retraumatising.[225] This highlights the importance that First Nations Australians are able to report racist incidents to a First Nations-led and managed body.

145. There are concerns that the criminal justice system is particularly unresponsive to complaints made by First Nations people. The Victorian Aboriginal Legal Service (**VALS**) states in its submission to the Senate Legal and Constitutional Affairs References Committee's inquiry into Australia's Youth Justice and Incarceration System that there is evidence that existing systems for accountability and protection

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[221] Australian Human Rights Commission, "National Anti-Racism Framework Scoping Report 2022" (2022) 155, <https://humanrights.gov.au/__data/assets/file/0016/57013/Narf_scoping_report_2022_-_final_word_layout_1.pdf>.

[222] Ibid.

[223] See also for example Fiona Allison and Jodie Luck, "Rethinking Access to Racial Justice – Race Discrimination and First Nations Peoples", (2020) 159 *Precedent* 8, 9, <https://www7.austlii.edu.au/au/journals/PrecedentAULA/2020/41.pdf>; Government of Victoria, "Intersectionality at Work" (Report, 24 October 2023), Chapter 1, <https://www.genderequalitycommission.vic.gov.au/intersectionality-work/chapter-1-gender-and-aboriginal-and-torres-strait-islander-employees>.

[224] Fiona Allison et al, "The Call It Out Racism Register 2024-2025: Everywhere I go no matter where, if it's around non-Indigenous people I feel a hate vibe. It feels like I'm being watched", Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney (2025), 12-13 <https://callitout.com.au/wp-content/uploads/2025/11/Jumbunna-Call-It-Out-Annual-Report-2024-2025.pdf>.

[225] Ibid, 14-17.

fail First Nations children (including a lack of culturally safe complaints pathways),[226] and that in particular there is a lack of safe, culturally appropriate complaints pathways for First Nations children in detention.[227] Similarly, the Koorie Youth Council has found that interactions with police, courts and detention are described as traumatising and dismissive of children's needs,[228] and that First Nations children reported no meaningful or safe ways to challenge mistreatment or speak out without fear of punishment.[229]

146. Practitioners have also reported that there are limited local and culturally safe reporting mechanisms for racial profiling by law enforcement authorities. In small and remote communities where policing is the sole law enforcement authority, fear of retaliation and low confidence in complaints processes contribute to widespread underreporting of such practices. Again, consultation with First Nations communities will be crucial in formulating effective responses to these issues through culturally safe complaints mechanisms.

Intersectional discrimination

147. While existing redress mechanisms are available for individuals who experience unlawful discrimination, these laws—including the *Racial Discrimination Act 1975 (Cth)* (**RDA**)—only address grounds of discrimination such as age *or* gender *or* race *or* disability. It is important to recognise the role of intersectional discrimination in experiences of racism, whereby two or more parts of a person's identity (such as race, age, gender, sexual orientation, socioeconomic status or disability) interact to shape their experience of a form of discrimination.[230] Intersectional discrimination has the result, for example, that First Nations women experience racism in a way that is unique to them and that interacts with other forms of prejudice, violence and discrimination (such as sexism).[231]

148. Along similar lines, the UN Committee on Rights of Persons with Disabilities has previously expressed its concern that:

> *… there is no effective legislative framework to protect persons with disabilities from systemic, intersectional and multiple forms of discrimination, especially at the Commonwealth level, that Aboriginal and Torres Strait Islander persons with disabilities are particularly disadvantaged and are often not consulted on matters that affect them, and that the complaints mechanisms under existing law,*

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[226] Victorian Aboriginal Legal Service and Koorie Youth Council, Submission no 85 to Senate Legal and Constitutional Affairs References Committee, *Australia's Youth Justice and Incarceration System* (February 2026), 25-31 <https://www.vals.org.au/wp-content/uploads/2026/02/VALS-KYC-Joint-Submission-to-the-Senate-Inquiry-into-Youth-Justice-2026.pdf>.

[227] Ibid, 27-29.

[228] Koorie Youth Council, "*Ngaga-Dji* (Hear Me): Young Voices Creating Change for Justice" (August 2018), 27-39, <https://www.koorieyouthcouncil.org.au/wp-content/uploads/2023/09/Ngaga-djireportAugust2018.pdf>.

[229] Ibid, 34-38.

[230] See for example Australian Human Rights Commission, "Key Racism Terms" (Web page, undated) <https://humanrights.gov.au/know-your-rights/rights-of-individuals/race-discrimination/guides,-tools-and-resources/key-racism-terms/_nocache>.

[231] See for example Alysia Blackham and Jeromey Temple, "Intersectional Discrimination in Australia: An Empirical Critique of the Legal Framework", (2020) 43(3) *University of NSW Law Journal* 773.

especially the Disability Discrimination Act 1992, are inaccessible to persons with disabilities.[232]

149. The Law Council is of the view that discrimination law reform should make the law clear, consistent, comprehensive, intersectional, remedial, accessible and preventive.[233] The Law Council has recently recommended that the *Disability Discrimination Act 1992* (Cth) should be amended to cover intersectional discrimination,[234] and similarly recommends in this inquiry that the RDA should be amended in the same way.

Access to justice

150. Access to justice remains a critical issue for many First Nations Australians. A lack of access to justice can result in limited participation in legal processes, challenges in obtaining remedies, and reduced trust in institutions more broadly. In turn, many First Nations people are precluded from accessing legal protections against racism, hate and violence, including under the RDA. The Law Council's Justice Project also identified discrimination matters as a key area of civil law need.[235]

151. Aboriginal and Torres Strait Islander Legal Services (**ATSILSs**) and other Aboriginal Community Controlled Organisations (**ACCOs**) are critical to reducing harm arising from racism and disproportionate justice system contact. These organisations provide culturally safe, community-led legal and support services that address issues early and thoroughly. However, these services remain significantly under-resourced which limits their capacity to meet demand and constrains their long-term impact. This has real costs for individuals, families and communities. In addition, the availability of culturally appropriate legal assistance is inconsistent, particularly in regional and remote locations.

152. The National Access to Justice Partnership (**NAJP**) commenced on 1 July 2025. It replaced the National Legal Assistance Partnership and provides additional and ongoing Commonwealth funding across all legal assistance services, including ATSILSs. However, the Law Council understands that the level of funding provided under the new NAJP for First Nations community-controlled legal services is not sufficient to meet existing (and growing) levels of legal need (including and particularly in areas of civil law), nor the requirements of the National Agreement on Closing the Gap.[236]

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[232] United Nations Committee on the Rights of Persons with Disabilities, "Concluding Observations on the Combined Second and Third Periodic Reports of Australia", UN Doc CRPD/C/AUS/CO/2-3 (15 October 2019), [9], <https://docs.un.org/en/CRPD/C/AUS/CO/2-3>.

[233] Law Council of Australia, Submission to Attorney-General's Department, *Disability Discrimination Act 1992 Review* (14 November 2025), 4 <https://lawcouncil.au/publicassets/e85e0368-1bc4-f011-94c0-005056acd090/4759%20-%20S%20-%20Disability%20Discrimination%20Act%20Review.pdf>.

[234] Ibid, 6.

[235] Law Council of Australia, "The Justice Project Part 1 – Aboriginal and Torres Strait Islander People" (August 2018), 24-25 <https://lawcouncil.au/files/web-pdf/Justice%20Project/Final%20Report/Aboriginal%20and%20Torres%20Strait%20Islander%20People%20%28Part%201%29.pdf>.

[236] See also Callan Morse, "Legal Service says Budget's 'failure' will continue to see Aboriginal people disadvantaged and over-represented in prisons", *National Indigenous Times* (15 March 2026)

153. Many First Nations people will also access the services of Legal Aid Commissions (**LACs**). For example, Legal Aid NT has noted that in 2024–25, 54 per cent of its clients identified as Aboriginal or Torres Strait Islander.[237] In 2024–25, across Australia, about 12 per cent of clients receiving court/tribunal representation services from LACs for Commonwealth-funded matters (i.e. primarily family law and some civil law) identified as Aboriginal or Torres Strait Islander.[238] LAC funding remains a significant problem at the Federal, State and Territory levels. As a result of mounting funding pressures, several LACs around the country are considering or implementing significant cuts to their services.[239]

154. The Law Council notes that the NAJP failed to address recommendation 5 of the Independent Review of the National Legal Assistance Partnership Final Report, which called on governments to address the persistent gaps in civil law assistance.[240]

155. Funding for civil law services, including, for example, in relation to claims under the RDA, remains a critical gap. The Law Council's assessment of the 2026–27 Budget was that it left "the chronic underfunding of legal assistance services—one of the most fundamental pillars of a fair society - … unaddressed", and that its measures did "not address the structural funding crisis facing legal assistance services across Australia".[241] Funding for these services should not be static and should respond to increases in demand to ensure that vital legal services are available when needed.

International complaint mechanisms

156. For completeness, the Law Council also notes that various complaints alleging violations of First Nations peoples' rights have been brought before United Nations human rights treaty bodies, including the UNCERD and the UN Human Rights Committee—some of which have been identified in this submission. This is an important mechanism given the limited domestic avenues available to directly challenge Australia's international human rights commitments, especially absent a Federal Human Rights Act. However, the findings (or 'Views') issued by those bodies are not legally binding on the Australian Government, and so cannot be enforced domestically where it has been found to have breached its international obligations. As a result, complainants have not always received the remedies

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<https://nit.com.au/15-05-2026/24304/legal-service-says-budgets-failure-will-continue-to-see-aboriginal-people-disadvantaged-and-over-represented>.

[237] Legal Aid NT, *Annual Report 2024/2025* (2025) 9 <https://www.legalaid.nt.gov.au/wp-content/uploads/Legal-Aid-NT_Annual-Report_2025_WEB.pdf>

[238] Australian Bureau of Statistics, *Legal Assistance (2024-25)* (23 April 2026) <https://www.abs.gov.au/statistics/people/crime-and-justice/legal-assistance/latest-release>.

[239] See for example Legal Aid NSW, "Legal Aid NSW Reduces Family Law Services Amid Budget Pressure" (Media Release, 13 May 2026), <https://www.legalaid.nsw.gov.au/about-us/news/media-releases/2026-05-13-budget-and-family-law-changes-media-release>; Roxanne Fitzgerald, "Criminal Cases at Risk of Being Halted as NT Legal Aid Crisis Leaves People without Lawyers" (Australian Broadcasting Corporation, 18 May 2026) <https://www.abc.net.au/news/2026-05-18/nt-criminal-cases-at-risk-halted-legal-aid-crisis/106678552>.

[240] Dr Warren Mundy, *Independent Review of the National Legal Assistance Partnership* (Final Report, March 2024) 56-58 <https://www.ag.gov.au/sites/default/files/2024-06/NLAP-review-report.PDF>.

[241] Law Council of Australia, "A Budget for Fairness that Left Justice Behind" (Media release, 12 May 2026) <https://lawcouncil.au/media/media-releases/a-budget-for-fairness-that-left-justice-behind>.

recommended by the UN for those breaches.[242] These processes may also take up to several years from lodgement of the initial submission before the treaty body issues its Views,[243] which may reduce the impact of their recommendations.

Recommendation 15

The *Racial Discrimination Act 1975* (Cth) should be amended to cover intersectional discrimination.

Recommendation 16

The Australian Government should ensure adequate and predictable funding for the Australian Human Rights Commission's advocacy and complaint handling functions, including to support culturally safe complaints processes for First Nations people.

Recommendation 17

The Australian Government should ensure adequate and predictable funding for First Nations legal assistance and access to justice (including for civil justice needs), including through the National Access to Justice Partnership.

[242] For example, following an analysis of 67 complaints involving findings of breach (not limited to First Nations-related matters), Remedy Australia found that authors in just 6 cases received the remedies recommended in the relevant Views, while 17 others received a partial remedy. See Remedy Australia, "Complaints upheld against Australia" (Web Page, 2025), <https://remedy-australia.au/cases/>.

[243] See for example United Nations Office of the High Commissioner for Human Rights, "Complaints Procedures under the Human Rights Treaties" (Web Page, 2026), <https://www.ohchr.org/en/treaty-bodies/human-rights-bodies-complaints-procedures/complaints-procedures-under-human-rights-treaties>.

About the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level; speaks on behalf of its constituent bodies on Federal, national, and international issues; promotes and defends the rule of law; and promotes the administration of justice, access to justice, and general improvement of the law.

The Law Council advises governments, courts, and Federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933, and represents its constituent bodies:

- the Australian Capital Territory Bar Association;
- the Law Society of the Australian Capital Territory;
- the New South Wales Bar Association;
- the Law Society of New South Wales;
- the Northern Territory Bar Association;
- the Law Society Northern Territory;
- the Bar Association of Queensland;
- the Queensland Law Society
- the South Australian Bar Association;
- the Law Society of South Australia;
- the Tasmanian Bar;
- the Law Society of Tasmania;
- the Victorian Bar Incorporated;
- the Law Institute of Victoria;
- the Western Australian Bar Association;
- the Law Society of Western Australia; and
- Law Firms Australia.

Through these bodies, the Law Council represents more than 110,000 Australian lawyers.

The Law Council is governed by a board of 23 Directors: one from each of the constituent bodies, and six Executive members elected by Directors. The Directors meet quarterly to set objectives, policy, and priorities for the Law Council. Between Directors' meetings, responsibility for the policies and governance of the Law Council is exercised by the Executive members, led by the President. In 2026, the Law Council Executive comprises:

- Ms Tania Wolff, President
- Ms Elizabeth Shearer, President-elect
- Mr Lachlan Molesworth, Treasurer
- Ms Jennifer Ball, Executive Member
- Mr Justin Stewart-Rattray, Executive Member
- Mr Ante Golem, Executive Member

The Chief Executive Officer of the Law Council is Dr James Popple.

The Law Council's Secretariat is based in Canberra. Its website is www.lawcouncil.au.