

## **Anti-racism and diversity training for police**

The Race Discrimination Commissioner is considering options for possible work with police on anti-racism and diversity training. Some police forces carry out training, but there is no 'best practice' approach, and the extent to which this training integrates into core police training varies. Following Australia's 2017 appearance before the CERD committee, there is an opportunity to work with police on developing training that is robust and nationally consistent.

### ***Background***

The Commission has raised police training as an important issue over several decades. For instance, HREOC's National Inquiry into Racist Violence (1991, p. 333) recommended:

- That police training include appropriate education in cultural issues and community relations and provide for supervised placements in areas with significant numbers of persons of Aboriginal and non-English speaking backgrounds.
- That the elimination of racist attitudes and practices be accorded an essential place in the recruitment and training of police, and that such attitudes and practices not be condoned in policing operations.
- That Federal and State police forces promote the recruitment of persons of Aboriginal and non-English speaking backgrounds, and provide special training programs to ensure that persons of those backgrounds are able to meet recruitment standards and prerequisites.
- That people of Aboriginal and non-English speaking backgrounds be involved in the development of curricula and materials for police training in cultural issues and community relations, in the presentation of training programs and in the assessment of trainees.
- That Federal and State police forces require experience and proven ability to work effectively with people of Aboriginal and non-English speaking backgrounds as prerequisites for promotion.

### ***National Forum on Diversity Training in Policing***

This forum was held at the Commission in 2014. Its aim was to establish what constitutes effective and applied diversity training in policing. Keynote speakers included the then Deputy Commissioner and Assistant Commissioner of NSWPF, AHRC President Gillian Triggs, RDC Tim Soutphommasane, CEO of the Migration Council of Australia, numerous researchers and ANZPAA. Various representatives attended from police forces at the state and federal level.

Issues identified included the need for and commitment to benchmarking of effective diversity training. While the forum found "no national consensus" on what constitutes effective diversity training in policing, it was noted "the NSWPF approach was the only identifiable strategy that had integrated diversity training into core police training and process". This approach was noted for its demonstrated effectiveness in investigations, intelligence gathering and community engagement.

The forum also noted organisational culture and the "need for a shift in mindset" as critical to success of training. It identified the opportunity to look at diversity training along the "whole continuum of policing and justice". Regarding next steps, the forum identified the need to do further work at a national level to "further refine the content, style and applications of diversity training in policing", including further collaboration with AHRC regarding benchmarking and possible training/development of trainers and alignment with NARPS work.

## **UN Committee Recommendations (2017)**

In its 2017 submission to the CERD committee, the Commission noted its concern about “allegations of systemic racially-discriminatory policing practices and allegations of profiling, excessive force and harassment. The submission provided information on the Palm Island case and the Federal Court ruling that the State of Queensland, through the QPS officers, had breached the Racial Discrimination Act. It also gave evidence on August 2016 violence in Kalgoorlie after the death of a 14-year-old Aboriginal boy. The Commission recommended that:

- All Australian governments ensure police are trained in cultural competency and anti-racism
- All Australian governments implement independent review mechanisms to monitor compliance of police practices with international human rights law (including CERD and the Racial Discrimination Act 1975 (Cth)), and
- The Queensland Government respond appropriately to the Federal Court of Australia’s decision in *Wotton v State of Queensland (No 5)* [2016] FCA 1457.

Further, the Commission identified policing (through the above recommendations) as one of only three ‘priority’ areas in the report. The Commission recommended that the Committee request an update on progress on these matters in 12 months’ time (following article 9(1) of CERD and rule 65 of the Rules of procedure.

In its Concluding Observations, published December 2017, the UN Committee noted that training has not been “regularly introduced” in police forces and “lacks systematic integration” of anti-racism and diversity dimensions. It noted the lack of data on training. The Committee recommended:

*“That the State party intensify training programmes for law enforcement officers at the federal, state and territory levels on combating racial discrimination, on the prevention of racial profiling and on the proper methods for investigating hate crimes and cases of hate speech. The Committee also recommends that the State party conduct specialized training on the prevention of racial discrimination and on the rights enshrined in the Convention for judges, lawyers and other State officials, as well as for representatives of local government entities and associations. The Committee requests that the State party provide updated, detailed information and statistics in its next periodic report on such training programmes and their impact on the situation of indigenous peoples and ethnic minorities.”*

## **Future direction**

There is now an opportunity to work with police to better coordinate anti-racism and diversity training.

Since returning to Australia, the Race Discrimination Commissioner has begun the process of meeting with police commissioners. The Commissioner is scheduled to speak at the next Police Commissioners’ Forum on 23 March in Hobart, and at the ANZPAA conference in Melbourne on 2-3 May through a keynote address on “Future Workforce: Diversity and Discrimination” and another closed session with Police Commissioners.

# Racial discrimination, the Australian Human Rights Commission (AHRC) and international developments

April 2018

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## 1 Australia's appearance at CERD

In November 2017, Australia appeared before the UN Committee on the Convention on the Elimination of All Forms of Racial Discrimination (CERD). This was part of its Periodic Review, which Australia is required to undertake as a signatory to the Convention. Australia implements CERD primarily through the *Racial Discrimination Act 1975* (Cth) and the work of the AHRC.

The Race Discrimination Commissioner Dr Tim Soutphommasane – representing the AHRC – also appeared before the Committee. Dr Soutphommasane listed three ‘priority areas’:

- Data collection, to enable a better understanding of racial disparities;
- The NT Royal Commission, urging authorities to implement recommendations;
- Discriminatory police practices, recommending police be trained in cultural competency and anti-racism.<sup>1</sup>

The Commissioner also raised the rise of racial intolerance and discrimination, the growing prominence of extreme nationalist organisations, and the anti-racism work of the Commission, including through the National Anti-Racism Strategy and the *Racism. It Stops with Me* campaign.

The UN Committee, in its concluding observations, recommended strengthening anti-racism programs (including the National Anti-Racism Strategy), improving data collection, and anti-racism and diversity training for law enforcement, among other recommendations. It acknowledged the important role of the *Racial Discrimination Act* in challenging racism.<sup>2</sup>

## 2 Follow up in Australia

In March 2018, the Commissioner addressed the Police Commissioners' Forum in Hobart. The Forum – which includes all federal, state and territory police commissioners – agreed to develop guidelines and/or benchmarks on anti-racism and diversity training for police. This will be coordinated through ANZPAA, the national police association.

The AHRC will continue to advocate for better data collection and support for anti-racism advocacy.

In 2017, the AHRC had recommended to the Senate Select Committee on Strengthening Multiculturalism that the Australian government investigate ways of collecting more comprehensive data on racially motivated crimes, as well as on issues concerning multiculturalism, including cultural diversity in Australian workplaces. The Select Committee adopted many of the AHRC's recommendations.<sup>3</sup>

### 3 International developments

#### United Kingdom

In October 2017, British Prime Minister Theresa May released a Race Disparity Audit, which examined the treatment of people of different backgrounds across health, education, employment and the criminal justice system. According to May, the audit data may be 'uncomfortable', but will also be 'regarded as the central resource in the battle to defeat ethnic injustice'.<sup>4</sup>

The Audit found, among other things, that ethnic minorities are under-represented at senior levels across the public sector, and there are disparities in unemployment rates, school performance, and home ownership. It also found that a high percentage of people of all ethnicities feel they "belong to Britain", with little variation between groups.

**Australia does not collect data on ethnic composition or racial disparities, and is unable to make such comparisons and determine where policy or political intervention may be required.**

#### Canada

The Canadian government has committed to providing \$23 million (AUD \$23.4 million) over two years for multicultural programs and consultations on racism. This includes a new national anti-racism plan and funds for community organisations to assist with integration. Canadian budget documents note:

*... Recent domestic and international events, like the rise of ultranationalist movements, and protests against immigration, visible minorities and religious minorities, remind us that standing up for diversity and building communities where everyone feels included are as important today as they ever were.<sup>5</sup>*

**Australia's funding for anti-racism is delivered through the National Anti-Racism Partnership and Strategy (NARPS) at the AHRC, which has an approximate annual allocation of \$90,000 for projects. In 2011, the Australian government provided the AHRC with a budget of \$1.7 million over four years to develop and implement the strategy. Since 2015, the AHRC has funded NARPS out of its own budget, with no additional resources provided. (Multicultural Affairs activities are delivered separately through the Department of Social Services, and include Multicultural Festival grants and Diversity & Social Cohesion grants.)**

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<sup>1</sup> AHRC Submission: <https://www.humanrights.gov.au/submissions/submission-cerd-2017>

<sup>2</sup> Concluding observations:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fAUS%2fCO%2f18-20&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fAUS%2fCO%2f18-20&Lang=en)

<sup>3</sup> Submissions and report: [https://www.aph.gov.au/select\\_strengtheningmulticulturalism](https://www.aph.gov.au/select_strengtheningmulticulturalism)

<sup>4</sup> <https://www.gov.uk/government/speeches/pm-words-at-race-disparity-audit-launch-10-october-2017>

<sup>5</sup> <https://www.budget.gc.ca/2018/docs/plan/chap-04-en.html>



04 October 2023

New South Wales Law Reform Commission

By email: [nsw-lrc@justice.nsw.gov.au](mailto:nsw-lrc@justice.nsw.gov.au)

### **Anti-Discrimination Act 1977 (NSW) Review**

Thank you for the opportunity to make this preliminary submission to the New South Wales Law Reform Commission's review of the *Anti-Discrimination Act 1977* (NSW) (the Act).

The Australian Human Rights Commission (the Commission) welcomes the NSW Government's initiative to review the Act, and supports its efforts to consider ways of modernising the Act to better promote the equal enjoyment of rights in NSW.

Since 2019, the Commission has undertaken work on a major project: *Free and Equal: An Australian conversation on human rights*.<sup>1</sup> The Free and Equal project seeks to identify what an effective system of human rights protection for 21st century Australia would look like, and what steps Australia needs to take to get there. The project outlines the actions necessary for Governments to meet their obligations to respect, protect and fulfil human rights, and sets out the Commission's proposed reform agenda for better protection of human rights at the national level.

As part of the Free and Equal project, the Commission has released two Position Papers on key reform priorities: federal discrimination laws, and a model Human Rights Act.

The Commission would like to first draw your attention to the position paper: [A Reform Agenda for Federal Discrimination Laws \(2021\)](#). In this position paper, the Commission provides recommendations for the reform of federal discrimination laws. Some of these reforms have already been implemented, as reflected in our [Table of Implementation](#). In this report, four overarching integrated sets of reform are recommended, and have been listed below.

1. building a preventative culture;
2. modernising the regulatory framework;
3. improving the practical operation of laws; and
4. enhancing access to justice.

Whilst these integrated sets of reforms are recommendations made for legal frameworks at the federal level, the principles outlined should be considered in the review of the NSW Act, to ensure a rights-based approach is achieved.

For example, the Commission recommends that the Act should shift its focus to prevention, through the inclusion of a positive duty in discrimination legislation which would establish an obligation to prevent discrimination from occurring. In considering this, the Commission would like to draw your attention to the [new Positive Duty](#) under the *Sex Discrimination Act 1984* (Cth), which imposes a legal obligation on organisations and businesses to take proactive and meaningful action to prevent relevant unlawful conduct<sup>2</sup> from occurring in the workplace or in connection to work.

The inclusion of a positive duty in anti-discrimination legislation is an effective means of ensuring substantive equality is achieved. This concept of including a positive duty in anti-discrimination legislation is also a recommendation made in the final report of the Disability Royal Commission. In this report, the Disability Royal Commission recommends that a positive duty be imposed on duty holders, requiring reasonable and proportionate measures be taken to eliminate disability discrimination, harassment and victimisation.<sup>3</sup> The Commission encourages the Law Reform Commission to consider the recommendations made by the Disability Royal Commission when reviewing the Act, and to consider including a positive duty under all protected attributes of the Act.

In your revision of the Act, the Commission would like to draw your attention, in particular, to the protected attributes of sexual orientation, gender identity and intersex status, under the *Sex Discrimination Act 1984* (Cth). The Commission supports the Equality Legislation Amendment (LGBTIQ+) Bill 2023 (the Bill), introduced by Alex Greenwich MP, and endorses the contents of the Bill. We would encourage you to consider the Bill in your revision of the Act, and recommend you extend the protections currently outlined in the Bill to all gender identities. This would align with the *Sex Discrimination Act 1984* (Cth) and ensure that protections are afforded to all marginalised gender identities and expressions, including gender diverse and non-binary people.<sup>4</sup>

Finally, the Commission notes that NSW does not have a Human Rights Act. The Anti-Discrimination Act NSW, the subject to this review, is outdated and reflective of piecemeal changes, which have not kept up with community standards. As noted above, the Commission also released a Free and Equal position paper: [A Human Rights Act for Australia](#), which recommends the establishment of a Federal Human Rights Act. Similar to a Federal Human Rights Act, a human rights Act for NSW would embed a rights-based approach and ensure the comprehensive promotion and protection of human rights at the state level.

The Commission commends the NSW Government for taking steps towards improving the rights of people in NSW through this review and hopes a human rights-based approach is adopted when looking at changes to this legislation.

The Commission would be pleased to discuss this submission and our two position papers further or provide any additional information that may be helpful to the review.



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<sup>1</sup> Australian Human Rights Commission, Free and Equal: An Australian conversation on human rights (Web Page) <<https://humanrights.gov.au/free-and-equal>>.

<sup>2</sup> Under the *Sex Discrimination Act 1984* (Cth), organisations and businesses now have a positive duty to eliminate, as far as possible, the following unlawful behaviour from occurring:

- discrimination on the ground of sex in a work context
- sexual harassment in connection with work
- sex-based harassment in connection with work
- conduct creating a workplace environment that is hostile on the ground of sex
- related acts of victimisation.

The Commission refers to this conduct as 'relevant unlawful conduct'.

<sup>3</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, (Final Report - Executive Summary, Our vision for an Inclusive Australia and Recommendations, 29 September 2023) 205.

<sup>4</sup> Which includes genders that sit within or outside of the spectrum of the male and female binary. A person might identify solely as non-binary or relate to non-binary as an umbrella term and consider themselves genderfluid, genderqueer, trans masculine, trans feminine, agender, bigender, or something else.

**From:** [Nora Bakalla](#)  
**To:** "NSW\_LRC"  
**Subject:** RE: AHRC extension request on the Anti-Discrimination Act 1977 review submission [SEC=OFFICIAL]  
**Date:** Wednesday, 4 October 2023 3:44:00 PM  
**Attachments:** [Australian Human Rights Commission - Submission NSW Law Reform Commission review NSW Anti-Discrimination Act 1977\).pdf](#)  
[image001.png](#)

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Dear NSW Law Reform Commission,  
Please find **attached** the Australian Human Rights Commission's short submission to the review of the *Anti-Discrimination Act 1977* (NSW).  
Thank you again for the extension and your flexibility.  
Please let me know you have any question.

Kind regards,

**Nora Bakalla** (she/her)

Senior Executive Support Officer | Commission Secretariat

**Australian Human Rights Commission**

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We acknowledge the traditional custodians of this land, the Gadigal peoples of the Eora Nation, and pay our respects to their Elders, past, present and future.



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**From:** NSW\_LRC <nsw-lrc@dcj.nsw.gov.au>

**Sent:** Friday, September 29, 2023 12:57 PM

**To:** Nora Bakalla <nora.bakalla@humanrights.gov.au>

**Subject:** RE: AHRC extension request on the Anti-Discrimination Act 1977 review submission [SEC=OFFICIAL]

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Dear Ms Bakalla,

Thank you for your email, we are happy to provide an extension until 4 October 2023.

We look forward to receiving your submission.

Please do not hesitate to contact us if you have any questions.

Kind regards,

**NSW Law Reform Commission and Sentencing Council Secretariat**

Department of Communities and Justice

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[www.lawreform.nsw.gov.au](http://www.lawreform.nsw.gov.au)

**NSW Law Reform  
Commission**

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**From:** Nora Bakalla <[nora.bakalla@humanrights.gov.au](mailto:nora.bakalla@humanrights.gov.au)>

**Sent:** Friday, 29 September 2023 12:22 PM

**To:** NSW\_LRC <[nsw-lrc@dcj.nsw.gov.au](mailto:nsw-lrc@dcj.nsw.gov.au)>

**Subject:** AHRC extension request on the Anti-Discrimination Act 1977 review submission

[SEC=OFFICIAL]

Dear NSW Law Reform Commission,

Apologies to write to you so late, the Australian Human Rights Commission is in the process of finalising a short submission to the review of the *Anti-Discrimination Act 1977* (NSW).

We note your submissions are due today 29 September. Could we kindly request an extension to this deadline to Wednesday 4 October for our submission.

Apologies again for the last-minute request, we appreciate your flexibility.

Kind regards,

**Nora Bakalla** (she/her)

Senior Executive Support Officer | Commission Secretariat

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We acknowledge the traditional custodians of this land, the Gadigal peoples of the Eora Nation, and pay our respects to their Elders, past, present and future.



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