National Anti-Racism Framework Scoping Report 2022



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National Anti-Racism Framework Scoping Report 2022

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Chin Tan

Race Discrimination Commissioner
Australian Human Rights Commission



A message from the Commissioner

In March 2021, I called for a national anti-racism framework. I did so at an unprecedented moment in time. The COVID-19 pandemic initially brought with it increased racism against Asian-Australians, which governments struggled to deal with effectively. The continued, urgent calls to end Indigenous deaths in custody and recent concerns over home grown terrorism and extremism signalled the many ways in which racism has grown, persisted, and become entrenched in our structures and institutions, and as a result, in our everyday lives.

As I said when launching this proposal, we need to treat racism as a scourge in much the same way we commit to addressing child abuse and family violence. Urgent, collective action is needed to combat racism throughout this country.

What the pandemic shows us is our enormous capability for swift and powerful action in times of crisis. Throughout this pandemic, the assertion that we are better, and more effective, when we work together has rung true, and been proven time and time again.

A national anti-racism framework will be a long-term, central reference point to guide actions on anti-racism and equality by government, NGOs, business, communities, and others. My hope is that it will provide a shared vision, and a focus for specific actions, to tackle racism in its interpersonal, institutional, and systemic forms.

It has been encouraging to see the concept for a national framework embraced by individual community members, community organisations, peak bodies, experts, researchers, service providers, human rights agencies, and government partners. This Report shares the scoping findings from consultation participants and those who made submissions and voiced what was important to them.

Consultations and submissions emphasised the need for a shared language for anti-racism action. I heard about the need to understand racism as a complex, intersectional phenomenon that reaches far beyond 'race' and is tied deeply to unique identities and circumstances. We must understand racism in this way, as an all-encompassing force perpetuated across many sites of power by institutions and structures.

This includes, as a threshold, leading with respect for the experiences of First Nations peoples. When we hold this as a baseline for anti-racism actions, we recognise the colonial foundations of Australia and their past and present impacts, and the immense value in drawing upon the unique strengths of First Nations peoples and communities, including their long leadership in anti-racism.

What I saw echoed across consultations and submissions was how pervasive racism is in the lives of many Australians, shaping experiences in educational settings, aspirations in the workplace, access to services and supports, interactions with the justice system, and embedded in what we see, hear, and read daily in the media.

The effects of this, not just for those with lived experience of racism but for our society as a whole, are vast and profound.

There is also a crucial role for better and more robust data to identify the prevalence, severity, and impact of racism. Data will bring nuance to a collective understanding of racism that is necessary for creating and sustaining anti-racist action. As consultations and submissions identified, taking action is not just about raising awareness, but also looking to what laws, regulations, standards, and mechanisms our country has, or does not have, in place to protect against the harm of racism and to ensure accountability for its elimination.

For a national anti-racism framework to be effective it must adapt to time, place, and circumstance. The constant in this is community. Communities are the experts in their own lives, experiences, and ways of living. For a framework to be meaningful and effective, it must reflect and respond to the priorities of communities. Achieving this requires strong adherence to human rights principles of equality, empowerment, and participation. As such, a framework must be a collective and collaborative project.

This Report is a product of initial consultations and submissions on a national anti-racism framework. I would like to thank all those who participated in consultations and provided submissions, especially those with lived experience of racism, to inform the development of a framework.

Attending a consultation and putting together a submission takes time, energy, and effort. Particularly for those with lived experience of racism, this process can evoke distress, frustration, and anger. I consider it a reflection of the collective commitment of individuals and communities to the work of anti-racism, as well as the importance of anti-racism more broadly, that you took the time and care to share your insights during this scoping phase with us. Your knowledge and expertise, gathered from the wealth of your experiences, is the heart of this document.

There remains more work to do in reaching those who are too often left out of decision-making processes that directly affect them. As we enter the next phase of the framework's development, it is my hope that this Report will be a bridge to fostering further relationships with communities, so that we may achieve a truly community-centric framework.

At such a pivotal point in this country's history, it is time that we progress, as a priority, a coordinated approach to anti-racism. When we engage in anti-racism action together, we recognise – as a collective act – the importance of equity and belonging in Australia. It is a matter of fulfilling the basic rights that come with being human.



Chin Tan
Race Discrimination Commissioner

Executive summary

In March 2021, the Australian Human Rights Commission released a proposal for a national anti-racism framework. This was in response to community calls for national action after heightened experiences of racism and racial inequality in recent years, particularly during the COVID-19 pandemic. The proposal contained guiding principles, outcomes, and strategies to begin a national conversation about how to tackle racism.

From March 2021 to April 2022, the Commission consulted with the public, peak and community organisations, experts, service providers, human rights agencies, and government at all levels on the scope and vision for a framework. In total, more than 100 consultations were undertaken with over 300 organisations. Submissions from individuals made up more than a third of the 164 total public submissions received.

Australia does not have a consistent and comprehensive national approach to anti-racism, with approaches differing across the federal government, states and territories. Most actions by governments are not identified as intended to address racism, and sometimes this is incidental to the policy or action.

Across the scoping phase of its project, the Commission found widespread support for a national anti-racism framework in Australia. In consultations, participants emphasised the importance of committed political will and adequate resourcing, genuine and comprehensive engagement with community, and accountability mechanisms to ensure the framework is a success.

An anti-racism framework must be a collective project, steered by a human rights-based approach based on the principles of participation, accountability, non-discrimination, and equality, empowerment, and legality.

The leading piece of feedback that the Commission received from participants, including First Nations and non-Indigenous organisations and individuals, was that the experiences of First Nations peoples must be central to the Framework and inform all strategies across national outcome areas. Many shared their strong view that a Framework must acknowledge the experience of colonisation and its ongoing impacts on First Nations peoples.

The Commission also received feedback that the Framework needs a definition of racism that reflects a nuanced and intersectional understanding of racism and that is community-centric. Participants stressed that understanding racism only through the category of race does not address its breadth and complexity, including the systems and structures of power implicated in its process. The systemic nature of racism must therefore be acknowledged and addressed in the Framework.

The Commission's Concept Paper about a national anti-racism framework, released in March 2021, flagged a need for greater community understanding of the different dimensions of racism and racial inequality in Australia.

Experiences of racism, discrimination and hatred vary and are experienced differently, ranging from:

- Verbal abuse and expressions of hate and violence from anonymous encounters
- Everyday racism like off-hand jokes and comments that reinforce negative stereotypes or prejudices about people based on their race, colour or ethnicity
- Institutionalised forms of racial discrimination
- Systemic issues that disproportionately impact certain groups identifiable by race (e.g. Aboriginal people and Torres Strait Islander people, Sudanese people)
- Lack of cultural diversity in leadership across government and business
- Fearmongering about asylum seekers and Muslims, often containing racial undertones.

Participants also called for enhanced visibility and responses at the intersection of different forms of discrimination. They shared concerns that those who experienced racial discrimination and who were also part of LGBTQIA+ communities, who were refugees, who had precarious visa or citizenship status, and who are people with disability, women, and young people, those from certain religious backgrounds, and those also experiencing caste discrimination, amongst others, need stronger protections in terms of policy, programs, and the law.

Key findings

The Commission heard from participants on a range of issues concerning data, education, public awareness, and cultural safety. Participants also identified legal protections, justice, and media regulations and standards as other areas of concern.

Data

Participants stressed the need for comprehensive, national data on the prevalence, nature, and impacts of racism. Many criticised Australia's current approach to data collection for anti-racism purposes. Data was highlighted as an important means of raising awareness about the extent of racism and racial inequity and as an important means of securing the appropriate resources and funding to address racism. Establishing mechanisms to collect data on cultural diversity broadly and across institutions and services was a main priority, as well as ensuring ethical approaches and processes around data collection that would protect communities from unethical data collection, management, and reporting that often results in deficit characterisations of First Nations peoples and people from migrant, refugee, and faith-based backgrounds.

Education and public awareness

Education and public awareness raising were priorities for participants. Improving understanding about race and racism in Australia was identified as an opportunity to connect people through common understandings and build momentum for change, including through anti-racism initiatives and actions. Participants advocated for anti-racism initiatives within educational institutions to improve racial literacy. This includes truth-telling about Australia's colonial and migration history, and anti-racism training and education for students and teachers.

Cultural safety

Cultural safety was identified by many participants as a best-practice approach to addressing race-based barriers and harms experienced in relation to job-seeking, and especially within the workplace. Cultural safety was also offered as a solution to what was described as the ineffectiveness and limits of workplace diversity and inclusion initiatives.

Cultural awareness and cultural competence training for staff was recommended as being essential to building a respectful and inclusive workplace. Participants described how culturally safe workplaces provide a foundation for culturally safe service provision and identified community-controlled service provision, trauma-informed and healing approaches to service delivery, anti-racist competencies that underpin service delivery, and accountability mechanisms to protect these principles as strategies to build upon this foundation.

Legal protections

The Commission heard about the importance of legal protections that are enforceable and reflective of Australia's international human rights obligations. Enhanced access to rights, and the safety and accessibility of reporting mechanisms were also urgent priorities for many communities, as well as the need for improved understanding and measures in relation to hate crime.

Justice

Oversight and accountability within the criminal justice system, particularly in relation to the systemic discrimination experienced by Aboriginal and Torres Strait Islander peoples was called for by many organisations, service providers, government departments and agencies as well as community members. Many participants also highlighted the disproportionate impact of the criminal justice system on people from migrant, refugee, and faith-based backgrounds, particularly through over-policing and an unequal access to justice. Participants advocated for the provision of safe complaints mechanisms, community-centred supports, and services for those caught in the criminal justice system, as well as culturally safe and unhindered legal assistance.

Media regulation and standards

The need for stronger media standards and more effective regulation was prominent across the feedback received. The Commission heard about the importance of media representation in fostering inclusion, and conversely, the harmful impacts of racial profiling and stereotyping in the media on public perceptions of communities and their perceptions of themselves. Improved accountability of political leaders and adequate resourcing of community-controlled media were also identified as necessary in fostering inclusion and understanding. Participants also strongly advocated for improved accountability of digital media through increased regulation and community-informed standards in relation to online hate.

Next steps

The Commission will continue to work collaboratively to develop a central reference point for anti-racism action by governments, business, community, and all sectors of society. The Commission intends to facilitate further development of a framework drawing on the groundwork provided by these findings, with the aim of securing formal commitment from governments to implementing a national anti-racism framework.

This process will continue to take a human-rights approach, with cultural safety and accessibility as key priorities to ensure future development of a framework is available to all. One suggested approach to establishing a central reference point includes a further, comprehensive consultation process with the community (overseen by an advisory group chaired by the Commission) that culminates in a summit attended by key representative bodies.

Delegates would agree to strong commitments, roles, and responsibilities on anti-racism action, particularly for all levels of government at the conclusion of the summit. Ultimately, a strong framework would be one that reflects a coordinated, shared vision to meaningfully tackle racism, promote racial equality, ensure access to rights, and foster a cohesive sense of belonging for all Australians.

Terminology

This note on terminology provides definitions of terms used in the National Anti-Racism Framework Project Scoping Report. We acknowledge that definitions of these terms may vary and have provided an explanation of their use in the context of this Report. We do not intend to cause offence through the use of certain language and apologise for any harm that may be caused.

First Nations

Aboriginal and Torres Strait Islander peoples are the First Peoples and Traditional Custodians of the lands now collectively referred to as Australia. First Nations is an encompassing term that refers to the numerous Traditional Custodians of Country across Australia.[1]

Indigeneity

There is great diversity amongst First Nations people. There is no official definition of 'Indigenous' or 'Indigeneity', but rather, as the United Nations states, the 'most fruitful approach is to identify rather than define Indigenous peoples…. based on the fundamental criterion of self-identification as underlined in a number of human rights documents'.[2] This approach highlights the importance of self-identification and acknowledges that First Nations peoples have their own laws and customs to determine the membership of their group.

Self-determination

Self-determination refers to First Nations peoples and communities' autonomy to control decisions that shape their economic, social, cultural, and political interests and futures.[3] The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) outlines the minimum standards for states to achieve regarding the realisation of Indigenous people's rights. Article 3, the right to self-determination, is positioned as the overarching norm from which all UNDRIP rights can be realised.[4]

Multicultural

The term multicultural refers to the diversity of racial, cultural, and religious identities within a society. The use of the term multiculturalism encompasses culturally and linguistically diverse people. It does not apply to First Nations peoples who have a unique position and experience in Australia.

Racialisation

Racialisation is the process by which groups of people come to be seen, treated and to understand themselves as belonging to a distinct racial group.[5] Throughout history racialisation has been used to establish a hierarchical system which justifies the oppression of certain groups and consolidation of white domination.[6] Racialisation has been embedded in the social upheavals that have shaped our world today, including settler colonisation and large-scale enslavement.[7]

Negatively racialised

Negatively racialised refers to groups who experience the harms and traumas of racialisation, which are typically concentrated on certain groups. These groups have been racialised in a way that is negative to maintain the supremacy of whiteness within different locations and contexts.[8]

People with lived experience of racism

Refers to First Nations and cultural and linguistically diverse peoples who have direct, firsthand experiences of interpersonal and systemic racism and who have been negatively racialised.[9]

CALD & culturally and linguistically diverse

CALD is an acronym typically used to refer to people of non-English speaking background, and people born outside of Australia as well as people whose first language is not English.[10] People may not identify with the acronym as it does not capture the complex nature of many Australians' cultural heritage. In the context of this Report, culturally and linguistically diverse refers to racial, cultural, and religious people or communities who are not First Nations but may otherwise have direct lived experience of racism.

Systemic and structural racism

Systemic and structural racism refer to cultural norms, laws, ideologies, policies, and practices that are designed to promote the interests of a single demographic while creating barriers or reinforcing racial inequity for individuals outside of this demographic. This macro level functioning of racism operates without needing dedicated laws, policies or practices to keep it in place, and underpins and enables other forms of racism to operate.[11]

Interpersonal racism

Refers to racism that occurs between individuals. It can be intentional or unintentional and can come in the form of abuse, harassment, humiliation, or exclusion or can be expressed through off hand jokes or comments.[12]

Internalised racism

Internalised racism occurs when an individual believes and promotes racist attitudes, beliefs or ideologies directed at their race or cultural group.[13]

Pathologisation

Pathologisation refers to the practice of viewing an individual or community through a lens of deficiency.[14] This involves characterising the issues faced by an individual or community as a result of a problem within the community itself, as opposed to being the result of external influences.

Deficit discourse

Deficit discourse considers and frames identity in narratives of negativity, deficiency, and failure.[15] These discourses are entrenched within different spaces of representation, policy, and expression,[16] forming a critical part of the racialisation process and protecting white interests by justifying interventions in First Nations and other negatively racialised peoples' lives.[17]

Strengths-based approach

Strengths-based approaches encompass a number of practices and themes that disengage from and provide alternative solutions to the deficit discourses that frame negatively racialised individuals.[18] The benefits of applying a strengths-based approach to service delivery and policy making is most often outlined as it relates to First Nations peoples. This is due to the capacity of this approach to foreground self-determination.[19] These approaches can facilitate investment in the strengths of First Nations and other negatively racialised peoples by providing a different language and set of solutions to overcoming an issue.

Intersectionality

Intersectionality is 'the multiple social forces, social identities, and ideological instruments through which power and disadvantage are expressed and legitimised'.[20] An intersectional framework acknowledges that multiple social categories, such as race, sexuality, class, gender, and disability, combine to create distinct experiences and identities that are lived and perceived in ways that cannot be reduced to any one category. Intersectionality recognises that there is no single way a person exists in the world, nor is there a single mechanism through which inequalities are produced at institutional and systemic levels. Rather, these intersections are themselves the result of systemic, structural, and institutionalised patterns of power and privilege.

Trauma-informed perspective

An event, series of events, or set of circumstances experienced by an individual who is the target of racial discrimination can result in trauma. A trauma-informed perspective recognises the intersectional impact of racism and racial discrimination and aims to centre the voice and experiences of the targets of racial discrimination.[21]

[1] Australian Human Rights Commission, 'Questions and context', Racism. It Stops With Me (Web Page, 2022) <https://itstopswithme.humanrights.gov.au/about-the-campaign/question-and-context>.

[2] 'Indigenous Australians: Aboriginal and Torres Strait Islander people', *Australian Institute of Aboriginal and Torres Strait Islander Studies* (Web Page) <https://aiatsis.gov.au/explore/indigenous-australians-aboriginal-and-torres-strait-islander-people>.

[3] Australian Human Rights Commission, *Wiyi Yani U Thangani: Securing our Rights, Securing our Future* (Report, 2020) 25 <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>.

[4] Megan Davis, 'Community Control and the Work of the National Aboriginal Community Controlled Health Organisation: Putting Meat on the Bones of the UNDRIP' (2013) 8(7) *Indigenous Law Bulletin* 11, 11.

[5] Chelsea Watego, David Singh and Alissa Macoun, *Partnership for Justice in Health: Scoping Paper on Race, Racism and the Australian Health System* (Discussion Paper, The Lowitja Institute, May 2021) <https://www.lowitja.org.au/content/Image/Lowitja_PJH_170521_D10.pdf>.

[6] Australian Human Rights Commission, 'Key Terms', *Racism. It Stops With Me* (Web Page, 2022) <https://itstopswithme.humanrights.gov.au/commit-to-learning/key-terms>.

[7] Michael Omi and Howard Winant, *Racial Formation in the United States* (Routledge, 2015) 111–2.

[8] See generally Patrick Wolfe, 'Settler Colonialism and the Elimination of the Native' (2006) 8(4) *Journal of Genocide Research,* 387.

[9] Australian Human Rights Commission, 'Questions and context', *Racism. It Stops With Me* (Web Page, 2022) <https://itstopswithme.humanrights.gov.au/about-the-campaign/question-and-context>.

[10] Victoria State Government, *Victorian Family Violence Data Collection Framework: A guideline for the collection of family violence related data by Victorian government departments, agencies and service provider*s (Guideline, December 2019) 87 <https://www.vic.gov.au/victorian-family-violence-data-collection-framework/data-collection-standards-culturally-and#terminology-and-definitions>.

[11] Australian Human Rights Commission, 'Key Terms', *Racism. It Stops With Me* (Web Page, 2022) <https://itstopswithme.humanrights.gov.au/commit-to-learning/key-terms>.

[12] Australian Human Rights Commission, 'Key Terms', *Racism. It Stops With Me* (Web Page, 2022) <https://itstopswithme.humanrights.gov.au/commit-to-learning/key-terms>.

[13] Yin C Paradies, 'Defining, conceptualizing and characterizing racism in health research'(2006) 16(2) *Critical Public Health* 143, 151.

[14] William Fogarty et al, *Deficit Discourse and Indigenous Health: How narrative framings of Aboriginal and Torres Strait Islander people are reproduced in policy* (Report, The Lowitja Institute, May 2018) viii–3 <https://www.lowitja.org.au/content/Document/Lowitja-Publishing/deficit-discourse.pdf>.

[15] William Fogarty et al, *Deficit Discourse and Indigenous Health: How narrative framings of Aboriginal and Torres Strait Islander people are reproduced in policy* (Report, The Lowitja Institute, May 2018) 12 <https://www.lowitja.org.au/page/services/resources/Cultural-and-social-determinants/racism/deficit-discourse-strengths-based>.

[16] Cressida Fforde et al, 'Discourse, deficit and identity: Aboriginality, the race paradigm and the language of representation in contemporary Australia' (2013) 149(1) *Media International Australia* 162, 162.

[17] Greg Vass, '"So, What *is* Wrong with Indigenous Education?" Perspective Position and Power Beyond a Deficit Discourse' (2013) 41(2) *The Australian Journal of Indigenous Education* 85, 93.

[18] William Fogarty et al, *Deficit Discourse and Indigenous Health: How narrative framings of Aboriginal and Torres Strait Islander people are reproduced in policy* (Report, The Lowitja Institute, May 2018) 12 <https://www.lowitja.org.au/page/services/resources/Cultural-and-social-determinants/racism/deficit-discourse-strengths-based>.

[19] Joanne Bryant et al, 'Beyond deficit: 'strengths-based approaches' in Indigenous health research' (2021) 43(6) *Sociology of Health & Illness* 1405, 1406.

[20] Kimberle Crenshaw, *On Intersectionality: Essential Writings* (New Press, 2017).

[21] Australian Human Rights Commission, *Racism. Nobody Wins. Guidelines for working with a trauma-informed approach* (2021) 1, 2 <https://humanrights.gov.au/sites/default/files/ahrc_sr_2021_8_trauma-informed_approach_a4_r2_0.pdf>.

Introduction

Over the course of the last few years, the COVID-19 pandemic, the Black Lives Matter movement, and ongoing calls for action in relation to Indigenous deaths in custody, the Christchurch terrorist attacks, and spikes in antisemitism and racist extremism, have exposed the ongoing prevalence and harm caused by racism. There is an urgent need for a coherent national policy to address racism.

Existing data

> It's almost impossible to have a conversation about racism and hate in society because most Australians have an image of Australia as not being a racist country and Australians as not racist. — *community consultation participant, NARF project, May 2021 – April 2022*

Despite the heightened racial discrimination and inequity experienced over the last few years, there is a widely held view that racism does not exist in Australia or that it is not an issue the nation needs to be seriously concerned about. However, the limited data that does exist about the prevalence, nature, and severity of racism, and the experiences of those who are negatively racialised, challenges this notion. The most recent available data demonstrates that racism needs to be addressed in all areas of public life.

In 2021, Reconciliation Australia's Barometer found that 52% of Aboriginal and/or Torres Strait Islander People reported experiencing at least one form of racial prejudice within the past six months.[1] The Scanlon Foundation's 2021 Mapping Social Cohesion research survey also revealed that 16% of Australians had experienced racism on the basis of their skin colour, ethnic origin or religious belief within the past 12 months.[2] These figures increased to 34% for those from non-English speaking backgrounds.[3]

The Australian National University's *Research Note: Asian-Australian experiences of discrimination,* found that in 2019, 65.1% of Asian Australians who participated in the research had experienced discrimination within the workplace or in education.[4] In addition, the 2019 Islamophobia Report identified that threats towards Australian Muslims spiked following the attacks perpetrated against worshippers in mosques in Christchurch with reporting of offline cases of Islamophobia increasing by four times and online cases by 18 times within the two weeks after the attacks.[5] Between 2020 and 2021, there was a 35% increase in antisemitic incident reports lodged nationwide with the Executive Council of Australian Jewry.[6]

This data confirms the alarming prevalence of racism in Australia and shows it remains a serious concern. The urgency of a response to protect communities against the harm of racism is clear.

> While one in two Aboriginal and Torres Strait Islander people have experienced racism in the last six months, one in five members of the general community experienced racism over the same period. The elimination of racism is therefore fundamental to progressing reconciliation and is dependent on all sectors of Australian society taking action to address both structural and institutional racism as well as continuing to bolster measures to address interpersonal racism. — *submission from Reconciliation Australia, NARF project, May 2021 – April 2022*

The policy gap

There is currently no national anti-racism policy in Australia. The Closing the Gap Agreement and the Multicultural Access and Equity Policy (MAEP) recognise the need to address racial inequality. The MAEP is directed at strengthening internal operations in government departments to meet the cultural needs of those accessing public services. Closing the Gap acknowledges the strength and resilience of First Nations people and aims to transform how governments work alongside them to achieve improved life outcomes. Closing the Gap has identified four priority reforms. These priority reforms include formal partnerships and shared decision making, building the community-controlled sector, transforming government organisations, and shared access to data and information at a regional level.

Internationally, Australia's obligations include reporting to the Committee on the Elimination of Racial Discrimination (CERD) about how Australia addresses racial discrimination. Under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), endorsed by Australia in 2009, the nation has committed to take action to implement the Declaration and promote First Nations people's enjoyment of rights on an equal basis.[7] However, the implementation of UNDRIP in law, policy and practice has not yet progressed, the auditing of existing laws and policy for compliance with the Declaration has not been undertaken, and negotiation with First Nations peoples on how to achieve its implementation has not commenced.[8]

> The engagement process for developing Canada's Anti-Racism Strategy 2019-22 highlighted the lack of consistent data collection, the need for disaggregated data relating to racism, and the limited sharing of data between government institutions and with communities. Australia has the opportunity to learn from other nations. — *submission from Western Sydney Community Forum, NARF project, May 2021 – April 2022*

Nations such as Canada, the United Kingdom, and the European Union have successfully implemented anti-racism initiatives. Common aims of such initiatives include equality, legal protections from racism, and equal participation in public life. Most recently in Canada, commitment to an anti-racism strategy has been supported with meaningful funding to advance its implementation.[9] Many organisations, community members, and government agencies that participated in the Commission's initial scoping phase for a national anti-racism framework agreed on the need for a coordinated, strategic approach to addressing racism in Australia, which would support action to enforce Australia's international law obligations and commitments and connect existing domestic policy together into a cohesive response to, and protection from, racism.

The Initial concept and scoping process

In March 2021, the Commission called for a national anti-racism framework and released a Concept Paper outlining guiding principles, outcomes, and strategies.

The Concept Paper set out 10 key reasons why a national anti-racism framework is needed:

1. We lack a clear articulation of what government has committed to doing and is doing to address racism at the national level
2. There is a need to ensure that measures to address racism are complemented by measures to build social cohesion
3. Existing anti-racism and racial equality measures that are in place are not acknowledged
4. There is a need for comprehensive, national data to inform, guide and deliver effective anti-racism and racial equality initiatives
5. There is growing community awareness and concern about racism in Australia
6. It is in the national interest to counter racism and achieve racial equality
7. There is a need for greater community understanding of the different dimensions of racism and racial inequality in Australia
8. There is growing community momentum to do more to tackle racism and achieve racial equality
9. The Australian Government has already committed to taking action to address racism, especially as experienced by Aboriginal and Torres Strait Islander peoples, but further action is required, and we need different approaches to achieve these commitments.

There are potentially significant economic consequences for Australia from not tackling racism and racial inequality.

A number of principles guide the development of a national anti-racism framework.

First and foremost, a national anti-racism framework must begin with the experiences of First Nations peoples and recognise the past and ongoing impacts of colonisation. Prioritising the experiences of First Nations people emphasises the agency, cultures, histories, and knowledges of First Nations communities.

Having an effective, nuanced, intersectional and community-centric definition of 'racism' is another key principle. Feedback from consultation participants and those who made submissions pointed to the importance of definitions as educative tools to inform racial literacy, as well as their strategic value in guiding anti-racism work and building confidence in anti-racism initiatives. A definition of racism must have the breadth to capture the experiences and harms of racism, as well as depth in spotlighting the range of interpersonal, institutional, and systemic actors who participate in the perpetration of racism.

In particular, focussing on the systemic nature of racism is key to a definition making visible the many ways in which racism occurs in society, including in laws, policies and practices that produce discriminatory outcomes. The systemic nature of racism takes on specific forms in relation to different communities and individuals.

Finally, it is not just 'racism', but the broader language surrounding racism and anti-racism that lacks clarity and consensus. Terms like 'social cohesion', 'equality', and 'multiculturalism' are used in a range of contexts, from everyday settings to official policies and programs. They often work to mask the issue of racism, obfuscate anti-racist aspirations, and as a result, can perpetuate racism. Having shared understandings around the language of racism and anti-racism is vital to a national anti-racism framework.

A national anti-racism framework would provide a long-term central reference point for government, organisations, businesses, and communities to take action on addressing racism.

The Commission engaged on the proposal through two key processes. The first was via consultations with peak and community organisations, service providers, government departments and agencies, experts, and community members. One hundred consultations were undertaken with approximately 300 organisations. The Commission partnered with some of those organisations and agencies and had the privilege of facilitating 10 community consultations across the nation. The second was that the Commission also called for public submissions between October 2021 and February 2022 and received 164 in total.

This Scopiong Report reflects the voices of representative organisations and peak bodies alongside observations of community members. The overwhelming support for the aims of this project across community and community representative organisations, as well as government departments and agencies, service providers and experts, highlights both the momentum for change and the urgent need for a national response.

This process has been informed by work happening within the Commission. This includes the community solutions proposed in the *Sharing the Stories of Australian Muslims* project calling for enhanced media regulation, legal protections at the intersection of racial and religious discrimination, and for public education; and the *Wiyi Yani U Thangani* project, specifically the recommendation for a national framework to respond to and heal the intergenerational trauma experienced by First Nations women and girls. It also reflects the Commission's approach in the *Free and Equal* project calling for a proactive approach to protecting human rights, including by modernising federal discrimination laws and the protection against racial discrimination, and draws on wider Commission work on human rights and technology, and capacity building.

Relevant, significant, and complementary work is also taking place across governments. In this initial scoping process, the Commission has also been informed by commitments under Closing the Gap, State and Territory treaty and truth-telling processes, recommendations from the Uluru Statement from the Heart for a Voice to Parliament, the development of a new National Plan to Reduce Violence Against Women and their Children, including the interconnected Aboriginal and Torres Strait Islander Action Plan and the National Framework for Protecting Australia's Children. The report findings connect with the 2022 Jobs and Skills Summit and current Australian government policy regarding skilled migrants, refugees, asylum seekers, and temporary visa holders as well as findings to date from the Disability Royal Commission.

Overview of the findings

During the framework scoping process, the Commission heard that a national anti-racism framework would be pivotal to encouraging institutional change.

> A National Anti-Racism Framework is a significant step towards achieving racial equity in Australia for all, including Aboriginal people. The Department is supportive of such a framework and sees it as a great opportunity for institutional change. — *submission from the Northern Territory Government, Department of the Attorney-General and Justice, NARF project, May 2021 – April 2022*

The Commission consistently heard that a framework and initiatives arising from it could only be effective if the harms of settler colonisation experienced by First Nations peoples were acknowledged. Project participants also urged that addressing the continuing impact of colonisation on First Nations peoples is central to anti-racism efforts in Australia and that the success of a framework initiative is predicated on recognising Aboriginal and Torres Strait Islander peoples' rights and their leadership in anti-racism initiatives.

The focus in this Report on the experiences of First Nations peoples as a threshold for anti-racist action, recognises the inviolability of human rights. It recognises that these rights may not be taken away at any time or infringed in any way and must be fully respected and defended. As former Race Discrimination Commissioner and Aboriginal and Torres Strait Islander Social Justice Commissioner Professor Tom Calma AO has observed, this is a matter of the 'inherent dignity and the equal and inalienable rights of *all* members of the human family'.[10]

Promoting the rights of First Nations peoples and communities will foster a more equitable and just society for all. In the words of Professor Megan Davis 'when we look around the world at other comparative Indigenous populations, recognition in the legal structures and frameworks of the state has a flow on effect that benefits not just Aboriginal peoples, but the broader population as well'.[11]

The Commission also received feedback that the framework needs a definition of racism that reflects a nuanced and intersectional understanding of racism, is community-centric, and that acknowledges First Nations peoples' experiences. Participants also called for enhanced visibility and responses at the intersection of different forms of discrimination. Participants stressed that understanding racism only through the category of race does not address its breadth and complexity.

The Commission identified three consistent cross-cutting themes across the feedback from all project participants. These were the need for data, education and awareness raising, and cultural safety. Three sector-specific themes were also identified. These related to the role of media, discrimination within the justice system, and the need for enhanced access to legal protections.

Next steps

The findings from this initial scoping process for a national anti-racism framework provide the basis for further actions to guide its continued development. The Commission intends to continue to facilitate the further development of a framework via a human-rights approach, with cultural safety and accessibility as key priorities. Ultimately, a strong framework will be one that reflects a coordinated, shared vision to meaningfully tackle racism, promote racial equality, ensure access to rights, and foster a cohesive sense of belonging for all Australians.

[1] Reconciliation Australia, *2020 Australian Reconciliation Barometer* (Summary Report, November 2020) 5 <https://www.reconciliation.org.au/wp-content/uploads/2021/02/Australian_Reconciliation_Barometer_-2020_Summary-Report_web_spread.pdf>.

[2] Andrew Markus, *Mapping Social Cohesion: The Scanlon Foundation Surveys* (Report, Scanlon Foundation Research Institute, 2021) 30 <https://scanloninstitute.org.au/sites/default/files/2021-12/Mapping_Social_Cohesion_2021_Report_0.pdf>.

[3] Andrew Markus, *Mapping Social Cohesion: The Scanlon Foundation Surveys* (Report, Scanlon Foundation Research Institute, 2021) 30 <https://scanloninstitute.org.au/sites/default/files/2021-12/Mapping_Social_Cohesion_2021_Report_0.pdf>.

[4] Nicholas Biddle et al, *Research Note: Asian-Australian experiences of discrimination* (Research Rreport, ANU Centre for Social Research and Methods, September 2019) <https://csrm.cass.anu.edu.au/sites/default/files/docs/2019/9/Asian-Australian_experiences_of_and_attitudes_towards_discrimination_-_Research_Note_10092019.pdf>.

[5] Derya Iner, *Islamophobia in Australia 2018-2019* (Report No 3, 2019) 12 <https://researchoutput.csu.edu.au/ws/portalfiles/portal/208330970/Islamophobia_Report_3_2022_LR_Spreads_RA.pdf>.

[6] The Executive Council of Australian Jewry, *Report on Antisemitism in Australia* (Report, 2021) 6 <https://www.ecaj.org.au/wordpress/wp-content/uploads/ECAJ-Antisemitism-Report-2021.pdf>.

[7] Australian Human Rights Commission, *Implementing UNDRIP: Australia's third UPR* (2021) <https://humanrights.gov.au/sites/default/files/2020-10/implementing_undrip_-_australias_third_upr_2021.pdf>.

[8] Australian Human Rights Commission, *Implementing UNDRIP: Australia's third UPR* (2021) <https://humanrights.gov.au/sites/default/files/2020-10/implementing_undrip_-_australias_third_upr_2021.pdf>.

[9] 'Building a Foundation for Change: Canada's Anti-Racism Strategy 2019-2022', *Government of Canada* (Web Page) <https://www.canada.ca/en/canadian-heritage/campaigns/anti-racism-engagement/anti-racism-strategy.html>.

[10] Tom Calma, 'Sorry' (Speech, Customs House Library, 11 December 2007) <https://humanrights.gov.au/about/news/speeches/essentials-social-justice-sorry> (transcript); <https://humanrights.gov.au/sites/default/files/content/podcasts/essentials_sorry20071211.mp3> (audio) (emphasis added).

[11] ABC Australia, 'The Voice to Parliament: Megan Davis | 10 minute Genius - Ep 6 | ABC Australia' (YouTube, 25 January 2022) 01:12–01:22 <https://www.youtube.com/watch?v=cHoFpymGBKM>.

A human rights-based approach

The Commission's development of a national anti-racism framework is guided by a human rights-based approach, informed by the principles of participation, accountability, non-discrimination and equality, empowerment and legality, as well as being guided by Australia's international obligations.[1] While human rights law, principles and standards look at what should be done to achieve freedom and dignity for all, a human rights-based approach considers how this is to be achieved.[2]

For the development of a national anti-racism framework this has meant recognising the knowledge and experiences of First Nations peoples and those from other negatively racialised communities as central, and best enabling and ensuring their input in shaping the vision, outcomes, and strategies for the Framework.

The Commission aims to incorporate these principles into the national anti-racism framework's core components and in its suggested process solution which will progress the development of the framework in a community-centric, culturally safe, and co-design approach.

Method

Overview

The initial scoping phase for a national anti-racism framework, from May 2021 through April 2022, consisted of two key approaches: consultations and a submissions process. First Nations peak and community organisations and service providers were also consulted in an ongoing advisory capacity during this period, and a Multicultural Advisory Group and Commonwealth Government Advisory Group were established. Other processes included seeking external feedback from peak and community organisations on report drafts and consideration of how best to reflect community priorities and needs.

Working with limited resources meant that comprehensive and extensive consultation with community, and, in particular, First Nations communities, was not possible during this initial scoping phase. However, these findings provide important groundwork for the next phase of the framework development, which, with the necessary resourcing, will better enable culturally safe and comprehensive community engagement in developing Australia's first National Anti-Racism Framework.

Multicultural Advisory Group

A Multicultural Advisory Group (MAG) was established to harness intersectional expertise across various organisations. Member organisations work intimately with negatively racialised communities and include migrant, refugee and settlement peak organisations as well as faith-based organisations and service providers with a focus on multicultural communities and/or policy and race related advocacy. The Multicultural Advisory Group provided overall guidance on the framework development, design, and implementation to support existing work of peak bodies and communities, assistance with community engagement where needed, and feedback on relevant draft deliverables. Two meetings of the MAG during the initial scoping process were held in addition to email correspondence, especially around the review of draft materials, and one-on-one meetings with members on specific matters such as approaches to community consultations and the submissions process.

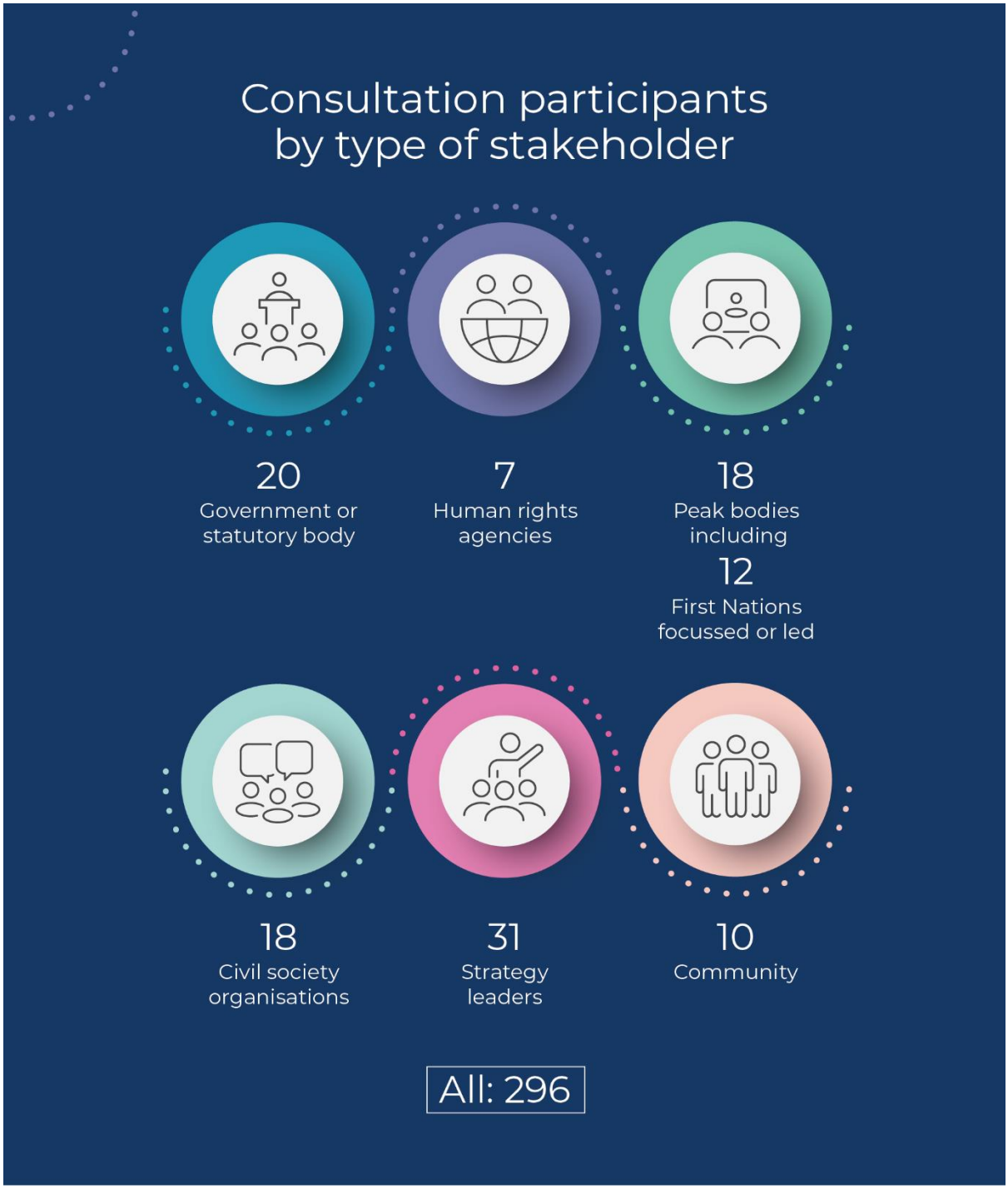
Commonwealth Government Advisory Group

The Commonwealth Government Advisory Group (CGAG) consisted of representatives from various Federal Government departments, agencies, and institutions. The Commonwealth Government Advisory Group assisted with network and community consultations and distributing the call for submissions, contributed to an inclusive map of stakeholders including key organisations and services, provided the Commission with information about relevant related policies, programs and initiatives, and identified additional resources to assist with the framework development. The CGAG met on two occasions during this first phase of the project, and representatives engaged with the Commission's work on the framework regularly via email correspondence, and one-on-one briefings.

Consultations

The Commission sought to consult community organisations, service providers, government departments and agencies, and leaders across the outcome areas proposed in the initial Concept Paper. Relevant stakeholders were identified through previous Commission work, the MAG and CGAG, desktop research, and following suggestions from consultation participants about other parties that should be engaged in the process.

Consultations were primarily undertaken online, due to COVID-19 restrictions, as well as resourcing constraints. Broadly, the consultation aims were to provide a platform for participants to contribute to a national conversation about anti-racism and equality principles, approaches, and practices in Australia and identify what is needed at an individual, community, institutional, and systemic level to support anti-racism work across the country. The Commission facilitated approximately 100 consultations with 300 organisations between May 2021 and April 2022.


Consultation participants by type of stakeholder
20
Government or statutory body
7
Human rights agencies
18
Peak bodies including
12
First Nations focussed or led
18
Civil society organisations
31
Strategy leaders
10
Community
All: 296


Consultations by location
NORTHERN TERRITORY
4
WESTERN AUSTRALIA
5
QUEENSLAND
13
5
SOUTH AUSTRALIA
9
VICTORIA
17
NEW SOUTH WALES
2
TASMANIA
National: 48

The Commission partnered with some organisations, departments, and agencies to facilitate ten national community consultations. Participants were invited to register for an online consultation as an individual or on behalf of an organisation. Consultations were unpaid and required roughly 1.5 hours of a participant's time. Community consultation questions included why participants believe racism needs to be addressed in Australia, how racism could be addressed, what difficulties arise in addressing racism, what they would like to see included in a national anti-racism framework, and what an inclusive and equal society looked like to them.



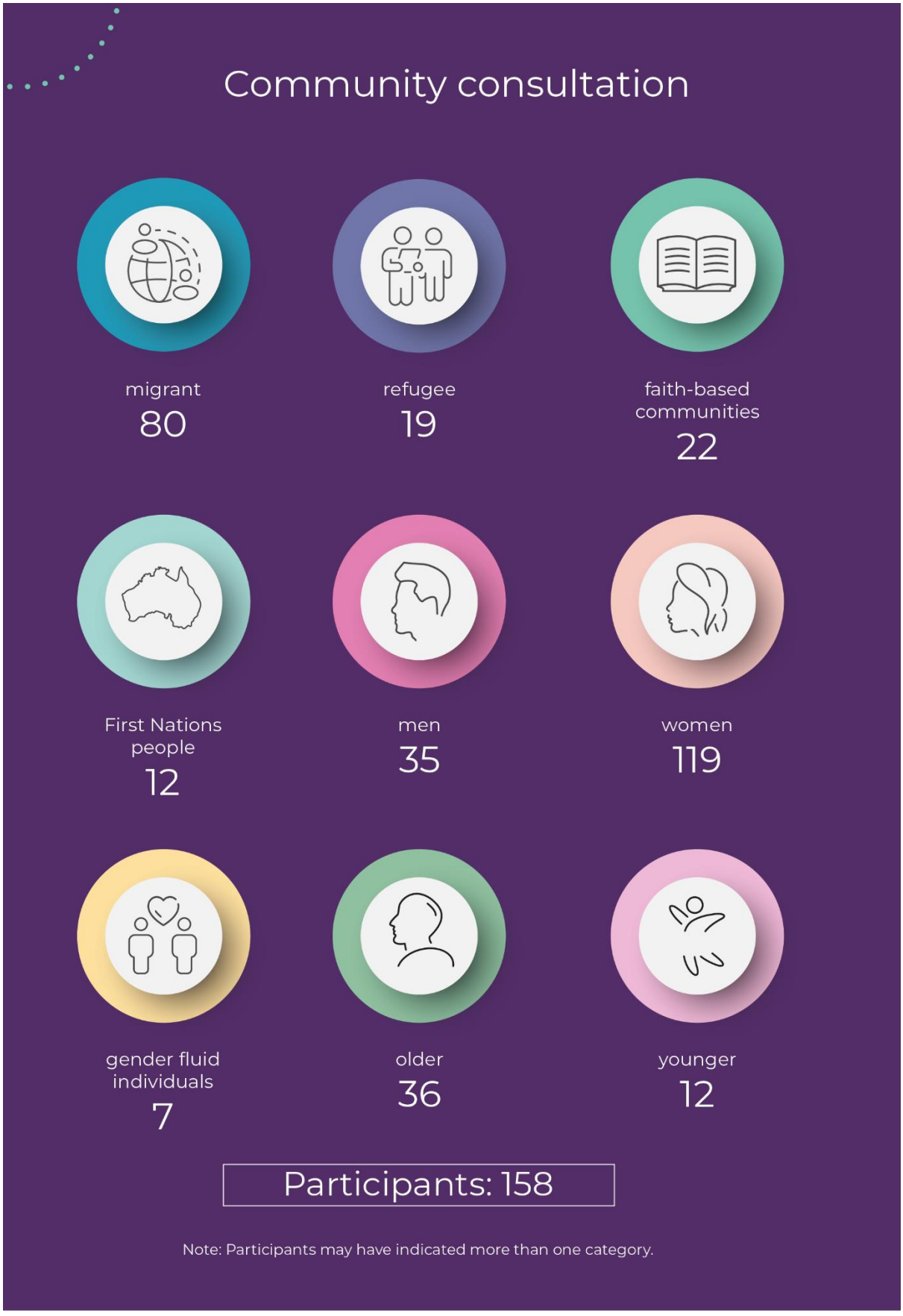
Cultural safety and a trauma-informed approach were a priority throughout the consultation process and particularly in the community consultations. Details on the consultation aims were provided prior to the session and consent was sought from participants. The confidential nature of experiences and priorities shared amongst the group were reinforced ahead of time, and privacy information was provided. Safety information was provided prior to and at the start of the session, and a facilitator or representative from a partner community/peak organisation or agency was nominated as a support person. Advice from partner organisations led to the inclusion of content providing information on the Australian Human Rights Commission, its work, and complaints processes in support of this. A safety protocol was implemented for consultation facilitators.

Notes were recorded by Commission facilitators during the consultations. Participants were advised that they could request that parts of the conversation be omitted from the notes. De-identified transcripts were offered to participants and made available upon request. Key information from the consultations was extracted into a consultation log.

Once consultations were complete, all participants received a follow-up email which outlined the key points of discussion, invited further discussion with the Commission facilitators, and provided an indication of the Commission's next steps in progressing the framework development. Community consultation participants were also invited to complete a voluntary online survey on their experience of the consultation process.

> Perhaps we could have been guided into the very specific, personal and actual experiences of individuals: I must admit I was so surprised and encouraged by this as it became apparent during the consultation. I really got the feeling that the whole process was guided by the participants, rather than the commission's agenda. Well done. Your kindness and genuine interest has really given me such a boost! — *community consultation survey respondent, NARF Project, May 2021 – April 2022*

Overall, 17 responses to the surveys were received, including from community members and/or representatives from community organisations, service providers, local government agencies, migrant, refugee, settlement, and/or faith-based peak bodies, as well as representatives from the corporate sector. Members of LGBTQIA+ communities, older people, and those living with a disability were amongst those who responded to the survey. Survey participants indicated that they resided in NSW, SA, and WA. The Commission was unable to determine an accurate picture of the diversity of participants in community consultations overall, given the small number of responses to the survey. However, registrations indicate that the 158 participants who registered to take part in consultations represented a range of community groups, including, but not limited to people from migrant (80), refugee (19) or faith-based communities (22), First Nations peoples (12), men (35), women (119), and gender fluid individuals (7), those from both older (36) and younger (12) age categories, as well as people engaged in a diversity of occupations. Those who registered indicated that they or their organisation were based in the following locations: ACT: 10 NATIONAL: 4 NSW: 40 NT:1 QLD: 5 SA: 9 TAS: 5 VIC: 17 WA: 39 (Prefer Not to Say: 28).


Community consultation
migrant
80
refugee
19
faith-based communities
22
First Nations people
12
men
35
women
119
gender fluid individuals
7
older
36
younger
12
Participants: 158
Note: Participants may have indicated more than one category.


Those who registered indicated that they or their organisation were based in the following locations:
NORTHERN TERRITORY
1
WESTERN AUSTRALIA
39
QUEENSLAND
5
40
NEW SOUTH WALES
ACT
10
9
SOUTH AUSTRALIA
17
VICTORIA
5
TASMANIA
National: 4
Prefer not to say: 28

Amongst survey respondents, a high level of satisfaction was indicated regarding the meaningfulness, cultural safety, and inclusivity of the consultations, with urgent calls for more time to be granted if conversations were to take place in the future.

> Not enough time to unpack the issues, the breakout group would work better after the introduction of the framework. It would help to encourage more diverse voices and participation. — *community consultation survey respondent, NARF Project, May 2021 – April 2022*

> More time to discuss, one hour is just too short to discuss issues of anti-racism. — *community consultation survey respondent, NARF Project, May 2021 – April 2022*

The Commission also developed a Conversation and Consultation Guide in collaboration with members of the MAG for organisations that wished to host their own consultations and report findings back to the Commission. This Guide enabled wider engagement in the process, including an opportunity to undertake consultations in a culturally safe way if Commission attendance at the consultation would not be appropriate. The Guide provided an overview of the Concept Paper, a detailed list of questions that organisations could draw on in their consultations, suggestions for consultation formats, and prompts to support consultations that are rights-based, safe, and inclusive. It also included relevant templates such as a consultation feedback template, a sample Information Statement, as well as guidance on combatting myths and misconceptions relevant to racism and anti-racism. At least five organisations opted to take this approach and reported their findings back to the Commission, whilst others used the Guide to support their submission on the framework.

Public submissions

A public submissions process was undertaken from October 2021 to February 2022. Its aim was to invite individuals, agencies, and organisations with expertise and knowledge of anti-racism strategies to provide input on the framework including guiding principles, the outcomes the framework should achieve, the issues the framework should engage with and strategies for addressing these, as well as best practice examples of anti-racism initiatives. Participants were invited to visit the Commission 'Have Your Say' webpage, where an online form prompting reflection on these topics was hosted, and where participants could upload their own submission in any format or language. The option to make an anonymous submission was also made available.



This process was promoted through the Commission's website, online social media channels, and newsletter – the *Racism. It Stops With Me* campaign newsletters – and via emails to Commission stakeholders, who were also invited to share the call via their networks. To support wide engagement, social media tiles calling for submissions and directing participants to the Commission's 'Have Your Say' page were translated into the top 20 languages spoken other than English in Australia, publicised on Commission channels and distributed to stakeholders for their own use. A Submissions Guide was distributed, with information on the Concept Paper, scoping process, how to make a submission, and detail on the feedback received to date in addition to definitions of key terms. An accessible Easy-English Guide to Submissions was also made available.

In total the Commission received 164 submissions.

Submissions by type of stakeholder



An Aboriginal and/or Torres Strait Islander knowledge holder and/or community member with lived experience of racism: **10**



A community member from a migrant, refugee and/or faith-based background with lived experience of racism: **49**



An Aboriginal and/or Torres Strait Islander representative from a peak or community organisation: **10**



A representative from a migrant, refugee, settlement or faith-based peak or community organisation: **30**



A representative of a Commonwealth, State or Local Government agencies and department: **23**



A representative of a human rights agency, advocacy organisation or a legal practitioner: **57**



A practitioner and/or expert in the identified outcome areas of the Framework: **11**



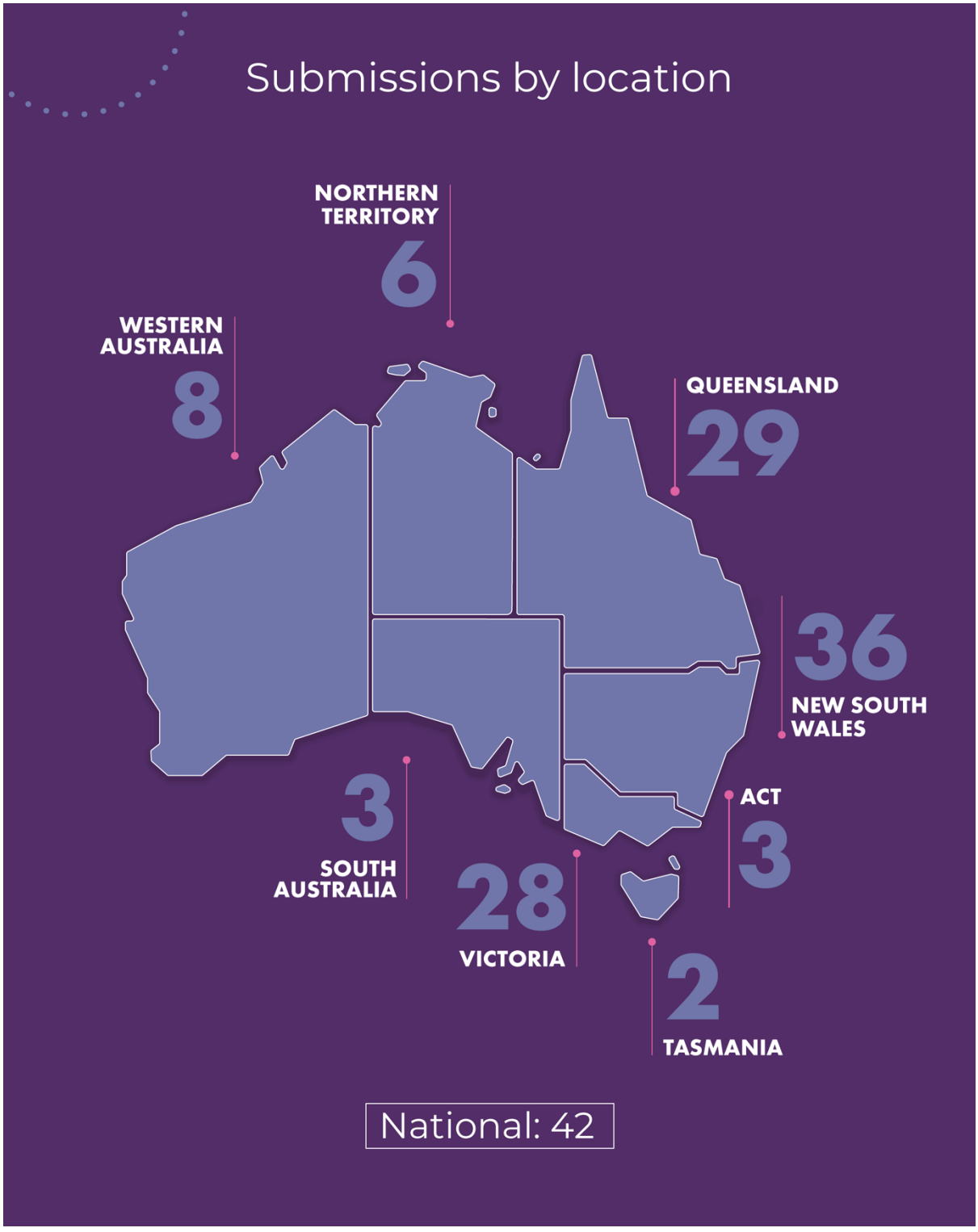
A researcher in the identified outcome areas of the Framework: **18**



From an individual not affiliated with an organisation: **62**

Total submissions: 164

Other: 17


Submissions by location
NORTHERN TERRITORY
6
WESTERN AUSTRALIA
8
QUEENSLAND
29
36
NEW SOUTH WALES
ACT
3
3
SOUTH AUSTRALIA
28
VICTORIA
2
TASMANIA
National: 42

Analysis of the findings

Through a thematic analysis of the consultation notes and transcripts, and the submissions, the Commission identified several key findings. This included findings in relation to the principles that should inform a national anti-racism framework, overarching themes, and sector-specific feedback. These are documented in this report.

During the analysis and writing process, supporting research and analysis on race in the Australian context, and the use of language in the work of anti-racism were undertaken. The Commission also drew upon current research and thinking to further articulate priorities and concerns shared with the Commission via consultations and submissions.

Drafts of the report findings were sent for external review by MAG members and representatives from First Nations peak organisations. The allocation of reviewers for each of the findings was determined by the expertise of the delegated reviewers. The feedback was incorporated if it was deemed to strengthen claims made in the findings, if new research was shared or if gaps were identified for particular negatively racialised groups.

Support for the framework

Many organisations, community members, and government agencies who participated in the project's initial scoping phase agreed on the vital need for a national anti-racism framework. The Commission heard that a national anti-racism framework would be pivotal to encouraging institutional change.

> The proposed National Anti-Racism Framework (the Framework) represents the types of initiatives that will bring about a proactive commitment to challenging systemic racism and fostering trust and cohesion in our communities. — *submission from the Australian Multicultural Foundation, NARF Project, May 2021 – April 2022*

> FECCA congratulates the Australian Human Rights Commission team on their efforts in developing the Proposed Anti-Racism Framework, their engagement with peak bodies representing multicultural communities, and their commitment to reducing racism and discrimination in Australia. FECCA supports the development of a national anti-racism framework and has multiple times lobbied for a federal commitment to a national anti-racism framework followed by appropriate resources to ensure a broad-reaching, accessible and evidence-based framework. Racism and discrimination undermine any efforts made to encourage belonging, inclusion and participation. A national anti-racism framework in Australia is a necessary step in addressing the existing and increasing racism and discrimination people experience daily in this country. — *submission from the Federation of Ethnic Communities' Councils of Australia, NARF Project, May 2021 – April 2022*

Limited but direct consultation survey feedback was received regarding the national anti-racism framework itself. Thirteen of the 17 total respondents agreed that there is a need for a coordinated, national effort to address racism and that the framework will provide support for anti-racism initiatives. Key concerns and points of focus primarily concerned resource limitations, the need for government accountability, and the importance of centring the voices of people with lived experiences of racism.

> I feel the new Framework will become just like all before it, where governments put it in bottom drawer and nothing happens – hopefully I can be proved wrong! — *community consultation survey respondent, NARF Project, May 2021 – April 2022*

> The Framework needs to be properly resourced and sufficient staff and budget available to implement. — *community consultation survey respondent, NARF Project, May 2021 – April 2022*

> There is a need to ensure accountability measures are implemented with government agencies and providers, otherwise the framework will not lead to meaningful change. — *community consultation survey respondent, NARF Project, May 2021 – April 2022*

> The framework principles need to centre on the voices and experiences of people who experienced racism. People with lived experience. — *community consultation survey respondent, NARF Project, May 2021 – April 2022*

Ensuring a framework's success

Political will and adequate resourcing

The underfunding of anti-racism initiatives has far-reaching consequences. Without sufficient resources, effective work to identify and address racism is compromised. The Commission heard how anti-racism work can often only be progressed through the unpaid labour of those most harmed by racism and how the lack of necessary resources limits the reach into negatively racialised communities. For example, in situations where translation or community participation cannot be facilitated. In practice, underfunding results in less significant initiatives which can, in turn, negatively affect the lives of community members.

> The space of multiculturalism and tackling racism has a common theme of being underfunded and not having adequate resourcing to execute projects ethically. — *consultation with government agency, NARF project, May 2021 – April 2022*

Participants also asserted that sufficient government funding demonstrates political commitment to anti-racism work and is key to this work's longevity and sustainability.

> The onus needs to be at a federal level. Political will needs to be transparent and in focus. — *youth consultation with migrant-women focussed organisation, NARF project, May 2021 – April 2022*

Although the Commission received a great deal of support for the Framework, there was also consistent feedback from participants regarding the limitations of its consultation process. Due to scarce resources, community consultations undertaken during the scoping phase were conducted with the generous support of community and government partners. However, this meant community consultations were limited to just 10 in total. The lack of comprehensive community engagement meant that there were many communities for whom this process was not accessible.

> A national framework needs adequate funding for effectiveness. — *submission from the Refugee Council of Australia, NARF project, May 2021 – April 2022*

Genuine engagement with community

> The importance and value of community engagement has been well-established in literature and is considered best-practice in policy making.[3] This is strongly mirrored in SCOA's experience. We observe that when approaches to addressing issues are informed by the insights of those directly affected, they are most likely to be effective. Such engagements ensure resources are targeted where needed most and can productively question dominant framings of issues and solutions. — *submission from the Settlement Council of Australia, NARF project, May 2021 – April 2022*

Project participants raised that those who experience the negative effects of racism are best equipped to find solutions. Comprehensive community engagement was emphasised, as was the importance of its culturally safe facilitation. Such an approach would extend accessibility to 'hardly reached' communities, such as those experiencing barriers due to English language proficiency or new migrant status. Participants also raised the importance of co-design being part of community engagement processes, which includes affected people in decision-making processes around development, design, and implementation. This was seen as a way to genuinely reflect community feedback and produce policies which respond directly to the priorities voiced.

> The best person to find the solutions to problems are those who are experiencing the issues. — *consultation with First Nations organisation, NARF project, May 2021 – April 2022*

Frustrations were raised regarding processes where communities are often consulted but no responding changes are made. It was also noted that there is often a disconnect on the ground between government intentions and how policies function in practice. This was characterised as a reflection of the state of relationships between negatively racialised communities and government bodies, namely one where the relationship is neither genuine nor equal.

> It's never a genuine partnership, the community has to demonstrate their value, but the government never has to show their value. — c*onsultation with First Nations organisation, NARF project, May 2021 – April 2022*

Accountability

Accountability was a recurring theme in both consultations and submissions. The Commission consistently heard that unless there are mechanisms in place to hold governments and organisations accountable, an anti-racism framework will be ineffectual.

There have been numerous occasions when international human rights bodies have recommended that Australia improve its racial discrimination laws. Australia has not acted on these recommendations. For example, responding to Australia's eighteenth to twentieth periodic reports to the United Nations Committee on the Elimination of Racial Discrimination (CERD), the CERD noted:

> The Committee regrets the State party's decision not to adopt a federal human rights act, as recommended during the national human rights consultation of 2009[4]

> The Committee is concerned that protection against racial discrimination is still not guaranteed by the Constitution, in accordance with article 4 of the Convention, and that sections 25 and 51 (xxvi) of the Constitution in themselves raise issues of racial discrimination[5]

The scoping phase of the project also identified the continued failure of successive governments to implement fully the recommendations outlined in the *Bringing Them Home Report*[6] and the Royal Commission into Aboriginal Deaths in Custody.[7] Participants felt grave concern that even while these powerful evidence-based reports exist, government implementation of the recommendations has not occurred or has at best been piecemeal and ad hoc.

> A National Anti-Racism Framework, as it relates to First Nations issues, must refer to the numerous studies, reports and recommendations that have been released over the decades since RCIADIC with the intent of protecting or responding to Aboriginal and Torres Strait Islander community interests. The National Anti-Racism Framework must be the vehicle to actualise the solutions that have been established for so long. — *submission from Australians for Native Title and Reconciliation (ANTaR), NARF project, May 2021 – April 2022*

Project participants suggested tangible measures to improve accountability in the context of anti-racism, including annual audits, measures to embed equity within legal structures, and public reporting of data, with independent oversight. Adopting such an approach can also encourage accountability in future policy and program reform. Consultation participants and submissions outlined how further actions could be measured against national accountability measures.

> We support the development of the National Anti-Racism Framework as a critical next step in addressing racism in Australia and embedding accountability measures for all areas of Australian society to take action on. *— submission from Reconciliation Australia, NARF project, May 2021 – April 2022*

The importance of co-design

The importance of centring the lived experiences and firsthand knowledge of community was voiced to the Commission as vital in progressing a national anti-racism framework. Co-design is emerging in policy environments as a best practice standard. In the context of a national anti-racism framework, co-design involves not only the active participation of community in the design and progression of the framework, but an asserted *emphasis* on their lived experience, firsthand knowledge, and unique insights as experts in their own lives and experiences.[8] By drawing upon ideas of participation, collaboration and empowerment, co-design can be a powerful 'act of collective creativity' that can meaningfully target longstanding issues such as racism.[9] A co-design approach to undertaking policy upholds the principles outlined in a human rights-based approach, encompassing participation and empowerment, in particular, as the foundation to effective policy and reform.

> Co-Design is a collaborative process that involves First Nations peoples and communities' input and advice on programs and policies that affect them. It entails genuine community engagement and representation throughout each step of the development process. Co-design upholds principles of self-determination by empowering First Nations peoples to have a greater say in the planning and implementation of policies and programs that concern their communities. *— submission from First Nations organisation, NARF project, May 2021 – April 2022*

Best Practice Partnership – Closing the Gap

Partnerships with communities and community-led organisations that are impacted by the development of policies were raised as crucial to ensuring the creation and implementation of constructive mechanisms that speak directly to community needs, especially for First Nations communities. Australia's National Agreement on Closing the Gap develops partnerships through a co-design approach with an emphasis on self-determination, as well as community-led and collaborative processes.[1] The scope for longevity of these partnerships and effective policy implementation enabled by the Agreement were also seen as a key priority.

> The Framework should adopt the National Agreement's principles of self-determination, community-led co-design and long-term partnerships with Aboriginal and Torres Strait Islander communities in the development of programs and policies that affect them. The Framework should be explicitly aligned with the National Agreement's: Priority Reform 1 – Formal Partnerships and Shared Decision-Making & Priority Reform 2 – Building the Community-Controlled Sector — *submission from NACCHO, NARF project, May 2021 – April 2022*

The Commission was told that co-design and partnership mechanisms are valuable because they allow for local voices and needs to be directly heard and accurately reflected in policymaking decisions. Participants also voiced that without these processes, policies, programs, and projects fall short of their own aspirations and have minimal positive impacts.

> The classic 'draft – consult – release – hope for the best' consultation approach has proven to have had little positive impacts on the ground — *consultation with civil society network, NARF Project, May 2021 – April 2022*

> Aboriginal and Torres Strait Islander people must be parties to equal partnerships in joint planning with government and other organisations at the local level and at the national, state and territory levels. Partnerships must be accountable and representative. In these partnerships, the voices of Aboriginal and Torres Strait Islander people, communities and organisations must hold as much weight as those of governments. This partnership approach should be reflected in the writing of the Anti-Racism Framework — *submission from NACCHO, NARF project, May 2021 – April 2022*

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1. Closing the Gap, National Agreement on Closing the Gap At a Glance <https://www.closingthegap.gov.au/national-agreement>.

Australia's National Disability Strategy 2021-2031

A further example of emerging good practice is demonstrated by Australia's National Disability Strategy for 2021-2031. As stated in the accompanying report, the National Disability Strategy has a vision 'for an inclusive Australian society that ensures people with disability can fulfil their potential, as equal members of the community.'[1]

The key to the successful implementation of this Strategy is adherence to Article 3 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), with one of the Strategy's guiding principles speaking to non-discrimination.[2] This is in alignment with the principles of a human rights-based approach.

Additionally, Australia's National Disability Strategy 2021-2031 has a focus on ongoing engagement with those who live with a disability, their carers, and organisations within the sector.[3] This focus takes a human rights-based approach by incorporating the principle of participation through a consultative medium.

This example demonstrates the success of policy, strategy, and reform mechanisms through the utilisation of a human rights-based approach. A national anti-racism framework would benefit from incorporating such principles and standards, not only to facilitate effective anti-racism mechanisms, but also to genuinely adhere to the desires of community which has on countless occasions emphasised to the Commission the need for genuine community engagement and inclusion in the progression of this Framework.

1. Department of Social Services, *Australia's Disability Strategy 2021-2031* (Report, December 2021) 5.
2. Department of Social Services, *Australia's Disability Strategy 2021-2031* (Report, December 2021) 38.
3. Department of Social Services, *Australia's Disability Strategy 2021-2031* (Report, December 2021) 49.

[1] 'Human rights based approaches', *Australian Human Rights Commission* (Web Page) <https://humanrights.gov.au/our-work/rights-and-freedoms/human-rights-based-approaches#:~:text=A%20human%20rights%20based%20approach,barriers%20to%20realising%20their%20rights>.

[2] 'Human rights based approaches', *Australian Human Rights Commission* (Web Page) <https://humanrights.gov.au/our-work/rights-and-freedoms/human-rights-based-approaches#:~:text=A%20human%20rights%20based%20approach,barriers%20to%20realising%20their%20rights>.

[3] Paula Peterson et al, 'Community engagement with refugee-background communities around health: the experience of the Group of 11' (2019) 25(2) *Australian Journal of Primary Health* <https://www.publish.csiro.au/py/PY18139>.

[4] Committee on the Elimination of Racial Discrimination, Concluding observations on the 18th to 20th periodic reports of Australia: Committee on the Elimination of Racial Discrimination, UN CERD, 94th sess, UN Doc CERD/C/AUS/CO/18-20 (26 December 2017) 2 [5].

[5] Committee on the Elimination of Racial Discrimination, Concluding observations on the 18th to 20th periodic reports of Australia: Committee on the Elimination of Racial Discrimination, UN CERD, 94th sess, UN Doc CERD/C/AUS/CO/18-20 (26 December 2017) 2 [7].

[6] Australian Human Rights Commission, *Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Report, 1997) <https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf>.

[7] Commissioner Elliott Johnston, QC, *Royal Commission into Aboriginal Deaths in Custody National Reports* (Final Report, 15 April 1991) <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/index.html>.

[8] Emma Blomkamp, 'The Promise of Co-Design for Public Policy' in Michael Howlett and Ishani Mukherjee (eds), *Routledge Handbook of Policy Design* (Routledge, 2018) 59, 63.

[9] Elizabeth B-N Sanders and Pieter Jan Stappers, 'Co-creation and the new landscapes of design' (2008) 4(1) *CoDesign* 5, 6. See also Emma Blomkamp, 'The Promise of Co-Design for Public Policy' in Michael Howlett and Ishani Mukherjee (eds), *Routledge Handbook of Policy Design* (Routledge, 2018) 59, 60.

Feedback on the concept paper for a national anti-racism framework

First Nations first

Across the National Anti-Racism Framework project consultations and public submissions, the Commission received staunch and consistent feedback that a framework must prioritise the experiences of First Nations peoples. This feedback came from First Nations focussed and led organisations and community members, as well as from non-Indigenous organisations and community members. There was clear consensus that the experiences of First Nations peoples, historical and ongoing, are threshold issues for a national approach to anti-racism.

A significant number of consultation participants and those who made submissions to the Commission during the initial scoping process noted that a national anti-racism framework must acknowledge the ongoing impacts of European colonisation on First Nations peoples. Recognition of Australia's status as a colonised state based on racial policies was identified as crucial. Many flagged that past discriminatory policies and laws, such as the White Australia Policy, have not been acknowledged and their impacts addressed; nor has current discrimination been characterised as connected to, and a direct result of, this history.

> Racism is one of Australia's biggest exports. From the 1897 Queensland Protection Act which informed South African apartheid legislation, to the development of brutal refugee detention policies which have been taken up around the world, this nation-state has been a leader in maintaining a racially divided world. It must be held accountable not just for the racist violence it enacts and legitimises here, but its active support for racist and colonial regimes elsewhere, such as in Palestine and West Papua. Institutions that are part of the Australian state must confront this legacy and ongoing reality before assuming they have the moral authority to mitigate racism in Australian society. — *submission from Sisters Inside and the Institute for Collaborative Race Research, NARF project, May 2021 – April 2022*

First Nations peoples have long advocated for truth-telling as foundational to addressing racism in the Australian context. Professor Megan Davis and Professor Gabrielle Appleby have argued that the absence of genuine acknowledgement of the historical realities of First Nations peoples' experiences serves to perpetuate political and community sentiments of indifference and denial of Australia's history, hindering reconciliation efforts.[1]

The Commission's *Bringing Them Home* report and, more recently, Commissioner June Oscar's *Wiyi Yani U Thangani* Report have amplified community calls for truth-telling in an anti-racism context.

> The truth is that the past is very much with us today, in the continuing devastation of the lives of Indigenous Australians. That devastation cannot be addressed unless the whole community listens with an open heart and mind to the stories of what has happened in the past and, having listened and understood, commits itself to reconciliation. — *Bringing Them Home Report*[2]

> If we are to find the right pathway forward, the facts about Australia's past and continuing mistreatment of our peoples must be fully incorporated into Australia's national narrative. — *Wiyi Yani U Thangani Report*[3]

First Nations organisations noted that anti-racism initiatives, and associated multicultural policy and strategies, have so far not adequately addressed this history and its ongoing impacts, despite long-standing advocacy from First Nations communities. First Nations participants said they felt consistently sidelined by policymaking in these areas.

> First Nations people having been crying out about all of these issues since the beginning – until it's a women's issue or multicultural issue people don't care. We are consistently put to the side. — *consultation with First Nations organisation, NARF project, May 2021 – April 2022*

First Nations organisations engaged in this process shared their concerns that without recognition of First Nations sovereignty and truth-telling, Aboriginal and Torres Strait Islander peoples continue to be treated as a 'problem to be solved' in terms of policies and programs.

> Many government departments and agencies operate on a deficit model. Assumptions of deficit have characterised relations between Aboriginal and Torres Strait Islander and other Australians since colonisation, with non-Indigenous 'truths' underpinning notions that Aboriginal and Torres Strait Islander people are a 'problem to be solved'. — *submission from the National Aboriginal Community Controlled Health Organisation, NARF project, May 2021 – April 2022*

The Lowitja Institute, Australia's National Institute for Aboriginal and Torres Strait Islander Health Research, argues that narratives of negativity and failure contribute to the continuation of race-based discourses that have long been used to stigmatise and disenfranchise Aboriginal and Torres Strait Islander peoples.[4] Professor Chelsea Watego asserts that the constant characterisation of First Nations peoples as the source of the problems affecting their communities, focusses on the effect rather than the external influences that are the major determinants of these challenges.[5] It is argued that these negative characterisations operate to conceal that settler colonisation is responsible for the problems identified and uses these 'outcomes' to justify continued interventions and marginalisation.[6]

An approach that centres First Nations sovereignty and truth-telling would refocus the responsibility for these harms on the structures and institutions responsible. It would also acknowledge the agency of First Nations communities in determining where their own best interests lie. First Nations peoples' distinct, complex culture and worldviews[7] are integral in addressing the needs of First Nations communities. Solutions determined without consulting the appropriate group are inevitably ineffective and unsuitable. Traditional western approaches have not worked and 'sit at the very heart of why attempts by governments to address disadvantage over the past several decades have continued to fail'.[8]

Only through First Nations peoples' engagement and direct participation can the aspirations and realisations of their unique and collective rights be achieved and maintained. Taking this kind of strengths-based approach has important implications across the work of anti-racism initiatives, including data collection on racism and anti-racism, and service responses to redress harms. These are discussed further in relevant sections of the Report.

During the National Anti-Racism Framework project initial scoping phase, the Commission also consistently heard about the integral part measures to strengthen the legislative framework for the right to self-determination of First Nations peoples must play in the recognition of First Nations sovereignty and truth-telling. There was strong support from participants, including government agencies, that a national anti-racism framework should support and align with the recommendations of the Uluru Statement from the Heart.

> The EOC encourages government backing for the Uluru Statement to recognise historical and institutional racism, its intergenerational impact and as a tool for building an anti-racism structure that ensures the truth-telling process and gives Aboriginal and Torres Strait Islander Australians a voice in systems from which they have long been excluded. — *submission from Western Australia's Commissioner for Equal Opportunity, NARF project, May 2021 – April 2022*

> ANTAR recommends the Human Rights Commission … ensure that a National Anti-Racism Framework upholds what is outlined in the demands and definitions within documents such as; the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Uluru Statement from the Heart, and the Racial Discrimination Act. It must also pay considerable attention to processes that have previously been deemed successful or unsuccessful by First Nations peoples and communities. — *submission from Australians for Native Title and Reconciliation (ANTaR), NARF project, May 2021 – April 2022*

NAATSIHWP believes that Australia's future looks improved with:

> The full implementation of the Uluru Statement from the Heart as it was intended as a first step to providing increasing opportunities for Aboriginal and Torres Strait Islander peoples to exercise their autonomy and self-determine the futures of communities, children and land. — *submission from National Association of Aboriginal and Torres Strait Islander Health Workers and Practitioners, NARF project, May 2021 – April 2022*

Participant feedback demonstrates it is essential a framework is informed by and aligns with anti-racism initiatives developed by First Nations peoples, upholding First Nations peoples' right to self-determination.

The need for definitions

Feedback from many consultation participants and those who made submissions, pointed to the importance of defining 'racism' for the purposes of the framework. In its Concept Paper about a national anti-racism framework, the Commission recognised that there are different dimensions of racism and racial inequality in Australia and that greater community understanding of racism is needed. Throughout the project the Commission received feedback that current definitions of racism are outmoded, little understood, and do not effectively capture the experience of racial discrimination. Participants outlined that an effective definition must reflect a nuanced and intersectional understanding of racism, one that is community-centric and informed by the ongoing impacts of colonisation. Feedback pointed to the significance of definitions in informing racial literacy, strategic approaches to anti-racism work, as well as in working to build confidence in anti-racism initiatives.

The Commission heard from organisations and individuals that clear definitions of 'race', 'racism' and 'anti-racism' were among the most important components of a national anti-racism framework.

> Clear definitions will be so crucial in providing guidance for government, NGO's and businesses. It is the foundation to building strategies in anti-racism. — *submission from the Lowitja Institute, NARF project, May 2021 – April 2022*

Taking an ecosystem approach

Participants, including government agencies, conveyed the importance of a definition of racism that takes an ecosystem approach.

> [T]he definition of racism must encapsulate the wide range of experiences that people have as a result of individual and systemic racism, and the impact it has on individuals and cultural groups. — *submission from Equal Opportunity Tasmania, NARF project, May 2021 – April 2022*

In addition to supporting effective anti-racism strategies, the operationalisation of a definition that reflects a systemic, intersectional and nuanced understanding of racism would also serve to build confidence in anti-racism initiatives among those who have lived experience of racism.

A focus on the systemic nature of racism

The feedback received by the Commission highlighted that definitions of racism need to adequately address its systemic nature. When definitions of racism explicitly incorporate its systemic dimension, they are better equipped to guide anti-racist efforts because they make visible the non-visible ways racism is perpetuated. Systemic racism is when cultural norms, laws, ideologies, policies and practices result in the unfair treatment of some groups compared to others. While the term 'systemic racism' is used for convenience, it is important to recognise how the systemic nature of racism manifests in different ways for different individuals and communities.

For example, participants in consultations noted that Aboriginal and Torres Strait Islander peoples face ongoing impacts from colonisation through the operation of institutions and structures.

> The definition must clarify that systemic racism is not a symptom of individual racist views, but rather, demonstrate the way that laws, policies and practices are racialised to produce discriminatory outcomes for particular groups based on race, and that this is a key factor contributing to inequitable and harmful outcomes in criminal justice, youth justice, child protection and health systems, as well as housing, economic stability, employment and homelessness. — *submission from the National Justice Project, NARF project, May 2021 – April 2022*

The Commission heard how the inequities experienced by Aboriginal and Torres Strait Islander peoples and other negatively racialised communities are reproduced by settler-colonial systems and structures and are not the result of inadequacies or failures from within these communities. Definitions that bring clarity around the operation of systemic racism as a function of settler-colonialism would address, for example, the 'deficit discourse' that characterises discussion about Aboriginal and Torres Strait Islander communities about disparities in health, the justice system, employment, education, and other socio-economic factors.

The Commission's *Sharing the Stories of Australian Muslims* project also highlighted the ways in which practices and processes by economic, social, and political institutions reinforce Islamophobia at a systemic level.[9] In this project systemic discrimination was identified as a key barrier to seeking employment. Job seekers with Middle Eastern names needed to submit 64% more applications to be granted the same opportunities as an applicant with an Anglo-sounding name.[10] The project findings reflected this with participants indicating that their name acted as a threshold barrier to their job application being considered. They also outlined barriers within the interview process including questions about religious beliefs and how, for Muslim women their headscarves, were often a barrier to finding a job, especially within customer service roles.

Systemic racism arises within the legal system and law enforcement practices. Young African Australians who participated in the Commission's *In our own words* project expressed feelings of being over policed.[11] Participants also noted the involvement mainstream media has in entrenching negative and pervasive stereotypes that preface and support policing practices.[12] These stereotypes shape engagements with the legal system and law enforcement officials and create barriers to the achievement of educational and career aspirations.[13]

The widespread underpayment and workplace exploitation of international students is enabled by systems that permit differential treatment of international students based on their visa status and that amplify other more direct forms of race and age discrimination by employers and co-workers.[14]



During the **2015** financial year, **44.1%** of those on STMP (Suspect Targeting Management Plan) were Aboriginal or Torres Strait Islander – being significantly over-represented across five Local Area Commands (LAC), one of these major LACs being Redfern.[1]

First Nations people are routinely subject to racial profiling by police. Data from **2019** revealed that Aboriginal drivers were far more likely to be given penalties by police, despite cameras revealing infringement levels between Aboriginal and non-Aboriginal drivers to be almost exactly the same.[2]





Gaps in on-the-spot fines varied across different offence types, but in some cases, Aboriginal drivers were found to have **19.2** times more penalties than non-Aboriginal drivers. The same data showed that traffic enforcement involving Aboriginal drivers was leading to cycles of unpaid fines and further police attention.[3]

In June **2020**, Aboriginal and Torres Strait Islander peoples made up **29%** of the prison population.[4]



29%

48%

Aboriginal and Torres Strait Islander youth made up **48%** in Australia's juvenile justice system.[5]



13X



Nationally Aboriginal and Torres Strait Islander peoples are jailed at **13** times the rate of other offenders and are **11** times more likely to be denied bail and to be jailed on remand.[6]

11X



1. Jenny Leong MP, Submission to the Australian Human Rights Commission, National Anti-Racism Framework Project (February 2022) 5.
2. Western Australia Police, *44543320* (Briefing Note, 2019), published in Calla Wahlquist, 'Aboriginal drivers in WA more likely to get fines from police officers than traffic cameras', The Guardian (online at 5 February 2020) 1.
3. Western Australia Police, *44543320* (Briefing Note, 2019), published in Calla Wahlquist, 'Aboriginal drivers in WA more likely to get fines from police officers than traffic cameras', The Guardian (online at 5 February 2020) 1.
4. 'Prisoners in Australia', *Australian Bureau of Statistics* (Web Page, 2020).
5. Australian Institute of Health and Welfare, *Youth detention population in Australia 2020* (Report, 2020) 10.
6. Australian Law Reform Commission, *Pathways to Justice–Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report, 2017) 133.



There have been at least **500** Aboriginal and Torres Strait Islander deaths in custody since the **1991** Royal Commission.[1]



46% of Aboriginal and Torres Strait Islander peoples have a chronic health condition, **17%** have anxiety, and **13%** have depression.[3]



From **2015–2017**, life expectancy at birth for Aboriginal and Torres Strait Islander peoples was **8.6** years less than the non-Indigenous population for men and **7.8** years less for women.[2]



In **2018** about one in four Indigenous students in Years **5**, **7** and **9**, and one in five in Year **3**, remained below national minimum standards in reading. Between **17%** –**19%** of Indigenous students were below the national minimum standards in numeracy.[4]

Most Indigenous students are in low and moderately achieving mainstream schools in Year 3. A small number (around **5%**) are in high achieving, metropolitan schools in Year 3.[5]



1. Laura Doherty, *Deaths in custody in Australia 2020–21* (Statistical Report No 37, Australian Institute of Criminology, 2021) iii.
2. Australian Institute of Health and Welfare, *Deaths in Australia* (Web Report, 2021).
3. Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Health Survey* (Webpage, 2019).
4. Australian Government, *Closing the Gap* (Report, 2020) 49.
5. Glenn Fahey, *Mind the Gap: Understanding the Indigenous education gap and how to close it* (Research Report, The Centre for Independent Studies, June 2021).

The need for shared understandings

Participants shared their concerns that there is little consensus on other key terminology often operationalised in relation to anti-racism. This includes the term 'social cohesion'. Social cohesion is an ambiguous term often used in policy discourse to refer to the unification of diverse cultural groups through a national identity.[15] Dr Randa Abdel-Fattah, argues that this national identity is primarily based on traditional white-Australian values. Her view is that, as a result, social cohesion has been the driver behind assimilationist policies and practices.[16] Social cohesion, interpreted in this manner, conflicts with anti-racism principles, as evidenced by arguments made by participants in the National Anti-Racism Framework initial scoping process. Participants said that the language of anti-racism and social inclusion needs to be more transparent and should be determined by consensus according to human rights approaches upholding participation and representation.

Participants shared their feedback that clarity was needed regarding the use of the terms 'equity' and 'equality' in relation to a national anti-racism framework.

> [We] need to clearly define equality vs equity before moving forward with any other discussion around racism and its effects on different cohorts of people. *— consultation with migrant focused community organisation, NARF project, May 2021 – April 2022*

> [W]e witness the goal of the AHRC's conceptualisation of anti-racism as one of working toward 'equal rights' yet, for Indigenous peoples, the emancipatory goal is one that recognises and protects their 'unique rights'. *— submission from Prof Chelsea Watego and Dr David Singh, NARF project, May 2021 – April 2022*

Racial equality is often understood as formal equality, referring to the equal treatment of individuals and groups regardless of racial difference, whereas equity, like substantive equality, recognises the needs and strengths of diverse communities and individuals, and that varying treatment is required to ameliorate disadvantage and ensure equal opportunities and outcomes. While 'equality' in Australian and international law and jurisprudence means substantive equality, this is often not the way it is understood by those making laws, policies, and programs. Participants also conveyed the importance of recognising the distinct unique and collective right of First Nations peoples and their goals in that regard. Formal racial equality was seen as undermining First Nations peoples' unique and collective rights by presenting the solutions to the unique concerns of First Nations peoples as identical to all culturally and linguistically diverse groups in Australia.

Similarly, ambiguity around 'multiculturalism' and its conflation with anti-racism was seen to detract from and obfuscate genuinely anti-racist aspirations and activities.

> Indeed, the conflation of multiculturalism with Indigenous concerns is a clear example of this kind of racism, where the former launders the dispossession of the latter. — s*ubmission from Prof Chelsea Watego and Dr David Singh, NARF project, May 2021 – April 2022*

> Following the lead of these activists, we are not seeking to be included in projects to build 'tolerance' or 'social cohesion' that simultaneously ignore this war raging all around us. If institutions continue to launder state violence using the polite language of diversity and inclusion, their 'anti-racist strategies' will be racist. — *submission from Sisters Inside, NARF project, May 2021 – April 2022*

Participants in the National Anti-Racism Framework project initial scoping process indicated that safe and risk averse language used in anti-racism initiatives, such as the rebranding of the 'International Day for the Elimination of Racial Discrimination' as 'Harmony Day', can perpetuate racism. They argued that language within a framework must unequivocally support anti-racist aspirations as determined by First Nations peoples and culturally and linguistically diverse groups.

[1] See generally Gabrielle Appleby and Megan Davis, 'The Uluru Statement and the Promises of Truth' (2018) 49(4) *Australian Historical Studies* 502.

[2] Human Rights and Equal Opportunity Commission, *Bringing Them Home* (Report, 1997) 4 <https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf>.

[3] Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future* (Report, 2020) 88 <https://humanrights.gov.au/sites/default/files/document/publication/ahrc_wiyi_yani_u_thangani_report_2020.pdf>.

[4] William Fogarty et al, Deficit Discourse and Indigenous Health: How narrative framings of Aboriginal and Torres Strait Islander people are reproduced in policy (Report, The Lowitja Institute, May 2018) 11–30 <https://www.lowitja.org.au/page/services/resources/Cultural-and-social-determinants/racism/deficit-discourse-strengths-based>.

[5] Chelsea Watego, 'Chelsea Bond: The "new" Closing the Gap is about buzzwords, not genuine change for Indigenous Australia', *The Conversation* (online at 31 July 2020) <https://theconversation.com/chelsea-bond-the-new-closing-the-gap-is-about-buzzwords-not-genuine-change-for-indigenous-australia-143681>.

[6] See generally Eve Tuck and K Wayne Yang, 'Decolonization is not a metaphor' (2012) 1(1) *Decolonization: Indigeneity, Education & Society* 22.

[7] Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future* (Report, 2020) 80 <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>.

[8] Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future* (Report, 2020) 80 <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>.

[9] Australian Human Rights Commission, *Sharing the Stories of Australian Muslims* (Report, July 2021) 46–7.

[10] Alison Booth, Andrew Leigh and Elena Varganova, 'Does Ethnic Discrimination Vary Across Minority Groups? Evidence from a Field Experiment' (2011) 74(4) *Oxford Bulletin of Economics and Statistics* 547.

[11] Australian Human Rights Commission, *In our own words – African Australians: A review of human rights and social inclusion issues* (Report, 2010) 28–9 <https://humanrights.gov.au/sites/default/files/content/africanaus/review/in_our_own_words.pdf>.

[12] Australian Human Rights Commission, *In our own words – African Australians: A review of human rights and social inclusion issues* (Report, 2010) 30 <https://humanrights.gov.au/sites/default/files/content/africanaus/review/in_our_own_words.pdf>.

[13] Australian Human Rights Commission, *In our own words – African Australians: A review of human rights and social inclusion issues* (Report, 2010) 11, 14, 16 <https://humanrights.gov.au/sites/default/files/content/africanaus/review/in_our_own_words.pdf>.

[14] Laurie Berg and Bassina Farbenblum, *Wage Theft in Australia: Findings of the National Temporary Migrant Work Survey* (Report, November 2017) 7, 41. <https://static1.squarespace.com/static/593f6d9fe4fcb5c458624206/t/5a11ff31ec212df525ad231d/1511128887089/Wage+theft+in+Australia+Report_final_web.pdf>.

[15] 'What is social cohesion?', *Scanlon Foundation Research Institute* (Web Page) <https://scanloninstitute.org.au/what-social-cohesion>; 'About social cohesion', *Australian Government Department of Home Affairs* (Web Page) <https://www.homeaffairs.gov.au/about-us/our-portfolios/social-cohesion/about-social-cohesion>.

[16] Randa Abdel-Fattah, 'Countering violent extremism, governmentality and Australian Muslim youth as 'becoming terrorist'' (2020) 56(3) *Journal of Sociology* 372, 374–80.

Intersectionality

> Intersectionality is the interconnected nature of social categorisations such as race, class, and gender as they apply to a given individual or group, regarded as creating overlapping and interdependent systems of discrimination or disadvantage. — *submission from the Victorian Aboriginal Child Care Agency, NARF project, May 2021 – April 2022*

Across consultations and submissions, an intersectional approach was raised by participants as an overarching imperative for a national anti-racism framework, with practical importance that reaches across personal, social, cultural, economic, and political terrains. As described in the previous section, intersectionality was identified by the Commission as a guiding principle of an anti-racism framework.

> Intersectionality is 'the multiple social forces, social identities, and ideological instruments through which power and disadvantage are expressed and legitimised.'[1]

An intersectional framework acknowledges that multiple social categories, such as race, sexuality, class, gender, and disability, combine to create distinct experiences and identities that are lived and perceived in ways that cannot be reduced to any one category, such as that of 'race'. Race is only one of many forces that inform lived experience. At the heart of intersectionality is an emphasis on specificity. While social categories can be useful tools and are used by the Commission in this report, intersectionality recognises that there is no single way a person exists in the world, nor is there a single mechanism through which inequalities are produced at institutional and systemic levels. Rather, these intersections are themselves the result of systemic, structural, and institutionalised patterns of power and privilege.

> Racism plays out in different ways for different cohorts in society, there is no 'one size fits all' approach. — *community consultation participant, NARF project, May 2021 – April 2022*

In this way, intersectionality is a crucial touchstone for the themes identified in this Report. Just as consultations and submissions captured feedback from specific perspectives, each theme in this Report will affect people and communities in specific ways. Accordingly, this consideration of intersectionality includes greater detail than the following thematic sections to reflect the importance of taking an intersectional approach to anti-racism. Intersectionality is central to guiding the Commission, both as it reports the thematic findings, and as it develops a process solution to progress implementation of a national approach to anti-racism.

At the most fundamental level, and as discussed in the previous section, the Commission heard about how an intersectional approach is necessary to nuanced and effective definitions of 'racism' and 'anti-racism'. Consultation participants and those who made submissions on a national anti-racism framework emphasised the role of intersectionality in shaping experiences of race and racism. Participants expressed how understanding racism only through the category of race obscures the complexity of racism. Recognising intersectionality means recognising racism as a complex and constantly shifting phenomenon – one that interlocks multiple social relations of power and forms of discrimination, and, in doing so, results in distinct and compounding harms and traumas.

> Most people are part of an intersectional community, but the system doesn't recognise this. — *consultation with First Nations organisation, NARF project, May 2021 – April 2022*

As feedback from consultations and submissions highlighted, working intersectionality into definitions and understandings of racism will have practical significance in strategic approaches to anti-racism work. When policy, programs and the law accommodate intersectional experiences and harms, they can respond meaningfully to the breadth and complexity of racism, including the myriad structures of power implicated in the process.

> Intersection is where we can make change. — *consultation with First Nations organisation, NARF project, May 2021 – April 2022*

Project participants shared with the Commission the following examples of how intersectionality can shape the forms and harms of racism that are perpetrated interpersonally, institutionally, and systemically. While the focus here is on harms, the intention is not to reinforce racial or colonial mechanisms, but rather to recognise the power of articulating and understanding them in order to continue developing effective paths for anti-racism efforts. While these experiences are grouped into categories such as disability and age for convenience, experiences of race and racism can occur through the intersection of multiple, and not just two, categories. True to lived experience, the lines between the following categories are fluid and indistinct.

The Commission also understands the importance of situating this focus on harms within its broader context where negatively racialised people and communities are engaged in and leading anti-racism and successfully participating and thriving in all aspects of public life. During the consultation and submissions process, however, the importance of articulating these intersecting harms, their consequences, and proposed solutions to address them was a key priority of participants and as such, a key responsibility of the Commission to analyse and report.

LGBTQIA+ people and communities

The Commission heard from many service providers and community organisations about the ways in which LGBTQIA+ people experience race-specific forms of discrimination.

Organisations, including ACON, indicated that the experiences of LGBTQIA+ people from First Nations communities and migrant, refugee or faith-based backgrounds that are negatively racialised, are less well understood than those from white, English-speaking communities. Racial literacy was identified as a knowledge gap among white members of LGBTQIA+ communities. While there is a paucity of research in this area, this is at least partly explained by how the intersections between race, sexuality, and gender are 'often ignored, silenced, or misunderstood' in educational settings, which tend to apply a single-category approach to discrimination.[2] The lack of racial literacy was demonstrated in a 2021 survey of 80 multicultural and multifaith LGBTIQ+ individuals (self-identified against the survey's categories), where 58% of respondents who had attended LGBTIQ+ settings and spaces in the last three years reported experiencing discrimination they believed was 'race-based, racist or because of their ethnicity'.[3]

Consultation participants and those who made submissions noted a need to build cross-cultural communication and connection between First Nations people and people from culturally, ethnically, and linguistically diverse and migrant and refugee backgrounds, within LGBTQIA+ communities. This is not only a matter of addressing racial literacy, but also key to building a sense of community.[4]

The immediate challenges faced by members of LGBTQIA+ communities, combined with longstanding social exclusion, creates difficulty in access to health supports and services. Social exclusion can result from an accumulation of social disadvantages, such as an unequal distribution of resources, and stigmatisation by an individual's community, family, or the broader Australian community. For individuals, expectations around gender and sexuality informed by culture, Medicare ineligibility for temporary visa holders, and fears around visa status are just some factors that can contribute to health inequalities and can consolidate social exclusion.[5] From an institutional perspective, disadvantage can arise from discrimination by health practitioners and a lack of culturally competent services.[6]

Even where individuals can access health services, inequalities arising from race, gender and sexuality can nonetheless layer to negatively impact health outcomes.[7] Here, the intersections of racism with homophobia and transphobia, for example, create barriers to access culturally and LGBTQIA+ safe health services. This is because health services often apply a single category approach to inclusion, focussing on either cultural safety or LGBTQIA+ inclusion, but never the intersection of these two barriers to access – let alone the more specific needs of those such as LGBTQIA+ refugees who are fleeing persecution and violence based on their diverse gender identity, sexual orientation or sex characteristics.[8] The impacts of this are profound, contributing to evidence which shows that LGBTQIA+ people from culturally, linguistically and ethnically diverse backgrounds have poorer mental health outcomes, higher suicide rates, and lower familial acceptance.[9]

Migrants

Migrants coming to Australia encounter a multiplicity of challenges not only in the costly, lengthy, and burdensome process of entering Australia,[10] but also in the protection and promotion of their human rights following entry. A lack of access to supports and services can leave the immediate and long-term needs of migrants unmet, affecting all aspects of their lives and causing detriment to their 'sense of belonging, social inclusion and citizenship'.[11]

For example, the Commission heard about experiences faced by migrants who are required to undertake English language testing to have their qualifications recognised. Not only are these tests expensive, typically costing hundreds of dollars,[12] but because they also expire, an individual may have to sit the test multiple times before being granted citizenship. The thresholds for English language proficiency are also stringent and are often much higher than is required to effectively perform in a profession.

Participants in the scoping process for a national anti-racism framework also raised how requirements for citizenship applications incorporated practices that lack consideration of the contexts of the country from which applicants were migrating and raise distressing challenges for them.

> There are thousands of individuals who have passed the citizenship test, with no criminal record or offence, and yet cannot prove their identity in accordance with the specific requirements set by the Department. — *submission from the Settlement Council of Australia, NARF project, May 2021 – April 2022*

People from refugee and asylum-seeking backgrounds

People from refugee and asylum-seeking backgrounds experience firsthand the intersection of discrimination based on multiple aspects of their identity. By definition, refugees face persecution and violence on the basis of their identity or membership of a social group, including because of their race, nationality, LGBTQIA+ identity, or faith. Experiencing racism and discrimination here in Australia can be re-traumatising and have measurably negative health impacts.[13] Due to experiences of conflict, torture and displacement, people from refugee backgrounds are also more likely to have a disability than other populations.

The challenges of establishing identity for those from refugee backgrounds were highlighted to the Commission in consultations with communities and their representatives, as well as in submissions. These challenges include months or years long delays in administrative processes, as well as adversarial and often traumatising interviews that quiz individuals on minute personal details.[14] New requirements to provide identity documents from birth can lead to application refusal for refugees who are fleeing persecution and consequently may not have access to such documents, or who have been ordered to destroy them by people smugglers.[15]

> Discrimination is high for people with accents/ESL, people with asylum and refugee background, non-western communities, anti-Semitism – representation for people who are not western. — c*onsultation with multicultural peak body, NARF project, May 2021 – April 2022*

People seeking asylum face many of the same barriers that people from migrant and refugee backgrounds face, but with the further complexity of a temporary visa and uncertain future. There are significant backlogs in the decision-making process for people who seek protection in Australia, with people facing an average of 8 years for a decision on their asylum applications.

Following entry, economic and social challenges and inequalities persist for migrants and refugees. For example, racism can play out in educational settings, where migrants and refugees have reported facing outright racial abuse, as well as assumptions about their education or intelligence.[16] This can be particularly difficult for refugees who may have endured the trauma and effects of forced displacement, war, violence and family separation, which compound their limited educational options and lack of financial support.[17]

Culturally and linguistically diverse migrants and refugees from non-English speaking backgrounds,[18] especially migrant and refugee women, are also often excluded from full economic participation.[19] Such economic disadvantage contributes to feelings of powerlessness and vulnerability, and many migrant and refugee women who are survivors of domestic and/or family violence[20] feel trapped in their economic dependency, especially if their migration status is precarious and/or dependent on the perpetrator of violence.[21] There is also a well-evidenced 'refugee gap' in labour market participation that cannot be explained by either skills, qualifications or English language differences and has been attributed in research to systemic factors including racism and discrimination.[22]

These existing inequalities and forms of disadvantage have been exacerbated by the COVID-19 pandemic. A Good Shepherd Australia and New Zealand study found that while 41% of all working Australians reported experiencing negative employment impacts such as reduced working hours, these impacts have affected the workforce unevenly, creating a cohort of what they describe as 'the new vulnerable', which includes recently arrived migrants.[23] Migrants and refugees have also experienced poor wellbeing and mental health as compared to the general Australian population.[24] Overall, the pandemic also saw an alarming increase in experiences and intensity of racism and discrimination, including the use of sexually explicit and abusive language towards migrant and refugee women.[25]

Consultations and submissions also noted the difficulty encountered by migrants and refugees in accessing supports and services that are responsive to their needs, and deliver them equitable outcomes. These include supports provided by the government such as income support or healthcare, as well as supports provided by social service providers to address the immediate needs of migrants and refugees and assist them in navigating Australia, such as English classes, job training, and social and community activities to maintain cultural connections.[26] Most newly arrived migrants do not have immediate access to income support payments when they first enter Australia – instead, they must wait long periods of time, which can stretch to multiple years, to access some of these supports.[27] The Commission also heard about how there is little awareness of how the clock for calculating these waiting periods restarts if migrants travel overseas for a period longer than what is permitted.

Again, the pandemic has spotlighted barriers to supports and services. One such barrier stems from a lack of communication, in particular culturally specific communication, that has resulted in a lack of awareness of available government supports.[28] Other barriers include economic difficulties,[29] obstacles to housing,[30] a lack of safe transport options,[31] a lack of translators or translated materials or other means of accommodating language barriers,[32] as well as a lack of digital equipment, internet and tech literacy at home when services have pivoted to online delivery during the pandemic.[33]

These challenges multiply and increase in complexity with refugees, who often require more specialised services.[34] This is true also of people seeking asylum who, while experiencing lengthy decision-making periods, have access to fewer support services and fewer rights available to them than permanent residents and citizens. This protracted uncertainty also contributes to significant psychosocial problems and health issues, particularly for children and young people.[35]

Temporary migrants also face exacerbated challenges; not only are they usually the first to lose employment,[36] but their temporary visa status often bars them from government benefits such as the JobKeeper and JobSeeker payments during the pandemic, as well as support from social service providers.[37] For temporary migrants whose status depends on employer sponsorship, losing employment can also disrupt their permanent residency or citizenship application process.[38]

Challenges faced by those on student visas were raised with the Commission in consultations and submissions. Limitations on the amount of work students can do and widespread underpayment, coupled with higher student fees, and a lack of access to free health care, make students more exposed to exploitative employment arrangements and generate feelings of unsafety.[39] Unlawful and exploitative employment arrangements experienced by international students, and migrants overall, typically present themselves through informal employment contracts and cash-in-hand work.[40] Cash-in-hand employment, where employees do not have tax deducted from their pay, nor receive other entitlements like superannuation, is unlawful and may negatively affect students' visa applications, as well as limit their options in accessing justice, since there will be little evidence of their employment.[41] Students often enter into such arrangements as they are unaware of their entitlements or generally lack choice in negotiating how they get paid.[42]

When international students have reported feeling unsafe, these perceived threats to safety often have a racial, religious or cultural dimension,[43] and they feel ill-equipped or reluctant to respond to such threats due to language barriers and a lack of understanding of their rights as temporary residents in Australia.[44] Exploitative employment conditions and financial pressures add to isolation from families and culture, as do language barriers and academic pressures.[45] Together, these factors severely impact the health and wellbeing of students, who also face compounding barriers to accessing mental health supports and services due to cultural stigma, a lack of culturally appropriate services, and costs.[46]

The report by the Multicultural Youth Advisory Network (MYAN) on its national consultation with young people on a national anti-racism framework identified that during the pandemic period, these challenges have been heightened. International students faced increased barriers to employment, and income support was not made available to them. This, in addition to the heightened isolation experienced because of the pandemic, and experiences of linguistic racism, have made them vulnerable to exploitation and exacerbated health concerns.

People with disability

Organisations and service providers described the challenges experienced by First Nations people with disability to the Commission. This included in education contexts, where First Nations people with disability are often required by systems and processes to identify either as Aboriginal and/or Torres Strait Islander, or as a person with disability. The disability sector was experienced by many as very European, with First Nations peoples and those from migrant, refugee and faith-based communities that are negatively racialised, describing experiencing dissonance and discrimination because of a lack of cultural safety in service delivery. On this point, the Commission heard about how frontline workers and interpreters lack knowledge and/or training around trauma informed support, cultural safety, inclusive and respectful language, and the social model of disability.

Evidence presented to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, outlines the difficulties experienced by First Nations and culturally and linguistically diverse people with disability in accessing services and supports, particularly disability support services and healthcare. These include the barriers described above in relation to migrants and refugees, which can acquire new dimensions when encountered by First Nations or culturally and linguistically diverse people with disability. These range from a lack of accessible information,[47] negatively racialised stereotyping that compounds attitudes around disability,[48] as well as privacy concerns, particularly around confidential health information.[49]

> COVID-19 has shown how at-risk culturally and linguistically diverse people with a disability are. — *consultation with peak organisation for people with disability, NARF project, May 2021 – April 2022*

Consultation participants and those who made submissions emphasised how the pandemic highlighted and exacerbated barriers to services. The Commission was advised about how, during the pandemic, no specific Emergency and Disaster Management Planning was developed and implemented for culturally and linguistically diverse people with disability. Furthermore, the increased presence of the police and military during the pandemic, which adversely impacted people with disability from culturally and linguistically diverse backgrounds, and in particular asylum seekers and newly arrived migrants, was identified as a compounding factor.[50] Troublingly, the pandemic also saw an increased risk of physical abuse and sexual violence for both First Nations women with restrictive long-term health conditions[51] and culturally and linguistically diverse women with disability. This was, in addition to an overall decrease in available care, supports and services, partly due to significant numbers of COVID-19 infections among disability support workers.[52]

For those aspiring to emigrate to Australia, their or their family member's disability and/or health conditions may form grounds for the refusal of their visa application, as well as those of their families. For most visas,[53] migrants will be refused entry where their disability would impose a 'significant cost' on the Australian community or prejudice access by Australian citizens to health or community care.[54] Disproving that a disability will not impose 'significant cost' is a high threshold to meet, setting standards that people with disability do not or cannot meet.[55] Australia's restrictive health requirements have been roundly criticised as breaching rights enshrined in the UNCRPD.[56] While these restrictions were designed to prevent the spread of infectious diseases and minimise pressure on Australia's health system, these health requirements make no distinction between 'disease' and 'disability', meaning that people suffering from infectious diseases and persons with disabilities are treated in the same way.[57]

Participants did not explicitly raise issues about the experiences of older persons with a disability from negatively racialised communities. It has been observed elsewhere that there is limited research about the experiences of older people from culturally and linguistically diverse backgrounds with a disability.[58] A recent inquiry into support for older Victorians from migrant and refugee backgrounds led by the Legislative Assembly Legal and Social Issues Committee in Victoria reiterated this, finding that there is limited research, as well as data collection, on the experiences of culturally diverse older Victorians, particularly as it relates to disability.[59] The Commission notes that older persons, particularly First Nations people and migrants and refugees, are particularly vulnerable to discrimination and can face additional barriers in accessing services and support. The Commission acknowledges that further development of a framework must give specific attention to how older age can compound the barriers experienced by negatively racialised communities. Future findings from the ongoing Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability will inform this work.

Women

Echoed across consultations and submissions was how race and gender discrimination often blend, each affecting and amplifying the other to create unique experiences and forms of discrimination across many social contexts, such as workplaces and the justice system.

The Commission heard how datasets neglect the experiences of First Nations women and women from migrant, refugee, and faith-based communities that are negatively racialised.

> Data collected on key outcomes must be analysed through metrics related to gender and race; examples include the ethnic pay gap, data on women of colour and of diverse backgrounds in formal leadership positions (equivalent to VPS 6 and above), women in the justice system (e.g. arrested and incarcerated, fines and justice outcomes) and women in politics. — *submission from the Victorian Public Sector Women of Colour Network, NARF project, May 2021 – April 2022*

This raises an imperative for comprehensive, national data specifically tailored to First Nations women and women of colour on indicators such as pay gaps, representation in formal leadership positions, rates of incarceration in the justice system, fines and justice outcomes, and measures of women in politics. The need for this kind of data is also reflected, for instance, in Victoria's *Gender Equality Act 2020*, which requires defined entities, including public service bodies and public entities,[60] to develop a Gender Equality Action Plan that includes a workplace gender audit.

In that audit, data is to reflect intersectionality, regarding not just gender, but also other attributes such as 'Aboriginality, age, disability, ethnicity, gender identity, race, religion, [and] sexual orientation'.[61] By having regard to intersectional factors, the Act incorporates organisational consideration of how experiences of gender inequality may be compounded by discrimination, or disadvantage experienced from other attributes.[62] Already, existing research and data attests to how, for First Nations women and women of colour, their race and gender textures not just their own sense of being in the world, but also how they navigate it and are perceived within it.

This spans both private and public spaces. For instance, during the pandemic, culturally and linguistically diverse migrant and refugee women have experienced an increase in incidents of family and domestic violence.[63] Whilst some of the factors contributing to this uptick are shared by other women in Australia, such as increased confinement at home during lockdowns,[64] other factors increasing this risk are specific to the lives of migrant and refugee women. These include a reliance on partners for residency status, language and cultural barriers to accessing help, an inability to access government supports due to visa status, a lack of culturally appropriate services, and an absence of trusted social networks in Australia.[65]

A survey of 543 women in the *Workplace Survey Report 2021* conducted by Women of Colour Australia found that the majority of respondents reported facing challenges in the workplace relating to their identity as a woman of colour,[66] with almost 60% experiencing discrimination in the workplace.[67] Notably, most women also reported that the leader of their organisation was a man who was not a person of colour.[68] Additionally, 42% of respondents to the *Workplace Survey Report 2021* felt that their identity as a woman of colour was not recognised and valued in the workplace. Understanding intersectional experiences in the workplace is not just a matter of addressing less favourable treatment, but also proactively recognising and utilising the strengths and expertise intersectionality brings.[69]

In workplaces there are complex challenges for First Nations and culturally and linguistically diverse women, who face intersectional inequalities and forms of discrimination. Harms are often perpetuated by organisational practices, cultures and leaders that disadvantage women in invisible ways. The Commission's 2020 report *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* identified that intersectional complexities arise in relation to barriers to reporting workplace sexual harassment – such as barriers surrounding cultural myths and stereotypes, language proficiency, fears of retribution or job loss, insecure work or visa status, a lack of understanding of one's own rights or where to access help, and a distrust of government or official complaint channels.[70]

Across consultations and submissions for a national anti-racism framework, the Commission heard about the need for effective legal protections and complaints handling systems that acknowledge intersectionality and address intersectional concerns embedded within formal structures.

> Australia doesn't consider intersectionality within complaints handling, i.e. a Black woman must conform/choose the box of either being Black or a woman. — *consultation with First Nations expert, NARF project, May 2021 – April 2022*

In the context of workplace sexual harassment, recommendations previously suggested by the Commission in its *Respect@Work* Report directly or indirectly address how intersectionality can be better incorporated into systemic responses to this issue. This includes information sharing and de-identified data exchange between agencies that handle workplace sexual harassment matters.[71] It also includes increased support and funding for working women's centres,[72] community legal centres, Aboriginal and Torres Strait Islander Legal Services, and legal aid commissions, which can provide holistic and targeted assistance that can consider the particular needs of those experiencing intersectional discrimination.[73] Such measures will not only facilitate access to justice, help to redress power imbalances and promote recovery for victims with unique experiences of workplace sexual harassment, but also provide an evidence base for further improvements.

Young people

> [T]hey get it from school. They get it on the street. They get it from the police. The media doesn't let them up. The stories that keep coming out about, you know, youth gangs and things like that. — *consultation with local government representatives, NARF project, May 2021 – April 2022*

Young people are at an increased risk of experiencing or witnessing racism. Furthermore, racism is a particularly powerful force in the lives of young people. This is because young people depend on social interaction and support for their personal development, including the formation of critical parts of their identities.[74] Many young peoples' lives primarily play out in public settings and on online platforms that can provide crucial spaces for community building, but also form the backdrop to especially visible, less moderated forms of racial discrimination.[75] As such, their identities are made through their exposure to this range of influences, experiences, and settings.[76]

> Young people are more open to racism as they are in many different environments (generally speaking). For example, most adults will go to work and go home, the environments they enter are usually repetitive whereas the youth are more free with time and commitments. — *consultation with representatives from government agencies, NARF project, May 2021 – April 2022*

Surveying 20,207 young people, Mission Australia's *Youth Survey Report 2021* found that over a quarter of those surveyed reported being treated unfairly due to their race or cultural background.[77]

Racial discrimination is at the forefront of young people's concerns. Mission Australia's *Youth Survey Reports* note the rapid rise of 'equity and discrimination' as one of the most important national issues identified by young people, with many specifying racial injustice as an issue of concern from their own experiences, media coverage, public dialogue, and grassroot movements.[78] This was reflected in the National Anti-Racism Framework project consultations and submissions. With many young people experiencing racial injustice and being attuned to this issue, it is vital that a national anti-racism framework hear their insights and respond to their experiences.

Exposure to different environments creates a range of settings for racism, as well as multiple presentations of racism. This was articulated by young people engaged in MYAN's national consultation on a national anti-racism framework, who spoke about experiences of racism and challenges that ranged from a lack of representation in the media and workplaces, microaggressions encountered in educational settings, and discriminatory hiring practices. The report by MYAN also identified that during the pandemic period, racial abuse in particular, was heightened.

Increased exposure to racism, including interpersonal racism, systemic racism, and institutional racism, can have a direct influence on the educational, social, and economic opportunities young people receive and/or feel that they could receive.[79] On a personal level, experiences of racism can impact a young person's wellbeing and health, as well as compromise their sense of identity and belonging as they journey through formative periods of their lives.[80]

> Students need to be taught about their rights as well as trauma and complex histories. — c*ommunity consultation participant, NARF project, May 2021 – April 2022*

As sites of learning, educational institutions have a critical role to play in anti-racism efforts. As the section on *Education* explores further, educational institutes can improve racial literacy in the broader public by providing the conceptual tools to understand race and racism. This includes the history of colonisation and how this relates to present-day experiences of Aboriginal and Torres Strait Islander peoples and communities.

Older people

The Commission observes that specific issues experienced by culturally, linguistically, and ethnically diverse older people was not an explicit concern raised by participants in the consultations and within submissions. However, the Commission, through its work in the area of age discrimination, recognises that ageism compounds racism,[81] and that the concerns of older people from negatively racialised communities should be a key consideration in the next stage of the framework, as age is an important category in intersectionality.

The Federation of Ethnic Communities' Councils of Australia (FECCA) has found that older culturally and linguistically diverse people can experience considerable disadvantage as they age due to language barriers, a lack of awareness of available services, a mistrust of government institutions, limited access to the internet, and limited skills in, and access to information technology.[82] FECCA notes issues for some older Australians, such as low levels of home ownership, low superannuation balances, and low levels of other savings, are likely to be exacerbated for many older people from culturally and linguistically diverse communities whose lifetime earnings have been restricted through the process of migration and re-settlement.[83]

On the other hand, a scoping study of Arabic, Greek, Mandarin, and Vietnamese speaking communities by FECCA has also found that ageism is moderated in contexts where older persons 'belong to a generation where social structures (family, ethnic group) and rituals (cultural, religious) have protected their role and purpose as valuable and respected members of the family and the community', pointing to the many ways in which race and age can intersect.[84]

The intersection of age and race is particularly prominent in relation to the right to work. Though the right to work is a fundamental human right, older First Nations and culturally and linguistically diverse people are too often prevented from enjoying this right. This was reflected in the Commission's 2016 *Willing to Work: National Inquiry into Employment Discrimination against Older Australians and Australians with Disability*, which heard that older Aboriginal and Torres Strait Islander people may not have their valuable experience and skills, including connection to community and cultural competence, recognised; or are expected to offer those skills and services for free, for instance by sharing their knowledge of culture and country, or performing welcomes to country.[85]

These skills are particularly valuable in service delivery,[86] as reflected in concerns shared with the Inquiry about the lack of cultural competency and understanding of intersectional discrimination from Disability Employment Service providers.[87] Similarly, the Inquiry heard that older culturally and linguistically diverse people also encounter negative treatment as a result of their age and race, which may even be exacerbated by a lack of awareness of their own rights under Australian laws.[88] Literacy and a lack of available information in Aboriginal and other community languages about government services, the Disability Employment Services (DES) system and DES providers to assist older people find employment were also highlighted by the Inquiry as hindering older First Nations and culturally and linguistically diverse people from finding work.[89]

The Commission's *In our own words* project previously heard from African Australians about a range of challenges many in the community experience in relation to human rights and social inclusion.[90] A number of participants in this project noted particular challenges for older African Australians in finding employment and training.[91] The Commission heard that barriers, such as learning English and new skills to access the labour market, are further compounded by negative employer attitudes to mature age workers.[92] Many also felt that the mental health needs of older African Australians, particularly refugees, had been largely neglected.[93] Some community members, particularly older women, felt that legal approaches and service interventions to address family violence within the community were based on an understanding of 'family' that was not relevant or appropriate to new communities.[94]

Overall, organisations such as FECCA have advocated for research that considers how ageism affects people from culturally and linguistically diverse backgrounds.[95] Interrogating this intersection will deepen understandings of the intersection of age and race, not only to inform approaches to racism, but also ageism as it is experienced by First Nations and culturally and linguistically diverse communities.

People and communities of faith

Participants and those who made submissions on a national anti-racism framework shared with the Commission concerns about communities that are negatively racialised at the intersection of religious discrimination, but that may not be covered by existing federal anti-discrimination legislation. Despite the existence of state and territory laws that acknowledge a right to freedom of religion, federal legislation provides limited protection against religious discrimination and vilification.

Though the *Racial Discrimination Act 1975* (Cth) (*Racial Discrimination Act*) protects against discrimination on the basis of race, colour, descent or national or ethnic origin, the Act does not make religious discrimination generally unlawful. Whilst Jewish and Sikh people have been included in the term 'ethnic origin', the Act does not make available equivalent protection for people of other religious groups, including Muslims.[96] This issue is replicated in some jurisdictions at the state and territory level.[97]

This existing approach sits uncomfortably with international human rights treaties to which Australia is bound, including the International Covenant on Civil and Political Rights (ICCPR), where article 18 speaks directly to the freedoms associated with religious expression based on the right to freedom of thought, conscience, and religion.

The Commission has consistently called for national protection against religious discrimination. Most recently in its 2021 Report, *Sharing the Stories of Australian Muslims*, the Commission recommended the amendment of the *Racial Discrimination Act* to extend to religious discrimination, or the creation of legislation that specifically protects religious discrimination, noting that any reform designed to further protect religious freedom should be done in such a way that promotes human rights in their universality and indivisibility.[98]

Consultations and submissions also pointed to how the intersection of religious and racial discrimination manifests itself beyond a narrow legal framework, and requires versatile and rounded responses that recognise the wide-ranging complexities faced by people of faith. Discriminatory and vilifying representations of Islam and Muslims in the media, including news media and social media, were examples given particular emphasis. These issues are discussed further in the section on *Media*.

> The Muslim community is extremely affected by the misinformation permeated online and groups of people are dehumanised… the Muslim community are now feeling unsafe during times of prayer with the high rates of hate crimes and recent events where they are targeted. — *consultation with Islamophobia Register Australia, NARF project, May 2021 – April 2022*

The need to use an intersectional framework when addressing the intersection of race and religion extends across multiple settings, such as cultural safety in the workplace or educational environments.

Incorporating intersectionality in this way acknowledges the interdependence of religion and race in generating individual social identities, and articulating distinct forms of discrimination that cannot be easily broken down as either 'racial discrimination' or 'religious discrimination'.

Caste

> We emphasise that casteism is an intersectional system of discrimination which includes but is not reducible separately to either of skin colour, religion, gender, ethnicity, nationality, ancestry/descent, work or occupation. … there is a need to recognise caste as a protected category in anti-discrimination legislation and policy. — *submission from Humanism Project, NARF project, May 2021 – April 2022*

The Commission heard that race can also be experienced through the category of caste. Though its precise form and content varies with time and place, caste is a strictly codified, socio-religious hierarchical system made up of classes and sub-classes that are ranked based on underlying ideas of purity and pollution.[99]

This system is hereditary, with caste often assigned to individuals patrilineally, at birth. Casteism is a form of social stratification, found across South Asian cultures and religious communities, and carried into other nations through diasporic movement.[100] It often finds expression by seizing upon racialised, quasi-biological attributes and differences, such as associations of dark skin with lower castes.[101] If an individual member of a caste moves to Australia, for instance, their caste comes with them.[102]

The Commission heard about the wide-ranging and severe impacts of casteism, and the need to recognise caste as a protected category in anti-discrimination legislation and policy. Casteism affects all aspects of life – including the exercise of basic civil, political, social, economic, and cultural rights – and takes form in interpersonal, institutional, and 'structurally invisibilised'[103] ways. Entrenching social and economic exclusion and inequalities, this includes impacts on housing access, denied or restricted access to services and education, as well as exclusion from community and religious activities.[104] Occupations are also restricted under the caste system, thus affecting labour and employment.

Even when an individual moves to Australia, the Commission heard the impacts of casteism can still be felt in day-to-day life.[105] For example, a Nepali Dalit man (Dalits form the lowest tier in the Hindu caste system) was evicted from his rental accommodation in Brisbane after the owner, an 'upper caste' Nepali, found out that he was a Dalit.[106] Similar experiences can also be found in employment decisions.[107] Casteism also arises interpersonally, expressed through verbal, physical, and online abuse, including violent threats and assault.[108]

Even after migration, caste can shape issues of domestic and family violence through social, cultural and economic factors that inform the increased prevalence of violence among lower caste women, including their lower social standing and restricted decision-making autonomy, their lower economic status, and their partner's alcohol consumption,[109] as well as a lack of legal mechanisms to bring perpetrators to account.[110] Casteism also creates boundaries for personal relationships, seen for instance in the Australian dating app Dil Mil, which contains a filter option for top tier caste groups to find matches within their own caste, while omitting any options for lower caste groups.[111]

The Commission heard that greater acknowledgement of, education on, and responses to this overlap of casteism and racism, is a key component of recognising the intersectional experiences of caste discrimination within Australia's multicultural migrant communities.

Though they are by no means exhaustive, these examples are windows to the multifaceted conceptual framework of intersectionality. They attest to how experiences of racism and racial discrimination are uniquely situated, engaging many systems of power all at once. In a similar way, the institutions and structures that perpetuate racist harms work through interlocking systems of power in ways that go beyond the sum of their parts. An intersectional approach is attentive to this, providing the flexibility to recognise and respond to the diverse forms that discrimination can take in the lives of individuals and communities. As such, any solutions to progress the implementation of a national anti-racism initiative must take an intersectional approach.

1 Kimberlé Crenshaw, *On Intersectionality: Essential Writings* (New Press, 2017).

2 David B Rhodes and Matt Byrne, 'Embedding Aboriginal and Torres Strait Islander LGBTIQ+ issues in primary initial teacher education programs' (2021) 9(2) *Social Inclusion* 30–31.

3 From the total 91% of respondents who had attended LGBTIQ+ settings and spaces in the last three years, 71% also reported experiencing microaggressions in these spaces and 40% felt that they experienced discrimination specifically because of their skin colour, reflecting how these spaces do not always provide safety for community members. See Maria Pallotta-Chiarolli, Budi Sudarto and Judy Tang, *Navigating Intersectionality: Multicultural and Multifaith LGBTIQ+ Victorians Talk about Discrimination and Affirmation* (Report, Australian GLBTIQ+ Multicultural Council, 2021) 49–50 <https://www.agmc.org.au/wp-content/uploads/AGMC_ReportA4P_NIR_Web18may2021.pdf>.

4 This is particularly important where LGBTQIA+ individuals experience strains on personal relationships and connections to culture due to expectations around sexuality from family, friends, or community. See David Mejia-Canales and William Leonard, *Something for them: Meeting the support needs of same sex attracted and sex and gender diverse (SSASGD) young people who are recently arrived, refugees or asylum seekers* (Monograph Series No 107, La Trobe University, 2016) 14-9 <http://www.lgbtiqintersect.org.au/wp-content/uploads/2018/11/somethingforthem.pdf>.

5 See, eg, Danielle Murray et al, 'High levels of engagement with testing for HIV and sexually transmissible infection among gay Asian men in Sydney and Melbourne: an observational study' (2020) 17(2) *Sexual Health* 126; David Mejia-Canales and William Leonard, *Something for them: Meeting the support needs of same sex attracted and sex and gender diverse (SSASGD) young people who are recently arrived, refugees or asylum seekers* (Monograph Series No 107, La Trobe University, 2016) <http://www.lgbtiqintersect.org.au/wp-content/uploads/2018/11/somethingforthem.pdf>.

6 Ruth McNair, 'A guide to sensitive care for lesbian, gay, and bisexual people attending general practice' (Guide, The University of Melbourne, 2012) <https://www.rainbowhealthvic.org.au/media/pages/research-resources/a-guide-to-sensitive-care-for-lesbian-gay-and-bisexual-people-attending-general-practice/464311362-1605661768/a-guide-to-sensitive-care-for-lesbian-gay-and-bisexual-people-attending-general-practice.pdf>.

7 See generally Elizabeth A McConnell et al, 'Multiple Minority Stress and LGBT Community Resilience among Sexual Minority Men' (2018) 5(1) *Psychology of Sexual Orientation and Gender Diversity* 1.

8 More information on how the needs of LGBTIQ+ refugees differ from the general refugee cohort with respect to accessing not only health care, but also social support, employment and housing support, can be found in the 2020 joint report by the Migration Council of Australia and the Forcibly Displaced People Network. See *Migration Council of Australia and Forcibly Displaced People Network, Gender Responsive Settlement: Broader Learnings from LGBTIQ+ Refugees* (Report, 2020) <https://fdpn964079271.files.wordpress.com/2021/07/lgbtiq-refugees-report-v2-mob.pdf>.

9 Adam Hill et al, *Writing Themselves In 4: The health and wellbeing of LGBTQA+ young people in Australia* (National Report, February 2021) 158–66 <https://www.latrobe.edu.au/__data/assets/pdf_file/0010/1198945/Writing-Themselves-In-4-National-report.pdf>.

10 See generally Mary Anne Kenny, Nicholas Procter and Carol Grech, *Temporary Protection Visas in Australia: A reform proposal* (Policy Brief No 13, June 2022) 6 <https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Policy_Brief_13_Temporary_Protection_Visas_Australia_Reform_Proposal.pdf>; Joint Standing Committee on Migration, Parliament of Australia, *Enabling Australia: Inquiry Into The Migration Treatment of Disability* (Report, June 2010) 101 [4.159].

[11] Enqi Weng, Fethi Mansouri and Matteo Vergani, 'The Impact of the COVID-19 Pandemic on Delivery of Services to CALD Communities In Australia' (2021) 2(2) *ADI Policy Briefing Papers* 1–3 <https://apo.org.au/sites/default/files/resource-files/2021-08/apo-nid313720.pdf>.

[12] See, eg, IELTS, 'How much does IELTS cost?' (online) <https://ielts.com.au/australia/prepare/article-how-much-does-ielts-cost>; Pearson PTE, 'PTE test centers and fees' (online) <https://www.pearsonpte.com/test-centers-and-fees>; Occupational English Test, 'How much does OET cost?' (online) <https://support.occupationalenglishtest.org/s/article/How-much-does-OET-cost>.

[13] See generally Anna Ziersch, Clemence Due and Moira Walsh, 'Discrimination: a health hazard for people from refugee and asylum-seeking backgrounds resettled in Australia' (2020) 20(108) *BMC Public Health* 1 <https://bmcpublichealth.biomedcentral.com/track/pdf/10.1186/s12889-019-8068-3.pdf>.

[14] Asher Hirsch, 'Denying refugees citizenship: The Australian way', Refugee Council of Australia (Speech, Migration Institute of Australia Conference, Melbourne, 10 November 2017) <https://www.refugeecouncil.org.au/denying-refugees-citizenship/>.

[15] Refugee Council of Australia, 'Identity documents for refugees' (online, 10 May 2020) <https://www.refugeecouncil.org.au/identity-documentation/>; Kristian Hollins, 'Comparative International Approaches To Establishing Identity In Undocumented Asylum Seekers', *Lowy Institute* (online, 11 April 2018) <https://www.lowyinstitute.org/publications/comparative-international-approaches-establishing-identity-undocumented-asylum-seekers>.

[16] See also Fethi Mansouri and Louise Jenkins, 'Schools as Sites of Race Relations and Intercultural Tension' (2010) 35(7) Australian Journal of Teacher Education 93–95 <https://core.ac.uk/download/pdf/41528351.pdf>; Refugee Council of Australia, Select Committee on Strengthening Multiculturalism, 'Submission on the Strengthening Multiculturalism Inquiry' (online, 2017) 12 <https://www.refugeecouncil.org.au/wp-content/uploads/2018/12/Strengthening_multiculturalism.pdf>; Australian Human Rights Commission, In our own words – African Australians: A review of human rights and social inclusion issues (Report, 2010) 14–5 <https://humanrights.gov.au/sites/default/files/content/africanaus/review/in_our_own_words.pdf>.

[17] Tebeje Molla, 'Trauma, racism and unrealistic expectations mean African refugees are less likely to get into Australian unis', *The Conversation* (online, 28 August 2019) <https://theconversation.com/trauma-racism-and-unrealistic-expectations-mean-african-refugees-are-less-likely-to-get-into-australian-unis-121885>.

[18] In its submission, the Settlement Council of Australia noted how 'non-citizens, people with lower levels of English language proficiency, new migrants, migrants of certain ethnic groups, and people who are geographically isolated experience the impacts of racism in different, and more aggravated ways'. Settlement Council of Australia, Submission to Australian Human Rights Commission, *Submission: Proposed National Anti-Racism Framework* (January 2022) 5.

[19] For example, interviews with 75 migrant and refugee women conducted by Gender Equity Victoria found that, whilst most participants had a tertiary education, before COVID-19 only 18% of the women interviewed were employed fulltime, whilst 45% were in insecure (and possibly underemployed) work arrangements, and over a quarter were financially dependent and reliant on a partner's income or social security payments. See Gender Equity Victoria, *Left Behind: Migrant and Refugee Women's Experience of COVID-19* (Report, 2021) 7, 17 <https://www.genvic.org.au/wp-content/uploads/2021/10/LeftBehindWOMHEnReport61021FINAL.pdf>. African Australians who participated in consultations for the Commission's In our own words project also noted the lack of information about relevant vocational education and training programs; the confusing nature of employment support services; the difficulties of having overseas training, qualifications and experience recognised; and experiences of discrimination and harassment when applying for jobs, during interviews or in the workplace. See Australian Human Rights Commission, *In our own words – African Australians: A review of human rights and social inclusion issues* (Report, 2010) 10–2 <https://humanrights.gov.au/sites/default/files/content/africanaus/review/in_our_own_words.pdf>.

[20] A landmark national report by Harmony Alliance found that, of a total 1,400 migrant and refugee women, over a third had experienced some form of domestic and/or family violence, and of those nearly half had experienced at least two forms of domestic and/or family violence. See Marie Segrave, Rebecca Wickes, and Chloe Keel, *Migrant and Refugee Women in Australia: The Safety and Security Study* (Report, Harmony Alliance and Monash University, 2021) 65.

[21] Marie Segrave, Rebecca Wickes, and Chloe Keel, *Migrant and Refugee Women in Australia: The Safety and Security Study* (Report, Harmony Alliance and Monash University, 2021) 38; Gender Equity Victoria, *Left Behind: Migrant and Refugee Women's Experience of COVID-19* (Report, 2021) 7 <https://www.genvic.org.au/wp-content/uploads/2021/10/LeftBehindWOMHEnReport61021FINAL.pdf>.

[22] Louise Olliff et al, '"We will start building from that": Social capital, social networks and African migrants' job-seeking experiences in Australia' (2022) 57(3) *Australian Journal of Social Issues* 725, 727, 736.

[23] Susan Maury et al, *Understanding the impacts of COVID-19 on vulnerable Australians: Insights from Good Shepherd Australia New Zealand* (Report, Good Shepherd Australia New Zealand, 2020) 4, 6, 11–3. See also Nicholas Biddle, Matthew Gray and Jieh Yung Lo, *The experience of Asian-Australians during the COVID-19 pandemic: Discrimination and wellbeing* (Paper, ANU Centre for Social Research and Methods, October 2020) ii, 5.

[24] See, eg, Gender Equity Victoria, *Left Behind: Migrant and Refugee Women's Experience of COVID-19* (Report, 2021) 20 <https://www.genvic.org.au/wp-content/uploads/2021/10/LeftBehindWOMHEnReport61021FINAL.pdf>; Nicholas Biddle, Matthew Gray and Jieh Yung Lo, *The experience of Asian-Australians during the COVID-19 pandemic: Discrimination and wellbeing* (Paper, ANU Centre for Social Research and Methods, October 2020) ii, 2.

[25] Harmony Alliance, *Migrant and Refugee Women in the COVID-19 Pandemic: Impact, Resilience, And The Way Forward* (National Consultation Report, February 2021) 18–9 <https://harmonyalliance.org.au/wp-content/uploads/2021/02/HA-Membership-Forum-Report.pdf>.

[26] Enqi Weng, Fethi Mansouri and Matteo Vergani, 'The Impact of the COVID-19 Pandemic on Delivery of Services to CALD Communities In Australia' (2021) 2(2) *ADI Policy Briefing Papers* 1, 2–3 <https://apo.org.au/sites/default/files/resource-files/2021-08/apo-nid313720.pdf>.

[27] Department of Social Services, 'Guides to Social Policy Law: Social Security Guide' (online, 15 August 2022) <https://guides.dss.gov.au/social-security-guide/3/1/2/40>.

[28] Gender Equity Victoria, *Left Behind: Migrant and Refugee Women's Experience of COVID-19* (Report, 2021) 4 <https://www.genvic.org.au/wp-content/uploads/2021/10/LeftBehindWOMHEnReport61021FINAL.pdf>.

[29] Enqi Weng, Fethi Mansouri and Matteo Vergani, 'The Impact of the COVID-19 Pandemic on Delivery of Services to CALD Communities In Australia' (2021) 2(2) *ADI Policy Briefing Papers* 1, 2 <https://apo.org.au/sites/default/files/resource-files/2021-08/apo-nid313720.pdf>.

[30] Adrienne Millbank, Janet Phillips and Catherine Bohm, 'Australia's settlement services for refugees and migrants' (e-Brief, 9 June 2006) <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/archive/settlement>; Enqi Weng, Fethi Mansouri and Matteo Vergani, 'The Impact of the COVID-19 Pandemic on Delivery of Services to CALD Communities In Australia' (2021) 2(2) *ADI Policy Briefing Papers* 1, 3 <https://apo.org.au/sites/default/files/resource-files/2021-08/apo-nid313720.pdf>.

[31] Gender Equity Victoria, *Left Behind: Migrant and Refugee Women's Experience of COVID-19* (Report, 2021) 15 <https://www.genvic.org.au/wp-content/uploads/2021/10/LeftBehindWOMHEnReport61021FINAL.pdf>.

[32] Gender Equity Victoria, *Left Behind: Migrant and Refugee Women's Experience of COVID-19* (Report, 2021) 15 <https://www.genvic.org.au/wp-content/uploads/2021/10/LeftBehindWOMHEnReport61021FINAL.pdf>.

[33] John Hajek et al, Understanding the experiences and communication needs of culturally and linguistically diverse communities during the COVID-19 pandemic (Report, Research Unit for Multilingualism and Cross-Cultural Communication, January 2022) 10, 37–8, 55–6 <https://arts.unimelb.edu.au/__data/assets/pdf_file/0020/4071170/Report_CALD_COVID.pdf>; Tania Miletic, Mental Health and Wellbeing for Victoria's Multicultural Communities under Covid-19 (Issue Brief, The Ethnic Communities' Council of Victoria, July 2020) 2, citing Federation of Ethnic Communities' Councils of Australia, FECCA's 2020 Vision for Older CALD Australians (online, 2015) 2.

[34] Enqi Weng, Fethi Mansouri and Matteo Vergani, 'The Impact of the COVID-19 Pandemic on Delivery of Services to CALD Communities In Australia' (2021) 2(2) *ADI Policy Briefing Papers* 1, 3 <https://apo.org.au/sites/default/files/resource-files/2021-08/apo-nid313720.pdf>.

[35] See, eg, Reza Rostami et al, 'The mental health of Farsi-Dari speaking asylum-seeking children and parents facing insecure residency in Australia' (2022) 27 *The Lancet Regional Health-Western Pacific* 100548.

[36] Laurie Berg and Bassina Farbenblum, *As If We Weren't Humans: The Abandonment of Temporary Migrants in Australia During Covid-19* (Report, Migrant Worker Justice Initiative, 2020) 6 <https://opus.lib.uts.edu.au/bitstream/10453/142965/2/As%20if%20we%20weren%E2%80%99t%20humans%20Report.pdf>.

[37] Susan Maury et al, *Understanding the impacts of COVID-19 on vulnerable Australians: Insights from Good Shepherd Australia New Zealand* (Report, Good Shepherd Australia New Zealand, 2020) 13; Gender Equity Victoria, Left Behind: Migrant an Refugee Women's Experience of COVID-19 (Report, 2021) 22 <https://www.genvic.org.au/wp-content/uploads/2021/10/LeftBehindWOMHEnReport61021FINAL.pdf>; Heli Askola, Helen Forbes-Mewett and Olha Shmihelska, *Migrant Precariousness in the Time of COVID-19: Migrant Workers, Risks and Rights* (Report, Castan Centre for Human Rights Law & Monash Migration and Inclusion Centre, Monash University, 2021) 9 <https://www.monash.edu/__data/assets/pdf_file/0004/2489233/Migration-and-COVID-19-final-report.pdf>.

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44 Orygen, *International Students and their Mental Health and Physical Safety* (Report, June 2020) 3 <https://internationaleducation.gov.au/International-network/Australia/InternationalStrategy/EGIProjects/Documents/ORYGEN%20-%20International%20Student%20Mental%20Health%20and%20Physical%20Safety%20June%202020.pdf>.

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47 For instance, a lack of accessible information may be particularly significant for First Nations or culturally and linguistically diverse people with disability who live in rural and remote communities, or people with disability who have migrated to Australia from overseas where they accessed different service systems. See Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Overview of responses to the experiences of culturally and linguistically diverse people with disability* (Issues Paper, November 2021) 10 <https://disability.royalcommission.gov.au/system/files/2022-03/Overview%20of%20responses%20to%20the%20Culturally%20and%20linguistically%20diverse%20people%20with%20disability%20Issues%20paper.pdf>.

48 Negative attitudes towards disability and a lack of culturally safe and appropriate services and supports can all impede effective service delivery, with discrimination based on outward difference – such as racial stereotyping – interfering with healthcare delivery and diagnoses. See Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Overview of responses to the experiences of culturally and linguistically diverse people with disability* (Issues Paper, November 2021) 6–9 <https://disability.royalcommission.gov.au/system/files/2022-03/Overview%20of%20responses%20to%20the%20Culturally%20and%20linguistically%20diverse%20people%20with%20disability%20Issues%20paper.pdf>.

49 Culturally and linguistically diverse people with disability have raised privacy concerns based on experiences where interpreters have shared confidential health information with other people in their community. See Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Overview of responses to the experiences of culturally and linguistically diverse people with disability* (Issues Paper, November 2021) 8 <https://disability.royalcommission.gov.au/system/files/2022-03/Overview%20of%20responses%20to%20the%20Culturally%20and%20linguistically%20diverse%20people%20with%20disability%20Issues%20paper.pdf>.

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53 All visas that attract Public Interest Criteria 4005 must satisfy the health requirements. This is in contrast to the limited number of visas attracting Public Interest Criteria 4007, which contains a 'health waiver'.

54 *Migration Regulations 1994* (Cth) Schedule 4, Public Interest Criteria 4005. In 2019, the threshold for the 'significant cost' test was increased from $40,000 (AUD) assessed over a person's life expectancy, to $49,000 (AUD) assessed over a ten-year period or life expectancy (whichever is shorter).

55 Joint Standing Committee on Migration, Parliament of Australia, *Enabling Australia: Inquiry into the Migration Treatment of Disability* (Report, 21 June 2010) 177 [7.47], noting the opinion of Professor Ben Saul.

[56] François Crépeau, *Report of the Special Rapporteur on the Human Rights of Migrants of Australia and the Regional Processing Centres in Nauru*, 35th sess, UN Doc A/HRC/35/25/Add.3 (24 April 2017) [92]; Joint Standing Committee on Migration, Parliament of Australia, *Enabling Australia: Inquiry into the Migration Treatment of Disability* (Report, 21 June 2010) 173–81; Ron McCallum AO, *The United Nations Convention on the Rights of Persons with Disabilities: An Assessment of Australia's Level of Compliance* (Research Report, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, October 2020) 88. See generally Ben Saul, 'Migrating to Australia with Disabilities: Non-Discrimination and the Convention on the Rights of Persons with Disabilities' (2010) 16(1) *Australian Journal of Human Rights* 63.

[57] Ron McCallum AO, *The United Nations Convention on the Rights of Persons with Disabilities: An Assessment of Australia's Level of Compliance* (Research Report, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, October 2020) 85–6.

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[60] *Gender Equality Act 2020* (Vic) s 5(1).

[61] *Gender Equality Act 2020* (Vic) ss 4(c), 11(2)(c).

[62] *Gender Equality Act 2020* (Vic) ss 4(c), 6(8); Victoria State Government and the Commission for Gender Equality in the Public Sector, *Workplace Gender Audit 2021: Guidance For Defined Entities* (March 2021) 4 <https://www.genderequalitycommission.vic.gov.au/sites/default/files/2021-04/CGEPS%20Workplace-Gender-Audit-Guide%20v2.0%20FINAL.pdf>.

[63] Harmony Alliance: Migrant and Refugee Women for Change, *Migrant And Refugee Women In The Covid-19 Pandemic: Impact, Resilience, And The Way Forward* (National Consultation Report, February 2021) 9 <https://harmonyalliance.org.au/wp-content/uploads/2021/02/HA-Membership-Forum-Report.pdf>; InTouch Multicultural Centre Against Family Violence, *The impact of the COVID-19 pandemic on InTouch and its clients* (Issues Paper, September 2020) <https://intouch.org.au/wp-content/uploads/2020/09/inTouch-issues-paper_The-impact-of-the-COVID-19-pandemic-on-inTouch-and-its-clients_September-2020.pdf>; Hayley Foster, Beth Roman, Amani Mahmoud, Chelsea Boyle, *Impact of COVID-19 on Migrant and Refugee Women and Children Experiencing DFV* (Report, Women's Safety NSW, July 2020) 3 <https://apo.org.au/sites/default/files/resource-files/2020-07/apo-nid307449.pdf>.

[64] Kerry Carrington et al, 'The Impact of COVID-19 Pandemic on Australian Domestic and Family Violence Services and their Clients' (2021) 56(4) *Australian Journal of Social Issues* 539, 546.

[65] Harmony Alliance: Migrant and Refugee Women for Change, *Migrant And Refugee Women In The Covid-19 Pandemic: Impact, Resilience, And The Way Forward* (National Consultation Report, February 2021) 10 <https://harmonyalliance.org.au/wp-content/uploads/2021/02/HA-Membership-Forum-Report.pdf>; Marie Segrave, Rebecca Wickes and Chloe Keel, *Migrant and Refugee Women in Australia: The Safety and Security Study* (Report, Harmony Alliance and Monash University, 2021) 38.

[66] Women of Colour Australia and Catherine Archer, *Workplace Survey Report 2021* (Survey Report, 2021) 15 <https://womenofcolour.org.au/wp-content/uploads/2022/02/WOMEN-OF-COLOUR-AUSTRALIA-WORKPLACE-SURVEY-REPORT-2020-2021.pdf>.

[67] Women of Colour Australia and Catherine Archer, *Workplace Survey Report 2021* (Survey Report, 2021) 17 <https://womenofcolour.org.au/wp-content/uploads/2022/02/WOMEN-OF-COLOUR-AUSTRALIA-WORKPLACE-SURVEY-REPORT-2020-2021.pdf>. This is particularly true to the experiences of Aboriginal and Torres Strait Islander women, and especially women with caring responsibilities, who experience significantly less support in culturally unsafe workplace situations than Aboriginal and Torres Strait Islander men, whilst taking on the highest cultural load in addition to their regular work, such as organising NAIDOC week activities. See Olivia Evans, *Gari Yala (Speak the Truth): Gendered Insights* (Report, Workplace Gender Equality Agency, Jumbunna Institute for Indigenous Education and Research and Diversity Council of Australia, October 2021) 5, 9–12 <https://www.wgea.gov.au/sites/default/files/documents/Gari_Yala_genderedinsights2021.pdf>.

[68] Women of Colour Australia and Catherine Archer, *Workplace Survey Report 2021* (Survey Report, 2021) 21 <https://womenofcolour.org.au/wp-content/uploads/2022/02/WOMEN-OF-COLOUR-AUSTRALIA-WORKPLACE-SURVEY-REPORT-2020-2021.pdf>.

[69] See Women of Colour Australia and Catherine Archer, *Workplace Survey Report 2021* (Survey Report, 2021) 13 <https://womenofcolour.org.au/wp-content/uploads/2022/02/WOMEN-OF-COLOUR-AUSTRALIA-WORKPLACE-SURVEY-REPORT-2020-2021.pdf>. See also Jane O'Leary, Dimitra Groutsis and Rose D'Almada-Remedios, *Cracking the Glass-Cultural Ceiling: Future Proofing Your Business in the 21st Century* (Synopsis Report, Diversity Council Australia, 2017) 8 <https://www.dca.org.au/sites/default/files/synopsis_-_cracking_the_glass-cultural_ceiling_available_to_public.pdf>, which found that only 10% out of a total of 230 culturally diverse women surveyed by Diversity Council Australia strongly agreed that their leadership traits were recognised or that their opinions were valued and respected.

[70] Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 2020) 161, 172–3, 184.

[71] Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 2020) 120–2.

[72] Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 2020) 760–2.

[73] Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 2020) 768–70.

[74] Yin Paradies et al, *Building our strengths: A framework to reduce race-based discrimination and support diversity in Victoria* (Full Report, Victorian Health Promotion Foundation, November 2009) 36 <https://www.vichealth.vic.gov.au/-/media/ProgramsandProjects/Publications/Attachments/Building-on-our-strengths---full-report-v2.pdf?la=en&hash=26A61987C308D2D27F97FD227FC74F48879AA914>; Maria Veronica Svetaz et al, 'The Traumatic Impact of Racism and Discrimination on Young People and How to Talk About It' in Kenneth R Ginsburg (ed), *Reaching Teens: Strength-Based, Trauma-Sensitive, Resilience-Building Communication Strategies Rooted in Positive Youth Development* (American Academy of Pediatrics, 2nd ed, 2020) 307, 308, 316–8.

[75] See eSafety Commissioner, *Protecting voices at risk online* (online, August 2020) <https://www.esafety.gov.au/sites/default/files/2020-08/Protecting%20voices%20at%20risk%20online_0.pdf>.

[76] See generally Multicultural Youth Advocacy Network Australia, *Multicultural Youth Perspectives on Racism and the Draft Anti-Racism Framework: 2022 Consultation Findings* (Report, 2022); Maria Veronica Svetaz et al, 'The Traumatic Impact of Racism and Discrimination on Young People and How to Talk About It' in Kenneth R Ginsburg (ed), *Reaching Teens: Strength-Based, Trauma-Sensitive, Resilience-Building Communication Strategies Rooted in Positive Youth Development* (American Academy of Pediatrics, 2nd ed, 2020) 307.

[77] Eboni Tiller et al, *Youth Survey Report 2021* (Survey Report, Mission Australia, 2021) 6.

[78] Eboni Tiller et al, *Youth Survey Report 2021* (Survey Report, Mission Australia, 2021) 4; Eboni Tiller et al, *Youth Survey Report 2020* (Survey Report, Mission Australia, 2020) 2.

[79] See, eg, Eboni Tiller et al, *Youth Survey Report 2021* (Survey Report, Mission Australia, 2021) 12.

[80] See generally David M Macedo et al, 'Effects of racism on the socio-emotional wellbeing of Aboriginal Australian children' (2019) 18 *International Journal of Equity Health* 132; Jacqueline Nelson et al, 'Australian Racism and Anti-Racism: Links to Morbidity and Belonging' in Fethi Mansouri and Michele Lobo (eds), *Migration, Citizenship and Intercultural Relations: Looking Through the Lens of Social Inclusion* (Ashgate, 2011) 159.

[81] Australian Human Rights Commission, *What's age got to do with it? A snapshot of ageism across the Australian lifespan* (Report, September 2021) 204.

[82] Federation of Ethnic Communities' Councils of Australia, *FECCA's 2020 vision for older CALD Australians* (Report, November 2015) 2 <http://fecca.org.au/wp-content/uploads/2015/11/FECCA2020Vision.pdf>.

[83] Federation of Ethnic Communities' Councils of Australia, *FECCA's 2020 vision for older CALD Australians* (Report, November 2015) 2 <http://fecca.org.au/wp-content/uploads/2015/11/FECCA2020Vision.pdf>.

[84] Federation of Ethnic Communities and the Benevolent Society, *Ageism in Culturally Diverse Communities: A Scoping Study in Arabic, Greek, Mandarin and Vietnamese Speaking Communities* (EveryAGE Counts Campaign, Report, December 2019) 8.

[85] Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability* (Report, 2016) 72.

[86] Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability* (Report, 2016) 72.

[87] Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability* (Report, 2016) 208.

[88] Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability* (Report, 2016) 74.

[89] Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability* (Report, 2016) 73, 208.

[90] Australian Human Rights Commission, *In our own words – African Australians: A review of human rights and social inclusion issues* (Report, 2010) <https://humanrights.gov.au/sites/default/files/content/africanaus/review/in_our_own_words.pdf>.

[91] Australian Human Rights Commission, *In our own words – African Australians: A review of human rights and social inclusion issues* (Report, 2010) 12–3 <https://humanrights.gov.au/sites/default/files/content/africanaus/review/in_our_own_words.pdf>.

[92] Australian Human Rights Commission, *In our own words – African Australians: A review of human rights and social inclusion issues* (Report, 2010) 13 <https://humanrights.gov.au/sites/default/files/content/africanaus/review/in_our_own_words.pdf>.

[93] Australian Human Rights Commission, *In our own words – African Australians: A review of human rights and social inclusion issues* (Report, 2010) 21 <https://humanrights.gov.au/sites/default/files/content/africanaus/review/in_our_own_words.pdf>.

[94] Australian Human Rights Commission, *In our own words – African Australians: A review of human rights and social inclusion issues* (Report, 2010) 33 <https://humanrights.gov.au/sites/default/files/content/africanaus/review/in_our_own_words.pdf>.

[95] See generally Federation of Ethnic Communities and the Benevolent Society, *Ageism in Culturally Diverse Communities: A Scoping Study in Arabic, Greek, Mandarin and Vietnamese Speaking Communities* (EveryAGE Counts Campaign, Report, December 2019).

[96] Australian Human Rights Commission, *Sharing the Stories of Australian Muslims* (Report, July 2021) 35. See also the discussion of the NSW Anti-Discrimination Act 1977 in Religious Freedom Review: Report of the Expert Panel (Report, 18 May 2018) 93 [1.383] <https://www.ag.gov.au/sites/default/files/2020-03/religious-freedom-review-expert-panel-report-2018.pdf>.

[97] For example, whilst it is accepted that Jewish people constitute a 'race' for the purposes of the *Anti-Discrimination Act 1977* (NSW), the position is less clear for other ethno-religious groups, including Muslims.

[98] Australian Human Rights Commission, Submission to the Expert Panel, Religious Freedom Review (February 2018) 4–5 [10] <https://humanrights.gov.au/our-work/legal/submission/religious-freedom-review-2018>; Australian Human Rights Commission, Submission to the Parliamentary Joint Committee on Human Rights, Religious Discrimination Bill 2021 and related bills (21 December 2021) 71 [304] <https://humanrights.gov.au/sites/default/files/ahrc_submission_to_pjchr_on_religious_discrimination_bill_0.pdf>.

[99] Purba Das, '"Is caste race?" Discourses of Racial Indianization' (2014) 43(3) *Journal of Intercultural Communication Research* 264, 266; Nishant Upadhyay, 'Making of "Model" South Asians on the Tar Sands: Intersections of Race, Caste, and Indigeneity' (2019) 5(1-2) *Journal of the Critical Ethnic Studies Association* 152, 161.

[100] Nishant Upadhyay, 'Making of "Model" South Asians on the Tar Sands: Intersections of Race, Caste, and Indigeneity' (2019) 5(1-2) *Journal of the Critical Ethnic Studies Association* 152, 161.

[101] Though racism and casteism are often disassociated in discourses, they parallel as social and historical constructs that invoke essentialisms and fashion them as immutable to sustain entrenched systems of power. Casteism is often structured and operationalised through racism by 'employ[ing] racial meanings to maintain itself, even if race is denied'; and conversely, racism 'lives through the caste system, and maintains the inequality of the system through the differences and essential qualities that are assigned to individual caste groups'. See Purba Das, '"Is caste race?" Discourses of Racial Indianization' (2014) 43(3) *Journal of Intercultural Communication Research* 264, 278–9.

[102] 'Australia's caste divide', *Earshot* (ABC Radio National, 6 February 2021) <https://www.abc.net.au/radionational/programs/earshot/australia/13085900>.

[103] Nishant Upadhyay, 'Making of "Model" South Asians on the Tar Sands: Intersections of Race, Caste, and Indigeneity' (2019) 5(1-2) *Journal of the Critical Ethnic Studies Association* 152, 161.

[104] International Dalit Solidarity Network, *Caste-based Discrimination in South Asia: Situational Overview, Responses and Ways Forward* (Report, June 2009) 1, 3–4 <https://idsn.org/wp-content/uploads/user_folder/pdf/New_files/EU/EU_Study_Caste_Discrimination_merged_April2010.pdf>.

[105] In this sense, 'South Asian diasporas are already always caste-d, and are continually caste-ing'. See Nishant Upadhyay, 'Making of "Model" South Asians on the Tar Sands: Intersections of Race, Caste, and Indigeneity' (2019) 5(1-2) *Journal of the Critical Ethnic Studies Association* 152, 161.

[106] Karishma Luthria, 'They've left South Asia, but they can't escape the discrimination and division of its caste system', *ABC* (online at 11 February 2021) <https://www.abc.net.au/news/2021-02-11/caste-system-of-india-and-south-asia-in-australia-dalit-rights/13135622>.

[107] See, eg, Naomi Selvaratnam, 'Australians subject to "caste discrimination", migrants say', *SBS* (online at 29 July 2015) <https://www.sbs.com.au/news/article/australians-subject-to-caste-discrimination-migrants-say/sdlevsaa5>.

[108] See, eg, Naomi Selvaratnam, 'Australians subject to "caste discrimination", migrants say', *SBS* (online at 29 July 2015) <https://www.sbs.com.au/news/article/australians-subject-to-caste-discrimination-migrants-say/sdlevsaa5>.

[109] Sourav Chowdhury et al, 'Intimate partner violence among scheduled caste women in India: A cross-sectional study' (2022) *Victims & Offenders* 1, 4 <https://www.tandfonline.com/doi/pdf/10.1080/15564886.2022.2069897?casa_token=rbT_OPVnrToAAAAA:CwtTRWY4X4l2bKu-ZixBxGwHYdKs4xcsMVw5EYNwxUohlKKORJ3Rscc98e237TkxHWLg2Ru7WaVkkg>.

[110] Gavin Fernando, 'Who are India's Dalits, and why are they particularly vulnerable to gendered sexual violence?', *SBS* (online at 2 October 2020, updated 22 February 2022) <https://www.sbs.com.au/news/article/who-are-indias-dalits-and-why-are-they-particularly-vulnerable-to-gendered-sexual-violence/a983nn5uf>.

[111] Karishma Luthria, 'They've left South Asia, but they can't escape the discrimination and division of its caste system', *ABC* (online at 11 February 2021) <https://www.abc.net.au/news/2021-02-11/caste-system-of-india-and-south-asia-in-australia-dalit-rights/13135622>.

Findings: data

> Having data and transparency is a key step to acknowledging it [racism] together. — *submission from the University of Queensland, NARF project, May 2021 – April 2022*

Consultation participants and those who made submissions on a national anti-racism framework provided guiding feedback that there was a need for comprehensive national data on the prevalence, nature, and impacts of racism and racial inequities to provide the groundwork for anti-racism action, and redirect focus on initiatives and programs.

Data was highlighted as an important means of raising awareness about the existence, extent and severity of racism experienced by communities and individuals. It was described as an important advocacy tool, bringing visibility to experiences for the public broadly. Participants advised that data plays a major role in influencing policy and service delivery, and is critical in securing the appropriate resources and funding to address racism. Data was also seen as a powerful source of self-expression, giving negatively racialised communities and individuals autonomy in the way details about their experiences are collected and recorded. Through diverse forms of data, experiences of racism and their impacts, as well as the institutions and structures through which racism is operationalised, can be meaningfully articulated.

Consultations with data experts during this initial scoping phase highlighted the importance of strengthening data infrastructure, cultural safety in data collection, and data sovereignty, as well as the need for longitudinal data, qualitative data, and data governance in relation to emerging technologies, as outlined below. Acknowledging the breadth and complexity of issues surrounding these areas of concern, it is essential that the development of data frameworks and any proposed solutions is guided by ongoing community input, if not community-determined and designed.

Data infrastructure

Currently, data collection for anti-racism purposes in Australia is not codified and collection is mainly facilitated by nationwide surveys conducted by the Australian Bureau of Statistics (ABS), policy-oriented research initiatives by federal and state human rights institutions, and non-governmental initiatives and studies such as the Islamophobia Register.

The gap in comprehensive data infrastructure becomes apparent when compared to overseas jurisdictions. For instance, Canada invested C$6.2 million into increasing the collection of reliable and comparable data for anti-racism work[1] and has established, through legislation, the Canadian Race Relations Foundation to facilitate long-term race-based data collection and research;[2] while New Zealand's Integrated Data Infrastructure (IDI) consolidates existing data sourced from government agencies and provides direct and public access to de-identified, individual-level data that enables public analysis of racial disparity on various issues.[3]

This lack of consolidated data infrastructure, particularly that of integration mechanisms[4] necessary for data to be shared and compared,[5] has led to the underrepresentation of certain communities in current data, hindering the development of anti-racism initiatives that respond to community needs. First Nations communities,[6] people from refugee and migrant backgrounds,[7] and children[8] are underrepresented in current data. For instance, there is little publicly available quantitative data from complaint handling agencies specifically from First Nations individuals.[9] A lack of data integration mechanisms has also led to a lack of policy to facilitate research on structural issues, such as racial profiling.[10]

Inadequate cultural safety and accessibility protections in current data collection practices also prevent the full representation of people who are negatively racialised in data, as people are reluctant or discouraged from participating in data collection exercises due to privacy and confidentiality concerns, and low English literacy and numeracy in some groups.[11]

Establishing mechanisms for improved data infrastructure, to support accuracy, consistency, inclusivity, transparency, accessibility, and ethical data collection and management, was a key priority for many consultation participants and those who made submissions on a national anti-racism framework.

Many participants argued that better and more consistent collection of data on cultural diversity broadly and across institutions and services, would provide a more accurate picture of Australia's diversity and who is Australian, as well as racial inequity. In their September 2020 Issues Paper, *If We Don't Count It…It Doesn't Count! Towards a Consistent National Data Collection and Reporting on Cultural, Ethnic and Linguistic Diversity*, FECCA argues that current Australian data collection and reporting on cultural, ethnic, and linguistic diversity, particularly in relation to human services planning and delivery (including health, mental health, aged care, disability, and social services), is inadequate. This is seen in the areas of administrative data (reporting on service delivery), survey data, as well as social and medical research.[12]

Focussing on people from culturally and linguistically diverse backgrounds, FECCA argues that the variables or criteria deployed to identify individuals' backgrounds are extremely narrow in their scope and are applied inconsistently. FECCA recommended that the Standards for Statistics on Cultural and Language Diversity (1999) be reviewed to better understand culturally and linguistically diverse populations and identify their specific needs, including allowing self-declaration of ethnicities, to accurately represent communities' evolving identities. Self-identification is key to the adoption of an intersectional approach as it recognises the agency of people in describing their own identities, as well as the multiple, overlapping factors that play into identity. This focus on intersectionality creates a more meaningful way of capturing data – one that recognises the dynamic, fluid, and changing nature of identity.

Participants in the scoping process for a national anti-racism framework advocated for mandated annual reporting of data on racial or cultural backgrounds by government service providers, departments, and agencies.

This is a recommendation also made in the FECCA Issues Paper, which proposes mechanisms to mandate the collection and reporting of data on cultural, ethnic, and linguistic diversity, dependent on the context, to ensure national consistency, completeness, and comparability.

The United Kingdom's Race Disparity Audit, conducted in 2017, provides some learnings on how the reporting of government-held data can illuminate racial inequalities. The Audit required all Government Departments to identify what data they held across UK public services, including health, education, employment, and the criminal justice system, that could be analysed by ethnicity, with the aim of casting light on how people of different ethnicities are treated across public services. The collated data were then published on the UK Government's permanent *Ethnicity Facts and Figures* website, which is regularly updated as data changes and new measures arise over time.[13] While the Audit promotes transparency and accountability in government, these kinds of initiatives are distinct from research led by negatively racialised communities.

A centralised and independent data base was viewed favourably by participants as a means of setting up mechanisms for effective accountability and monitoring processes and to provide community control and access to data. In its submission, FECCA argued that this would enable data collation formulations and assessments which account for impacts on culturally and linguistically diverse communities; mechanisms for collating data that are inclusive; and facilitating the availability of data including instructive non-public data. A 2022 review by the Centre for Resilient and Inclusive Societies (CRIS) also recommended the development of a national racism data management plan in close collaboration with state, local and community organisations, with the aim of having this plan feed into national, state, and local strategies for eradicating racism.[14]

Ensuring ethical approaches and processes around data collection was also a key concern amongst participants. This would help to protect communities from unethical data collection, management, and reporting that often results in deficit characterisations of First Nations peoples and those from migrant, refugee, and faith-based backgrounds that are negatively racialised. The FECCA Issues Paper recommends the application of the FAIR (Findable, Accessible, Interoperable, Reusable) Data Principles, which have received worldwide recognition as a useful framework for maximising use and reuse of data (Recommendation 7),[15] as well as a robust oversight mechanism for implementation and reporting.[16]

For Aboriginal and Torres Strait Islander participants, mechanisms to ensure data sovereignty were paramount.

Data sovereignty

> It is more important the way the data is interpreted and the narrative that Indigenous people give us about that data. — *consultation with First Nations researchers, NARF project, May 2021 – April 2022*

> [W]e rely heavily on western data – important to counteract this with First Nations data. — *consultation with First Nations researchers, NARF project, May 2021 – April 2022*

Indigenous data refers to any information or knowledge that concerns, and may affect, Aboriginal and Torres Strait Islander peoples.[17] Indigenous data sovereignty affirms the right of Aboriginal and Torres Strait Islander peoples, communities and organisations to access, retain control over, protect, develop, and use this data as it relates to them, as well as their self-determined priorities and practices.[18] These principles of Indigenous data sovereignty that centre self-determination can provide broader guidance on the creation of data sovereignty frameworks for migrant, refugee, and faith-based communities that are negatively racialised.

Experts advised the Commission that mechanisms to ensure data sovereignty would avoid the perpetuation of systemic racism that occurs when communities are studied and reported on in a way that focuses on 'First Nations peoples' disadvantage, disparity, and deprivation' reinforces the pathologisation of communities, and ignores 'Indigenous sovereignty, cultural diversity,' and self-determination.[19] Data sovereignty also enables the collection of data and measurement of racism and inequities in a way that is meaningful to communities.

Sovereignty over data is activated through strong Indigenous data governance, which upholds Indigenous autonomy throughout the research process. The research process is further guided by Indigenous Data Sovereignty Principles, which recognise First Nations peoples' right to exercise control over the data ecosystem, as well as rights to accountable data structures and data that is contextualised, disaggregated, relevant, and supportive of sustainable self-determination and their individual and collective interests.[20]

Control of the data ecosystem includes decision-making over how and why data is collected, its interpretation and analysis, and how the data is shared.[21] Data sovereignty recognises how research can tend to silence non-white knowledges,[22] and spotlights the value of having these knowledges lead the research process. When strong processes of Indigenous data governance are maintained, Aboriginal and Torres Strait Islander peoples can more accurately contextualise and articulate their stories, knowledges, and aspirations.[23]

Indigenous data sovereignty recognises how the handling of data about Aboriginal and Torres Strait Islander peoples and communities not only reflects, but also develops, Indigenous peoples' experiences, knowledges, values, and wellbeing.[24] Data sovereignty is a corollary of the broader right of Aboriginal and Torres Strait Islander peoples to exercise autonomy over their cultural heritage, traditional knowledges, and traditional cultural expressions, which are rights affirmed by the UNDRIP.[25]

Currently, there are no regulatory or legislative protections to ensure First Nations communities' data sovereignty, which puts Australia behind comparable jurisdictions like Canada. One of the exemptions to Canada's data disclosure consent requirements is disclosure to enable Indigenous governments and groups to access personal information to advance historical claims and grievances.[26] The Office of the Privacy Commissioner of Canada has also published guidance noting that First Nations, Métis, and Inuit peoples have inherent and collective rights to self-determination, which entail the ownership and governance of their data. In practice, this means the collection and use of relevant personal data typically require community engagement and the establishment of data governance agreements. Indigenous governments and organisations are also exempted from the *Privacy Act (RSC 1985, c P-21)* except when they are accessing personal information held by federal government institutions, giving Indigenous individuals and communities greater access to data that affects them.

Case study: National Agreement on Closing the Gap

Developed in partnership between Australian governments and the Coalition of Aboriginal and Torres Strait Islander Peak Organisations, the National Agreement on Closing the Gap came into effect on 27 July 2020. Priority Reform Four of the National Agreement, 'Shared Access to Data and Information at a Regional Level', seeks to ensure that Aboriginal and Torres Strait Islander people have access to, and the capability to use, locally relevant data and information to set and monitor the implementation of efforts to close the gap, their priorities, and drive their own development. In this sense, this Priority Reform rests upon a recognition of data sovereignty and culturally appropriate data management as crucial elements to close the gap. This includes support for the ability of Aboriginal and Torres Strait Islander communities to explore themselves what data sovereignty means at a local and regional level.

Under Priority Reform Four, Commonwealth, state and territory governments have committed to implementing the data and information elements, including to:

- share available, disaggregated regional data and information with Aboriginal and Torres Strait Islander organisations and communities
- establish partnerships between Aboriginal and Torres Strait Islander people and government agencies to improve collection, access, management, and use of data
- make their data more transparent by telling Aboriginal and Torres Strait Islander people what data they have and how it can be accessed
- build capacity of Aboriginal and Torres Strait Islander organisations and communities to collect and use data.

To achieve this outcome, Commonwealth, state, and territory governments will establish regional data projects in up to six locations across Australia, including Western Sydney in New South Wales and the Kimberley region in Western Australia. These data projects will support Aboriginal and Torres Strait Islander communities to analyse and use regional specific data to help drive their own development and discussions with governments, as well as collect and access other data which they consider important. This, in turn, will support Aboriginal and Torres Strait Islander communities to make decisions about their development and closing the gap.

The need for longitudinal data

In addition to the implementation of formal mechanisms to ensure data sovereignty, participants in consultations on a national anti-racism framework, and those who made submissions, emphasised the need for diverse forms of data that effectively capture the breadth and nuance of racism and its impacts.

Experts working on research on racial inequality in health, in particular, noted the importance of longitudinal data to better determine the impacts of racism over time, which could be facilitated by a uniform national database rollout.

Longitudinal data is data collected from the same individuals or entities (such as businesses) repeatedly over time, providing an evidence base for how and why certain circumstances, actions, events, policies, and other causal factors can yield particular long-term outcomes.[27] Studies drawing upon this data thus possess a 'breadth and depth of perspective' that is required for the analysis of complex and entrenched problems, such as those surrounding racial discrimination.[28] This includes the identification of sub-groups who are at greater risk of cumulative impacts from multiple and intersecting forms of discrimination, thus creating an evidence base for addressing intersectional harms.

With research on racism being a relatively recent phenomenon, longitudinal data can assist in understanding not only the critical events and histories that impact racism and responses to it, but also racism itself, including how racism might transform, fluctuate, and impact people in specific phases of their lives and in their overall lifespan.[29] Altogether, this makes way for the development of effective and meaningful public policy to address these problems.

By following the trajectories of individuals over time, longitudinal data has been able to demonstrate that racial discrimination – including internalised, interpersonal, and systemic racism – is a fundamental determinant of ill health and health inequalities,[30] particularly for Aboriginal and Torres Strait Islander peoples and communities.[31] This has been shown to occur through several pathways, including restricted access to social resources such as employment and education, exposure to risk factors such as unnecessary contact with the justice system, and direct physical injury caused by racist violence.[32]

Other longitudinal studies conducted in Australia include *Building a New Life in Australia (BNLA): The Longitudinal Study of Humanitarian Migrants* conducted by the Department of Social Services, examining how humanitarian migrants settle into life in Australia;[33] *Growing Up in Australia*: The Longitudinal Study of Australian Children (LSAC), which follows the development of 10,000 young people and their families from all parts of Australia;[34] the *Household, Income and Labour Dynamics in Australia (HILDA) Survey*, which collects information about economic and personal well-being, labour market dynamics, and family life;[35] the *Longitudinal Study of Immigrants to Australia (LSIA)*, which sought to collect information on recently arrived migrants, measure how they settled in Australia, and provide reliable data to monitor and evaluate immigration settlement policies, programs and services;[36] and *Mayi Kuwayu: The National Study of Aboriginal and Torres Strait Islander Wellbeing (MK)*, which looks at how Aboriginal and Torres Strait Islander wellbeing is linked to connection to country, cultural practices, spirituality, language use, and other factors.[37]

Footprints in Time: The Longitudinal Study of Indigenous Children (LSIC), the first large-scale longitudinal survey to focus on the development of Aboriginal and Torres Strait Islander children, aimed to identify what helps them 'grow up strong' in their communities.[38] From 1,239 Indigenous children aged 5–10 who participated in the survey, 40% of primary carers, 45% of families and 14% of Aboriginal and Torres Strait Islander children aged 5–10 years reported experiencing racial discrimination at some point in time, with 28–40% experiencing it persistently. Repeated data collection over the life course of participants identified that cumulative experiences of racial discrimination were linked to the development of sleep difficulties, obesity, asthma, and mental health problems.[39] Another longitudinal study found differences in the prevalence of racial discrimination experienced by children aged 10–11 of various groups, including children of Anglo/European background (8%), visible minority background (18%) and Indigenous background (25%), and identified a correlation between these early experiences and the worsening of socioemotional difficulties and an increased risk of obesity over time.[40]


Footprints in Time: The Longitudinal Study of Indigenous Children (LSIC)[1]
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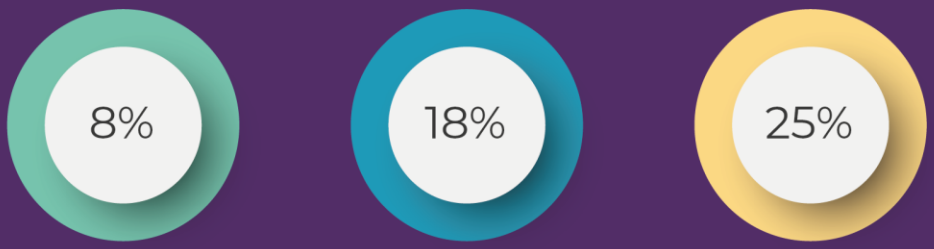
1. Mick Dodson, Boyd Hunter and Matthew McKay, 'Footprints in Time: The Longitudinal Study of Indigenous Children: A guide for the uninitiated' (2012) 91 Family Matters 69.
2. Carrington C J Shepherd et al, 'The impact of racial discrimination on the health of Australian Indigenous children aged 5–10 years: analysis of national longitudinal data' (2016) 16 International Journal for Equity in Health 116, 117, 124.

Another longitudinal study found differences in the prevalence of racial discrimination experienced by children **aged 10–11** of various groups



Anglo/European background

visible minority background

Indigenous background

and identified a correlation between these early experiences and the worsening of socioemotional difficulties and an increased risk of obesity over time[1]

1. Naomi Priest et al, 'Cumulative effects of bullying and racial discrimination on adolescent health in Australia' (2019) 60(3) Journal of Health and Social Behavior 344, 353–7.

The need for qualitative data

Participants in the scoping process for a national anti-racism framework highlighted the importance of qualitative data, in addition to quantitative data, to better understand experiences of racism, their gravity, and importantly, to give voice to experiences that are routinely silenced. Consultation participants and those who made submissions advised the Commission that the lack of such data has been a main challenge in health equity and a significant impediment to understanding experiences of racial discrimination in the operation of the justice system, when it comes to engagement with legal support, the court system, and judges.

Unlike quantitative data, which can furnish a stark and decontextualised picture of their subject matter, qualitative data articulates embodied experiences by giving voice to those who have lived them. For those experiencing racial discrimination and violence, the deficit focus of statistics and aggregated numbers are insufficient in rendering a meaningful portrait of their lives and experiences of racism, let alone informing a policy framework that serves their needs, interests, and priorities.[41]

This is not to negate the role of quantitative data, but rather, to acknowledge that 'accepting numerical reality is not the same as accepting the validity of the picture they represent or the policy settings that invariably emerge from these statistics'.[42] Quantitative data have been described as being weaponised against Aboriginal and Torres Strait Islander peoples and other negatively racialised communities, and have tended to paint those who are negatively racialised, and Aboriginal and Torres Strait Islander communities in particular, 'into a bleak corner of humanity'.[43]

A qualitative methodology can resist the creation of racist narratives by centring the words and experiences of Aboriginal and Torres Strait Islander peoples and other negatively racialised communities. In doing so, this methodology can move away from disconnected descriptions of racism, and towards an analysis of the diverse meanings and languages of racism used by those who experience it.[44]

In this way, qualitative data can and should be used to shape quantitative studies by gauging people in a 'full, relational sense'[45] and, as a result, 'mak[ing] the world visible'[46] – for instance, the Commission heard about how qualitative studies might help understand changing experiences or understandings of racism over time. Furthermore, in spotlighting words and experiences, a qualitative methodology has the potential to promote a more sustainable, ethical, and relational approach to advancing new knowledge – one that respects personal autonomy, as well as the political and intellectual authority of those taking part in research. In the context of racial discrimination, this is a methodology that can recognise how the voices spotlighted are often ones marginalised or silenced by white knowledge and research paradigms.[47]

Artificial intelligence and racial bias in data

> A comprehensive antiracism framework must take into account the emerging technologies which bring new challenges of racial bias into our everyday lives. […] Biases within such technologies poses the threat of misidentification, discrimination, and wrongful prosecution. — *submission from the Asian Australian Alliance, NARF project, May 2021 – April 2022*

The emergence of artificial intelligence (AI) has seen a rise in concerns of algorithmic bias in AI-led decision-making processes in both the public and private sectors. Although AI has aims to progress technological capabilities, previous Commission research, as well as consultation and submission participants on the National Anti-Racism Framework project, raised serious concerns about the possibility of algorithms replicating the racial bias in data and further entrenching discriminatory practices.

AI-informed risk assessment is a form of decision-making that is increasingly common within the criminal justice system, immigration departments, and other government services like healthcare. When flawed data sets, such as historical data affected by racial bias or prejudice, are used to build and train an assessment tool or create projections, the algorithms will produce biased outcomes that reinforce human prejudice and systemic racism in the real world, to the detriment of negatively racialised groups.[48]

An example of structural racism being reinforced through AI algorithms is the Suspect Target Management Plan used by the NSW Police to identify potential criminal offenders. The tool disproportionately labels First Nations people, especially young First Nations people, as potential criminal offenders. This is due to the tool's ability to target a race related factor based on historical discriminatory statistics, namely criminal offence data in which First Nations people are disproportionately overrepresented, as part of its assessment.[49]

Discriminatory decision-making arising from AI-informed risk assessments is difficult for individuals to navigate through anti-discrimination laws. The Commission's previous research into human rights protections in the area of emerging technologies also indicates that current laws leave the variables within, and reasoning behind, these machine decisions unchecked, and fall short in addressing the potential negative effects of AI technology.[50]

In view of inadequate protections, consultation participants called for greater accountability and transparency around the use of big data, including in relation to the connections between data collected, and its use by different governments and private and public services. Participants also shared the need for capacity building and defined strategies countering racial bias in emerging technologies.

Participants' initial feedback about AI supports the Commission's proposals in the *Human Rights and Technology* Report, which recommends that Australian governments incorporate international human rights frameworks into services driven by AI and create accountability mechanisms to redress harm caused by AI technology. This includes allowing challenges to an AI-informed decision, providing opportunities to obtain explanations for decisions made, and ensuring relevant testing is conducted to prevent algorithmic bias.[51]

[1] Government of Canada, *Building a Foundation for Change: Canada's Anti-Racism Strategy 2019–2022* (Report, 2019) 19 <https://www.canada.ca/content/dam/pch/documents/campaigns/anti-racism-engagement/ARS-Report-EN-2019-2022.pdf>.

[2] *Canadian Race Relations Foundation Act*, SC 1991, c 8, s 4(a).

[3] Stats NZ, *Integrated Data Infrastructure* (Web Page, updated 23 August 2022) <https://www.stats.govt.nz/integrated-data/integrated-data-infrastructure/>. See also Jehonathan Ben et al, *Identifying and filling racism data gaps in Victoria: A stocktake review* (Report, Centre for Resilient and Inclusive Societies, June 2022) <https://static1.squarespace.com/static/5d48cb4d61091100011eded9/t/62b14a146c39cf263f66c4d6/1655786012856/Identifying+and+filling+racism+data+gaps+in+Victoria+A+stocktake+review+final.pdf>.

[4] Intergovernmental Agreement on Data Sharing (9 July 2021) <https://federation.gov.au/sites/default/files/about/agreements/iga-on-data-sharing-signed.pdf>. See also Jehonathan Ben et al, 'Racism in Australia: filling data gaps' (2021) 1(1) *CRIS Issue Papers* 1, 1–10.

[5] Family Matters, *The Family Matters Report 2020: Measuring Trends to Turn the Tide on the Over-Representation of Aboriginal and Torres Strait Islander Children in Out-Of-Home Care in Australia* (Report, 16 November 2020) 110.

[6] Fiona Allison, 'A Limited Right To Equality: Evaluating the Effectiveness of Racial Discrimination Law For Indigenous Australians Through An Access To Justice Lens' (2013) 17(2) *Australian Indigenous Law Review* 3, 9 <https://www.jcu.edu.au/__data/assets/pdf_file/0011/119999/jcu_144196.pdf>.

[7] *Closing the Gap* has identified the under collection of data in relation to First Nations communities and people from refugee and migrant backgrounds.

[8] Jehonathan Ben et al, 'Racism in Australia: filling data gaps' (2021) 1(1) *CRIS Issue Papers* 1, 2.

[9] Complaints-handling agencies that do provide this information include the Commission, the NSW Anti-Discrimination Board, and the Equal Opportunity Commissions. As Fiona Allison points out, this is 'despite the fact that some jurisdictions have strategic frameworks in place requiring reporting of numbers of Indigenous complaints.' See Fiona Allison, 'A limited right to equality: evaluating the effectiveness of racial discrimination law for Indigenous Australians through an access to justice lens' (2013) 17(2) *Australian Indigenous Law Review* 3, 9.

[10] Tamar Hopkins, *Monitoring Racial Profiling: Introducing a scheme to prevent unlawful stops and searches by Victoria Police* (Report, Police Stop Data Working Group, Flemington & Kensington Community Legal Centre, August 2017) 6–7 <https://www.policeaccountability.org.au/wp-content/uploads/2017/08/monitoringRP_report_softcopy_FINAL_22082017.pdf>.

[11] Angeline Ferdinand, Margaret Kelaher and Yin Paradies, *Mental health impacts of racial discrimination in Victorian culturally and linguistically diverse communities* (Full Report, Victorian Health Promotion Foundation, 2013) 10 <https://rest.neptune-prod.its.unimelb.edu.au/server/api/core/bitstreams/3accc47e-da77-56c7-8ff2-dd213cd81f3f/content>.

[12] Federation of Ethnic Communities' Councils of Australia, *If We Don't Count It…It Doesn't Count! Towards a Consistent National Data Collection and Reporting on Cultural, Ethnic and Linguistic Diversity* (Issues Paper, September 2020) 5–6 <https://fecca.org.au/wp-content/uploads/2020/10/CALD-DATA-ISSUES-PAPER-FINAL2.pdf>.

[13] Government Digital Service (UK), *Ethnicity facts and figures* (Web Page) <https://www.ethnicity-facts-figures.service.gov.uk>.

[14] Jehonathan Ben et al, 'Identifying and filling racism data gaps in Victoria: A stocktake review' (Report, Centre for Resilient and Inclusive Societies, June 2022) 31 <https://static1.squarespace.com/static/5d48cb4d61091100011eded9/t/62b14a146c39cf263f66c4d6/1655786012856/Identifying+and+filling+racism+data+gaps+in+Victoria+A+stocktake+review+final.pdf>.

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16 Federation of Ethnic Communities' Councils of Australia, *If We Don't Count It…It Doesn't Count! Towards a Consistent National Data Collection and Reporting on Cultural, Ethnic and Linguistic Diversity* (Issues Paper, September 2020) 18 <https://fecca.org.au/wp-content/uploads/2020/10/CALD-DATA-ISSUES-PAPER-FINAL2.pdf>.

17 Australian Institute of Aboriginal and Torres Strait Islander Studies, *A Guide to Applying The AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research* (Guide, 2020) 25 <https://aiatsis.gov.au/sites/default/files/2020-10/aiatsis-guide-applying-code-ethics_0.pdf>.

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19 Yoorrook Justice Commission, *Indigenous Data Sovereignty and Data Governance* (Information Sheet, 2022) 1 <https://yoorrookjusticecommission.org.au/wp-content/uploads/2022/04/041922_Yoorrook_DataSovereigntyGuidance.pdf>.

20 Yoorrook Justice Commission, *Indigenous Data Sovereignty and Data Governance* (Information Sheet, 2022) 1 <https://yoorrookjusticecommission.org.au/wp-content/uploads/2022/04/041922_Yoorrook_DataSovereigntyGuidance.pdf>.

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22 Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (Zed Books and University of Otago Press, 1999) 42–57.

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25 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted on 13 September 2007) art 31(1). See also Tahu Kukutai and John Taylor, 'Data sovereignty for indigenous peoples: current practice and future needs' in Tahu Kukutai and John Taylor (eds), *Indigenous data sovereignty: toward an agenda* (ANU Press, 2016) 1, 1; *Mayi Kuwayu: The National Study of Aboriginal & Torres Strait Islander Wellbeing,* Indigenous Data Sovereignty Principles (Web Page) <https://mkstudy.com.au/indigenousdatasovereigntyprinciples/#:~:text=Indigenous%20Data%20Sovereignty%20in%20Australia,exercise%20ownership%20over%20Indigenous%20data>.

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[32] Naomi Priest et al, 'A systematic review of studies examining the relationship between reported racism and health and wellbeing for children and young people' (2013) 95 *Social Science & Medicine* 115, 116.

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[34] Growing Up in Australia: The Longitudinal Study of Australian Children (Web Page) <https://growingupinaustralia.gov.au/>.

[35] Melbourne Institute: Applied Economic & Social Research, *HILDA Survey* (Web Page) <https://melbourneinstitute.unimelb.edu.au/hilda>. See also Department of Social Services, *Living in Australia: The Household, Income and Labour Dynamics in Australia (HILDA) Survey* (Web Page, 23 June 2022) <https://www.dss.gov.au/about-the-department/longitudinal-studies/living-in-australia-hilda-household-income-and-labour-dynamics-in-australia-overview>.

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[37] Mayi Kuwayu: The National Study of Aboriginal and Torres Strait Islander Wellbeing (Website) <https://mkstudy.com.au/>.

[38] Mick Dodson, Boyd Hunter and Matthew McKay, 'Footprints in Time: The Longitudinal Study of Indigenous Children: A guide for the uninitiated' (2012) 91 *Family Matters*, 69. <https://aifs.gov.au/sites/default/files/fm91g_0.pdf>.

[39] Carrington C J Shepherd et al, 'The impact of racial discrimination on the health of Australian Indigenous children aged 5–10 years: analysis of national longitudinal data' (2016) 16 *International Journal for Equity in Health* 116, 117, 124.

[40] Naomi Priest et al, 'Cumulative effects of bullying and racial discrimination on adolescent health in Australia' (2019) 60(3) *Journal of Health and Social Behavior* 344, 353–7.

41 Maggie Walter and Stephanie Russo Carroll, 'Indigenous Data Sovereignty, governance and the link to Indigenous policy' in Maggie Walter et al (eds), *Indigenous Data Sovereignty and Policy* (Routledge, 2021) 1, 2, 10. See also Chelsea Watego et al, 'Black to the Future: Making the Case for Indigenist Health Humanities' (2021) 18(16) *International Journal of Environmental and Public Health* 8704, 8706, citing Mark Brough, 'Healthy imaginations: A social history of the epidemiology of Aboriginal and Torres Strait Islander health' (2001) 20(1) *Medical Anthropology* 65.

42 Maggie Walter and Stephanie Russo Carroll, 'Indigenous Data Sovereignty, governance and the link to Indigenous policy' in Maggie Walter et al (eds), *Indigenous Data Sovereignty and Policy* (Routledge, 2021) 1, 2.

43 Chelsea Watego et al, 'Black to the Future: Making the Case for Indigenist Health Humanities' (2021) 18(16) *International Journal of Environmental and Public Health* 8704, 8707.

44 Ariana Kong et al, 'A Qualitative Study Exploring the Experiences and Perspectives of Australian Aboriginal Women on Oral Health during Pregnancy' (2021) 18 *International Journal of Environmental and Public Health* 8061, 8064. See also Margarete Sandelowski, 'Whatever happened to qualitative description?' (2000) 23(4) *Research in Nursing & Health* 334.

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46 Norman K Denzin and Yvonna S Lincoln, 'Introduction: Critical Methodologies and Indigenous Inquiry' in Norman K Denzin, Yvonna S Lincoln and Linda Tuhiwai Smith (eds) *Handbook of Critical and Indigenous Methodologies* (Sage, 2005) 1, 5.

47 See generally Chelsea Watego et al, 'Black to the Future: Making the Case for Indigenist Health Humanities' (2021) 18(16) *International Journal of Environmental and Public Health* 8704.

48 Australian Human Rights Commission, *Human Rights and Technology* (Final Report, 2021) 45, 107.

49 Australian Human Rights Commission, *Human Rights and Technology* (Final Report, 2021) 43. An interim report by the Law Enforcement Conduct Commission also points to 'patterns of targeting that appear to have led to unreasonable, unjust and oppressive interactions for young STMP targets,' on account of 'overt and intrusive policing tactics' and 'unreasonable surveillance and monitoring': Law Enforcement Conduct Commission, *An investigation into the formulation and use of the NSW Police Force Suspect Targeting Management Plan on children and young people: Operation Tepito* (Interim Report, January 2020) 11 <https://www.lecc.nsw.gov.au/news-and-publications/publications/operation-tepito-interim-report-january-2020.pdf>. See also Vicki Sentas and Camilla Pandolfini, *Policing Young People in NSW: A study of the Suspect Targeting Management Plan* (Report, Youth Justice Coalition, 2017) <https://www.yjc.org.au/report.html>.

50 Australian Human Rights Commission, *Human Rights and Technology* (Final Report, 2021) 90.

51 See generally Australian Human Rights Commission, *Human Rights and Technology* (Final Report, 2021) 35–105.

Findings: education

> Imagine a world where all Australian children are respected and offered the absolute best choices in education and future employment; imagine an Australia where every Aboriginal and Torres Strait Islander child has the right and opportunity to realise her or his dream of excellence. And imagine every Australian university student benefiting from the expertise and ingenuity of the world's oldest living cultures. — *Tom Calma AO*[1]

Consultation participants and many of those who made submissions on a national anti-racism framework conveyed to the Commission that there is a lack of understanding amongst the public and within institutions about race and racism and how it shapes everyday life.

Both First Nations participants and non-Indigenous participants indicated that there was not enough understanding about the unique position of First Nations peoples. Improving literacy about race and racism in Australia was identified as an opportunity to connect people through common understandings and build momentum for change including through anti-racism initiatives and actions. The need for a holistic approach to public education was asserted by participants, including reforms to educational institutions and their curricula to foster racial literacy and anti-racism from a young age.

Broad based racial literacy

> I wasn't able to really articulate myself about this topic until I got to Uni and learnt about different theories and ways of talking about racism — *youth consultation participant, submission from Multicultural Youth Action Network, NARF project, May 2021 – April 2022*

Government agencies, peak and community organisations, and individuals alike indicated that educating the public about race and racism was a key priority.

Participants shared concerns with the Commission about the broad lack of understanding and awareness of how race and racism operate amongst the public, and an associated lack of motivation to address it. Many participants shared that they themselves only became able to articulate their own experiences after engaging with material on race and racism in a tertiary-education context.

Consultations and submissions advocated for earlier and wider community understanding of how race and racism operate, to support action to address racism in all facets of public life, and better enable individuals and organisations to prevent and respond to racism in various settings.

> Comprehensive public education is essential to a framework that has the intention of eliminating the experience of racial discrimination. By educating institutions and communities about both the overt and less visible acts of racial discrimination, individuals and organisations will be able to identify and address racial discrimination when and where it would otherwise occur. *— submission from Australians for Native Title and Reconciliation (ANTaR), NARF project, May 2021 – April 2022*

Education around the history and ongoing impacts of European colonisation on First Nations peoples was viewed as fundamental in fostering this understanding. Specifically, First Nations experts cited the lack of public awareness around the violence experienced by Aboriginal and Torres Strait Islander communities since colonisation, and the harms of this violence, including its intergenerational and ongoing effects. Experts noted that failure to acknowledge these harms perpetuates structures and institutions that reinforce these harms. Non-Indigenous community members and organisations also said that truth-telling was a necessary component of any anti-racism work.

> Any anti-racism work must include education and information informed and designed by First Nations peoples to encompass truth telling. *— submission from Jenny Leong MP, NARF project, May 2021 – April 2022*

Non-Indigenous community members articulated the importance of being actively given the opportunity to connect with First Nations history and truth. For newly arrived and emerging communities in particular this was identified as a critical omission from narratives around Australian history and identity, which affected their understanding of, and relationship with, Aboriginal and Torres Strait Islander communities.

Members of new and emerging communities and their representatives told the Commission that information on the unique experience of Aboriginal and Torres Strait Islander communities in terms of European colonisation and its ongoing impacts, as well as the unique rights of First Nations peoples, is not easily accessible; and this often meant there is a lack of opportunity to foster understanding of and solidarity with Aboriginal and Torres Strait Islander communities.

> For many, there hasn't been that interaction with Indigenous communities. The need for opportunities to learn the true history of Australia. That’s the first priority in creating a foundation. An opportunity to actively teach this - it's not a good history but that shouldn’t stop it from being taught. We need to be open and honest about the history. Reconciliation can’t happen unless we acknowledge peoples' experience… the importance of First Nations needs to come first not just in the framework development but also within everyday life. *— community consultation participant, NARF project, May 2021 – April 2022*

> It is essential to highlight the role of history in shaping where we are today – shaped the institutions of current modern Australia, it's laws, the dialogue, the media. That history has created different layers and levels of racial inequality. — *consultation with subject-matter expert, NARF Project, May 2021 – April 2022*

Participants also asserted the need for enhanced understanding of Australia's migration history, and discriminatory immigration laws and policies. These include the White Australia Policy and associated dictation testing, alien registration cards, the internment camps of World War I and World War II, and the *Pacific Island Labourers Act 1901* (Cth). Public awareness about this history was seen as critical to an understanding of the function of race in Australia's settler-colonial society from 1788 through to the present, and how disparate treatment based on race is embedded across all aspects of public life.

Participants perceived the impacts of this history in current border control laws, policies, and practices (including asylum seeker policies and visa and citizenship policies), through to the racialised narratives reproduced in the media and public discourse.

Subject-matter experts and organisations representing the interests of migrant, refugee and faith communities that are negatively racialised asserted that including information about racially discriminatory laws, policies, and practices in narratives about who is or was 'Australian' would improve understanding about the way non-white and non-English speaking migrants and migrant communities have been and continue to be characterised as 'other' or 'not Australian'.

Participants noted the lack of transparency about this history renders some communities invisible, including in relation to their diversity, their needs and priorities, and their contributions to Australian society, as well as the way racism systematically operates to centre whiteness and reproduce exclusion and inequities for them.

> Australia would like to see multicultural Australia as part of the mainstream but that's unhelpful because it means that people aren't seen, and structural racism is not highlighted. — *consultation participant representing a multicultural peak body, NARF project, May 2021 – April 2022*

Educational institutions

Racism experienced by students in educational settings was a common concern shared with the Commission. Participants indicated these experiences appeared to be on the rise, schools did not know how to respond, and teaching staff were occasionally implicated. Participants reported experiences where assumptions were made by teaching staff about student competency based on race, and that diversity was often viewed through a deficit rather than a strengths-based lens.

Research has shown that racial bias and racism are pervasive in educational settings. Young people experience and witness high rates of racial discrimination at school from both their peers and their teachers. In 2017, the Australian National University's Speak Out Against Racism student and staff surveys found that one-third of students experienced racism from their peers, and 12% by teachers, and 60% witnessed their peers being racially discriminated against by other students, and 43% by teachers.[2] Aboriginal and Torres Strait Islander students in particular face persistent negative representations of Indigeneity, Indigenous intelligence, and academic achievement from teachers.[3] Research has also shown that children want to talk about race and racism, but parents and teachers silence or evade these discussions, or approach these discussions by encouraging young people not to see race.[4] This serves to elide the realities of structural racism and discrimination, contributing to a knowledge deficit about racism perpetuated across generations.[5] It also denies the strength and pride individuals and communities find within their racial identity.[6]

Community members who engaged in the initial scoping process for a national anti-racism framework shared fears about the harms experienced by young people who face racism at school, and the implications for their wellbeing as well as their future. Since schooling is a key formative stage in a child's life, the impacts of racial bias or racism are harmful, extensive, and long-term. Racism negatively impacts young people's sense of belonging and can increase the risk of anxiety, depression, and psychological distress.[7] Research also demonstrates how experiences of racism at school can lead to poorer physical wellbeing, including cardiometabolic disease risk in children.[8] Racism in schools also negatively impacts attendance, with students reporting skipping school to avoid racism.[9] These impacts on wellbeing and educational development are long lasting and can inform a student's trajectory into adulthood. In the long term, experiences of racial discrimination have been shown to lead to poorer mental and physical wellbeing, substance misuse, and the development of unhealthy coping behaviours, as well as decreased self-esteem.[10]

Community members who engaged in the initial scoping process for a national anti-racism framework shared fears about the harms experienced by young people who face racism at school, and the implications for their wellbeing as well as their future. Since schooling is a key formative stage in a child's life, the impacts of racial bias or racism are harmful, extensive and long-term.

Racism



negatively impacts young peoples overall sense of belonging



increases the risk of anxiety, depression and psychological distress[1]

Racism at school



leads to poorer physical wellbeing including cardiometabolic disease risk[2]



negatively impacts attendance as students skip school to avoid racism[3]

1. Hannah Yared, Christine Grové and Denise Chapman, 'How Does Race Play Out in Schools? A Scoping Review and Thematic Analysis of Racial Issues in Australian Schools' (2020) 23(6) *Social Psychology of Education* 1505, 1506, 1510.
2. See generally Naomi Priest et al, 'Experiences of racial discrimination and cardiometabolic risk among Australian children' (2020) 87 *Brain, Behavior, and Immunity* 660; Naomi Priest et al, 'Cumulative Effects of Bullying and Racial Discrimination on Adolescent Health in Australia' (2019) 60(3) *Journal of Health and Social Behavior* 344.
3. Nicholas Biddle and Naomi Priest, 'Indigenous student skipping school to avoid bullying and racism', *The Conversation* (online at 11 April 2014) <https://theconversation.com/indigenous-students-skipping-school-to-avoid-bullying-and-racism-25433>.

First Nations students' performance and wellbeing are particularly harmed by racial bias or racism at school, with impacts ranging from school withdrawal and disengagement, to students deidentifying as Aboriginal and Torres Strait Islander and internalising negative beliefs about Aboriginal and Torres Strait Islander intelligence and academic performance.[11]

The Commission's *Wiyi Yani U Thangani* Report cited customised ABS data showing that Aboriginal and Torres Strait Islander peoples remain significantly underrepresented in the higher education system, with approximately 3.9% of the Aboriginal and Torres Strait Islander population participating in higher education in 2016 compared to a national average of approximately 10.5%.[12]

First Nations girls who participated in the *Wiyi Yani U Thangani* project told the Commission they had done their utmost to finish their schooling so they could attend university, and fulfil aspirations in medicine, the humanities, engineering, law, technology and services.[13] Tertiary education was widely seen by First Nations young people as a way to address inequality of opportunity, however, participants also expressed apprehension and uncertainty about pathways post-secondary school.[14] These concerns, together with the underrepresentation of First Nations peoples in tertiary education, demonstrate the significant impact that racist environments have on engagement of Aboriginal and Torres Strait Islander peoples in further education.

> Education institutes play a key role in shaping anti-racist mentalities, especially with youth. — *submission from Reconciliation Australia, NARF project, May 2021 – April 2022*

Consultation participants and those who made submissions on a framework noted the important role teachers play in the early stages of an individual's development. Anti-racism teacher and student training was therefore seen as critical in preventing the long-term harms of racist education experiences. Organisations advised this training must engage with intersectional experiences of racism, and that it needs to be embedded in pedagogy and practice, as opposed to being delivered as stand-alone cultural competency training. This includes training to improve competency around data collection on cultural diversity across student cohorts as well as competency around the use of this data. Organisations also advocated for the monitoring and evaluation of anti-racism programs within education settings, as well as the need for independent complaints-handling bodies.

Peak and community organisations, service providers, and government departments advocated for the importance of anti-racism curricula in schools and educational institutions. Early education was seen as critical, and several organisations called for a standard anti-racism curriculum in schools.

> There's no appropriate education material. There are many ways that the Australian curriculum disadvantages [First Nations] students at a systemic level incorporating racism within education through the lack of correct or relevant materials. — *consultation with First Nations organisation, NARF project, May 2021 – April 2022*

In a higher-education context, the Commission's Wiyi Yani U Thangani Report identified that culturally focussed academic and social support within the university setting, including mentorship and support from other Aboriginal and Torres Strait Islander students and staff members, is essential to improving student retention rates.[15] Indigenous centres in universities play a key role in providing a culturally safe space and facilities for students and staff, as well as a range of initiatives such as academic support and advice, and outreach programs for prospective Indigenous students.[16]

Organisations representing migrant, refugee, and faith-based communities that are negatively racialised noted that the white-centric lens in schooling also has impacts beyond school and in industry and employment. Expanding curricula to include diverse histories, knowledge, and culture would foster inclusion, belonging, and intercultural engagement, giving young people the capacity to challenge structural harms in their professional lives that otherwise extend from a more narrowly designed curriculum. Diversity in teaching staff and the corporate arms of education institutions were seen as an important component of fostering these expanded curricula.

Similarly, the First Nations women and girls consulted on the Commission's *Wiyi Yani U Thangani* project identified university education as the conduit through which a base level of cultural competency can be built within the sectors working with Aboriginal and Torres Strait Islander peoples and communities.[17] This includes moving away from a perception of Aboriginal and Torres Strait Islander peoples through a deficit lens and adopting a strengths-based approach. The *Wiyi Yani U Thangani* Report supports the recommendation of the *Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People: Final Report*, 'that universities develop and implement an Aboriginal and Torres Strait Islander teaching and learning strategy applicable across a range of curriculums, focused on standards of excellence as applied to other curriculum content and feeding into description of graduate attributes, with an initial focus on priority disciplines to close the gap such as teaching and health professionals'.[18]

Participants in the scoping process for a national anti-racism framework identified specific examples of good practice approaches to anti-racism curricula. These examples represent just some of the anti-racism work being undertaken in this important area and many local, geographically specific initiatives are in operation.

Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) Education Strategy

A significant example was the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) Education Strategy, which has a cutting edge goal of developing and implementing dedicated Aboriginal and Torres Strait Islander curriculum designed by Aboriginal and Torres Strait Islander peoples.[1] The AIATIS Education Strategy includes anti-racism teacher training, the creation of education resources for anti-racism practice, and building culturally responsive professional learning for educators. Other programs cited included ANTaR's Know Your Country campaign which advocates for First Nations Cultural Educators in every school, and Reconciliation Australia's Narragunnawali platform, which provides resources that 'support all schools and early learning services in Australia to develop environments that foster a high level of knowledge and pride in Aboriginal and Torres Strait Islander histories, cultures and contributions'.

1. 'About', *Narragunnawali: Reconciliation in Education* (Web Page) <https://www.narragunnawali.org.au/about>.

[1] Tom Calma AO, 'Shifting Perspectives In Our Universities' (Issue No 41, May 2019) *Reconciliation News: Stories about Australia's journey to equality and unity* 21 <https://www.reconciliation.org.au/wp-content/uploads/2021/02/Reconciliation-News-May-2019.pdf>.

[2] Naomi Priest et al, *Findings from the 2017 Speak Out Against Racism (SOAR) student and staff surveys* (Working Paper No 3, ANU Centre for Social Research & Methods, 2019) 4 <https://www.westernsydney.edu.au/__data/assets/pdf_file/0004/1566688/CSRM-WP-SOAR_PUBLISH.PDF>.

[3] Nikki Moodie, Jacinta Maxwell and Sophie Rudolph, 'The impact of racism on the schooling experiences of Aboriginal and Torres Strait Islander students: A systematic review' (2019) 46(2) *The Australian Educational Researcher* 273, 274, 291.

[4] Hannah Yared, Christine Grové, and Denise Chapman, 'How Does Race Play Out in Schools? A Scoping Review and Thematic Analysis of Racial Issues in Australian Schools' (2020) 23(6) *Social Psychology of Education* 1505, 1520–7.

[5] David Chae, Leoandra Onnie Rogers and Tiffany Yip, 'Most white parents don't talk about racism with their kids', *The Conversation* (online at 25 June 2020) <https://theconversation.com/most-white-parents-dont-talk-about-racism-with-their-kids-140894>.

[6] Australian Human Rights Commission, 'How old was I when I became aware of my race?', *Racism. It Stops With Me* (Web Page, 2022) <https://itstopswithme.humanrights.gov.au/about-the-campaign/question-and-context/how-old-was-i-when-i-became-aware-my-race>.

[7] Hannah Yared, Christine Grové and Denise Chapman, 'How Does Race Play Out in Schools? A Scoping Review and Thematic Analysis of Racial Issues in Australian Schools' (2020) 23(6) *Social Psychology of Education* 1505, 1506, 1510.

[8] See generally Naomi Priest et al, 'Experiences of racial discrimination and cardiometabolic risk among Australian children' (2020) 87 *Brain, Behavior, and Immunity* 660; Naomi Priest et al, 'Cumulative Effects of Bullying and Racial Discrimination on Adolescent Health in Australia' (2019) 60(3) *Journal of Health and Social Behavior* 344.

[9] Nicholas Biddle and Naomi Priest, 'Indigenous student skipping school to avoid bullying and racism', *The Conversation* (online at 11 April 2014) <https://theconversation.com/indigenous-students-skipping-school-to-avoid-bullying-and-racism-25433>.

[10] Naomi Priest et al, 'A Systematic Review of Studies Examining the Relationship Between Reported Racism and Health and Wellbeing for Children and Young People' (2013) 95 *Social Science & Medicine* 115, 116.

[11] Nikki Moodie, Jacinta Maxwell and Sophie Rudolph, 'The impact of racism on the schooling experiences of Aboriginal and Torres Strait Islander students: A systematic review' (2019) 46(2) *The Australian Educational Researcher* 273, 274; Amanuel Elias and Yin Paradies, 'The costs of institutional racism and its ethical implications for healthcare' (2021) 18(1) *Journal of Bioethical Inquiry* 45, 48–9 (see Figure 1).

[12] Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (Report, 2020) 502 <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>.

[13] Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (Report, 2020) 502 <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>.

[14] Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (Report, 2020) 502-503 <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>.

[15] Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (Report, 2020), 504 <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>.

[16] Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (Report, 2020) 503-505 <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>.

[17] Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (Report, 2020) 505 <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>.

[18] Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (Report, 2020) 505 <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>.

Findings: cultural safety

> A culturally safe and secure environment is one where people feel safe and draw strength in their identity, culture and community. — *submission from Western Sydney Community Forum, NARF project, May 2021–April 2022*

> Cultural safety is about overcoming the power imbalances of places, people and policies that occur between the majority non-Indigenous position and the minority Aboriginal and Torres Strait Islander person. Cultural safety is met through actions from the majority position that recognise, respect, and nurture the unique cultural identity of Aboriginal and Torres Strait Islander people. — *submission from the National Aboriginal Community Controlled Health Organisation, NARF project, May 2021 – April 2022*

Cultural safety was identified by participants in the National Anti-Racism Framework project as a key priority for addressing racial inequities in workplaces and in the provision of services.

In 1989, Māori nurses developed the concept of cultural safety in seeking to address inequities experienced by First Nations peoples by challenging the view that everyone should be cared for in the same way.[1] Cultural safety requires service providers and organisations to develop meaningful and accountable relationships, built on an understanding of communities' unique needs and strengths.[2] It also requires an ongoing process[3] to recognise how cultural, professional, and institutional locations impact interactions and service provision.[4] Cultural safety is a dynamic and flexible process,[5] that is client-centred and locally specific.[6] It is a framework and outcome that enables safe and accessible environments to be defined by employees and those who access services.[7] This strengths-based approach moves away from the deficit narratives[8] that surround cultural difference, and instead focuses on empowerment, healing and self-determination.[9]

Culturally safe workplaces

> In order to keep my job, I keep quiet. — *consultation participant, quoted in submission from the Federation of Ethnic Communities' Councils, NARF project, May 2021 – April 2022*

Cultural safety was identified by many participants across the National Anti-Racism Framework project as a best-practice approach to addressing race-based barriers and harms experienced in relation to job-seeking, and especially within the workplace. Community members as well as service providers described how racism affects the capacity of some to obtain work, and how racial discrimination faced within the workplace impacts employees' career progression and retention as well as their wellbeing. Participants highlighted that these experiences were exacerbated when racial discrimination intersected with other forms of discrimination including in relation to gender, age, visa status, and discrimination based on English-language proficiency and accent.

> We all need to be working together and lifting each other up. And that comes through being honest about the situation, through being honest about how things are structured first, and then looking at solutions and ways to change things and make them better. — *Nathan Rew, Pacific academic*[10]

There is strong evidence supporting the correlation between racism and barriers to securing employment. Numerous studies have demonstrated racial bias in recruitment. First Nations peoples and those from migrant, refugee, and faith-based communities or backgrounds that are negatively racialised are less likely to be offered employment than other applicants.[11] The Commission's Sharing the Stories of Australian Muslims project found that 48% of the Australian Muslims who participated in the National Survey conducted for the project, reported being treated unfavourably in the workplace or when seeking employment because of their race, religion, or ethnicity.[12]

Racism also creates poor work conditions. Discrimination, and hostility in the workplace, impact on job satisfaction, wellbeing, and job security.[13] The Commission's *Wiyi Yani U Thangani* Report found that Aboriginal and Torres Strait Islander women experience significant bullying in the workplace.[14] The Diversity Council of Australia recently found that employees who feel excluded at work are 5 times less likely to be satisfied with their jobs, 3 times more likely to feel work negatively impacts their mental health and 3.5 times more likely to leave their employer.[15]

> Beyond recruitment, structural interventions must also focus on retention, promotion, tenure and compensation among underrepresented artists and creative workers. Beyond diversity in the creative industries, work conditions must be made culturally safe and so cultural safety must be embedded into policies, practices and governance. [Culturally and linguistically diverse people] require spaces for safe discussion of key issues related to race and racism in the sector. This has become particularly evident to us as we consulted with members of our communities. — *consultation with industry specific peak organisation representing culturally and linguistically diverse communities, NARF project, May 2021 – April 2022*

Cultural safety was also offered as a solution to what was described as the ineffectiveness of workplace diversity and inclusion initiatives. Participants told the Commission that, to date, these initiatives have generally not adequately centred the needs of diverse staff and their safety, nor have they taken a strengths-based approach to diversity and inclusion. Project participants also identified that such initiatives also fail to be accountable to the employees they are stated to support. Participants in the *Sharing the Stories of Australian Muslims* project articulated similar concerns noting that diversity and inclusion measures are often not comprehensively implemented. Participants indicated that to address structural barriers in workplaces diversity and inclusion, practices must not only be included in an organisation's policy, but must be implemented to their fullest potential.[16] Cultural safety was identified as best practice in effectively supporting and retaining diverse staff.

The *Wiyi Yani U Thangani (Women's Voices)* Report

The *Wiyi Yani U Thangani (Women's Voices)* report observes that identified roles, where an employer identifies that a position is to be filled by an Aboriginal and/or Torres Strait Islander employee, are often tokenistic in nature, are not underpinned by cultural safety in recruitment processes, are limited to roles with an Aboriginal and Torres Strait Islander focus, and fail to provide opportunities for Aboriginal and Torres Strait Islander staff to participate meaningfully in organisations and share their worldview. Aboriginal and Torres Strait Islander women and girls told the Commission they also experience stress when they enter these roles, reporting the need to work harder and deliver better outcomes than their non-Indigenous counterparts, as well as the pressure to fall in line with organisation policies determined by non-Indigenous managers. The *Wiyi Yani U Thangani (Women's Voices)* report asserts that a culturally safe and respectful environment can help make the workplace more inclusive for Aboriginal and Torres Strait peoples where their unique contributions and skillsets are seen as valuable assets to the workplace and community at large.[1]

1. Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future* (Report, 2020), pp 524-527.

> Racism is a silent, but persistent work health and safety issue in health and aged care workplaces. — *submission from the NSW Nurses and Midwives Association, NARF project, May 2021 – April 2022*

Participants advised the Commission that culturally safe workplace environments start with workforce diversity and representation, but that the psychological and physical wellbeing of employees also needs to be ensured, particularly to support diversity across the employment lifecycle and in workplace leadership.

> A powerful characteristic of cultural safety is that it asks people to step into their responsibility and to be agents for change in systems – Aboriginal and Torres Strait people cannot do this alone. — *submission from Lowitja Institute, NARF project, May 2021 – April 2022*

First Nations organisations advised that often, the burden of supporting and upholding cultural safety is placed on First Nations peoples within an organisation, but that this is the responsibility of organisations. Organisations must ensure cultural safety is embedded within workplace programs, policies and practices as a workplace health and safety issue. A culturally safe approach can help to correctly situate the burden of addressing racism with institutions rather than individuals.

The Commission was advised that culturally safe workplaces involve anti-racist recruitment and hiring practices, mentoring and retention practices, and cultural accommodations that can support staff with lived experience of racism. Safe and transparent discrimination, harassment and vilification reporting mechanisms were also identified as a priority. The adoption of such practices and mechanisms was also identified as a priority solution to the harms of discrimination in the workplace in the *Sharing the Stories of Australian Muslims* report.[17]

> The concepts of Cultural Safety are not simply learning about others' cultures but reflecting upon one's own culture and how one's own cultural lens shapes one's behaviour, their interactions with the world around them, and their perceptions of the cultures and behaviours of others. — *submission from the Queensland Nurses and Midwives Union, NARF project, May 2021 – April 2022*

In addition to this, cultural awareness and cultural competence training for staff was cited as paramount to building a respectful and inclusive workplace. Participants shared that this training needs to be ongoing and either mandatory or tied to professional development. Some organisations suggested training must address unconscious bias. In the *Wiyi Yani U Thangani* project, Aboriginal and Torres Strait Islander women and girls expressed support for an Aboriginal and Torres Strait Islander-led system of cultural accreditation for organisations and workers which would ensure the effectiveness of organisations and their employees to deliver on outcomes.[18] In the *Sharing the Stories of Australian Muslims* project participants outlined the need for companies, organisations, and governments to educate existing workforces and build environments that understand the benefits of a diverse and inclusive workplace and indicated that this cultural competency is needed to support any diversity and inclusion practices and policies that are implemented.[19]

The Commission also heard there needs to be a long-term commitment from organisations to continuously monitor and evaluate their practices, programs and policies. Participants suggested that auditing could monitor the cultural safety of spaces. Some organisations consulted by the Commission indicated that a legislative or regulatory framework to support this, particularly in relation to the Australian Public Service, would help to ensure organisations are accountable to requirements for cultural safety.

The Commission heard about examples of workplace practice to ensure cultural safety that were supporting Aboriginal and Torres Strait Islander staff and staff from other negatively racialised groups to participate and contribute equitably within the workplace.

One organisation described the commissioning of a workplace census in response to a culture of exclusion experienced within the workplace by Aboriginal and Torres Strait Islander staff and others from negatively racialised groups, that came to the fore during the resurgence of the Black Lives Matter movement in 2020. The organisation sought guidance from an external First Nations organisation with expertise in employment, to improve their diversity and cultural safety. The external organisation conducted interviews with staff, including former staff, and volunteers and identified disparities in workplace experiences between white volunteers and volunteers from diverse backgrounds. Recommendations were provided to embed practices within this workplace to build a sustainably diverse, culturally safe workplace that prioritises First Nations voices. These recommendations included employing a paid Aboriginal and Torres Strait Islander staff member to maintain diversity; creating a diversity committee; setting up a town hall for volunteers to discuss their concerns; setting up a listening process to be used to voice opinions to the organisation's board; and limiting the term of each board member to 6 years.

Programs such as Reconciliation Australia's Reconciliation Action Plans were also presented to the Commission as frameworks with clear steps to support organisations in building culturally safe organisations, from human resources policies, centring First Nations expertise in the development of anti-racism policies and building racial literacy throughout an organisation including within the executive.

Culturally safe services

> These experiences are in keeping with the goals of affirmative action, which are to create equality of opportunity and outcome for Indigenous Australians and, for the benefit of all Australians, to promote diversity through equitable representation of Indigenous people in society. — *Yin Paradies, First Nations academic*[20]

Many participants described culturally safe workplaces as providing the necessary groundwork for culturally safe service provision. This foundation could then be built on by: ensuring a representative and culturally safe workforce, so that the workforce reflects the people it services; supporting community-controlled service provision; facilitating community empowerment and trauma-informed and healing approaches to service delivery; developing anti-racist competencies that underpin service delivery, and; ensuring accountability to these principles.

> The Aboriginal and Torres Strait Islander Health Worker and Health Practitioner workforce is integral to the delivery of culturally safe and responsive care… implementing measures to increase and facilitate the professional deployment of the workforce across the health care system is key to meeting future population health needs, embedding cultural safety and facilitating improved health and wellbeing outcomes. — *submission from the National Association of Aboriginal and Torres Strait Islander Health Workers and Practitioners, NARF project, May 2021 – April 2022*

The importance of culturally safe services has been highlighted during the pandemic. For example, the failure to provide accessible health information for culturally and linguistically diverse communities has been identified as a barrier to people accessing available services and supports.[21] During the lockdown of communities in Flemington and North Melbourne in July 2020, appropriate community supports and information were initially inadequate and service providers risked exacerbating the adversity experienced by affected communities.[22]

First Nations health service providers are leading work on cultural safety across the health sector. The Commission received detailed submissions on the principles that underlie culturally safe health service provision from First Nations peak bodies and organisations engaged in this work. Participants advised that these principles extend to culturally safe service provision for migrant, refugee and faith-based communities that are negatively racialised and are increasingly being recognised and cited across sectors, including in mainstream service provision, as best practice approaches to service delivery to ensure that community needs are catered to and strengths supported.[23]

In health service provision, for example, the Commission heard that racism towards First Nations peoples is rife. Studies have shown that racism is a key factor in determining how people access health services, receive diagnoses, treatment and care.[24] Experiences of care are significantly improved when Aboriginal patients have Aboriginal Health Workers in their care team. In 2021, a Bureau of Health Information report showed that of 8,000 Aboriginal patients surveyed in NSW hospitals, 70% described their experience of care as very good when there was an Aboriginal Health Worker in their care team, as opposed to 58% when there was not.[25]

> It is critical that any anti-racism efforts within the health sector ensure the expansion of the community-controlled health sector and the growth of the Aboriginal and Torres Strait Islander health workforce, particularly Aboriginal and/or Torres Strait Islander Health Workers and Health Practitioners, roles that were created by Aboriginal and Torres Strait Islander people to ensure cultural safety and consistency in their interactions with the health system. — *submission from the National Association of Aboriginal and Torres Strait Islander Health Workers and Practitioners, NARF project, May 2021 – April 2022*

Building the Aboriginal and Torres Strait Islander workforce was advocated for in tandem with expanding the community-controlled sector more broadly. A recent Radio National Report on pregnancy and childbirth amongst First Nations women revealed that First Nations women's experiences in hospitals are largely culturally unsafe, and as a result the maternal child health risk is significantly increased. This is due to multiple factors stemming from long-standing experiences of racial discrimination, including fears of children being removed. It also includes hospital practices that do not take into account cultural practices such as the spiritual and physical significance of birthing on country, and the family support, connection and culturally appropriate care this allows.[26]

> Maternal child health risk is often framed purely through an obstetric lens which denies the rich cultural and historical knowledge and intergenerational trauma that has affected birthing women and mothers and babies for generations. — *submission from the Queensland Midwives and Nurses Association, NARF project, May 2021 – April 2022*

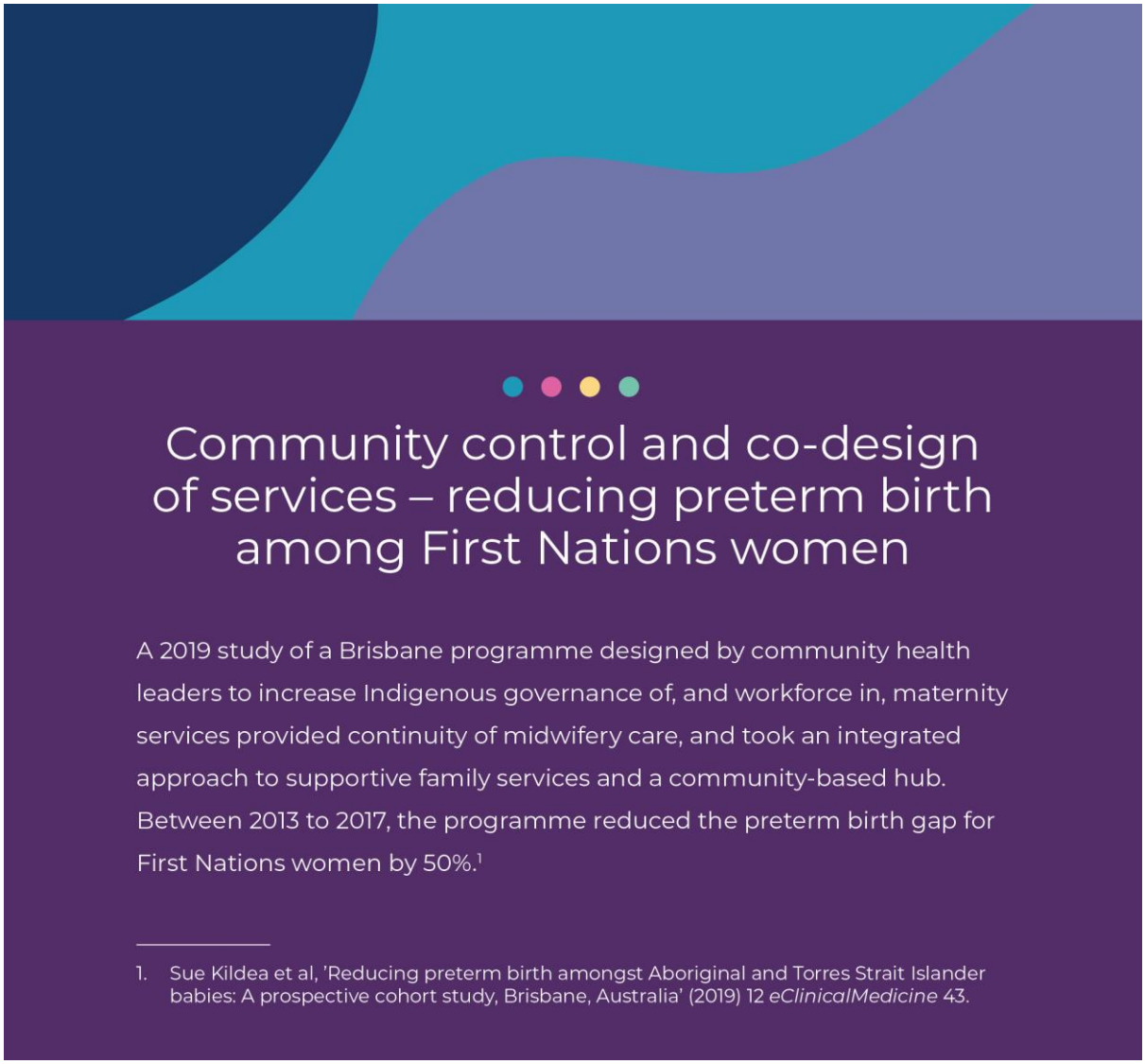
In the *Sharing the Stories of Australian Muslims* project, participants told the Commission about unfavourable treatment they received in the healthcare system and feelings of unsafety because of their race, ethnicity and/or their religion. In particular, they expressed a lack of faith in complaints mechanisms in healthcare settings, doubting that these systems would work or anyone would care. This acted as a barrier to reporting discrimination.[27]

The Commission was advised that across health services, a strengths-based, and trauma-informed approach is urgently needed, and is best enabled via community-controlled service provision. The importance of trauma-informed and healing approaches in fostering culturally safe service provision was highlighted to the Commission by both First Nations organisations and those working with refugee and migrant communities.

> Many clients have lost family members in violent circumstances and have spent lengthy periods in refugee camps or in otherwise displaced circumstances. Our client's experiences have impacted on them in profound ways, both mental and psychological. — *consultation report from the Forum of Australian Services for Survivors of Torture and Trauma, NARF project, May 2021 – April 2022*

Trauma-informed care and healing approaches are models of service provision used across a variety of health and social service settings. These approaches acknowledge that trauma is interrelated and linked to many health and social problems. The aim is to reduce to the risk of re-traumatisation and facilitate healing. Trauma-informed care is a culturally safe practice implemented through principles of collaboration, empowerment, choice, and acknowledgement of and response to intersectional identities.[28]

Participants in the scoping process for a national anti-racism framework advised the Commission that trauma-informed care was urgently needed in relation to perinatal care for First Nations women, to close the infant mortality gap. Representative organisations shared that First Nations women want community control, and co-design of mainstream services, allowing for the integration of cultural practices.



Queensland Health's *Matrix for Identifying Measuring and Monitoring Institutional Racism within Public Hospital and Health Services* found that a lack of Indigenous participation in governance and service delivery was a primary signifier of institutional racism. This work asserted that Indigenous led co-design is crucial to improving the effectiveness of initiatives, services and programs designed to close the gap on Indigenous health outcomes. Queensland Health identified that culturally safe health service delivery should have an integrated approach between public health and Indigenous community-controlled health service sectors, with data demonstrating that Indigenous led participation can improve the cultural and clinical safety of healthcare provision and delivery in the public health system.[29]

Organisations such as the National Aboriginal Community Controlled Health Organisation (NACCHO) advocated for building the Aboriginal Community Controlled sector, and alignment with the National Agreement on Closing the Gap principles of self-determination, community-led co-design and long-term partnerships with Aboriginal and Torres Strait Islander communities in the development of programs and policies that affect them.

> We noticed there are not a lot of services for children and there are barriers to accessing mental health services. We just did big research to understand needs and have come up with a plan for what's required. One barrier is funding. Another is understanding systems and what happens when people go through systems. We use language that makes sense to people we are supporting without putting them off; even though we are a mental health provider we don't frame it in that way. We need to look outside the service system to make it happen. Where I am we are committed to codesigning with community but it takes time to build relations with community and get their perspectives. — *consultation with settlement services organisation, NARF project, May 2021 – April 2022*

Co-design was cited as an important mechanism to supporting healing and trauma-informed approaches by First Nations organisations and non-Indigenous organisations working with migrant, refugee and faith-based communities that are negatively racialised. Participants shared that co-design can improve community accessibility of services by ensuring that they are responsive to community needs. Communities must be empowered to participate and contribute to the design and delivery of programs and services through the provision of sufficient time and resources to allow for the comprehensive and community engagement that this requires.

> In the day-to-day experiences of workers in our network, migrants and refugees continue to face direct and indirect exclusion from services and public spaces. This often occurs due to measures such as a lack of access to interpreters, lack of cultural accessibility, and a variety of other means. — *submission from the Settlement Council of Australia, NARF project, May 2021 – April 2022*

Developing a community-centred approach in the provision of settlement supports to assist new migrants, including personalised information and referrals, assistance with accommodation, and counselling services, was deemed especially important in terms of mental health and wellbeing supports and other supports associated with settlement. Peak bodies in settlement service provision and in Aboriginal Community Controlled Health Organisations advised the Commission that even organisations and service providers with diverse representation within their workplace and that specialise in supporting First Nations peoples and other negatively racialised communities cannot be complacent about their level of cultural safety.

Peak organisations and community members asserted that these supports need to be made more accessible, culturally appropriate, and capable of being tailored to the needs and strengths of specific communities, to support healing, and respond to the trauma that community members have experienced. This includes escape from civil war or unrest, persecution and torture, and from intersecting forms of discrimination that may have been or are being experienced. As with cultural safety within the workplace, comprehensive anti-racism and cultural competency staff training, informed by an intersectional framework, was highlighted as a priority in this regard.

> There is a need for all staff to participate in active anti-racism education/training given the demographics of our client group and diversity in staff. — *consultation report from the Forum of Australian Services for Survivors of Torture and Trauma, NARF project, May 2021 – April 2022*

The need for accountability mechanisms to ensure that cultural safety is embedded in policies and practices was emphasised across service sectors. In their submission, NACCHO asserted that all Commonwealth and state hospitals should be required to 'use accreditation standards to embed culturally safe care; increase the number of staff who have undertaken cultural capability and anti-racism training; and adopt validation tools led by Aboriginal and Torres Strait Islander people, which regularly assess workforce cultural capability as part of broader institutional racism assessments'.

The National Association of Aboriginal and Torres Strait Islander Health Workers and Practitioners suggested that culturally safe practices be embedded in national law to ensure accountability. They recommended that the Australian Health Practitioners Regulation Agency (AHPRA) implementation of The National Scheme's Aboriginal and Torres Strait Islander Health and Cultural Safety Strategy 2020-2023, developed by the Aboriginal and Torres Strait Islander Health Strategy Group, be adopted more broadly across the health profession to enable systemic change.

[1] Mark Lock et al, 'Are cultural safety definitions culturally safe? A review of 42 cultural safety definitions in an Australian cultural concept soup' (2021) *Research Square* 1, 3. See also Irihapeti Merenia Ramsden, 'Cultural Safety and Nursing Education in Aotearoa and Te Waipounamu' (PhD Thesis, Victoria University of Wellington, 2002).

[2] Leticia Funston, 'Aboriginal and Torres Strait Islander Worldviews and Cultural Safety Transforming Sexual Assault Service Provision for Children and Young People' (2013) 10(9) *International Journal of Environmental Research and Public Health* 3818, 3830–1.

[3] Indigenous Allied Health Australia, *Cultural Responsiveness in Action: an IAHA Framework* (Report, 2019) 4 <https://iaha.com.au/wp-content/uploads/2020/08/IAHA_Cultural-Responsiveness_2019_FINAL_V5.pdf>.

[4] Chelsea Watego, David Singh and Alissa Macoun, *Partnership for Justice in Health: Scoping Paper on Race, Racism and the Australian Health System* (Discussion Paper, Lowitja Institute, May 2021) 10 <https://www.lowitja.org.au/content/Image/Lowitja_PJH_170521_D10.pdf>.

[5] Leticia Funston, 'Aboriginal and Torres Strait Islander Worldviews and Cultural Safety Transforming Sexual Assault Service Provision for Children and Young People' (2013) 10(9) *International Journal of Environmental Research and Public Health* 3818, 3829–31.

[6] Chelsea Watego, David Singh and Alissa Macoun, *Partnership for Justice in Health: Scoping Paper on Race, Racism and the Australian Health System* (Discussion Paper, Lowitja Institute, May 2021) 10 <https://www.lowitja.org.au/content/Image/Lowitja_PJH_170521_D10.pdf>.

[7] Indigenous Allied Health Australia, *Cultural Responsiveness in Action: an IAHA Framework* (Report, 2019) 4 <https://iaha.com.au/wp-content/uploads/2020/08/IAHA_Cultural-Responsiveness_2019_FINAL_V5.pdf>. See also Kerry Taylor and Pauline Guerin, *Health Care and Indigenous Australians: Cultural safety in practice* (Bloomsbury Publishing, 3rd ed, 2019).

[8] William Fogarty et al, 'Deficit Discourse and Strengths-based Approaches: Changing the narrative of Aboriginal and Torres Strait Islander health and wellbeing' (Report, Lowitja Institute, May 2018) vi <https://www.lowitja.org.au/content/Document/Lowitja-Publishing/deficit-discourse-strengths-based.pdf>.

[9] Melissa Sweet et al, '#IHMayDay: tweeting for empowerment and social and emotional wellbeing' (2015) 23(6) *Australasian Psychiatry* 636, 636.

[10] NZ Human Rights Commission, 'Nathan Rew — Pacific Pay Gap Inquiry' (YouTube, 23 March 2022) 03:25–03:30, 03:40–03:56 <https://www.youtube.com/watch?v=NPIqzN32rFw>.

[11] Shyamal Chowdhury, Evarn Ooi and Robert Slonim, 'Racial discrimination and white first name adoption: a field experiment in the Australian labour market' (Working Paper, University of Sydney, June 2017) 19 <http://econ-wpseries.com/2017/201715.pdf>. See also Alison Booth, Andrew Leigh and Elena Varganova, 'Does Ethnic Discrimination Vary Across Minority Groups? Evidence from a Field Experiment' (2011) 74(4) *Oxford Bulletin of Economics and Statistics* 547–73; Jane O'Leary and Dimitria Groutsis, *Counting Culture: Six Principles for Measuring Cultural Diversity of Your Workplace* (Report, Diversity Council Australia, 2019) 4 <https://www.dca.org.au/research/project/counting-culture>.

[12] Australian Human Rights Commission, *Sharing the Stories of Australian Muslims* (Report, July 2021) 44 <https://humanrights.gov.au/our-work/race-discrimination/projects/sharing-stories-australian-muslims>.

[13] Debbie Bargallie, *Unmasking the Racial Contract: Indigenous voices on racism in the Australian Public Service* (Aboriginal Press Studies, 2020) 103. See also Women of Colour Australia, *Workplace Survey Report 2021* (Report, 2021) <https://womenofcolour.org.au/wp-content/uploads/2022/02/WOMEN-OF-COLOUR-AUSTRALIA-WORKPLACE-SURVEY-REPORT-2020-2021.pdf>.

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[15] Diversity Council Australia, *Inclusion@Work Index 2021-2022: Mapping the state of inclusion in the Australian workforce* (Synopsis Report, 2021) 14 <https://www.dca.org.au/sites/default/files/synopsis_2021-22_inclusionwork.pdf>.

[16] Australian Human Rights Commission, *Sharing the Stories of Australian Muslims* (Report, July 2021) 50 <https://humanrights.gov.au/our-work/race-discrimination/projects/sharing-stories-australian-muslims>.

[17] Australian Human Rights Commission, *Sharing the Stories of Australian Muslims* (Report, July 2021) 50 <https://humanrights.gov.au/our-work/race-discrimination/projects/sharing-stories-australian-muslims>.

[18] Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future* (Report, 2020) 100 <https://humanrights.gov.au/sites/default/files/document/publication/ahrc_wiyi_yani_u_thangani_report_2020.pdf>.

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[20] Yin C Paradies, 'Affirmative action and equity in Aboriginal and Torres Strait Islander health' (2005) 183(5) *Medical Journal of Australia* 269, 269.

[21] Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Overview of responses to the Experiences of culturally and linguistically diverse people with disability* (Issues Paper, November 2021) 10 <https://disability.royalcommission.gov.au/system/files/2022-03/Overview%20of%20responses%20to%20the%20Culturally%20and%20linguistically%20diverse%20people%20with%20disability%20Issues%20paper.pdf>.

[22] Australian Human Rights Commission, 'Calls for community support during Melbourne lockdowns' (Media Release, 7 July 2020) <https://humanrights.gov.au/about/news/media-releases/calls-community-support-during-melbourne-lockdowns>.

[23] This includes participants providing settlement and wellbeing support services for migrants and refugees, and organisations within the media and creative arts sectors.

[24] Yin Paradies, Mandy Truong and Naomi Priest, 'A systematic review of the extent and measurement of healthcare provider racism' (2014) 29(2) *Journal of General Internal Medicine* 364–87. See also Chloë FitzGerald and Samia Hurst, 'Implicit bias in healthcare professionals: a systematic review' (2017) 18(19) *BMC Medical Ethics* 1.

[25] Bureau of Health Information (NSW), *The Insights Series: Aboriginal people's experiences of hospital care* (Report, July 2021) 13 <https://www.bhi.nsw.gov.au/__data/assets/pdf_file/0012/666399/BHI_Insights_Aboriginal_PE_2021_REPORT.pdf>.

[26] 'Holistic and healthy childbirth for Indigenous women', *Health Report* (ABC Radio National, 12 April 2021) <https://www.abc.net.au/radionational/programs/healthreport/story-4:-birthing-on-country/13298946>.

[27] Australian Human Rights Commission, *Sharing the Stories of Australian Muslims* (Report, July 2021) 62 <https://humanrights.gov.au/our-work/race-discrimination/projects/sharing-stories-australian-muslims>.

[28] Elizabeth A Bowen and Nadine Shaanta Murshid, 'Trauma-Informed Social Policy: A Conceptual Framework for Policy Analysis and Advocacy' (2016) 106(2) *American Journal of Public Health* 223, 224.

[29] Adrian Marrie, Addressing Institutional Barriers to Health Equity for Aboriginal and Torres Strait Islander People in Queensland's Public Hospital and Health Services: Report to Commissioner Kevin Cocks AM, Anti-Discrimination Commission Queensland (Report, March 2017) 37–8 <https://www.qhrc.qld.gov.au/__data/assets/word_doc/0017/16550/Health-Equity-Report-2017.docx>.

Findings: media regulation and standards

Media representation

Negative media representation and its harmful effects

> There are strong correlations between media portrayal, self-determination, and wellbeing. For this reason, some of the key themes identified in the Royal Commission into Aboriginal Deaths in Custody identified that 'action is needed to encourage Aboriginal and Torres Strait Islander participation in the media, and to educate non-Aboriginal and Torres Strait Islander people to improve community attitudes and address ignorance'. — *submission from First Nations Media Australia, NARF project, May 2021 – April 2022*

First Nations organisations, researchers, and community members told the Commission that media portrayals play a significant role in perpetuating harmful narratives about Aboriginal and Torres Strait Islander communities. For example, participants noted these impacts can manifest through heightened mental health concerns from harmful interactions with the media such as 'online trolling' or the release of culturally insensitive content. An example of cultural insensitivity was identified as media coverage that characterises Australia Day as a day of celebration, while disregarding First Nations peoples' experiences of European colonisation. These concerns can affect both media sector employees and individuals who are consuming or engaging with the media. Findings from the 2020 Reconciliation Australia Barometer Survey found that 44% of the general community and 46% of First Nations peoples feel that media portrayals of Aboriginal and Torres Strait Islander People are negative. However, in response, 32% of the general Australian population indicated they have now steered away from media narratives of First Nations people and instead prioritise direct media accounts created and run by First Nations people as a trusted source.[1]

The impacts of racialised reporting and stereotyping in the media are also experienced by multicultural communities. In its submission, the Western Sydney Community Forum highlighted research conducted by All Together Now which analysed 315 opinion pieces and identified negative racialised reporting on Muslim (75% of the opinion pieces), Chinese (55%), Indigenous (47%) and other racialised (54%) people or communities.[2]

> If a person's community and culture are not represented positively in the media and culture of their time, then there is a loss of a sense of self and feeling real. — *submission from the Islamophobia Register Australia, NARF project, May 2021 – April 2022*

Young people from migrant, refugee or faith-based backgrounds that are negatively racialised shared with the Commission that representation in the media landscape shapes what is seen as 'normal'. Representation that lacks the inclusion of diverse communities leads to feelings of exclusion. This was felt even within their own communities, where intersectional identities are not adequately represented or are represented poorly in the media.

> The lack of representation means some of us just don't feel like we belong in our own communities, we can feel excluded. — *consultation participant quoted in submission from the Multicultural Youth Action Network, NARF project, May 2021 – April 2022*

Research has shown that negative portrayals of communities in the media have led to racial abuse. For example, inflammatory reporting on 'African gangs' in Melbourne led to racialised abuse of South Sudanese and other African Australian communities. Media narratives of these supposed 'gangs' began to escalate following the 2016 Moomba Festival in Melbourne, in which physical altercations involving predominately South Sudanese youths led to reporting with commentary suggesting that violence is a common practice for this cohort.

The sensationalisation of this incident about African communities, resulted in community members experiencing increased difficulty in obtaining employment and educational opportunities.[3] Similarly, research finds that inaccurate, insensitive, and negative portrayals of Islam and Muslims has had a significant detrimental impact on Australian Muslim communities.

Other research shows that messaging which challenges negative media narratives of Muslim communities is ineffective for individuals who are exposed to media coverage of terrorism and who have low racial literacy regarding Muslim communities.[4] Further, incidents of Islamophobia, including online Islamophobia, become more frequent when events such as the 2019 Christchurch attacks are highlighted in media discourse.[5] Although there is no distinguishing factor between online and offline perpetuation of Islamophobia, research further indicates that the least and most severe levels of hate speech are dominant in online hate rhetoric.[6]

In addition, research conducted by Umar Butler for the Islamic Council of Victoria confirms that newsworthy events related to Islam and heightened cases of online Islamophobia have a strong correlation, demonstrating how influential media narratives are in instilling negative portrayals of negatively racialised groups, and in this example, the Muslim community.7 Severe and disturbing threats are a common form of online hate being directed at the Australian Muslim and Jewish communities.[8] The laws to address this behaviour have been found to be inadequate.[9]

> The media and its portrayal of people is allowing for propaganda.
> *— consultation participant, NARF project, May 2021 – April 2022*

The Commission heard that combatting racial stereotyping, and inaccurate and unbalanced media reporting would positively impact the way First Nations communities are perceived, and the way they perceive themselves. First Nations organisations argued that increasing First Nations participation in the media was a critical step in advancing culturally appropriate reporting.

> This imbalance in participation in the media still permeates Australia's media landscape today. First Nations broadcasting and media has a vital role in providing balanced and culturally appropriate reporting in order to promote awareness and understanding among non-Indigenous Australians, participate in the truth-telling process, encourage participation in democratic processes and promote reconciliation. — *submission from First Nations Media Australia, NARF project, May 2021 – April 2022*

Organisations representing the interests of multicultural communities argued for the need to 'challenge monocultural and patriarchal spaces'. The current media landscape can be challenged by amplifying the narratives and lived experiences of First Nations peoples, migrant, refugee and faith-based communities that are negatively racialised, including women and young people amongst others at the intersection of different forms of discrimination.

> Intersectional representation of multicultural communities is an area that is currently lacking in the media landscape. — *consultation participant, NARF project, May 2021 – April 2022*

Leadership accountability

The Commission heard that when leadership roles within the media sector are occupied by those with lived experience of racism, it can lessen the degree of not only harmful content but also harmful commentary and editorialising which can amplify negative beliefs about First Nations people and other negatively racialised groups.

Beyond what the Commission heard, The Islamic Council of Victoria in its 2022 *Islamophobia in the Digital Age: a Study of Anti-Muslim Tweets* Report speaks to leadership and accountability through a lens of political influence. The research observed that politicians' responses to events which are connected to Islam make a significant contribution to online hate, specifically referring to Islamophobia.[10] For example, in 2020, French President Emmanuel Macron made a controversial statement which saw a spike in anti-Muslim tweets which were linked to the President's assertion. Leadership accountability was seen as vital due to leadership positions being influential in decision making processes and standard setting.[11]

> Promote oversight and accountability of media personalities, politicians and public figures who make comments which incite racial violence, hatred or perpetuate negative attitudes and stereotypes. — *submission from Change the Record, NARF project, May 2021 – April 2022*

Community-controlled media

It was widely felt by participants that adequate resourcing of the community-controlled media sector would be beneficial in addressing negative media discourse. Further to this, support for community-controlled media was identified as fundamental.

Priority Reform Two of the National Agreement on Closing the Gap speaks directly to building the community-controlled sector through the recognition of First Nations expertise and the acknowledgement of the right to self-determination.[12] The National Agreement on Closing the Gap will be developing a joint communications strategy with a focus on ongoing engagement. The strategy's aim is to be guided by First Nations people on the implementation of the commitments made within the National Agreement. The joint communications strategy has a particular interest in the Aboriginal and Torres Strait Islander community-controlled media sector where First Nations people will hold a central role in distributing and promoting various mediums of media throughout Australia.[13]

Current services available within the First Nations community-controlled sector can further extend discourse in advancing positive media spaces for First Nations people. This extension can make the First Nations community-controlled media sector a space for shifting attitudes, increasing representation, and challenging racial stereotypes currently perpetuated by mainstream media outlets. Beyond the commitments made within the National Agreement on Closing the Gap, participants also raised the importance of the community-controlled sector in addressing racism.

> Support for the community-controlled media sector … [is]… a primary means of shifting racist attitudes in Australia toward Aboriginal and Torres Strait Islander people and addressing Indigenous disadvantage. — *submission from First Nations Media Australia, NARF project, May 2021 – April 2022*

The importance of the community-controlled media sector was highlighted again in terms of the role it can play in fostering inclusion and leadership. For example, community radio was described as essential to delivering culturally safe messaging. We heard through the Community Broadcasting Association of Australia's submission to a National Anti-Racism Framework project, that community radio not only speaks to 25% of the Australian population, but also advances community interests, broadcasts diverse stories, delivers broadcasting stations in language, and challenges harmful narratives perpetuated by mainstream broadcasting stations.[14]

> For First Nations and culturally and linguistically diverse communities, community media fulfills a strong need for news and information that is in-language and relevant to community interests concerns and needs. It is well documented that audiences feel they cannot receive community specific information from other media sources. — *submission from the Community Broadcasting Association of Australia for the NARF project, May 2021 – April 2022*

Representation through employment

The difficulties of securing employment in mainstream media by members of negatively racialised communities and First Nations people was cited as a significant issue by First Nations organisations, peak bodies, and individuals, as well as non-Indigenous peak bodies in the sector. Such difficulties manifest as barriers to seeking employment or experiences as an employee, such as working in a culturally unsafe environment. Further issues stemming from the lack of representation in workplaces include the perpetuation of negative portrayals of First Nations people and communities who are negatively racialised when monocultural views are at the centre of editorial decision making. Organisations that engaged on a national anti-racism framework advocated for measures to increase the cultural safety of the media sector by removing such barriers. The Commission heard, for example, that having First Nations peoples in decision making roles was integral to this.

> First Nations media exists due to the failure of mainstream media to adequately reflect Aboriginal and Torres Strait Islander people in news and public discourse. — *submission from First Nations Media Australia, NARF project, May 2021 – April 2022*

The importance of data

The collection and monitoring of diversity data within the media sector was a need raised to the Commission by a number of participants, given the concerns surrounding representation. In its submission to a National Anti-Racism Framework, the Australian Muslim Advocacy Network argued for an appropriate body such as the Australian Communications and Media Authority to be given powers to monitor and collect data within the media industry. Interviews conducted by Media Diversity Australia for its *Who Gets to Tell Australian Stories* Report found that senior leaders within mainstream news and current affairs television programming, admitted to not accurately reflecting their audience and expressed reservations about welcoming diversity and inclusion plans (D&I).[15] This research demonstrates the need for a standardised approach to the collection and monitoring of diversity within the media so that policy improvements can produce positive outcomes for under-represented and negatively racialised groups.

The Everyone Project is a current initiative led by the Screen Diversity and Inclusion Network which documents media diversity in Australia through comprehensive de-identified surveys, specific to the film and television sector.[16] Current D&I frameworks within media workplaces are also seen as mechanisms to collect and monitor diversity data and to proactively increase representation. For example, ABC's 2019-2022 Diversity & Inclusion Plan aspires to create pathways for under-represented groups in the media, this includes creating a central database of on-air contributors like interviewees, experts, and other talent to better ensure diversity is reflected in content, inclusive mentoring programs, and gender pay equity reviews.[17] Such practices also create foundations for data collection and monitoring.

Media regulation and standards

> Support doesn't mean just after harm has happened. The best support happens by preventing harm by disrupting sources of online dehumanisation of communities identified based on protected attributes. — *submission from the Islamophobia Register Australia, NARF project, May 2021 – April 2022*

The Commission heard that while online platforms often provide opportunities to foster positive and inclusive spaces, it is also often a space where misinformation spreads, racism, and dehumanisation[18] occurs. Online spaces such as social media can be seen as platforms to express selfhood and challenge dominant societal structures, and can be a means of resistance, including through niche online community groups. Although, these are also spaces which attract digital violence and cyberbullying.[19] Emphatic calls were raised regarding more accountability for media providers including social media platforms. Organisations including the Settlement Council of Australia advised the Commission that there is a need to monitor and regulate racial profiling in the media. Others cited the dehumanising and violence-inciting content that often goes unregulated online. Broadly, participants advised the Commission that current standards and regulatory mechanisms do not adequately protect users from online hate.

> We have experienced this during in person discussion over racist Aboriginal memes with senior executives from major technology companies. Because the nature of this content is specific to Australia, unlike other forms of hate, we cannot rely on action from governments or civil society oversees to help address this problem. — *submission from the Online Hate Prevention Institute, NARF project, May 2021 – April 2022*

Participants noted the difficulty of taking down material on social media platforms that operate globally where the jurisdiction of regulatory bodies is limited to Australia. Participants also noted the limited capacity of the *Online Safety Act 2021* (Cth), including the limitations of its newer measures to address race hatred, and its intersection with religious discrimination. As noted by the Australian Muslim Advocacy Network in their submission, the *Online Safety Act 2021* (Cth) does not address hatred when it concerns race, religion, or negatively racialised groups. The Act has a focus on individual abuse, meaning abuse and dehumanising disinformation relating to groups cannot be given attention.[20]

> Vilification laws are not enough to fight against dehumanising disinformation. — *submission from the Australian Muslim Advocacy Network, NARF project, May 2021–April 2022*

Suggested solutions for preventing online racism and hate included community-informed anti-racism standards for the media industry, including digitised media, and adequate moderation mechanisms across media platforms. These standards would include addressing negative media saturation that centres on group identity. The Commission heard, including from the Australian Muslim Advocacy Network, of the need to 'immediately close gaps in Australia's media regulatory framework for online content.' There was also a view that anti-racism standards must be monitored and enforced by an independent body, rather than placing a burden on the community to contend with a public harm. Organisations and individuals also shared their calls for transparency and accountability around complaints handling when reports of racism were made to media regulatory bodies.

Further solutions to regulate online hate include ensuring updated mechanisms for the Online Content Scheme,[21] strengthening industry codes and standards for online content, expanding information, education, and enforcement for cyber-abuse takedown options including civil penalties that remove the burden from communities that are negatively racialised. On top of this, improved data collection to build an evidentiary basis to support programs and strategies was suggested. Training for decision-makers within regulators and law enforcement would also be necessary to effectively apply various frameworks which address online hate[22] and dehumanisation, and to understand how it appears across different community contexts.

[1] Reconciliation Australia, *2020 Australian Reconciliation Barometer* (Report, November 2020) 45,113 <https://www.reconciliation.org.au/wp-content/uploads/2021/02/Australian_Reconciliation_Barometer_2020_-Full-Report_web.pdf>.

[2] All Together Now, *Social Commentary, Racism & Covid-19: A case study on opinion pieces in Australian mainstream newspapers* (Media Monitoring Report, 2020) 4 <https://alltogethernow.org.au/social-commentary-racism-and-covid-19-a-2020-report/>.

[3] Kathryn Benier, '*Don't Drag Me Into This': Growing Up South Sudanese in Victoria After the 2016 Moomba 'Riot'* (Research Report, Centre for Multicultural Youth, 2018) 14 <https://researchmgt.monash.edu/ws/portalfiles/portal/253671904/Don_t_Drag_Me_Into_This_Research_Report_Oct_2018.pdf>.

[4] Matteo Vergani, Fethi Mansouri and Liliana Orellana, 'Terrorism concern and persistence of negative attitudes towards Islam and Muslims' (2022) 32(6) *Journal of Community & Applied Social Psychology* 1029, 1030–1.

[5] Derya Iner, *Islamophobia in Australia* (Report No 3, 2019) 89–128 <https://researchoutput.csu.edu.au/ws/portalfiles/portal/208330970/Islamophobia_Report_3_2022_LR_Spreads_RA.pdf>.

[6] Derya Iner, *Islamophobia in Australia* (Report No 3, 2019) 89–128 <https://researchoutput.csu.edu.au/ws/portalfiles/portal/208330970/Islamophobia_Report_3_2022_LR_Spreads_RA.pdf>.

[7] Umar Butler, *Islamophobia in the Digital Age: A Study of Anti-Muslim Tweets* (Report, 2022) 8–9 <https://apo.org.au/sites/default/files/resource-files/2022-08/apo-nid318935.pdf>.

[8] See generally Andre Oboler, Measuring the Hate: The Sate of Antisemitism in Social Media (Report, 2016) <https://ohpi.org.au/measuring-antisemitism/>; Andre Oboler, Anti-Muslim Hate Interim Report (Interim Report, 2015) <http://ohpi.org.au/anti-muslim-hate-interim-report/>.

[9] Derya Iner, *Islamophobia in Australia* (Report No 3, 2019) 127–8 <https://researchoutput.csu.edu.au/ws/portalfiles/portal/208330970/Islamophobia_Report_3_2022_LR_Spreads_RA.pdf>.

[10] Umar Butler, *Islamophobia in the Digital Age: A Study of Anti-Muslim Tweets* (Report, 2022) 8-9 <https://apo.org.au/sites/default/files/resource-files/2022-08/apo-nid318935.pdf>.

[11] Umar Butler, *Islamophobia in the Digital Age: A Study of Anti-Muslim Tweets* (Report, 2022) 8-9 <https://apo.org.au/sites/default/files/resource-files/2022-08/apo-nid318935.pdf>.

[12] Closing The Gap, *Priority Reform Two: National Agreement on Closing the Gap* (Web Page, 2020) <https://www.closingthegap.gov.au/sites/default/files/files/priority-reform-2.pdf>.

[13] Closing The Gap, *National Agreement on Closing the Gap Ongoing Joint Communications Strategy* (2021) 2–3 <https://coalitionofpeaks.org.au/wp-content/uploads/2021/04/Item-06-Attachment-A-Joint-Communications-Strategy.pdf>.

[14] 'Community Radio Learner Survey', *Community Broadcasting Association of Australia* (Web Page, 2021) <https://www.cbaa.org.au/broadcasters/get-data-national-listener-survey-station-census/national-listener-survey-fact-sheets>.

[15] Media Diversity Australia, *Who Gets To Tell Australian Stories? Putting the spotlight on cultural and linguistic diversity in television news and current affairs* (Report, August 2020) 2 <https://www.mediadiversityaustralia.org/wp-content/uploads/2020/08/Who-Gets-To-Tell-Australian-Stories_LAUNCH-VERSION.pdf>.

[16] *The Everyone Project* (Website) <https://theeveryoneproject.org/film-and-tv-industry>.

17 Australian Broadcasting Corporation, *Diversity & Inclusion Plan 2019-22* (Report, 2019) 14–6 <https://about.abc.net.au/wp-content/uploads/2019/11/ABC-Diversity-Inclusion-Plan-201922.pdf>.

18 See generally Jeroen Vaes et al, 'We are human, they are not: Driving forces behind outgroup dehumanisation and the humanisation of the ingroup' (2012) 23(1) *European Review of Social Psychology* 64.

19 Bronwyn Carlson and Ryan Frazer, "They Got Filters": Indigenous Social Media, the Settler Gaze, and a Politics of Hope' (2020) 6(2) *Social Media+ Society* 1, 1–4.

20 Australian Muslim Advocacy Network, Submission No 52 to the Legal Affairs and Safety Committee, Queensland Legislative Assembly, *Inquiry into Serious Vilification and Hate Crimes* (12 June 2021) 31–4 <https://documents.parliament.qld.gov.au/committees/LASC/2021/VilificationandHateCrimes/submissions/052.pdf>.

21 Existing regulatory guidance on the actions available to eSafety can be accessed at eSafety Commissioner, *Online Content Scheme: Regulatory Guidance* (Regulatory Guidance No 4, December 2021) <https://www.esafety.gov.au/sites/default/files/2021-12/eSafety-Online-Content-Scheme.pdf>.

22 Online Hate Prevention Institute, Submission No 38 to the Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Anti-Vilification Protections* (17 January 2020) 10 <https://www.parliament.vic.gov.au/images/stories/committees/lsic-LA/Inquiry_into_Anti-Vilification_Protections_/Submissions/038_2020.01.17_-_Online_Hate_Prevention_Institute_Redacted.pdf>.

Findings: justice

The Commission heard that negative experiences within the justice system are common for First Nations, migrant, refugee, and faith-based communities in Australia.

Whilst reports of racism within the justice system to the Commission came primarily from First Nations participants, it is likely comprehensive community engagement with those from migrant, refugee or faith-based communities that are negatively racialised would have demonstrated that experiences of racism are more widespread.

As outlined earlier in a 'human rights-based approach', such an approach was not available to the Commission, but research details the experiences of racism within the justice system for members of negatively racialised groups more broadly.[1]

Significantly, both First Nations and non-Indigenous participants advised the Commission that Aboriginal and Torres Strait Islander people have unique dealings with the justice system because of ongoing over-policing, removal of children and disproportionate conviction rates. This was widely recognised by participants as a concern in need of urgent attention.

> The history of Australian police and courts is of the enforcement of assimilationist policies and perpetuation of colonial violence, criminalisation and over-policing of Aboriginal and Torres Strait Islander peoples, fracturing of First Nations families through forced child removal, paternalism and brutality. These problems are deeply embedded within the criminal, legal, family violence and child removal systems. — *submission from Change the Record, NARF project, May 2021 – April 2022*

In their submissions, government agencies, as well as First Nations organisations, experts, and individuals, documented the systemic discrimination experienced by First Nations peoples in the legal system. It was asserted that racism occurs at each stage of the legal system, from initial contact with law enforcement through bail processes, conviction, sentencing, and post prison release.

> Aboriginal people are more likely to be questioned by police than non-Aboriginal people. When questioned, they are more likely to be arrested than proceeded against by summons. If they are arrested, Aboriginal people are much more likely to be remanded in custody than given bail. Aboriginal people are much more likely to plead guilty than go to trial, and if they go to trial, they are much more likely to be convicted. If Aboriginal people are convicted, they are much more likely to be imprisoned than non-Aboriginal people, and at the end of their term of imprisonment they are much less likely to get parole than non-Aboriginal people. — *submission from the Northern Territory Department of the Attorney General and Justice, quoting former Chief Justice of Western Australia Wayne Martin, NARF project, May 2021 – April 2022*

Both Aboriginal and Torres Strait Islander organisations and individuals as well as those from migrant, refugee and faith-based backgrounds that are negatively racialised reported experiences of injustice in their dealings with the police, tied to both a denial of rights and over-policing. This continues to amplify intergenerational trauma and blocks pathways to equity within public life for First Nations people and other negatively racialised groups.

Over 30 years ago, the Royal Commission into Aboriginal Deaths in Custody identified over-policing, racial profiling, and the penalising of trivial offences as drivers of overincarceration and deaths in custody.[2] Many of the Royal Commission's recommendations remain unimplemented. As a result, some policing practices continue to disproportionately target and discriminate against First Nations communities.[3] Youth of South Sudanese or Pasifika backgrounds have also reported how police targeting and profiling are common experiences.

Youth participants of a South Sudanese or Pasifika background, in research conducted by Leanne Weber from Monash University, shared personal accounts of police making assumptions of criminality based on race.[4] The Commission heard from community members that such encounters resulted in young people being alienated from police, high rates of continued involvement with the justice system, less favourable outcomes in relation to convictions and sentencing, feelings of dehumanisation, heightened safety concerns, and experiences of exclusion more broadly.

> Police officers' approach to operating and young people's struggle to regulate emotions because of what they've been through can result in a harmful relationship. — *consultation with a faith-based community organisation, NARF project, May 2021 – April 2022*

The lack of accessibility to legal and support services was identified to the Commission as a priority concern. Both First Nations peoples and those from migrant, refugee and faith-based communities that are negatively racialised face multiple barriers when dealing with the justice system. Since communities face discriminatory structures, the Commission was told that people need cultural safety and unhindered legal assistance working together during interactions with the justice system. For example, the Commission heard inhibited access to legal rights for newly arrived migrant communities creates a position of disadvantage with complexities surrounding citizenship status, economic barriers and limited social capital making navigation of the landscape of Australia's legal and justice systems challenging.

Overcoming Indigenous Disadvantage identified that 38% of First Nations people whose first language is not English experience difficulty when communicating with mainstream services providers, which extends to legal assistance and processes.[5] Migrant and refugee women accessing legal assistance during all stages of court proceedings specific to family violence face barriers including legal knowledge in the Australian context and poor police responses.[6] Such barriers faced by migrant communities in the legal setting exacerbate barriers to settlement and inclusion. Inadequate access to legal and support services can link directly to deprivation of an individual's liberty.

Participants in the National Anti-Racism Framework initial scoping process also told the Commission that access to resources, including lawyers and services, which take into account intersectional needs, is important. For example, the Commission heard that the lack of access to customary law pathways within the justice system available to Aboriginal and Torres Strait Islander people disregards the intersectional and cultural needs of those within the system. Such access was identified as vital in facilitating more equitable outcomes through communities' participation in the legal system.

> At a minimum, the avenue for redress should ensure that victims have access to resources, such as lawyers, to allow them to pursue justice unhindered by other factors. — *submission by the National Association of Aboriginal and Torres Strait Islander Health Workers and Practitioners, NARF project, May 2021–April 2022*

The importance of culturally safe assistance was highlighted by participants in relation to first responders, legal providers, and support services within criminal justice settings. Participants noted occasions where a lack of assistance from first responders such as police officers and paramedics demonstrated the ways that bias and low racial literacy led to inequitable treatment for negatively racialised communities. First responders in the criminal justice system should be equipped to provide trauma-informed, culturally responsive assistance that is sensitive to a long history of systemic discrimination.[7]

> Omicron suddenly became an African issue, Africans got beat up and no one raised concerns. The government just went ahead and banned all African countries from travelling to Australia. — *consultation participant, NARF project, May 2021 – April 2022*

Cultural responsiveness can improve outcomes and experiences within the justice system more broadly. Culturally responsive training aims to build skills of self-knowledge, and knowledge of others, capacity to act according to such knowledge, and general respect for ideas or cultures which differ from one's own.[8] Cultural responsiveness aligns with the concept of cultural safety to create safe, discrimination free environments.[9]

The Walama Court List

An example of best practice in improving the criminal justice system for First Nations people is through the adjustment of court sentencing procedures. For example, to address charges against adult First Nations people, the Walama Court List is now being piloted in the NSW District Court. The Walama Court List adopts a community-based approach to sentencing, where Indigenous Elders and other Respected Persons are included in the sentencing process alongside the presiding judge.[1] Through this approach to sentencing, the Walama Court List seeks to minimise overrepresentation in prisons, reduce risk factors to re-offending, enable community participation in court processes and utilise culturally appropriate programs.[2] This initiative is aiming for a 15% reduction in over-incarceration specific to First Nations people by 2031 in alignment with Target 10 of the National Agreement on Closing the Gap.[3]

1. Aboriginal Affairs NSW, *Walama List Factsheet* (Factsheet, 21 November 2021).
2. Aboriginal Affairs NSW, *Walama List Factsheet* (Factsheet, 21 November 2021).
3. National Indigenous Television, '*The Walama List: how culture over crime hopes to reduce incarceration*', SBS (online at 7 April 2022); 'Closing the Gap Targets and Outcomes', Closing the Gap.

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1. Aboriginal Affairs NSW, *Walama List Factsheet* (Factsheet, 21 November 2021) <https://www.aboriginalaffairs.nsw.gov.au/media/website_pages/our-agency/news/pilot-of-specialist-approach-for-sentencing-aboriginal-offenders/Walama-List-Fact-Sheet.pdf>.
2. Aboriginal Affairs NSW, *Walama List Factsheet* (Factsheet, 21 November 2021) <https://www.aboriginalaffairs.nsw.gov.au/media/website_pages/our-agency/news/pilot-of-specialist-approach-for-sentencing-aboriginal-offenders/Walama-List-Fact-Sheet.pdf>..
3. National Indigenous Television, 'The Walama List: how culture over crime hopes to reduce incarceration', SBS (online at 7 April 2022) <https://www.sbs.com.au/nitv/article/the-walama-list-how-culture-over-crime-hopes-to-reduce-incarceraton/7b7unbcu1>; 'Closing the Gap Targets and Outcomes', *Closing the Gap* (online) <https://www.closingthegap.gov.au/national-agreement/targets>.

Alternative to custody – Drug and Alcohol Services Australia

Consultation participants working on First Nations justice initiatives referenced Drug and Alcohol Services Australia's alternative to custody initiative for First Nations Women as a good practice community-based approach to addressing high incarceration rates and reoffending. The alternative to custody is a 26-week program which provides 10 residential beds for First Nations women who take part in one-on-one case management, group therapy, cultural activities and engage with relevant support services.[1]

1. 'Alternative to Custody', *Drug and Alcohol Services Australia* (Web Page, 2022).

Programs within prisons – Wāhine Māori Pathways Program

Alternatives to custody and programs within prisons, have been successful internationally, with, for example, imprisoned Māori women in New Zealand being able to engage with the Wāhine Māori Pathways program. This program is a series of initiatives which launched in Christchurch Women's Prison with a significant funding pool provided to the Department of Corrections by the New Zealand Government within the 2019 budget, plus additional funding provided in the budget for 2021. Some aspects of the Wāhine Māori Pathways program include incorporating culturally appropriate spaces for women and their families, a new Kaupapa Māori Whanau-centred operating model, increased cultural practice for frontline staff and Kaupapa Māori accommodation services. Under this program, the incarceration rates of Māori women has reduced by 20%, meaning 800 fewer imprisonments.

1. Behive.govt.nz, 'Wāhine Māori Pathways to support the wellbeing of women in prison' (Media Release, 25 May 2021).

> Recognising what actually works for people and alternatives to custody as well. What is the goal of the justice system? — *consultation with Aboriginal Justice Initiative, NARF project, May 2021 – April 2022*

The importance of incorporating independent oversight mechanisms in the justice system was highlighted as crucial to addressing the harms experienced by Aboriginal and Torres Strait Islander peoples and other negatively racialised communities.[10] Participants identified that it is currently lacking. In relation to First Nations women and girls, the Commission's *Wiyi Yani U Thangani* Report[11] recommends the establishment of independent complaints and investigative oversight mechanisms to address police misconduct and the use of force by police.

This recommendation of an independent complaints and investigative oversight can interrogate instances of police negligence or aiding those who are negatively racialised when incidents advance to the judicial system. At the state level, the 2022 *Inquiry into Victoria's criminal justice system* recommended the consideration of a new independent body to investigate allegations of police misconduct and increase the accountability of state police, as well as a mechanism for independent oversight over police decision-making regarding bail.[12]

To address the overrepresentation of people from culturally and linguistically diverse backgrounds in the criminal justice system specifically, the Inquiry also recommended that the Victorian Government work with culturally and linguistically diverse community representatives, community service providers and Victoria Police to develop a Multicultural Youth Justice Strategy to 'drive committed action to eradicating all forms of racial discrimination within the criminal justice system' and 'improve accountability and transparency through monitoring and reporting on outcomes for culturally and linguistically diverse people who encounter the criminal justice system'.[13]

> For an effective framework there must be the establishment of an oversight mechanism to review the operation of the legal and judicial system.
> — *submission from Change the Record, NARF project, May 2021 – April 2022*

First Nations community members and service providers expressed the need for community accountability and support mechanisms when it came to the removal of Aboriginal and Torres Strait Islander children from their families. The criminal justice system and child protection services are intimately connected to each other in the experiences of First Nations people. Research shows that more than half of First Nations mothers who have been incarcerated in NSW were removed from their families as children, in some cases due to their own parents' interaction with the criminal justice system.[14]

In the first days of Australia's colonisation, First Nations children were kidnapped and exploited for their labour, and by the early 1900s 'protectionist legislation', which facilitated and justified the removal of Aboriginal and Torres Strait Islander children, was widespread throughout the country.[15] These laws and policies were the beginnings of the Stolen Generation, the effects of which are still felt today, with high rates of Indigenous children continuing to be removed from their families through the child protection system. The Australian Institute of Health and Welfare confirmed in their *Child Protection Australia* Web Report that from 2020-2021, Aboriginal and Torres Strait Islander children were more likely to have engagement with child protection services at a rate of 172 per 1,000 children in comparison to a rate of 21 per 1,000 children for non-Indigenous children.[16]

Nationally in 2021, 42.2% of children aged 0-17 years old in out-of-home care were Aboriginal and Torres Strait Islander – an increase of 2.2 % points since 2019. The proportion of Aboriginal and Torres Strait Islander children aged 0-17 years old in the general population in 2021 was, however, only 6.0%.[17] The current figures on First Nations children being taken from their families is at an even higher rate than during the period of the Stolen Generations.[18]

> First Nations children are being removed from their families at a rate greater than that during the Stolen Generations. — *submission from Jumbunna Institute, NARF project, May 2021 – April 2022*

Through submissions and consultations, participants emphasised the need for grassroots, community-controlled supports, and service provision for First Nations families. Genuine community engagement in the development of responses to supporting Aboriginal and Torres Strait Islander peoples in the criminal justice and child protection systems was also highlighted as a key need. The Commission was told that these processes allow access to culturally safe and effective response mechanisms for First Nations communities.

> [T]here needs to be grassroot organisations who look at the way Aboriginal services function and the practises that they use. [Aboriginal advocacy organisation] would also like there to be a panel of elders that can oversee the removal of Indigenous children from families. — *consultation with Aboriginal advocacy organisation, NARF project, May 2021 – April 2022*

Raising the age of criminal responsibility was supported by participants in consultations and outlined in submissions on a national anti-racism framework. Early exposure to the justice system traumatises young people and makes future reoffending likely, especially for First Nations youth who are disproportionately represented in youth detention centres.[19] Experiences of detention inflict further trauma on children who have been exposed to various forms of abuse.[20] The Commission heard that the current mechanisms in place for Aboriginal and Torres Strait Islander youth in detention fail to acknowledge that structural racism and oppressive cycles are at fault for trauma and behavioural complexities which contribute to over-policing and high rates of detention.

The Commission has long raised concerns about the approach taken to youth justice in Australia. The *Wiyi Yani U Thangani* Report encouraged the monitoring of detention centres in accordance with the Optional Protocol to the Convention against Torture (OPCAT) as an independent oversight mechanism focused on the rights of detainees.[21] In July 2022, the Aboriginal and Torres Strait Islander Social Justice Commissioner, Australia's National Children's Commissioner, and Australia's Human Rights Commissioner issued a joint statement in the face of cruel and degrading conditions experienced by young people at Banksia Hill Youth Detention Centre in Western Australia. The joint statement called for national leadership and cooperation at all levels of government to ensure the rights of children in the youth justice system, and highlighted the need for more effective, trauma-informed approaches to diversion and rehabilitation.[22]

At the state and territory level, there are also ongoing discussions about raising the minimum age of criminal responsibility or detention to divert young people from contact with the criminal justice system. The ACT government committed to raising the minimum age of criminal responsibility to 14 years old,[23] while Tasmania is the first jurisdiction to agree to raising the minimum age of detention from 10 to 14 years of age by 2024.[24] The change in Tasmania will take place alongside other reforms to the youth justice system in Tasmania, including additional options to divert young people away from the formal court system, a broader range of community-based sentencing options available to courts, as well as trauma-informed, therapeutic, and restorative interventions for high-risk young offenders, including new custodial facilities.[25] These reforms constitute a positive step in assisting children in the community to feel safe and supported by the justice system, especially First Nations children.

> We must raise the age of criminal responsibility to at least 14. Jail is not an appropriate place for children to be. We know that children under the age of 14 are still developing and maturing and that their brains do not have the necessary components or functioning in terms of both behaviour control and moral awareness to be able to be found criminally responsible. Australia is out of step with international human rights and the UN Committee on the Rights of the Child have called for countries to have a minimum age of criminal responsibility to be set at 14 years of age. Aboriginal and Torres Strait Islander children are disproportionately represented in the youth justice system. This is not because they are inherently bad or criminal, instead it is a reflection of a racist system that criminalises children rather than addresses the causes of their trauma and behaviour. — *submission from the Victorian Aboriginal Child Care Agency, NARF project, May 2021 – April 2022*

It was emphasised to the Commission that data on interactions with the justice system needs to be captured, especially in identifying patterns over time. In relation to First Nations people, comprehensive data was noted as vital in determining reoffending rates of those accused of criminal activity. Data can be influential in identifying racism within the justice system. This can be seen, for example, in the *Haile-Michael* case brought under the Commonwealth *Racial Discrimination Act,* where an expert witness provided data confirming that young African Australians were 2.5 times more likely to be stopped by police in certain suburbs of Melbourne.[26] The case led to more widespread public revisions to cultural training and 'field contact' practices by Victoria Police.[27]

Data such as the above would be significant in tracing how forms of oppression such as racism have historically structured the policies and practices of the criminal justice system, especially in instances of over-policing. Submissions and consultation participants also expressed the need for such data collection to be led by community to reflect the intersections and unique experiences of Aboriginal and Torres Strait Islander people within the justice system, as well as other negatively racialised communities.

Consultation participants specifically expressed the need for data on the outcomes of justice, and the experiences of individuals within court processes. Participants further emphasised the importance of such data collection being accessible and credible to counteract potentially unjust outcomes. The Australian Law Reform Commission's (ALRC) research Report *Without Fear or Favour: Judicial Impartiality and the Law on Bias* considered credible data collection. The ALRC found that bias within court proceedings is more significant than is currently reported by court users. This becomes problematic if outcomes from court cases are being determined unfairly, including if outcomes are based on racial prejudice.[28] Data collection on court user experiences would allow for analysis regarding systematic racism, while also meeting the standards of best practice outlined in the International Framework for Court Excellence in ensuring all court users are treated equally and that feedback is addressed.[29]

[1] Leanne Weber, '"My Kids Won't Grow Up Here": Policing, Bordering and Belonging' (2020) 24(1) *Theoretical Criminology* 71 <https://journals.sagepub.com/doi/pdf/10.1177/1362480619843296>; Leanne Weber, *'Police are good for some people, but not for us': Community perspectives on young people, policing and belonging in Greater Dandenong and Casey* (Report, Monash Migrant and Inclusion Centre, December 2018) 26–32 <https://www.monash.edu/__data/assets/pdf_file/0005/2118605/Police-are-good-for-some-people-Report-27.02.2020.pdf>; Daniel Haile-Michael and Maki Issa, *The More Things Change, the More They Stay the Same: Report of the FKCLC Peer Advocacy Outreach Project on Racial Profiling Across Melbourne* (Research Report, Flemington and Kensington Community Legal Centre, 2015) <https://www.policeaccountability.org.au/wp-content/uploads/2015/07/More-Things-Change_report_softcopy.pdf>; Australian Institute of Criminology, *Counter-terrorism policing and culturally and linguistically diverse communities 1: the challenges* (Study No 68, AICrime Reduction Matters, 5 June 2008) <https://www.aic.gov.au/sites/default/files/2020-05/crm068.pdf>; Scott Poynting, '"Bin Laden in the Suburbs": Attacks on Arab and Muslim Australians before and after 11 September' (2002) 14(1) *Current Issues in Criminal Justice* 43 <http://www.austlii.edu.au/au/journals/CICrimJust/2002/14.pdf>.

[2] Royal Commission into Aboriginal Deaths in Custody, *Royal Commission into Aboriginal Deaths in Custody* (Final National Report, 1991).

[3] Chris Cunneen, *Conflict, Politics and Crime* (Routledge, 2001) 80–105; 'Tanya Day inquest – summary of findings', *Human Rights Law Centre* (Web Page, 2020) <https://www.hrlc.org.au/human-rights-case-summaries/2020/9/8/tanya-day-inquest-summary-of-findings>; Australian Law Reform Commission, *Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Final Report No 133, 2018) 451–8; Isabelle Peart, Josephine Booth and Amy Hancell, *Police photography of children in Queensland: An analysis of police powers and privacy rights* (Position Paper, Caxton Legal Centre, May 2018); Michael McGowan and Christopher Knaus, 'NSW police pursue 80% of Indigenous people caught with cannabis through courts', *The Guardian* (online at 10 June 2020) <https://www.theguardian.com/australia-news/2020/jun/10/nsw-police-pursue-80-of-indigenous-people-caught-with-cannabis-through-courts>; Western Australia Police, 44543320 (Briefing Note, 2019), published in Calla Wahlquist, 'Aboriginal drivers in WA more likely to get fines from police officers than traffic cameras', *The Guardian* (online at 5 February 2020).

[4] Leanne Weber, 'Police are good for some people, but not for us': Community perspectives on young people, policing and belonging in Greater Dandenong and Casey (Report, Monash Migrant and Inclusion Centre, December 2018) 26–32 <https://www.monash.edu/__data/assets/pdf_file/0005/2118605/Police-are-good-for-some-people-Report-27.02.2020.pdf>.

[5] Productivity Commission, *Overcoming Indigenous Disadvantage* (Report, 2016) <https://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/2016/report-documents/oid-2016-overcoming-indigenous-disadvantage-key-indicators-2016-report.pdf>.

[6] Judicial Council on Cultural Diversity, *The Path to Justice: Migrant and Refugee Women's Experience of the Courts* (Report, 2016) <https://jccd.org.au/wp-content/uploads/2021/06/JCCD_Consultation_Report_-_Migrant_and_Refugee_Women.pdf>.

[7] Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future* (Report, 2020) 103 <https://humanrights.gov.au/sites/default/files/document/publication/ahrc_wiyi_yani_u_thangani_report_2020.pdf>.

[8] 'Cultural Responsiveness in Action Framework', *Indigenous Allied Health Australia* (Web Page, 2022) <https://iaha.com.au/workforce-support/training-and-development/cultural-responsiveness-in-action-training/>.

[9] 'Cultural Responsiveness in Action Framework', *Indigenous Allied Health Australia* (Web Page, 2022) <https://iaha.com.au/workforce-support/training-and-development/cultural-responsiveness-in-action-training/>.

[10] Vicki Sentas and Camilla Pandolfini, *Policing Young People in NSW A study of the Suspect Targeting Management Plan* (Report, 2017) <https://apo.org.au/sites/default/files/resource-files/2017-10/apo-nid116176.pdf>; Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's criminal justice system: Volume 1* (Report, March 2022) xxxi–xxxviii <https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_/Report/LCLSIC_59-10_Vic_criminal_justice_system.pdf>.

[11] Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future* (Report, 2020) 103 <https://humanrights.gov.au/sites/default/files/document/publication/ahrc_wiyi_yani_u_thangani_report_2020.pdf>.

[12] Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's criminal justice system: Volume 1* (Report, March 2022) 256, 464 <https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_/Report/LCLSIC_59-10_Vic_criminal_justice_system.pdf>.

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[14] Elizabeth A Sullivan et al, 'Aboriginal mothers in prison in Australia: a study of social, emotional and physical wellbeing' (2019) 43(3) *Australian and New Zealand Journal of Public Health* 241, 243.

[15] Australian Human Rights Commission, *Bringing Them Home National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children From Their Families* (Report, 1995) 21–130 (Part 2) <https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf>.

[16] Australian Institute of Health and Welfare, *Child Protection Australia 2020–21* (Web Report, 2022) 19 <https://www.aihw.gov.au/getmedia/a64278fd-712d-4c20-9f03-cf5b30cf7a09/Child-protection-Australia-2020-21.pdf.aspx?inline=true>.

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[18] Family Matters, *The Family Matters Report 2021: Measuring Trends to Turn the Tide on the Over-Representation of Aboriginal and Torres Strait Islander Children in Out-Of-Home Care in Australia* (Report, 2021) 56 <https://www.familymatters.org.au/wp-content/uploads/2021/12/FamilyMattersReport2021.pdf>.

[19] Roger Jaensch, Minister for Education, Children and Youth, 'Raising the minimum age of detention' (Media Release, 8 June 2022) <https://www.premier.tas.gov.au/site_resources_2015/additional_releases/raising_the_minimum_age_of_detention#:~:text=The%20Tasmanian%20Liberal%20Government%20will,in%20conflict%20with%20the%20law>.

[20] Amanda Harris, *Trauma, young people and Juvenile Justice* (Paper, Australian Child & Adolescent Trauma, Loss & Grief Network, unknown) <http://earlytraumagrief.anu.edu.au/files/Trauma%20and%20juvenile%20justice%20in%20Australia.pdf>.

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[24] Roger Jaensch, Minister for Education, Children and Youth, 'Raising the minimum age of detention' (Media Release, 8 June 2022) <https://www.premier.tas.gov.au/site_resources_2015/additional_releases/raising_the_minimum_age_of_detention#:~:text=The%20Tasmanian%20Liberal%20Government%20will,in%20conflict%20with%20the%20law>.

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[27] Leanne Weber, *'"You're going to be in the system forever": Policing, risk and belonging in Greater Dandenong and Casey'* (Report, 2020) 13. <https://www.monash.edu/__data/assets/pdf_file/0011/2175959/Youre-going-to-be-in-the-system-forever-June.pdf>.

[28] Australian Law Reform Commission, *Without Fear of Favour: Judicial Impartiality and the Law on Bias* (Report, 2021) <https://www.alrc.gov.au/wp-content/uploads/2022/08/ALRC-Judicial-Impartiality-138-Final-Report.pdf>

[29] Australasian Institute of Judicial Administration et al, *International Framework for Court Excellence 3rd Edition* (Report, 2020) <https://www.courtexcellence.com/__data/assets/pdf_file/0015/53124/The-International-Framework-3E-2020-V2.pdf>.

Findings: legal protections

Comprehensive legal protection framework

Adequate legal protections against racial discrimination, vilification, harassment, and race hate were key priorities for participants in the National Anti-Racism Framework project initial scoping process.

Many shared their views that without enforceable legal frameworks, affected individuals and communities are forced to bear the double burden of combatting racism while processing the trauma from experiences of racism, and that there would be no reliable means to ensure accountability and protection from the harms of racism. Participants indicated that a key role of a national anti-racism framework would be to hold legislation and policy to account in relation to both domestic and international anti-racism standards.

> [A national anti-racism framework would] enable government legislation, policies and existing laws to be reviewed against an antiracist framework and for incompatibilities to be genuinely and thoroughly examined and justified to the community. — *submission from Change the Record, NARF project, May 2021 – April 2022*

> A National Anti-Racism Framework [needs to uphold] what is outlined in the demands and definitions within documents such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Uluru Statement from the Heart, and the Racial Discrimination Act. — *submission from Australians for Native Title and Reconciliation (ANTaR), NARF project, May 2021 – April 2022*

Consultation feedback supported a review of existing laws against the international human rights instruments Australia has signed, especially the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This feedback echoed the Commission's own recommendations from the *Free and Equal* Report.

The Commission's *Free and Equal* recommendations aim to improve protections afforded by federal discrimination laws by improving the coverage of anti-discrimination laws, allowing representative claims in courts, and establishing a positive duty to take reasonable and proportionate measures to eliminate unlawful discrimination, which echoes a similar positive duty on employers to prevent workplace sexual harassment that was recently introduced by the Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022 (Cth).[1]

Specific proposals include introducing the right to freedom of thought, conscience, and religion, and freedom from discrimination based on irrelevant criminal records as new protected attributes, allowing unions and other representative groups to bring representative claims to court, and introducing positive duties enforced through new regulatory powers, such as the Commission's powers to initiate inquiries into systemic discrimination matters and the ability to issue standards, compliance notices, and enforceable undertakings.[2]

These measures aim to address some of the identified gaps in existing legal protections by extending more explicit coverage to negatively racialised religious communities while also strengthening compliance.[3] For instance, new systemic inquiry powers might apply to cases similar to that of Yorta Yorta woman Aunty Tanya Day's death in police custody, where although the coroner had identified the role of systemic racism in her death, there were no direct follow-up actions or remedies that had been or could be invoked under existing anti-discrimination laws.[4]

Beyond Commission proposals, consultation feedback to expand coverage of legal protections echoes community calls to codify relevant rights. For example, while housing rights,[5] the right to education,[6] and the right to meaningful access to culture for First Nations peoples[7] and other negatively racialised groups[8] have been recognised as part of the protections against racial discrimination in case law, these rights are not clearly articulated in law and are still applied on a case-by-case basis.

Codifying the protection of these rights would incorporate these safeguards into legislation and create guidance and responsibilities for relevant institutions and governments to embed these rights in all practices and decision-making. Experts further proposed embedding protections in the *Racial Discrimination Act* into workplace health and safety frameworks, which will place the onus to reasonably eliminate or minimise risks of discrimination on the employers and create liability for any failure to fulfill relevant duties of care (see also section on *Cultural Safety*). Codification is therefore important for not only making claims in court and raising public awareness of these rights, but also ensuring these articulated protections can withstand changes in organisational culture or the broader political climate.

> A National Anti-Racist Framework must not allow party politics to dilute such an important piece of anti-racist legislation. Section 18C of the RDA [*Racial Discrimination Act 1975* (Cth)] has faced many attacks from past governments, attacks which would have weakened the law to allow vilification to proliferate. Such exemptions to the Act, defended on the grounds of free speech, would give almost no ground to accuse someone of racial discrimination.
> *— submission from Australians for Native Title and Reconciliation (ANTaR), NARF project, May 2021 – April 2022*

Submission feedback around guarding against political erosion of rights supports ongoing efforts at the Commission to explore the possibility of codifying and consolidating such rights in a comprehensive national human rights instrument guided by the principles of participation and equal access to justice. These principles are already embedded in common law and crucial to realising other rights,[9] especially First Nations peoples' right to self-determination and the collective right to participation.

Codifying positive legal protections and remedies for rights enshrined in not only the ICERD and UNDRIP, but also the ICCPR, ICESCR, and other international human rights instruments, is fundamental to developing cohesive protections against intersectional forms of discrimination for negatively racialised communities.[10]

Beyond protections, codifying rights, including participation rights and the political legitimacy to influence laws and policymaking, is often seen as a key means to realising Indigenous self-determination.[11] Australia's contested sovereignty and the lack of a federal treaty with Indigenous peoples mean the relationship between Australian governments and Aboriginal and Torres Strait Islander peoples remains one of domination, which manifests through systemic discrimination and subjugation.[12] For any decisions affecting First Nations peoples' rights, all participation processes should be further guided by self-determination principles, meaning the relevant participation duties, processes, and mechanisms are to be determined by Aboriginal and Torres Strait Islander peoples.

Specific attention is needed to align the duty and processes with UNDRIP principles, the constitutionally enshrined First Nations Voice to Parliament called for in the Uluru Statement from the Heart, any treaty processes led by First Nations peoples, and the protection of access to Aboriginal-controlled legal services to remedy the historical systemic discrimination and continued over-representation of First Nations peoples in the criminal justice system.[13] Codifying these principles and rights also serves important educational purposes when the denial of Indigenous cultural rights and peoplehood continues to run rampant online[14] and is seen more recently in the context of Welcome to Country acknowledgements[15] and the referendum on a First Nations Voice to Parliament, which are in great part due to the lack of comprehensive anti-racism education and literacy, as discussed in the section on *Education*.

Responses to hate crimes and incidents

Various consultation participants pointed to improving response mechanisms and providing more accessible and effective legal protections against hate crimes and extremist violence as another crucial aspect of enhancing anti-racist legal protections.

> Australian states and territories need to have practicable and effective hate crime laws. AMAN has put forward a series of recommendations to the Queensland Government in the context of Parliamentary Inquiry into Serious Vilification and Hate Crime. That Committee has adopted a number of recommendations in its report, published 31 January 2022. — *submission from the Australian Muslim Advocacy Network, NARF project, May 2021 – April 2022*

Currently, the legal protection framework against hate incidents mainly consists of the federal *Racial Discrimination Act,* state and territory anti-discrimination and work health safety legislation, and relevant federal laws that prohibit cyber abuse of adults and bullying of children (*Online Safety Act 2021* (Cth)),[16] racial harassment in the workplace (*Fair Work Act 2009* (Cth)),[17] menacing and extreme forms of speech inciting violence or supporting terrorism (*Criminal Code Act 1995* (Cth)),18 and seriously vilifying content (*Broadcasting Services Act 1992* (Cth)).[19]

The *Racial Discrimination Act* offers civil redress through complaints to the Australian Human Rights Commission and adopts a harm-based approach that focuses on redress for the victim or the target community. The *Racial Discrimination Act* provides the broadest protections among these laws since it has a lower threshold that does not require proof of vilification or incitement of hatred and, unlike the other federal provisions, also covers communities and groups.[20] Still, despite the lower threshold, it can be challenging to pursue such redress, especially for self-represented complainants, given the lack of explicit coverage for religious identities, the 6 month limitation period,[21] and difficulties and costs associated with progressing complaints to the Federal Court or Federal Circuit and Family Court of Australia if the conciliation process is unsuccessful.[22]

Participants raised further concerns about the rare use of existing criminal incitement to violence or vilification laws in addressing hate incidents,[23] which echo findings from the Commission's *Sharing the Stories of Australian Muslims* project,[24] as well as current remedy options' failure to acknowledge hate incidents' additional terrorising effect and dignity harm on targeted individuals and communities.[25]

To address ineffective responses to and provide meaningful remedies for various types of hate crimes, community members have long been devising and advocating for sophisticated, comprehensive, and research-backed solutions. Communities have proposed harm-based, community-centric reforms that, for example, shift the evidentiary burden to prove a hate crime away from victims, introduce new offences that acknowledge the harm inflicted on targeted individuals or communities when existing crimes are aggravated by hate, and allow concerned community members to make claims if they witness a hate crime.[26]

Beyond state and territory-based reforms, community members also highlighted the need for a greater federal role in leading the reform discussion for data collection, harmonising legislative responses to online and offline conduct, and considering how hate crime diverges from terrorism.[27] These community solutions will be explored in further detail in the next phases of the National Anti-Racism Framework development.

Conceptually, these solutions generally point to the need to understand and respond to hate crimes through the broader concept of a 'continuum of violence' and to address their online dimension that often comes with offline impacts on individuals' and communities' wellbeing.[28] Some community solutions involve adopting a harm-based approach to hate crimes in criminal law, which would do away with the requirement to prove 'the perpetrator's state of mind' and instead focus on 'the perpetrator's conduct and the effects' – a direction adopted in the United Kingdom and accepted in principle by the Legal and Social Issues Committee of the Parliament of Victoria.[29]

This shift of emphasis from the perpetrator's motive to the conduct and its effects recognises that hate crimes impact not only the victim but also the victim's community and 'does significant damage to personal security, social belonging, inclusion, participation, and cohesion'.[30] Recognising extremist violence as an extension of hate crimes, the Australian Hate Crime Network advocates for understanding 'violent extremism to include "the violent denial of diversity"' to capture the fact that hate crimes and extremist violence are not singular incidents but lie on the same 'continuum of violence'.[31] In devising possible legislative responses to hate incidents, community members also highlighted the importance of ongoing community input and participation in relevant governance frameworks, such as a hate crime scrutiny panel that reviews operating procedures in police handling of hate crime cases, in developing an effective hate crime handling mechanism.[32]

The public information environment

Participants highlighted the need to enhance and harmonise legal protections against racism in the public information environment, with specific attention to the transnational social media sphere.[33]

> There are many different legal structures depending on the state you live in, the law can actually be a barrier to dealing with hate crimes especially since it lacks consistency from federal to state levels… there needs to be enhanced regulatory frameworks, but there also needs to be thinking of modes of encouragement, platforms that do the right thing and those platforms that help combat hate crimes, how do we recognise that and showcase them, this will allow for a public relation encouragement for platforms to do the right thing and then use penalties when they do the wrong thing. — *consultation with hate crimes expert, NARF project, May 2021 – April 2022*

Aside from harmonising the laws in different areas at both the Commonwealth and state and territory levels, consultation feedback called for legal protections against race hate online – both harassment and the spread of dehumanising and racist ideas – to keep pace with technological developments and shifts in targeted groups. Hate crimes experts advised the Commission that online racism is unique as bad actors can adapt methods or wordings of harassment to circumvent moderation or even amplify their message through algorithms, often turning individual incidents into a public harm. Additionally, online racism can be carried out in roundabout ways through racist curation of information or stories and amounts to 'an aggregate harm of dehumanising an outgroup to an ingroup audience' over time, and yet current laws do not cover encounters with these 'patterns' of hate speech or harassment online that are sometimes not targeted against individuals.[34]

To address the gaps in current protections against online racism, experts shared the view that platform owners equipped with the resources to intervene, instead of individuals harmed by the content, should bear the onus to mitigate harmful content,[35] while action in the social media sphere should be considered as part of a broader anti-racism strategy within the public information environment. Similar to legal protections for consumers' private information, experts called for comprehensive protections against racism that cover any content in the public information environment stoking or driving racism, including establishing legal frameworks that clearly define categories of harm and encourage digital platforms and traditional media to adopt a preventative, Safety by Design approach.[36]

Some participants argued that the fundamental goal of these legal frameworks would be to strive for a public information environment that does not tolerate the dehumanisation of groups based on protected characteristics.[37] Communities advocated for solutions including civil penalties for actors engaged in serial or systematic dehumanisation of groups based on protected characteristics, digital platform or third-party liability for recklessly allowing racist content to remain on platforms, judicially reviewable powers to investigate and issue warning notices or injunctions for problematic content, e-Safety industry standards and advertising guidance,[38] conciliation-based mechanisms, and other positive intervention strategies that avoid carceral approaches (see also section on *Media Regulation and Standards*).[39]

The Australian Muslim Advocacy Network emphasises that a broader understanding of hate crimes within the concept of the public information environment will allow legislators, policymakers, and legal practitioners to adopt an 'atrocity-prevention' approach to addressing hate crimes and violent extremism both online and offline, which focuses on maintaining collective social barriers to hatred and violence in all its forms.[40]

Beyond introducing new protections, consultation participants highlighted the need to review existing laws for their contribution to racism, particularly counterterrorism laws, that were seen to contribute to the continued stigmatisation and negative racialisation of certain communities, especially Muslim communities. Community research highlighted that Australian terrorism offences are still defined by the legal element of motive – instead of intention – to terrorise, and distinguish between ideological and religious motives, which is inconsistent with international law on terrorism[41] and has been responsible for promulgating the conflation of Islam and terrorism.[42] Participants also pointed out that the focus on religious motivations is biased against Muslim communities and fails to capture 'Neo-Nazi, white nationalist or anti-Government plans to commit terror'.[43]

> If the Australian Government is sincere about its promise to enforce counterterrorism laws in a non-discriminatory and ideology-neutral way, it should not be necessary to directly discriminate based on a person's religious belief or activity. [...] Australian Governments [need] to review their laws that contribute to dehumanisation of racial and religious minorities and adjust them to avoid harm. — *submission from the Islamophobia Register Australia, NARF project, May 2021 – April 2022*

More recent research found that media coverage of terrorism was responsible for persistent negative concern about Islam and prevented Australian audiences from accepting anti-racist messages about Muslims.[44] Beyond media coverage, consultation feedback and Commission research also highlighted that political speech in and outside Parliament is highly influential.[45] Hate crimes experts advised removing religion from the terrorist act definition is key to decoupling Islam and terrorism in public discourse, while there is also a necessity to consider a Parliamentary Code of Conduct with possible enforcement mechanisms to guard against political racism.[46]

Remedies

> [Legal protections should entail] the establishment of reporting mechanisms and consequences that strive to address the perpetrators' role, and advances opportunities to prevent future instances, educate, and heal collectively as a community. — *submission from the Asian Australian Project, NARF project, May 2021 – April 2022*

Community feedback stressed that an effective legal response to hate crimes needs to provide timely and meaningful remedies for individuals and communities who encounter hate crimes. Aside from criminal penalties, communities have called for a broader application of civil penalties beyond crisis events, which can allow more timely action to be taken against the hateful act, such as removing online content and covering conduct that does not currently amount to criminal responsibility but is nonetheless causing individuals or communities great distress.[47] Beyond hate crimes, submissions have highlighted the broader issue of systemic racism and the lack of adequate redress in current legal mechanisms.

> The issue with systemic racism, is when people raise a complaint around matters of race from the system, they're reporting it TO the system. — *submission from Anti-Discrimination NSW, NARF project, May 2021 – April 2022*

Several community organisations and advocates in Australia and internationally have been challenging systemic racism in the criminal legal system, especially around the disproportionate incarceration of Aboriginal and Torres Strait Islander people in Australia.[48] Advocates have put forward solutions to confront systemic violence enabled by the criminal justice system and reduce the 'reliance on police, prosecution, and imprisonment to address social problems',[49] while others characterised the Australian criminal justice system as inherently racist and called for a full shift to community-based accountability mechanisms.[50] Similarly, advocates also questioned carceral remedies for hate crimes, challenging their effectiveness as a deterrent in reducing recidivism and repairing harms inflicted on individuals and/or communities. Advocates warn that adopting more punitive and carceral solutions to offences generally could increase incarceration of First Nations and other negatively racialised communities.[51] Community-developed alternatives to imprisonment, such as restorative justice programs,[52] transformative justice,[53] and community accountability measures,[54] have emerged as possible measures to address drivers of racism before they manifest into violent speech or conduct and holistically tackle both interpersonal and systemic racism. Rooted in Indigenous 'traditional justice practices', these alternatives emphasise community participation and provide redress to affected individuals or communities by centring their voices throughout the process, holding the perpetrators accountable, and developing social services to prevent recidivism and support community resilience, while also seeking to reduce the use of imprisonment.[55]

Acknowledging that there currently exist different views on the appropriate remedies for hate crimes, any recommended approach will need to be guided by significant community input, if not community-designed and led.[56] Research on community-designed accountability solutions also highlights the importance of grounding the exploration of alternative justice approaches in the broader advocacy for and commitment to restorative or transformative justice beyond hate crimes, especially in relation to countering systemic racism in, and disproportionate punishment of, negatively racialised communities by the criminal legal system.[57]

Access to legal protection of rights

Aside from the lack of appropriate remedies, participants shared their experience that most people who encounter racism do not report it and highlighted several barriers to accessing existing legal protections.

> The majority of aggrieved individuals do not report experiences of racial discrimination and harassment due to fear of victimisation as a result of reporting, lack of access to support and resources, mistrust of the systems put in place to hold individuals accountable and fear of being subject to more experiences of discrimination. — *submission from the Western Australian Commissioner for Equal Opportunity, NARF project, May 2021 – April 2022*

Many consultation participants shared that a major barrier to reporting incidents of racism is an underlying distrust of institutions, including a fear of being silenced or discredited and concerns about engaging with government bodies. The Commission has heard, for example, that for remote Aboriginal communities, historical interactions with institutions that failed to protect the rights of Aboriginal and Torres Strait Islander peoples have discouraged them from reporting incidents.

Individuals and communities that experience racism are generally uncertain about seeking assistance from institutions perceived to be reproducing racism. The COVID-19 pandemic has seen hesitance in reporting from negatively racialised communities. A recent report by the Centre for Resilient and Inclusive Societies on Asian-Australian experiences of racism during the pandemic found that Asian Australians are overwhelmingly not reporting incidents of racism. When participants were asked whether they reported any of the incidents of racism they experienced during the COVID-19 pandemic, the most frequent response was that they had never reported such incidents (30.4–52.3%), while the most common bystander or witness response was to 'do nothing' (12.2%).[58] The key barriers to reporting cited by the respondents were a lack of trust in statutory agencies and their response to racism reports, feelings of hopelessness, shame or disempowerment, a lack of knowledge of reporting tools and human rights, fear of repercussions of reporting, and language and physical barriers.[59]

> Inadequate legal responses to hate crimes—the NSW Police Bias Crime Unit is under resourced, and reports indicate that complaints are not being taken seriously. — *submission from Western Sydney Community Forum, NARF project, May 2021 – April 2022*

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;[60] lack of trust in official agencies, such as possible discrimination by the police[61] or likelihood of having their cases dismissed or ignored; and accessibility issues.[62] 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.[63]

> Most of the community can be effective advocates for themselves, but most families are unaware of their own rights since they don't understand how this relates to them. Indigenous Australians have human rights and special rights as Indigenous peoples, but they don't know how to use them. — *consultation with First Nations organisation, NARF project, May 2021 – April 2022*

In view of the low confidence in reporting and response mechanisms, community representatives and members have stressed the importance of increasing the safety and accessibility of reporting mechanisms in consultations. Third-party community initiatives such as the Islamophobia Register, the Asian Australian Alliance's reporting tool, and Call it Out, a register for reporting hatred towards Aboriginal and Torres Strait Islander people, were highlighted as examples of safe, accessible, and independent platforms where individuals and communities feel comfortable sharing and documenting their experiences, even where a resolution was not possible. Participants emphasised the need for any reporting mechanism to be anonymous and independent from any institutions, so individuals are offered protection from potential retaliation. Participants also advised that incidents not meeting anti-discrimination legislation thresholds should still be recognised and documented for communities' reference and as a means of bearing witness to experiences of harm. First Nations community representatives observed that the need to go through the police or the Ombudsman to report incidents of racism acts as a significant barrier, emphasising that building support or interest across Aboriginal and Torres Strait Islander communities for any reporting mechanisms or relevant legislative reforms will be difficult unless there is the guarantee of a strong degree of independence.

Beyond reporting mechanisms, communities have raised further solutions to address these reporting barriers, particularly the lack of awareness of the rights of those who make and respond to incident reports. These solutions include creating awareness campaigns about relevant rights and reporting avenues, providing response teams with training about specific communities' needs and improving operational responses to hate crime reports, and conducting genuine community engagement that centres community input and participation and ensures the mechanism is community-led, culturally safe, and trauma-informed.[64]

[1] Australian Human Rights Commission, *Free & Equal: A Reform Agenda for Federal Discrimination Laws* (Report, December 2021) 12, 332.

[2] Australian Human Rights Commission, *Free & Equal: A Reform Agenda for Federal Discrimination Laws* (Report, December 2021) 236–7 (see reform proposal 20), 308–9 (see reform proposals 24, 26-29).

[3] Australian Hate Crime Network, Submission to the Australian Government's Consultations on a new Online Safety Act (February 2020) 14.

[4] Human Rights Law Centre, *Charters of Human Rights Make Our Lives Better: Here are 101 cases showing how* (Report, June 2022) 25 (Case 21).

[5] Human Rights Law Centre, *Charters of Human Rights Make Our Lives Better: Here are 101 cases showing how* (Report, June 2022) 32 (Cases 34), 42 (Case 54), 46 (Case 66), 48 (Case 68), 49 (Cases 74 and 75), 50 (Case 77), 52 (Case 81), 54 (Case 84).

[6] Human Rights Law Centre, *Charters of Human Rights Make Our Lives Better: Here are 101 cases showing how* (Report, June 2022) 16 (Case 1), 22 (Case 16).

[7] Human Rights Law Centre, *Charters of Human Rights Make Our Lives Better: Here are 101 cases showing how* (Report, June 2022) 20 (Case 11), 28 (Case 26), 29 (Case 27), 30 (Case 30), 36 (Case 41), 38 (Case 44), 39 (Case 46), 40 (Case 49), 56 (Case 88).

[8] Human Rights Law Centre, *Charters of Human Rights Make Our Lives Better: Here are 101 cases showing how* (Report, June 2022) 32 (Case 34), 45 (Case 64), 49 (Case 74).

[9] Such as the right of access to information, freedom of expression, freedom of association, and the rule of law principles of transparency and accountability.

[10] The Commission's forthcoming Free & Equal Position Paper on a Human Rights Act discusses the importance of a comprehensive national human rights instrument in more detail.

[11] *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted on 13 September 2007) arts 18–9.

[12] Sovereignty is contested as Australia's First Nations peoples maintain that sovereignty was never ceded, and the High Court of Australia has already rejected *terra nullius* as the legal basis for Australia's claim of sovereignty in the *Mabo* case without declaring a substitute. Canada approached redressing the continued domination by establishing a consultation duty, which general purpose is to foster reconciliation. See Isabelle Brideau, 'The Duty to Consult Indigenous Peoples' (Background Paper, Publication No 2019-17-E, Library of Parliament, Parliament of Canada, 12 June 2019) 1 <https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/BackgroundPapers/PDF/2019-17-e.pdf>.

[13] The Uluru Statement from the Heart, the result of one of the most significant First Nations consultation processes concerning constitutional reform, called for a constitutionally enshrined First Nations Voice to Parliament, as well as a Makarrata Commission that supervises agreement-making between governments and First Nations and facilitates truth-telling. See 'The Statement', *The Uluru Statement* (Web Page) <https://ulurustatement.org/the-statement/>.

[14] Online Hate Prevention Institute, *Campaign on Tackling Online Racism against Indigenous Australians* (March 2020). See 'Campaign on Racism against Indigenous Australians', *Online Hate Prevention Institute* (Web Page, 1 March 2020) <https://ohpi.org.au/campaign-on-racism-against-indigenous-australians/>.

[15] David Hirst, 'Sydney United 58 fans condemned for Nazi salutes and booing of Welcome to Country', *ABC News* (online at 2 October 2022) <https://www.abc.net.au/news/2022-10-02/sydney-united-fans-nazi-salutes-welcome-to-country-booed/101494818>.

16 The Act, among other things, establishes mechanisms and powers for removing online materials 'depicting, promoting, inciting or instructing in abhorrent violent conduct' in crisis situations. See 'Online Safety Bill 2021', *Parliament of Australia* (Web Page) <https://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bId=r6680>.

17 The Act addresses 'repeated vilifying or harassing comments or conduct' that amount to bullying by issuing 'stop bullying orders,' but cannot cover 'a single incident of vilification or harassment [that] may be insufficient to ground and substantiate an allegation of bullying'. See Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into serious vilification and hate crimes* (Report No 22, January 2022) 33.

18 The Act 'prohibits some hate speech in telecommunication offences, abhorrent violent material offences and offences of urging violence and advocating terrorism or genocide'. See Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into serious vilification and hate crimes* (Report No 22, January 2022) 30.

19 The Act provides 'for a reporting scheme about illegal and offensive online content, called the Online Content Scheme. Hate speech that incites violence against a particular societal group may be considered to be prohibited content. The eSafety Commissioner is empowered to give takedown notices to the relevant site hosting company where the content is hosted in Australia'. See Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into serious vilification and hate crimes* (Report No 22, January 2022) 31.

20 Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into serious vilification and hate crimes* (Report No 22, January 2022) 31–3.

21 Recognising the barrier that the 6-month timeframe poses to potential complainants, the Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022 (Cth) extends the limitation period for complaints under the *Sex Discrimination Act 1984* (Cth) to 24 months.

22 Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into serious vilification and hate crimes* (Report No 22, January 2022) 31.

23 For example, these include: *Crimes Act 1900* (NSW) s 93Z; *Racial and Religious Tolerance Act 2001* (Vic) pt 4 (serious vilification offences); *Anti-Discrimination Act 1991* (Qld) s 131A; *Criminal Code Act 1995* (Cth) s 80.2A. See also Derya Iner, *Islamophobia in Australia* (Report No 3, 2019) 122–30 <https://researchoutput.csu.edu.au/ws/portalfiles/portal/208330970/Islamophobia_Report_3_2022_LR_Spreads_RA.pdf>; Jacqueline Maley, 'Call to scrap "free speech" legal defence', *The Sydney Morning Herald* (online at 3 September 2019) <https://www.smh.com.au/politics/federal/call-to-scrap-free-speech-legal-defence-20190903-p52ng9.html>; Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into serious vilification and hate crimes* (Report No 22, January 2022) 8–9.

24 Australian Human Rights Commission, *Sharing the Stories of Australian Muslims* (Report, July 2021) 38–41.

25 Australian Hate Crime Network, Submission No 13 to the NSW Legislative Council Standing Committee on Social Issues, *Inquiry into Gay and Transgender Hate Crimes Between 1970 and 2010* (28 February 2020) 26.

26 Australian Muslim Advocacy Network, Submission No 52 to the Legal Affairs and Safety Committee, Queensland Legislative Assembly, *Inquiry into Serious Vilification and Hate Crimes* (12 June 2021) 22, 28, 33 <https://documents.parliament.qld.gov.au/committees/LASC/2021/VilificationandHateCrimes/submissions/052.pdf>.

27 Australian Hate Crime Network, Submission to the Parliamentary Joint Committee on Intelligence and Security's Inquiry into extremist movements and radicalism in Australia (18 February 2021) 5, 9, 10, 16, 19.

[28] Australian Hate Crime Network, Submission to Australian Government, Department of Infrastructure, Regional Development and Communications on the Online Safety Bill's Exposure Draft (12 February 2021) 10.

[29] Australian Muslim Advocacy Network, Submission No 52 to the Legal Affairs and Safety Committee, Queensland Legislative Assembly, *Inquiry into Serious Vilification and Hate Crimes* (12 June 2021) 16, 19 <https://documents.parliament.qld.gov.au/committees/LASC/2021/VilificationandHateCrimes/submissions/052.pdf>; Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into anti-vilification protections* (Report, March 2021) 120–1 (Recommendation 9) <https://www.parliament.vic.gov.au/images/stories/committees/lsic-LA/Inquiry_into_Anti-Vilification_Protections_/Report/Inquiry_into_Anti-vilification_Protections_002.pdf>.

[30] Australian Muslim Advocacy Network, Submission No 52 to the Legal Affairs and Safety Committee, Queensland Legislative Assembly, *Inquiry into Serious Vilification and Hate Crimes* (12 June 2021) 19 <https://documents.parliament.qld.gov.au/committees/LASC/2021/VilificationandHateCrimes/submissions/052.pdf>.

[31] 'The violent denial of diversity' is a definition first used by the Khalifer Ihler Global Institute that aims to capture how extremist violence is often driven by a belief that 'peaceful coexistence with someone different from them is impossible, and that violently enforcing this either through forced submission or through eradication of diversity is the solution'. See Australian Muslim Advocacy Network, Submission to the Parliamentary Joint Committee on Intelligence and Security, Parliament of Australia, *Inquiry into and report on matters relating to extremist movements and radicalism in Australia* (12 February 2021) 17–8.

[32] Australian Muslim Advocacy Network, Submission No 52 to the Legal Affairs and Safety Committee, Queensland Legislative Assembly, *Inquiry into Serious Vilification and Hate Crimes* (12 June 2021) 39 <https://documents.parliament.qld.gov.au/committees/LASC/2021/VilificationandHateCrimes/submissions/052.pdf>; Australian Muslim Advocacy Network, Submission No 3 to the Select Committee on Social Media and Online Safety, Parliament of Australia, *Inquiry into Social Media and Online Safety* (21 December 2021) 32.

[33] Evidence to the Select Committee on Social Media and Online Safety, Parliament of Australia, Canberra, 22 December 2021 <https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=committees/commrep/25358/&sid=0003>. See also Gail Mason and Natalie Czapski, 'Regulating Cyber-Racism' (2017) 41(1) *Melbourne University Law Review* 284, 284.

[34] Australian Muslim Advocacy Network, Submission No 3 to the Select Committee on Social Media and Online Safety, Parliament of Australia, *Inquiry into Social Media and Online Safety* (21 December 2021) 8. See also Australian Muslim Advocacy Network, Submission No 52 to the Legal Affairs and Safety Committee, Queensland Legislative Assembly, *Inquiry into Serious Vilification and Hate Crimes* (12 June 2021) 8 <https://documents.parliament.qld.gov.au/committees/LASC/2021/VilificationandHateCrimes/submissions/052.pdf>.

[35] Katharine Gelber, 'A better way to regulate online hate speech: require social media companies to bear a duty of care to users', *The Conversation* (online at 14 July 2021) <https://theconversation.com/a-better-way-to-regulate-online-hate-speech-require-social-media-companies-to-bear-a-duty-of-care-to-users-163808>.

[36] 'Safety by Design', *eSafety Commissioner* (Web Page) <https://www.esafety.gov.au/industry/safety-by-design>.

[37] Marten Risius et al, 'Dynamic Matrix of Extremisms and Terrorism (DMET): A Continuum Approach Towards Identifying Different Degrees of Extremisms' in Global Internet Forum to Counter Terrorism, *Broadening the GIFCT Hash-Sharing Database Taxonomy: An Assessment and Recommended Next Steps* (Report, 2021) 42, 51. See also Australian Muslim Advocacy Network, Submission No 3 to the Select Committee on Social Media and Online Safety, Parliament of Australia, *Inquiry into Social Media and Online Safety* (21 December 2021); Christchurch Call Advisory Network, *CCAN Report on Anti-Dehumanization Policy* (Report, Christchurch Call Summit, September 2022).

[38] Current guidance on industry codes and industry standards can be found at eSafety Commissioner, *Online Content Scheme: Regulatory Guidance* (Regulatory Guidance No 4, December 2021) 17–8 <https://www.esafety.gov.au/sites/default/files/2021-12/eSafety-Online-Content-Scheme.pdf>. See also eSafety Commissioner, *Development of industry codes under the Online Safety Act* (Position Paper, September 2021) <https://www.esafety.gov.au/sites/default/files/2021-09/eSafety%20Industry%20Codes%20Position%20Paper.pdf>.

[39] Australian Muslim Advocacy Network, Submission to the Legal Affairs and Safety Committee Queensland Legislative Assembly, *Inquiry into Serious Vilification and Hate Crimes* (12 June 2021) 37–8 <https://documents.parliament.qld.gov.au/committees/LASC/2021/VilificationandHateCrimes/submissions/052.pdf>.

[40] Australian Muslim Advocacy Network, Submission No 52 to the Legal Affairs and Safety Committee, Queensland Legislative Assembly, *Inquiry into Serious Vilification and Hate Crimes* (12 June 2021) 32 <https://documents.parliament.qld.gov.au/committees/LASC/2021/VilificationandHateCrimes/submissions/052.pdf>.

[41] Bret Walker SC, *Independent National Security Legislation Monitor* (Declassified Annual Report, Australian Government, 20 December 2012) 113–4 <https://www.pmc.gov.au/sites/default/files/publications/INSLM_Annual_Report_20121220.pdf>.

[42] Australian Muslim Advocacy Network, Submission to the Parliamentary Joint Committee on Intelligence and Security, Parliament of Australia, *Inquiry into and report on matters relating to extremist movements and radicalism in Australia* (12 February 2021) 5, 10.

[43] Australian Muslim Advocacy Network, Submission to the Parliamentary Joint Committee on Intelligence and Security, Parliament of Australia, *Inquiry into and report on matters relating to extremist movements and radicalism in Australia* (12 February 2021) 10.

[44] Matteo Vergani, Fethi Mansouri, Liliana Orellana. 'Terrorism concern and persistence of negative attitudes towards Islam and Muslims' (2022) 32(6) *Journal of Community & Applied Social Psychology* 1029.

[45] Australian Human Rights Commission, *Sharing the Stories of Australian Muslims* (Report, July 2021) 70.

[46] Mohamad Abdalla and Rita Jabri Markwell, 'The Case for Removing Religion from Australia's Definition of Terrorism', *ABC* (online at 12 September 2022) <https://www.abc.net.au/religion/removing-religion-from-terrorism-definition-mohamad-abdalla-and/14050702>.

[47] Australian Hate Crime Network, Submission to Australian Government, Department of Infrastructure, Regional Development and Communications on the Online Safety Bill's Exposure Draft (12 February 2021) 15.

[48] In a call to stop mass incarceration of Aboriginal and Torres Strait Islander peoples, Commissioner June Oscar AO discussed how First Nations Australians – making up only three percent of the population but 29 percent of the prison population – are the most incarcerated people in the world. See Australian Human Rights Commission, 'Stop mass incarceration to prevent deaths in custody' (Media Release, 14 April 2021) <https://humanrights.gov.au/about/news/media-releases/stop-mass-incarceration-prevent-deaths-custody>.

[49] Tyler Bishop et al, *Exploring Alternative Approaches to Hate Crimes* (Report, Stanford Law School Law and Policy Lab, June 2021) 4. See also Sisters Inside and the Institute for Collaborative Race Research, Joint Submission to the Independent Commission of Inquiry into Queensland Police Service responses to domestic and family violence, Queensland Government (13 July 2022).

[50] See, eg, Sisters Inside and the Institute for Collaborative Race Research, Joint Submission on Discussion Paper 2 of the Women's Safety and Justice Taskforce: *Women and girls' experience of the criminal justice system – Proposed focus areas*, Queensland Government (30 July 2021).

[51] Tyler Bishop et al, *Exploring Alternative Approaches to Hate Crimes* (Report, Stanford Law School Law and Policy Lab, June 2021) 4, 12–3; Australian Muslim Advocacy Network, Submission No 52 to the Legal Affairs and Safety Committee, Queensland Legislative Assembly, *Inquiry into Serious Vilification and Hate Crimes* (12 June 2021) 29 <https://documents.parliament.qld.gov.au/committees/LASC/2021/VilificationandHateCrimes/submissions/052.pdf>.

[52] Restorative justice refers to 'a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.' Some examples include repairing harm circles, community sentencing circles, alternative sentencing options, and social services like funding culturally competent mental health services for survivors. See Howard Zehr, *The Little Book of Restorative Justice* (Good Books, 2002) 40; Tyler Bishop et al, *Exploring Alternative Approaches to Hate Crimes* (Report, Stanford Law School Law and Policy Lab, June 2021) 16, 20, 21, 24.

[53] Transformative justice refers to alternative approaches to justice that seek 'safety and accountability without relying on alienation, punishment, or State or systemic violence, including incarceration or policing'. These approaches emphasise the equal importance of 'individual justice and collective liberation' and the need to transform societal and individual conditions that enabled violence to occur, while recognising that 'State and systemic responses to violence, including the criminal legal system and child welfare agencies, [...] condone and perpetuate cycles of violence.' Transformative justice measures thus seek to 'provide people who experience violence with immediate safety and long-term healing and reparations while holding people who commit violence accountable within and by their communities,' for instance by 'stopping immediate abuse, making a commitment to not engage in future abuse, and offering reparations for past abuse'. See Generation FIVE, *Toward Transformative Justice: A Liberatory Approach to Child Sexual Abuse and other forms of Intimate and Community Violence – A Call to Action for the Left and the Sexual and Domestic Violence Sectors* (Report, June 2007) 5. See also *Transform Harm* (Web Page, 2020) <https://transformharm.org/>.

[54] Community accountability strategies aim to prevent and respond to violence through strengthening relationships and support for communities, addressing the conditions that enabled violence to occur, and holding individuals accountable for the harms they caused. Some examples include committing to transforming political conditions that reinforce oppression and violence, providing safety and support to community members who are violently targeted, and developing processes to address community members' abusive behaviours and track their improvement progress. See 'Community Accountability', *Transform Harm* (Web Page) <https://transformharm.org/category/community-accountability/>; 'Community Accountability', *INCITE! Women of Color and Trans People of Color Against Violence* (Web Page, 2012) <https://incite-national.org/community-accountability/>.

[55] Tyler Bishop et al, *Exploring Alternative Approaches to Hate Crimes* (Report, Stanford Law School Law and Policy Lab, June 2021) 16–7.

[56] For instance, there are concerns that restorative justice remedies, if not accompanied by support services or broader social changes, might retraumatise victims or embolden some to commit hate crimes. See Tyler Bishop et al, *Exploring Alternative Approaches to Hate Crimes* (Report, Stanford Law School Law and Policy Lab, June 2021) 23, 55.

[57] Tyler Bishop et al, *Exploring Alternative Approaches to Hate Crimes* (Report, Stanford Law School Law and Policy Lab, June 2021) 23.

[58] Alanna Kamp et al, *Asian Australians' Experiences of Racism During the COVID-19 Pandemic* (Report, Centre for Resilient and Inclusive Societies, 2021) 31, 33 <https://static1.squarespace.com/static/5d48cb4d61091100011eded9/t/60f655dd3ca5073dfd636d88/1626756586620/COVID+racism+report+190721.pdf>.

[59] Alanna Kamp et al, *Asian Australians' Experiences of Racism During the COVID-19 Pandemic* (Report, Centre for Resilient and Inclusive Societies, 2021) 44–6 <https://static1.squarespace.com/static/5d48cb4d61091100011eded9/t/60f655dd3ca5073dfd636d88/1626756586620/COVID+racism+report+190721.pdf>.

[60] Australian Muslim Advocacy Network, Submission No 3 to the Select Committee on Social Media and Online Safety, Parliament of Australia, *Inquiry into Social Media and Online Safety* (21 December 2021) 26.

[61] Tyler Bishop et al, *Exploring Alternative Approaches to Hate Crimes* (Report, Stanford Law School Law and Policy Lab, June 2021) 4, 11.

[62] Matteo Vergani and Carolina Navarro, *Barriers to Reporting Hate Crime and Hate Incidents in Victoria: A mixed-methods study* (Report, Centre for Resilient and Inclusive Societies, 30 June 2020) 12.

[63] Matteo Vergani and Carolina Navarro, *Barriers to Reporting Hate Crime and Hate Incidents in Victoria: A mixed-methods study* (Report, Centre for Resilient and Inclusive Societies, 30 June 2020) 12.

[64] Matteo Vergani and Carolina Navarro, *Barriers to Reporting Hate Crime and Hate Incidents in Victoria: A mixed-methods study* (Report, Centre for Resilient and Inclusive Societies, 30 June 2020) 23–7. Some examples of culturally safe practices are embedding Indigenous languages and the consideration of Indigenous laws and protocols, governance, spirituality, and religion; while a trauma-informed approach requires knowledge of the impacts of trauma, as well as active and appropriate identification of and responses to signs of trauma during the process. See National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report into Missing and Murdered Indigenous Women and Girls* (Final Report, Volume 1b, 2019) 171–3.

Process solution

Next steps

The Australian Government recently announced funding for the Commission to deliver a National Anti-Racism Strategy. It committed an initial $7.5 million over 4 financial years for the strategy with an annual commitment of $1.4 million following the 2022–2026 period.

The Australian Government has recognised that this strategy, overseen by the Commission, will include two major streams of work. The establishment of a National Anti-Racism Framework which, as set out in this report, is intended to support the commitment of government, civil society and business and the community to tackle racism and promote racial equality in Australia. A national public awareness and educative campaign under the existing *Racism. It Stops With Me* banner will be a second priority initiative of the strategy.[1]

This ongoing commitment gives the Commission the means to progress a national anti-racism framework.

In keeping with a human rights-based approach, the Commission intends the next stage of developing a framework to be community-centred through nationwide consultations, ensuring anti-racism efforts reflect community priorities and draw on community strengths, knowledge, and expertise. Cultural safety and accessibility must be key priorities to make this undertaking as representative of the community as possible.

First Nations peoples and those from migrant, refugee and faith-based backgrounds that are negatively racialised have long led the way in addressing racism and are best placed to advise on the necessary approaches and strategic outcomes of this work. Recognition of the experiences of First Nations peoples, as well as a nuanced and intersectional understanding of racism, must be central to any framework.

The Commission is privileged to facilitate this conversation and will continue to work collaboratively to bring into effect a central reference point for anti-racism action by government, business, community, and all sectors of society.

Within this process, the Commission intends to facilitate progress in response to the Report's findings on the operative definitions of racism, anti-racism, cultural safety and intersectionality, as well as the key feedback on data and data sovereignty, legal protections, justice, and media and online hate by connecting with experts and anti-racism advocates.

Comprehensive community and targeted consultations will be undertaken in the lead up to a National Anti-Racism Summit in a co-design approach informed by the approaches taken in the National Agreement on Closing the Gap and the National Disability Strategy, as well as by internal Commission approaches such as that taken in the *Wiyi Yani U Thangani* project.

The Commission, however, recognises that significant community effort has already informed findings and recommendations in previous projects (both Commission and non-Commission facilitated) that overlap with the themes of this Report, including the:

- *Royal Commission into Aboriginal Deaths and Custody* Final Report (1997)
- *Isma ع – Listen: National consultations on eliminating prejudice against Arab and Muslim Australians* Report (2003)
- *Unlocking Doors: Muslim communities and police tackling racial and religious discrimination together* Report (2006)
- *In our own words – African Australians: A review of human rights and social inclusion issues* Report (2010)
- *Implementing OPCAT in Australia* Report (2020)
- *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future* Report (2020)
- *Sharing the Stories of Australian Muslims* Report (2021)

The Commission envisions that development of a Framework must also be informed by the specific findings and recommendations from these projects, as well as other existing community-led research and emerging research.

The Commission proposes to establish an advisory group for this consultation process in the lead up to a summit. The Race Discrimination Commissioner will convene this advisory group.

Key representative bodies would participate in a summit and delegates would agree to a set of strong commitments, roles, and responsibilities, particularly for all levels of government, at the end of this process. The Commission could be responsible for independent monitoring (such as with the National Disability Strategy). While significant further work must be undertaken with regard to the issue of data on racism, as well as racial equity measures, the Commission could be tasked with undertaking some targeted data driven research, for example on workplace-based racism or measures of race-based pay equity, to contribute to the broader work being taken to progress a national approach to data.

This proposed process solution is one of many approaches the Commission could take with the further development of a framework. Ultimately, a co-design approach that is accessible to all will see the establishment of a framework that reflects a coordinated, shared vision to meaningfully tackle racism, promote racial equality, ensure access to rights, and foster a cohesive sense of belonging for all Australians.

Solutions

Each of the solutions for the national outcome areas listed below are drawn from the consultations and submissions which informed this Report. The Commission heard from participants about a range of specific and more general solutions and those listed below are by no means exhaustive or definitive of the various anti-racism strategies a Framework should include. The Commission envisions that the next stage of the Framework will see further community-recommended solutions.

In some circumstances, participants provided differing levels of detail on the nature of possible solutions. Sometimes, participants only highlighted issues experienced by different communities and did not identify solutions. In these situations, the Commission has suggested possible solutions to these issues. Care has been taken overall to capture the solutions as closely as possible to participants' original feedback, with the Commission only making minor recommendations on the possible authorities responsible for implementing the solution and suggesting possible solutions in situations where none were proposed by participants.

Where suggested by participants, solutions have also made specific reference to particular communities, but the Commission recommends that each of the solutions be read as requiring an intersectional approach, especially as they relate to categories of intersectionality that are not immediately obvious. The Commission intends that the next stage of the Framework's development will attempt to address any gaps in the solutions as they relate to individuals with multiple, diverse experiences of discrimination and harm.

Overarching

An intersectional framework that centres the experiences of First Nations peoples

A Framework must take a systemic, nuanced and community-centric approach to understanding racism. It must be grounded in an intersectional approach, with the experiences of First Nations peoples as a foundation. All anti-racism action must acknowledge and be informed by the distinct experiences and identities of those from multiple social categories, including race, sexuality, class, gender, age, disability, and legal status.

Broadly, an effective Framework requires definitions of 'racism' and 'anti-racism' that reflect this nuanced and intersectional understanding of racism. These definitions, along with definitions of other common terms (for example, equality and equity, social cohesion and multiculturalism) must be community-centric and acknowledge the impacts of European colonisation and the ongoing impacts of settler colonisation on First Nations peoples.

Key areas

Data

National data collection

The Australian Government should support the development of a comprehensive, national and independent data base which captures diverse forms of data to show the prevalence, nature and impacts of racism and racial inequities.

- Data types should include longitudinal, qualitative and quantitative data.
- A data approach should incorporate cultural safety practices and meet the FAIR Data Principles of findability, accessibility, interoperability and reusability. Comprehensive, national data must also be specifically tailored to First Nations women and women from culturally, ethnically, and linguistically diverse backgrounds on indicators such as pay gaps, representation in formal leadership positions, rates of incarceration in the justice system, fines and overall justice outcomes, and measures of women in politics.
- Governments should also explore options for de-identified data exchange between agencies to incorporate intersectional approaches into systemic responses.

- A data approach should account for racial biases in emerging technologies, including artificial intelligence. The Australian Government should implement the 38 recommendations from the Commission's *Human Rights and Technology Final Report* (2021), particularly as they relate to incorporating international human rights frameworks into artificial intelligence-based services and creating strong accountability mechanisms to redress harms caused by artificial intelligence.

Data sovereignty

- The Australian Government should consult on mechanisms to establish data sovereignty frameworks for First Nations people that reflect self-determined priorities and practices, including the Indigenous Data Sovereignty Principles. Legislative or regulatory protections should recognise First Nations peoples' inherent and collective rights to self-determination and centre their ownership and governance of their data.
- The Australian Government should consult on the development of a data sovereignty framework for migrant, refugee and faith-based communities that are negatively racialised, guided by Indigenous data sovereignty principles.

Improved transparency

- The Australian Bureau of Statistics should be tasked to review the Standards for Statistics on Cultural and Language Diversity (1999) to reflect a nuanced identification process that more accurately captures communities' evolving identities.
- Government services, departments and agencies should be required to annually report racial and cultural data.

Governments, in collaboration with public and private sector organisations should promote greater transparency and accountability on the use of 'big data', including on the connections between the collection of data and its use by governments and the public and private sectors.

- Complaint handling agencies at federal and state and territory levels should consistently make publicly available quantitative data on racial discrimination complaints received by Aboriginal and Torres Strait Islander peoples and people from negatively racialised backgrounds.
- The Australian Government, in partnership with state and territory governments, should explore options to improve reporting of complaints relating to intersectional experiences of discrimination, including the various law reform and funding strategies necessary to implement this. Attention should be given to the Commission's recommendation in the *Free and equal: A reform agenda for federal discrimination laws* Report (2021) that dedicated resourcing be provided to the Commission, as well as to academic partners, to provide publicly available information and analysis about trends in complaints on a periodic basis.

Education and public awareness

Racial literacy

- State and territory governments and providers of education (from early childhood education through to tertiary education) should further develop and consistently implement strategies to improve broad based literacy about race and racism. This includes implementing holistic reforms to public education, such as committing to anti-racist curricula that:
  - emphasise the following areas:
    - the experiences of First Nations peoples since colonisation
    - the link between Australia's colonial history and the present-day inequities experienced by First Nations peoples
    - Australia's migration history, discriminatory immigration laws and policies
    - the impacts of Australia's migration history on current border control laws, policies, and practices, as well as current racialised narratives in the media and public discourse, especially in defining who is or was 'Australian'
  - includes diverse histories, knowledge, and culture
  - engages with intersectional experiences of racism
  - is introduced from an early stage of education to foster racial literacy and anti-racism from a young age
  - is embedded in pedagogy and practice.

- Noting the Australian Curriculum, Assessment and Reporting Authority's recent update of the Australian Curriculum, with Aboriginal and Torres Strait Islander history as a key cross-curriculum priority the Commission suggests further reforms, including future reviews of the National Curriculum, should commit to an approach to anti-racism curricula as outlined above.
- In line with Recommendation 18 of the *Wiyi Yani Thangani* Report, universities should develop and implement an Aboriginal and Torres Strait Islander teaching and learning strategy applicable across a range of curriculums, focused on standards of excellence as applied to other curriculum content and feeding into description of graduate attributes, with an initial focus on priority disciplines to close the gap such as teaching and health professionals.
- The Australian Government Department of Education, state and territory governments, and providers of education (from early childhood education through to tertiary education) should resource active opportunities for non-Indigenous community members, especially those of newly arrived and emerging communities, to connect with First Nations history and truth.

Social support and mentorship

- Providers of tertiary education should continue developing, monitoring, evaluating, and updating culturally focused academic and social support and mentorship within university settings to assist students, particularly First Nations students, to improve student retention rates.

Representation in employment

- The Australian Government Department of Education, state and territory governments, and providers of education (from early childhood education through to tertiary education) should actively support, and develop strategies to increase, diversity in teaching staff and the corporate arms of education institutions.

Cultural safety

Workplace initiatives

- Organisations should incorporate cultural safety within workplace policies, programs and within work health and safety (WHS) practices as a best practice.
- Organisations should introduce safe and transparent reporting mechanisms for discrimination, harassment, and vilification within the workplace.
- Organisations should ensure a representative and culturally safe workforce.
- Organisations should adopt anti-racist recruitment and hiring practices, monitoring and retention practices, and cultural accommodations that can support staff with lived experience of racism.

- Organisations should require staff cultural awareness training and cultural competency training, informed by an intersectional framework, to be completed on an ongoing basis for professional development.
- Organisations should undertake regulatory auditing around cultural safety.
- The Australian Government, and state and territory governments, should ensure accountability to the principles and requirements of cultural safety through mechanisms such as:
  - cultural accreditation standards, particularly Aboriginal-led standards
  - a national legislative or regulatory framework embedding culturally safe workplace practices in law and creating organisational accountability for the requirement to provide culturally safe workplaces

Services and support

- The Australian Government, and state and territory governments, should support community-controlled service provision.
- The Australian Government, and state and territory governments, should support the expansion of the Aboriginal and Torres Strait Islander workforce and the community-controlled sector.
- The Australian Government, state and territory governments, and organisations should support community empowerment and adopt trauma-informed, strength-based and healing approaches to service delivery, especially across health services, through co-design mechanisms. Sufficient time and resources should be provided for the comprehensive community engagement necessary for co-design processes.
- The Australian Government, state and territory governments, and organisations should support and develop strategies to actively promote First Nations participation in governance and service delivery processes.
- Settlement service providers should be better supported to develop a community-centred approach in the provision of settlement supports to assist new migrants. This includes making supports more accessible, culturally appropriate, and capable of being tailored to the needs and strengths of specific communities.

Legal protections

Protection of rights

- The Australian Government should reform existing anti-discrimination laws to better align with Australia's international human rights obligations. The Australian Government should implement the Commission's recommendations from the *Free and Equal: A reform agenda for federal discrimination laws* (2021) Report to improve the coverage of anti-discrimination laws, particularly as they relate to establishing an enforceable positive duty to take reasonable and proportionate measures to eliminate unlawful discrimination, allowing representative claims in court, and extending anti-discrimination law to religious discrimination.
- The Australian Government should recognise casteism in anti-discrimination legislation and policy.
- The Australian Government should explore options, including through a national human rights instrument, to expand protections of human rights, such as the rights to freedom of thought, conscience, and religion and freedom from discrimination, housing, education and meaningful access to culture. A comprehensive national human rights instrument should be guided by the principles of participation and equal access to justice.

Online hate

- Governments should develop a comprehensive and enforceable legal framework which reflects domestic and international anti-racism standards and offers strong protections against racial vilification, hate, violence, and harassment.
- Governments should adopt an atrocity-prevention and harms-based approach to hate crimes and incidents, both online and offline. Legal protections should be harmonised at both Commonwealth and state and territory levels. Opportunities for reform include digital platform or third-party liability for recklessly allowing racist content to remain online and introducing judicially reviewable powers of investigation and enforcement for regulatory bodies, such as the e-Safety Commissioner.
- Governments should explore meaningful remedies for hate crimes, including alternative justice solutions, that are timely, effective in reducing recidivism and repairing harms, and do not reinforce the systemic racism in the criminal justice system. These options should be either community-designed and led or guided by significant community input.
- Governments should explore broader application of civil penalties beyond crisis events in relation to hateful acts.
- Governments should establish robust hate crime handling mechanisms which provide for ongoing community input and participation. Reporting mechanisms should be safe, accessible, anonymous and independent.

Other areas of law reform

- The Australian Government should reform counterterrorism laws to be more consistent with international standards.
- The Australian Government should take a human-rights based approach in a review of existing citizenship laws, to address the significant barriers experienced by migrants, refugees, and asylum seekers in seeking citizenship or asylum.
- The Australian Government should review the effectiveness of current protections in employment legislation and develop further strategies to address unlawful and exploitive arrangements experienced by migrants, particularly international students.

Access to legal protections/Accessibility

- Relevant duties, processes and mechanisms around access to the protection of rights by First Nations people including participation processes should be determined by First Nations' peoples and aligned with principles under the *Universal Declaration on the Rights of Indigenous Peoples,* the Uluru Statement from the Heart, and the protection of Aboriginal-controlled legal services.
- Governments and non-government bodies should implement strategies to address barriers to reporting racism through awareness campaigns about relevant rights and reporting avenues, providing response teams with training about specific communities' needs, improving operational responses to hate crime reports, and conducting genuine community engagement that ensures the complaint mechanisms are community-centred, culturally safe, and trauma-informed.

Justice

Services and support

- The Australian Government, and state and territory governments, should ensure access to culturally safe legal and support services, unhindered by cost, and which take into account intersectional needs.
- The Australian Government, and state and territory governments, should implement culturally responsive and trauma-informed training for those employed within the justice system, especially for first responders like police and paramedics, but also for legal providers and support service providers.
- The Australian Government, and state and territory governments, should resource community-controlled supports and mechanisms for Aboriginal and Torres Strait Islander peoples involved in the criminal justice system.
    - The Australian Government, and state and territory governments, should ensure access to customary law pathways for Aboriginal and Torres Strait Islander peoples.
    - The Australian Government, and state and territory governments, should adopt community-based approaches to sentencing for First Nations peoples.

- The Australian Government, and state and territory governments, should support grassroots, community-controlled supports and service provision for First Nations families in child protection services

Alternatives to custody

- The Australian Government, and state and territory governments, should adopt trauma-informed, therapeutic and restorative approaches to diversion and rehabilitation. The Australian Government, and state and territory governments, should pursue alternatives to custody.

Protection of rights

- The Australian Government, and state and territory governments, should follow Tasmania in raising the age of detention and ACT in committing to raise the age of criminal responsibility to at least 14 years old nationwide.
- The Australian Government should ensure all places of detention comply with international human rights standards including the *Optional Protocol to the Convention against Torture* and the *Convention on the Rights of the Child* particularly as these standards relate to the rights of children in the youth justice system.

Transparency and accountability

- The Australian Government, and state and territory governments, should establish independent oversight mechanisms for police misconduct and negligence across the justice system, including monitoring and transparent reporting mechanisms.

Data collection

- The Australian Government, and state and territory governments, should support comprehensive, community-led data collection on interactions with the justice system, including arrests, outcomes of justice and the experiences of individuals within court processes. Data collection must be accessible and credible.

Media regulation and standards

Workplaces and cultural safety

- Media organisations should resource and platform stories which amplify narratives and lived experiences of First Nations people and migrant, refugee and faith-based communities that are negatively racialised.
- Media organisations should develop culturally safe workplaces to advance culturally safe reporting.
- Media organisations should create pathways for First Nations and/or racially literate leadership in decision-making and standard-setting roles.

- Media organisations should increase efforts to reduce the barriers experienced by First Nations people and negatively racialised communities in seeking and securing employment in the media by developing culturally safe workplace practices.

Government and regulation

- The Australian Government should explore options for law reform to better protect individuals and communities from racially-based online hate, including by:
  - Strengthening industry codes and standards in relation to online hate.
  - Ensuring that anti-racism standards for the media industry, including digital platforms, are community-informed.
  - Establishing an independent body to monitor and enforce anti-racism standards across the media industry.
  - Establishing adequate moderation and regulation mechanisms across platforms, particularly in relation to racial profiling.
  - Addressing the limitations of the *Online Safety Act 2021* (Cth) to better protect individuals and communities against racial hatred and its intersection with religious discrimination.
  - Updating mechanisms for the Online Content Scheme.
- Regulators and law enforcement should develop training for their decision-makers which address online hate and dehumanisation across different community contexts.
- Governments should explore options to expand information and education about cyber abuse takedown options and explore further enforcement mechanisms including civil penalties that remove the burden from communities that are negatively racialised.
- Governments should sustainably resource and bolster community-controlled media organisations.

Transparency and accountability

- Political leaders, media personalities, and other public figures who make comments which invite racial violence and hatred or otherwise perpetuate negative attitudes and stereotypes of racial communities should be accountable through mechanisms like workplace codes of conduct.
- Media regulatory bodies should improve transparency and accountability on complaint handling for racism-based complaints.

Data collection

- Governments should support the development of a standardised, media sector-wide approach for the collection and monitoring of diversity data. This should be informed by the recommended solutions in the *Data* section.

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1 Australian Human Rights Commission, 'Kep Enderby Memorial Lecture 2022' (YouTube, 6 November 2022) 00:26:58–00:45:00 (Mark Dreyfus, Attorney-General) <https://www.youtube.com/watch?v=iy8ZkBVHZVI>.

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