

Inquiry into Racism, Hate and Violence directed at Aboriginal and Torres Strait Islander people

Australian Human Rights Commission

Submission to the Joint Standing Committee on
Aboriginal and Torres Strait Islander Affairs

8 May 2026

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40  **Australian
Human Rights
Commission**
Celebrating 40 years

Contents

Overview	5
Introduction	5
Recommendations	6
1 Australia's international human rights obligations	10
Gaps in Australia's legal protection of human rights	11
United Nations Declaration on the Rights of Indigenous Peoples	12
2 The historical context of racism and violence against First Peoples	13
3 Drivers of increasing racism, hate and violence against First Peoples	17
The 2023 Voice Referendum	17
Ideologically motivated violent extremism	18
Online platforms and misinformation and disinformation	19
Responses to youth offending	20
4 Commission work around racism against First Peoples	23
Informing the Agenda	23
Respect at Uni: Study into antisemitism, Islamophobia, racism and the experience of First Nations people	25
National Anti-Racism Framework	26
Wiyi Yani U Thangani (Women's Voices)	28
Other Commission Projects	29
Harms of racism	30
5 Existing mechanisms to prevent and respond to racism against First Peoples	32
<i>Racial Discrimination Act 1975 (Cth)</i>	32
The Commission and complaint-processes under the RDA	34
United Nations Committee on the Elimination of Racial Discrimination	44
National Agreement on Closing the Gap	45
Other parliamentary accountability	46
6 Proposed mechanisms to prevent and respond to racism against First Peoples	47
National Anti-Racism Framework	47
Domestic implementation of the United Nations Declaration on the Rights of Indigenous Peoples	48
National Human Rights Act	49
7 Appendix: Case summaries of resolved conciliations under the RDA involving First Peoples	52

Acknowledgement of Country

The Australian Human Rights Commission acknowledges the Traditional Custodians of Country throughout Australia, and recognise their continuing connection to land, waters and culture. We pay our respects to their Elders – past and present.

About the Australian Human Rights Commission

Our vision for Australia is one where everyone can live free and equal in dignity and rights as part of a strong, healthy democratic society.

We have 4 core functions under our legislation:

- Access to justice: We help people to resolve complaints of discrimination and human rights breaches through our complaint handling services.
- Fairer laws, policies and practices: We review existing and proposed laws, policies and practices and provide expert advice on how they can better protect people's human rights. We help organisations to protect human rights in their work. We publish reports on human rights problems and how to fix them.
- Education and understanding: We promote understanding, acceptance and public discussion of human rights. We deliver workplace and community human rights education and training.
- Compliance: We are the regulator for positive duty laws requiring employers and others to address sexual harassment, sex discrimination and other unlawful conduct.

Note on terminology

In this submission, we use **First Peoples** as an inclusive, collective term for Aboriginal and Torres Strait Islander Peoples. We also use **Aboriginal and Torres Strait Islander** as a descriptor (e.g. Aboriginal and Torres Strait Islander children, Aboriginal and Torres Strait Islander women). We use **Peoples** (rather than **people**) to recognise the distinct Peoples, Nations and language groups of Australia and to reflect First Peoples' right to self-determination recognised in international law.

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Overview

Introduction

1. The Australian Human Rights Commission (the Commission) welcomes the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry into racism, hate and violence directed at Aboriginal and Torres Strait Islander people.
2. The Commission has important statutory functions that we regularly exercise in relation to Aboriginal and Torres Strait Islander peoples, including:
 - The Social Justice Commissioner has functions to report on the status of enjoyment of human rights by Aboriginal and Torres Strait Islander peoples and to promote awareness and discussion of their human rights
 - Our other statutory commissioners (race discrimination, sex discrimination, disability discrimination, age discrimination, children and human rights) similarly consider the human rights of Aboriginal and Torres Strait Islander peoples within their mandated areas
 - The Commission receives and handles complaints of discrimination, harassment and racial vilification under the 4 federal discrimination laws, as well as complaints alleging violations of human rights by the Australian Government under the *Australian Human Rights Commission Act 1986* (Cth).
3. We reflect on our experience in exercising our functions throughout this submission.
4. Australia was founded on the mistreatment of and racism towards Aboriginal and Torres Strait Islander peoples. Racism has existed throughout Australian history, from the formation of British colonies onwards. The impact of this racism has been felt across generations and continues today.
5. Racism is more than interpersonal actions or attitudes people hold. It is systemic in nature, with interconnected social, cultural, political and legal structures and systems. Until we address those systems, racism affecting First Peoples will persist.
6. The statutory role of the Aboriginal and Torres Strait Islander Social Justice Commissioner was established following 2 major inquiries which identified significant racism at structural, systemic and institutional levels, as well as in the daily interpersonal experiences of First Peoples. In 1991 the Royal Commission into Aboriginal Deaths in Custody published its final report and the Human Rights and Equal Opportunity Commission published the report of its National

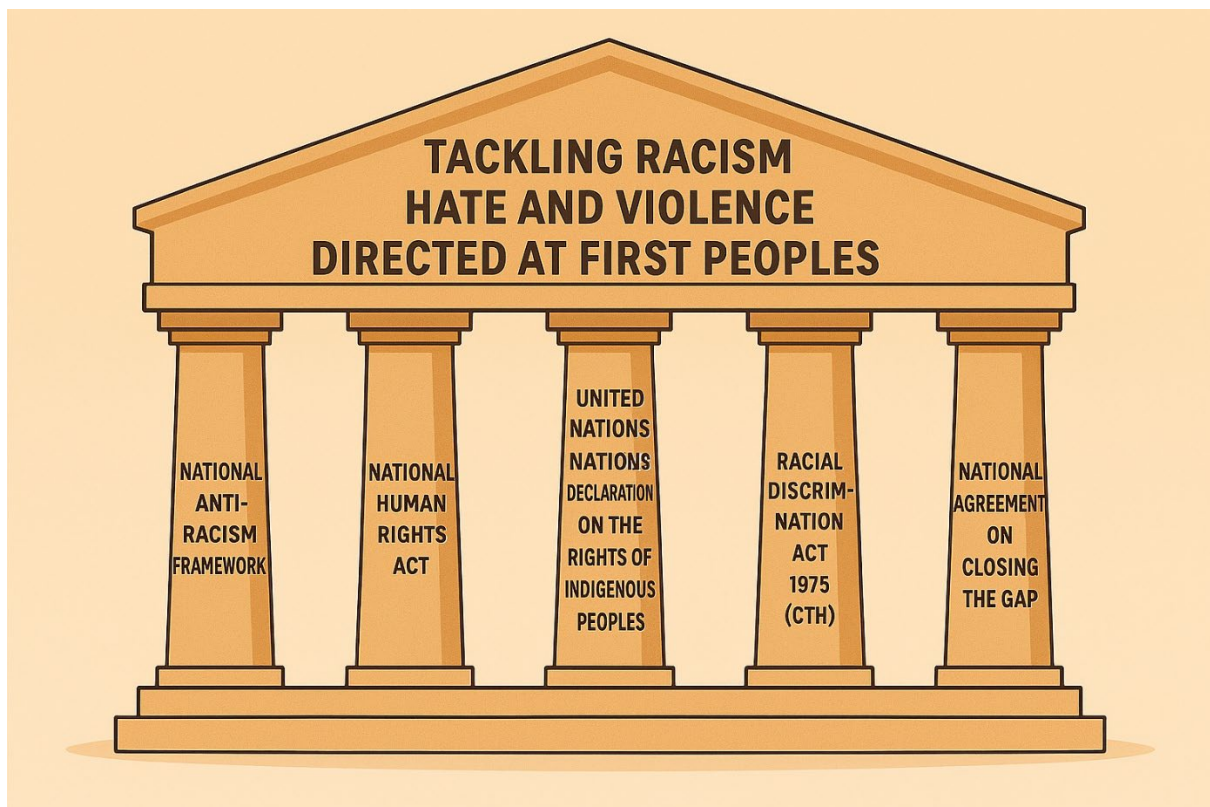
Inquiry into Racist Violence. Both identified ongoing racism against First Peoples as significant contemporary issues requiring further action.

7. In the last few years, the Commission has undertaken several projects which have provided insights into First Peoples' experiences of racism, racial hatred and violence. These include:
 - [*Informing the Agenda*](#) (2024–2026) which features in *A Fair and Just Future for First Peoples: Social Justice Report 2025* (due for tabling in Parliament in June 2026).
 - [*Respect at Uni: Study into antisemitism, Islamophobia, racism and the experience of First Nations people*](#) (2026)
 - [*National Anti-Racism Framework*](#) (2024)
 - [*Wiyi Yani U Thangani \(Women's Voices\)*](#) (2020)
8. In addition:
 - the National Children's Commissioner's [*Help Way Earlier!*](#) (2024) and [*Safe and Supported*](#) (2021) projects heard from Aboriginal and Torres Strait Islander children about racism they experience, especially in the criminal justice system
 - the Sex Discrimination Commissioner's [*Speaking from Experience*](#) (2025) project heard about Aboriginal and Torres Strait Islander women's experiences of sexual harassment and discrimination in the workplace.
9. This submission will outline the historical and contemporary drivers of racism against First Peoples and highlight the Commission's work documenting and responding to it. It will discuss some of the existing mechanisms to respond to racism and highlight potential frameworks and legislation to prevent, and more effectively respond to, racism against First Peoples.
10. The Commission notes that the nature and prevalence of racism, racial hatred and violence against First Peoples pervades all areas of society. This submission does not cover the full scope or degree to which First Peoples experience racism.

Recommendations

11. Tackling racism against First Peoples requires a multi-pronged approach focused on prevention, effective response mechanisms and institutional accountability. The 10 recommendations set out in this submission complement each other and address different aspects of racism against First Peoples.
12. The recommendations are holistic and interconnected. They fit within the 5 human rights pillars set out below:

- The National Anti-Racism Framework and National Agreement on Closing the Gap provide over-arching policy guidance for addressing racism across the Australian community and within government
- A reformed, modernised Racial Discrimination Act and complementary protection of human rights through a national Human Rights Act provide a remedial framework for addressing violations of First Peoples human rights, including more effective protection through discrimination law
- Implementation of the UN Declaration on the Rights of Indigenous Peoples would also build better understanding of the distinct cultural and social needs of First Peoples, and ensure their effective participation in decision making that affects them
- All of which contribute to eliminating racism against First Peoples.



Recommendation 1: Governments at all levels should immediately review and implement any outstanding recommendations from the following reports and inquiries:

- Aboriginal Women's Taskforce *Women's Business Report* (1986)
- Royal Commission into Aboriginal Deaths in Custody (1991)
- National Inquiry into Racist Violence in Australia (1991)
- National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (Bringing them Home) (1997)
- *Wiyi Yani U Thangani (Women's Voices)* (2020)

- *Report of the Inquiry into the Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia* (2023)
- Missing and murdered First Nations women and children (2024)
- *Help Way Earlier!* (2024)
- Inquiry into Australia's Human Rights Framework (2024)
- *Respect at Uni: Study into antisemitism, Islamophobia, racism and the experience of First Nations people* (2026)

Recommendation 2: The Australian Government Digital Duty of Care should require social media platforms to identify, assess and mitigate foreseeable risks arising from recommender systems and monetisation practices that incentivise the amplification and normalisation of racist narratives.

Recommendation 3: The Australian Government should refer to the Australian Law Reform Commission an inquiry into the conduct of police and coronial investigations into First Peoples' deaths and critical incidents in custody across Australia to identify a best practice approach.

Recommendation 4: All Australian governments urgently reform youth justice systems to focus on early intervention and preventative measures particularly focussing on the overrepresentation of Aboriginal and Torres Strait Islander children and young people. The *Help Way Earlier* report provides a comprehensive set of recommended actions in support of this recommendation

Recommendation 5: The Australian Government should strengthen anti-discrimination laws through implementing the reforms to all 4 federal anti-discrimination laws set out in *Free and Equal: A reform agenda for federal discrimination laws* (2021), and particularly through legislating the following specific amendments to strengthen the *Racial Discrimination Act 1975* (Cth):

1. Introduce a positive duty requiring government agencies, service providers, businesses and employers to take reasonable and proportionate measures to eliminate, as far as practicable, racial discrimination and racial vilification.
2. Introduce sections relating to workplace harassment and hostile work environments on the ground of race which mirror sections 28AA and 28M of the *Sex Discrimination Act 1984* (Cth).
3. Amend the victimisation (sections 18AA and 27) and incitement/aiding and abetting (section 17) provisions to bring them in line with other federal anti-discrimination laws.
4. Amend the special measures provision (section 8) to require a process of consultation and consent with the people impacted by the measure.

Recommendation 6: The Australian Government should provide additional funding to the Australian Human Rights Commission to resource:

1. the Investigation and Conciliation Service to process the high volume of complaints and to conduct conciliations in a timely manner
2. the creation of specific First Peoples liaison roles to conduct outreach about First Peoples' rights under the *Racial Discrimination Act 1975* (Cth), and to provide information about how to make complaints and the complaints process.

Recommendation 7: All Australian governments should urgently introduce rigorous independent accountability, monitoring and evaluation mechanisms around the National Agreement on Closing the Gap.

Recommendation 8: The Australian Government should implement the [National-Anti Racism Framework](#). The Framework includes a dedicated focus on racism against First Peoples, in addition to broader, more generalist reforms that would also benefit First Peoples.

Recommendation 9: The Australian Government should comprehensively adopt the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in Australia, including by:

- a. taking steps to implement the UNDRIP into law, policy and practice
- b. co-designing with First Peoples a National Action Plan to implement the UNDRIP
- c. independently auditing existing laws, policies, and practice for compliance with the UNDRIP.

Recommendation 10: The Australian Government should legislate a national Human Rights Act, in line with the recommendations of the [Free & Equal](#) report. This includes specific provisions to protect First Peoples in Australia by ensuring their participation in decision making that affects them, interpreting human rights consistent with the UNDRIP and protecting their cultural rights.

1 Australia's international human rights obligations

This section contributes to:

ToR 6 regarding other matters related to racism, hatred and violence directed at First Peoples people.

It gives an overview of the relationship between Australian domestic law and international human rights instruments. These instruments include specific obligations to protect First Peoples from racism.

13. First Peoples face significant racism and racial hatred in Australia. Racism against First Peoples originated in the process of colonisation and has ongoing, intergenerational impacts.
14. The international human rights framework provides a pathway to remedy racial inequality and racial discrimination. However, domestic laws and policies to codify and enforce Australia's international human rights commitments are inconsistent and piecemeal. Federal, state and territory governments have also enacted laws and policies that contradict and undermine these commitments.
15. The Australian Government has ratified and agreed to be bound by several major international human rights treaties and instruments. These include the 7 main human rights treaties:
 - a. [International Covenant on Civil and Political Rights](#) (ICCPR)
 - b. [International Covenant on Economic, Social and Cultural Rights](#) (ICESCR)
 - c. [International Convention on the Elimination of All Forms of Racial Discrimination](#) (ICERD)
 - d. [Convention on the Elimination of Discrimination Against Women](#) (CEDAW)
 - e. [Convention on the Rights of the Child](#) (CRC)
 - f. [Convention Against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment](#) (CAT)
 - g. [Convention on the Rights of Persons with Disabilities](#) (CRPD).
16. All of these treaties prohibit racial discrimination in the enjoyment of all human rights. ICERD in particular directs all signatories 'to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races'.¹

Gaps in Australia's legal protection of human rights

17. Australia's relationship with the international human rights framework is characterised by a mix of high levels of engagement and failings in key aspects.
18. Australia's dualist constitutional tradition means ratified treaties do not apply directly unless there is domestic legislation. In practice, Australian governments have partially incorporated international law within federal law (e.g. the ICERD via the *Racial Discrimination Act 1975* (Cth) and CEDAW via the *Sex Discrimination Act 1984* (Cth)).
19. Australia lacks a standalone national Human Rights Act that protects in our domestic law the human rights Australia has agreed to uphold under international law. This means accountability for human rights depends on the patchwork of protections in existing statutes, common law presumptions and parliamentary practice. Human rights protections are inconsistent and vulnerable to parliamentary override and policy drift across electoral cycles.
20. First Peoples have been especially vulnerable to governments explicitly violating its international human rights obligations. For example, Australian Governments have 3 times passed legislation which is inconsistent with the *Racial Discrimination Act 1975* (Cth). On all 3 occasions, the legislation restricted the rights of First Peoples:
 - a. *Hindmarsh Island Bridge Act 1997* (Cth), which removed rights to protect Aboriginal cultural heritage in relation to a specific development proposal²
 - b. *Native Title Amendment Act 1998* (Cth), which implemented the then government's Wik 10-Point Plan, extinguished First Peoples' native title rights across a range of property titles and reduced their negotiation powers over classes of development with the overall effect of diminishing First Peoples' native title rights³
 - c. the Northern Territory Emergency Response (the 'Intervention') in 2007, which overrode a number of human rights protections for First Peoples living in prescribed communities in the NT and explicitly removed the protection of the *Racial Discrimination Act 1975* (Cth) for Aboriginal peoples in the NT in relation to the Intervention measures.⁴
21. Section 6 of this submission outlines some ways to remedy these shortcomings in Australia's human rights framework and protect First Peoples from racism.

United Nations Declaration on the Rights of Indigenous Peoples

22. In 2009, the Australian Government officially endorsed the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and referred to it as a standard for government accountability.⁵
23. The UNDRIP articulates what protections First Peoples around the world need to benefit fully from existing human rights standards.
24. Key elements of UNDRIP include rights and principles associated with:
 - self-determination, autonomy and participation, consultation and consent
 - equality and non-discrimination
 - cultural integrity
 - lands, territories and resources, development with identity, redress and compensation.⁶
25. The UNDRIP does not introduce new legally binding obligations in the same way as do international covenants or conventions. Rather, it is based on, and echoes, many rights already contained in other human rights treaties, with a focus on Indigenous peoples.⁷
26. Section 14(3)(a) of the recently legislated *National Commission for Aboriginal and Torres Strait Islander Children and Young People Act 2026* (Cth) is the first federal provision that explicitly refers to, and requires implementation consistent with, the UNDRIP. The law builds on the more generic functions of the Social Justice Commissioner outlined in section 46C(4)(b) of the *Australian Human Rights Commission Act 1986* (Cth). Under this provision, the Social Justice Commissioner may take the UNDRIP into account when exercising their functions.
27. Aside from these provisions, there is currently no legislation that places obligations more broadly on government to act consistently with the UNDRIP in Australian domestic law.

2 The historical context of racism and violence against First Peoples

This section contributes to:

ToR 1 regarding the nature, prevalence and impact of racism, hate and violence towards First Nations people, including trends over time.

It gives an overview of the historical context of racism against First Peoples and the ongoing impacts of colonisation.

28. The acceptance and normalisation of racism in Australia began at first contact and is entrenched in Australia's systems, structures and institutions. If we do not address racism against First Peoples as a national priority, we cannot address any other forms of racism – including that being examined in the Royal Commission on Antisemitism and Social Cohesion.
29. Colonisation was not just a point in time or a single event. Colonisation began at first contact, and its impacts continue today through laws, policies, practices and social values.
30. The ongoing process of colonisation saw state sanctioned dismantling of First Peoples' governance, cultural authority, legal systems and kinship structures. Colonisation severely disrupted connections to Country, culture, language, family and community.⁸ Historical and ongoing colonial practices created inequities for First Peoples in health, education, justice, housing and employment systems.⁹
31. Non-Indigenous structures, institutions and decision-makers almost exclusively determine the extent to which First Peoples can access and enjoy just outcomes in all areas of life. These structures primarily privilege Western values, knowledge systems and outcomes.¹⁰
32. The Australian Constitution, which took effect from 1 January 1901, has very few express human rights protections. The drafters consciously rejected including guarantees of equal rights for all people, not wanting to grant them for First Peoples and other non-white people.
33. The Constitution did contain the following provisions:
 - Section 25 provides that state governments may disqualify people from voting on the grounds of race.
 - Section 51 (xxvi) gave the Commonwealth Government power to make laws with respect to 'people of any race other than the aboriginal race in any state, for whom it is deemed necessary to make special laws'.

- Section 127 excluded First Peoples from being counted in the census.¹¹
34. In the 1967 Referendum, 90.77% of the population voted to repeal section 127 and to remove the words 'other than the aboriginal race in any state' from section 51 (xxvi). This change gave the Commonwealth Government power to pass legislation relating to First Peoples.
 35. Section 25 is still in the Australian Constitution. Furthermore, while Section 51 (xxvi) has been important for enabling legislation such as land rights and native title, as mentioned above Australian Governments have also used it to pass legislation which discriminates against First Peoples. This is because Section 51 (xxvi) does not specify that 'special laws' must be for the benefit of First Peoples or any other racial group.
 36. Many inquiries have exposed ongoing systemic racism against First Peoples and recommended ways to address it. Some of the more prominent federal examples are:
 - Royal Commission into Aboriginal Deaths in Custody (1991)¹²
 - National Inquiry into Racist Violence in Australia (1991)¹³
 - National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (Bringing them Home) (1997).¹⁴
 - Reconciliation: Australia's Challenge, the Final Report of the Council for Aboriginal Reconciliation (2000)¹⁵
 - Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel (2012).¹⁶
 37. Additionally, the Social Justice and Native Title Reports of the Aboriginal and Torres Strait Islander Social Justice Commissioner from 1993 onwards provide a chronological, historical and systematic record of the racial discrimination experienced by Aboriginal and Torres Strait Islander Peoples.
 38. Several state and territory governments have also commissioned inquiries which exposed systemic racism. Most recently, these have included reports as part of treaty processes. The most prominent examples are Victoria's Yoorrook Justice Commission truth-telling reports.¹⁷ In 2022, the Northern Territory Treaty Commission published its Final Report.¹⁸ Between 2021 and 2024 the Queensland Treaty process produced several significant reports culminating in the *Path to Treaty Act 2023* (Qld) and the establishment of the First Nations Treaty Institute and the Truth-telling and Healing Inquiry.¹⁹ The *Path to Treaty Act 2023* was repealed in November 2024 and the Truth-Telling and Healing Inquiry was terminated.
 39. These major inquiries have created opportunities for truth-telling that have been valuable at raising awareness. The reports alone have been insufficient as

mechanisms to tackle systemic racism. Successive federal, state and territory governments have ignored most of these report recommendations.

Recommendation 1: Governments at all levels should immediately review and implement any outstanding recommendations from the following reports and inquiries:

- Aboriginal Women’s Taskforce Women’s Business Report (1986)
- Royal Commission into Aboriginal Deaths in Custody (1991)
- National Inquiry into Racist Violence in Australia (1991)
- National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (Bringing them Home) (1997)
- Wiyi Yani U Thangani (Women's Voices) (2020)
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- Help Way Earlier! (2024)
- Inquiry into Australia’s Human Rights Framework (2024)
- Respect at Uni: Study into antisemitism, Islamophobia, racism and the experience of First Nations people (2026)

40. There have been some important advances in tackling racism against First Peoples over the last 60 years. These include:
- the successful 1967 Referendum
 - legislated land rights regimes
 - the 1992 Mabo High Court ruling overturning the doctrine of *terra nullius*
 - 2008 National Apology to the Stolen Generations
 - National commitments to Closing the Gap and the adoption of rights-based approaches to policy since 2008
 - grassroots social movements such as those promoting Reconciliation.
41. However, systemic, structural and interpersonal racism has been ongoing against First Peoples across all domains of Australian political, cultural and social life.
42. Systemic racism involves whole systems – including political, legal, economic, health, education and criminal justice systems – and the structures that uphold them. Rules, norms and institutional habits reproduce patterns of inequitable treatment, outcomes and access.
43. Structural racism refers to the laws, policies, practices and social norms that organise and distribute power and resources along racial lines. These laws, policies practices and social norms produce, condone or perpetuate injustice.

44. For First Peoples, systemic and structural racism contribute to physical, psychological, social and cultural harms. Systemic and structural racism also weaken cultural and kinship ties and compound the effects of colonisation. There is also a relationship between systemic and structural racism and interpersonal racism. For example, systemic racism influences public attitudes, stereotypes and discussions about First Peoples. These public discourses influence how non-Indigenous people interact with, and treat, First Peoples.
45. The path to tackle racism effectively requires acknowledgement of the true history of Australia and the ongoing impacts of that history. It also requires fundamental changes to the relationship between First Peoples and governments.

3 Drivers of increasing racism, hate and violence against First Peoples

This section contributes to:

ToR 1 regarding the nature, prevalence and impact of racism, hate and violence towards First Nations people, including trends over time

ToR 2 regarding the effect of online platforms on the reach, prominence and harm caused by racism and hate directed at First Nations people

ToR 4 regarding the threat posed by ideologically motivated extremism towards First Nations people and the role of intelligence and law enforcement agencies in protecting the community from that threat.

The section takes a thematic approach, highlighting some of the key drivers of increasing racism against First Peoples.

- 46. Racism against First Peoples has been a constant in Australia.
- 47. This section identifies some of the more prominent drivers of the rise in racism against First Peoples.

The 2023 Voice Referendum

- 48. The 2023 Voice Referendum was a key inflection point in First Peoples' experiences of racism and racial hatred. The campaign against the Voice was characterised by high volumes of misinformation and disinformation. It normalised and legitimised the spread of hostile narratives about First Peoples.
- 49. Aboriginal and Torres Strait Islander peoples who participated in the *Informing the Agenda* project (discussed more in the next section) pointed out how politicians and media used harmful, divisive language that gave others 'permission' to be racist. They emphasised the vulnerability of young people during and in the wake of the Referendum campaign.
- 50. In small towns, we heard that more people felt free to make racist comments without facing any consequences. Across all communities, *Informing the Agenda* participants said they were more fearful than ever of leaving their homes, travelling on public transport, going to shopping centres or even to their schools and workplaces.
- 51. Participants' experiences were consistent with other findings about the impacts of the Referendum. The e-Safety Commissioner identified a rise of more than 10% in online abuse complaints from First Peoples in the lead up to the Referendum. These complaints included threats, harassment and vilification.²⁰

52. Reconciliation Australia's 2024 Australian Reconciliation Barometer found that 54% of First Peoples reported experiencing racism in the previous 6 months. One decade earlier (2014) that figure was 39%. Experiences of interpersonal racism ranged from verbal and physical abuse to being refused entry, denied services and targeted online.²¹
53. Nearly 1 in 5 reports to the 'Call it Out' racism register over 2023–2024 specifically linked the Voice Referendum to racism. The register's online social media promotion shut down because of the scale of racist responses it was receiving in the lead up to the Referendum.²²
54. The increase in racism during the campaign for the Voice revealed uncomfortable truths that First Peoples have long known: racism, in all its forms, is a powerful and hurtful phenomenon that continues to affect them and their communities.
55. The period since the Referendum has been marked by a measurable rise in racism against First Peoples.
56. Some politicians and local governments have promoted anti-Welcome to Country agendas, denounced the presence of Aboriginal and Torres Strait Islander flags and questioned the value of programs for First Peoples. Some state governments have repealed truth and Treaty mechanisms; in other jurisdictions, opposition parties have pledged to do so if they win state and territory elections, and the rights of First Peoples are being questioned.

Ideologically motivated violent extremism

57. ASIO's 2025 Annual Threat Assessment highlights the persistent threat posed by nationalist and racist violent extremism, including white supremacist ideologies. It particularly noted the radicalisation of young people into these ideologies.²³
58. First Peoples are targets of violent, racially motivated attacks. Two attacks in the last 2 years are noteworthy:
 - In August 2025, a group of Neo-Nazis attacked a peaceful protest gathering of First Peoples at 'Camp Sovereignty' in Melbourne. There was graphic footage of the attack including one Neo-Nazi hitting an elderly Aboriginal woman. Police charged 14 men with charges relating to violent disorder and assault.²⁴ Authorities did not charge the alleged attackers with inciting racial hatred.²⁵ The matters are progressing through the courts.
 - On 26 January 2026, a man allegedly threw a homemade 'fragment bomb' into a crowd of approximately 2,500 people at the Boorloo (Perth) Invasion Day rally. Fortunately, the bomb did not detonate. Nine days later police declared the attempted bombing an act of terrorism.

59. In the aftermath of the Boorloo attack, First Peoples and their allies noted that the attempted bombing on 26 January 2026 did not receive the same level of public, media and political attention as attacks against other groups violently targeted for ideologically motivated reasons. This lack of attention was an example of the systemic and structural racism experienced by First Peoples in Australia.
60. In the wake of the attempted bombing in Boorloo, the Social Justice and Race Discrimination Commissioners called for consistent treatment of ideologically motivated attacks, regardless of the perpetrator's identity or ideology.
61. The Social Justice Commissioner stated: 'Had the device detonated the results could have been catastrophic, and potentially as deadly as the Bondi terrorist attack. I call on the government and law enforcement agencies to treat this incident with the same urgency and seriousness.'

Online platforms and misinformation and disinformation

62. Misinformation and disinformation about First Peoples have been a constant in Australian history. The evolution of digital ecosystems and movement of Australians to social media platforms has only increased its scale and severity.
63. The Australian Electoral Commission defines misinformation and disinformation: 'Misinformation is false information that is spread due to ignorance, or by error or mistake, without the intent to deceive. Disinformation is knowingly false information designed to deliberately mislead and influence public opinion or obscure the truth for malicious or deceptive purposes.'²⁶
64. Social media platforms amplify racist misinformation and disinformation largely because their dominant business models are designed to maximise user engagement for advertising revenue.²⁷ Social media platforms use 'recommender systems' to determine what content to show a user. A recommender system analyses user data and behaviour to automatically select the content it predicts the user is most likely to engage with.²⁸ Recommender systems aim to keep people on platforms for the most amount of time. This often incentivises the promotion of content that elicits strong emotional reactions.
65. The *United Nations Global Principles For Information Integrity* note that '[m]essaging designed to polarize and produce strong emotions is often that which generates the most engagement'.²⁹ One consequence of this practice is the disproportionate amplification and repetition of racist narratives online.
66. Several *Informing the Agenda* participants commented on the steady flow of misinformation and disinformation during the Voice Referendum campaign. Some participants who completed the *Informing the Agenda* survey wrote:

- 'The failure of the Voice Referendum shows that Australians are easily swayed by misinformation, conscious and unconscious bias and covert and overt racist dialog [sic].'
- 'Need to ... make people accountable for spreading lies. Makes it hard to try and explain to people ... when there are people in parliament doing fear enticing letter box drops. Where I live a local politician put a flyer about land rights and if the Voice gets through then all the parks in the area will be taken over. We know how wrong that is but they get away with it'.

67. *Informing the Agenda* participants described social media as a significant source or transmission mode of racism and hate speech. This aligns with research that indicates that First Peoples are overwhelmingly exposed to negative content at least weekly on social media.³⁰
68. *Informing the Agenda* participants suggested that greater regulation of mainstream and online media organisations is important to reduce racism against First Peoples.
69. The Australian Government has committed to implementing a Digital Duty of Care through the *Online Safety Act 2021* (Cth).³¹ Such a duty should:
- directly address platform design and the economic incentives embedded in recommender systems
 - place responsibility for safer design on social media platforms
 - make the platforms account for how recommender systems and monetisation models foreseeably amplify and expose users to extreme racist content.

Recommendation 2: The Australian Government's proposed new Digital Duty of Care should require social media platforms to identify, assess and mitigate foreseeable risks arising from recommender systems and monetisation practices that incentivise the amplification and normalisation of racist narratives.

Responses to youth offending

70. Everyone wants to live in a society that is safe, secure and free from crime. All communities in Australia – including First Peoples – want prevention, accountability and justice that reduce harm and keep people safe.
71. The criminal justice system is intended to protect the safety and rights of all people. In practice, however, it does not operate equally. First Peoples consistently experience disproportionate surveillance, punishment and risk. The criminal justice system fails to adequately provide safety, justice or accountability.

72. In the past 3 years, political and media discourse has framed youth offending as a worsening crisis often in response to individual offences. Even while data on youth offending indicates that it has been broadly in decline for some time many states and territories have nonetheless introduced new 'tough on crime' policies and legislative amendments.³²
73. These responses reduce access to justice, and in many instances encourage the promotion of racial stereotypes. Legislative amendments have narrowed the circumstances in which young people can access bail. Recent changes in some jurisdictions also impose approaches to sentencing that treat children as adults.³³
74. Once young people enter the criminal justice system, poverty and housing instability effect remand rates. Individuals who cannot demonstrate secure accommodation, who cannot be bailed to secure accommodation because of family members' criminal records, or who cannot afford bail are more likely to remain on remand. Many First Peoples on remand ultimately receive non-custodial outcomes or sentences that essentially amount to time already served.³⁴
75. The impact of these approaches to offending is not neutral. Thirty-five years ago, the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) highlighted systemic and structural racism embedded across Australian police, courts and prison systems. The most extreme outcome of inequalities in the criminal justice system is deaths in custody.³⁵
76. First Peoples' over-representation in custody has worsened since the RCIADIC. Deaths in custody have continued at high rates. The Australian Institute of Criminology reported that in the financial year 2024–2025, 33 First Peoples died in custody. This represented 29% of all deaths in custody, up from 23% the previous year and the highest proportion in more than 2 decades.³⁶
77. Since the RCIADIC, numerous federal, state and territory inquiries have highlighted ongoing systemic racism within Australian police forces.³⁷ The lack of accountability for deaths in custody and racism more broadly further entrenches First Peoples' distrust of police.
78. Policing is one part of systemic racism across the criminal justice system. Racial profiling and over-policing bring First Peoples into the system. Aboriginal and Torres Strait Islander people also experience high levels of disadvantage that influence their involvement in activities that see them in contact with the criminal justice system.
79. Law and order responses to crime like legislative changes that lower thresholds for arrest, restrict access to bail or remove detention as a last resort effectively punish poverty, trauma and state intervention. This draws First Peoples further into the justice system, rather than providing protection or support.

80. Racial profiling and over-policing bring First Peoples into the system. Since Aboriginal and Torres Strait Islander people are disproportionately involved in offending this also means they are charged differently, have different outcomes in bail applications and are given different sentences by the courts.³⁸ This compounding systemic racism has resulted in First Peoples becoming the most imprisoned people in the world.³⁹
81. Expanding prison or custodial punishment does not make Australia safer. Rather, governments should invest in systems that prevent harm, uphold dignity and strengthen communities. Approaches grounded in human rights, evidence and partnership with First Peoples offer more effective and sustainable pathways to safety for everyone.

Recommendation 3: The Australian Government should refer to the Australian Law Reform Commission an inquiry into the conduct of police and coronial investigations into First Peoples' deaths and critical incidents in custody across Australia to identify a best practice approach.

Recommendation 4: All Australian governments urgently reform youth justice systems to focus on early intervention and preventative measures particularly focussing on the overrepresentation of Aboriginal and Torres Strait Islander children and young people. The *Help Way Earlier* report provides a comprehensive set of recommended actions in support of this recommendation.

4 Commission work around racism against First Peoples

This section contributes to:

ToR 1 regarding the nature, prevalence and impact of racism, hate and violence towards First Nations people, including trends over time

The section outlines relevant Commission work about the nature and extent of racism against First Peoples.

82. The first guiding principle of the Commission's 2026–2030 Strategic Plan is 'First Peoples Focus: We will consider the impact for First Peoples in everything we do, consider First Peoples' perspectives and work in partnership with them.'⁴⁰
83. Another one of the Commission's values and guiding principles is intersectionality. Intersectionality is a concept which helps to explain distinct experiences of discrimination. It refers to the ways that people who come from multiple marginalised identities experience compounding forms of discrimination in different ways. Put simply, a First Nations woman experiences discrimination not just as a woman, and not just as a First Nations person, but as a First Nations woman.
84. Many of the institutions with embedded systemic racism – be they around the justice system, education, employment, healthcare or any other domain of life – also have systemic sexism, ableism, homo/bi/transphobia and ageism. First Peoples (and others) with intersecting identities tend to report higher rates, and distinct experiences, of discrimination.
85. Several recent Commission projects have documented First Peoples' experiences of racism in the immediate period preceding and after the Voice Referendum. These are outlined below.

Informing the Agenda

86. The Aboriginal and Torres Strait Islander Social Justice Commissioner's *Informing the Agenda* project (ITA) (2024–2026) was a national listening tour and survey. The Commissioner travelled across the country and listened to over 1,600 First Peoples discuss the priority issues impacting on their families and communities. Participants also proposed solutions to realise their human rights and improve outcomes.
87. ITA participants described racism as 'everyday and everywhere'. They recounted children being treated differently in schools and playgrounds; Elders and respected community members being followed in shops; harmful stereotyping in media; verbal abuse from referees and officials in sport; and suspicion or

hostility in interactions with police and service providers. Many linked these experiences directly to systemic disadvantages in health, housing, employment and justice and to the erosion of cultural safety and belonging.

88. Participants talked about laws, policies and practices that target and disproportionately impact on First Peoples, their families and communities. Across ITA consultations, participants highlighted:
- the clear connections between past assimilation and child removal laws with contemporary laws, policies and practices that target and disproportionately impact on First Peoples families and communities
 - the overrepresentation of First Peoples in custody, particularly young people
 - the increasing number of First Peoples dying in custody and dying by suicide
 - the pervasiveness of structural and systemic discrimination and interpersonal racism.
89. Many participants described intersectional harms for queer mob and First Peoples living with disability.
90. Many talked about the practical barriers to redress, including inconsistent, inaccessible reporting pathways and the financial and emotional costs associated with taking action.
91. Participants also spoke about native title and land justice as an area of law and policy which is racially discriminatory. They emphasised that native title does not often deliver real control, access to Country and economic prosperity. They highlighted that native title processes are often complex, costly and unfair, and prioritise non-Indigenous interests over First Peoples' rights to their lands and territories. In particular, participants emphasised that they should not be forced to use their native title benefits to fund universal and secondary social services that all other Australians are provided through public systems.
92. Community solutions were clear:
- Invest in truth-telling and education.
 - Strengthen media standards and accountability.
 - Provide culturally safe counselling and free legal support.
 - Adopt and implement the National Anti-Racism Framework.
 - Embed anti-racism and cultural safety standards across organisations, with transparent performance reporting.
93. Many ITA participants were frustrated that for generations First Peoples have been telling governments what is required. There are countless reports and reviews which detail the need for significant reform in the relationship between

all levels of government and First Peoples. The problem is not a lack of awareness or evidence. It is a lack of political will to make the big changes.

Respect at Uni: Study into antisemitism, Islamophobia, racism and the experience of First Nations people

94. The Commonwealth Department of Education tasked the Commission to lead a national prevalence study on racism at Australian Universities. The project consisted of 4 parts:
 - a. national online survey
 - b. focus groups
 - c. policy audit
 - d. literature review.
95. The online survey had 76,131 responses from staff and students and 310 people participated in the focus groups. Among those participants, 2,227 First Peoples staff and students completed the online survey.
96. The survey found that among First Peoples respondents:
 - 81.0% experience both direct and indirect racism
 - 36.6% experience direct interpersonal racism
 - 58.4% always or often mentally prepare for racist conversations
 - 36.6% always or often feel uncomfortable disclosing their racial/cultural identity.⁴¹
97. The survey also measured the impacts of racism on First Peoples respondents:
 - More than 4 in 5 academic staff reported a negative impact on their mental health.
 - More than 3 in 4 professional staff reported a negative impact on their mental health.
 - More than 7 in 10 students reported a negative impact on their mental health.
 - More than half of students and academic staff reported that racism negatively impacted on their studies and careers.⁴²
98. The study also examined the nature of racism that university students and staff experienced. Findings from First Peoples respondents included:
 - 55% of students, 52% of academic staff and 43% of professional staff were subject to inappropriate comments or jokes
 - 51% of students, 54% of academic staff and 51% of professional staff were singled out or excluded
 - 49% of students, 43% of academic staff and 47% of professional staff were told they were unintelligent or incapable.⁴³
99. Some other survey results were specifically about First Peoples:

- 28.1% of Aboriginal and Torres Strait Islander academic staff and 13.6% of students disagree or strongly disagree that their university values First Peoples' knowledges and cultures
- 26.3% of Aboriginal and Torres Strait Islander academic staff and 15.9% of students disagree or strongly disagree that their university respects their culture
- 25.2% of Aboriginal and Torres Strait Islander academic staff and 12.1% of students disagree or strongly disagree that their university has an inclusive environment.

100. Survey and focus group respondents shared their experiences of racism. Some of these include:

- 'One particular academic told me that I couldn't use Indigenous knowledges or standpoint in my PhD because there was no such thing as them, and I had to use Western methodologies.'⁴⁴
- 'A student said that to me in class, when I was conducting a tutorial, that Aboriginal people were all just a bunch of dole bludgers, and we were lazy, and we didn't do any work. I was a little bit upset, but I said, "Well, actually, I'm here to show you that that is incorrect. I'm here. I'm getting a degree. I'm getting my PhD. I'm teaching, you know." But that student just had a really closed mind.'⁴⁵

101. The final report contains 47 recommendations for the Australian Government and universities which would go towards eliminating racism against First Peoples and other populations who experience racism.

National Anti-Racism Framework

102. In November 2024, the Commission released the National Anti-Racism Framework. The Framework was the result of extensive consultation with peak and community organisations, service providers, government departments, experts and community members.

103. The consultation process gathered 496 contributions from First Peoples groups and sectors. Participants provided firsthand accounts of the impacts of racism on their daily lives. They described experiences in education, healthcare, employment and the criminal justice system. Their contributions highlighted the personal and communal toll of systemic racism.

104. Participants reported experiencing a range of racist behaviours. First Peoples' most reported forms of racism included hurtful comments and actions (84.5%), disrespect of culture (83.64%) and facing unfair treatment within institutions (72.3%).⁴⁶

105. The consultations identified systemic and structural racism in several sectors:

- Education: through exclusion of First Peoples' perspectives in curriculum, biased disciplinary actions against Aboriginal and Torres Strait Islander students, underrepresentation of Aboriginal and Torres Strait Islander staff, lower expectations and diminished opportunities for students
- Health: through racism from healthcare providers, unconscious bias influencing treatment, lack of cultural safety and inadequate access to services
- Media: through negative media representations, influencing community perceptions, spreading misinformation, perpetuating harmful stereotypes and fuelling unconscious bias
- Criminal justice: through over-policing, targeting by law enforcement and harsher sentencing.⁴⁷

106. Aboriginal and Torres Strait Islander participants shared some of these views during consultations:

- 'Education about racism should start from a young age to help eliminate biased views.'⁴⁸
- 'The reporting process for racism needs to be clear and easy for mob to report racism.'⁴⁹
- 'Laws are needed for people committing racism to be held accountable'.⁵⁰

107. As part of the research for the National Anti-Racism Framework, an independent scoping review on the impact of racism on health outcomes and healthcare access of First Peoples and other communities affected by racism was undertaken. This research is a case study of the effects of systemic and structural racism on the social determinants of health.

108. *Health Inequities in Australia* found that for First Peoples, systemic racism – rooted in colonial policies and culture – manifests in cultural disconnection, intergenerational trauma and inequitable access to healthcare. Discrimination in healthcare settings compounds these experiences through neglect, stereotyping and the provision of substandard care.

109. These compounding factors result in delayed care, poor health outcomes and First Peoples' sustained mistrust of healthcare systems. The cumulative effects of racism manifest in consistently poor mental health, increased chronic disease risk and reduced life expectancy.⁵¹ These findings highlight the urgent need for systemic change.

110. The National Anti-Racism Framework sets out ways governments and various sectors of society can work to eliminate racism. Section 6 of this submission discusses how the Framework is an important mechanism to combat racism.

Wiyi Yani U Thangani (Women's Voices)

111. Wiyi Yani U Thangani was a multi-year initiative conducted in partnership with the National Indigenous Australians Agency. It captured what Aboriginal and Torres Strait Islander women and girls considered to be their strengths, challenges and aspirations for change.
112. In 2018, the then Social Justice Commissioner, Ms June Oscar AO, travelled to 50 locations in urban, regional and remote areas across Australia. The Commissioner's team conducted 106 engagements and met with 2,294 Aboriginal and Torres Strait Islander women of all ages. They also received over 100 submissions and 300 survey responses. The final report was published in 2020, with a follow-up implementation framework, summit, communiques and statements released in 2022 and 2023.
113. Aboriginal and Torres Strait Islander women discussed how racism against First Peoples is prevalent and normalised across society. They described interpersonal racism expressed as bullying, derogatory jokes, online hate, over-surveillance from police, shop owners and the public. Often members of Australian society excuse or dismiss such racism as a form of larrikinism or as simply 'casual' remarks or jokes.⁵²
114. *Wiyi Yani U Thangani* described a perpetual cycle of racism: Damaging racist stereotypes and discriminatory ideas influence non-Indigenous people's attitudes. These attitudes, in turn, continue to fuel the stereotypes and discriminatory ideas. Some of these stereotypes are that First Peoples are lazy and lack a 'work ethic', simple-minded, prone to substance misuse, inherently violent and criminal and feel entitled to a 'free ride' and preferential treatment.⁵³
115. Some of the quotes in *Wiyi Yani U Thangani* which illustrate these points about racism include:
 - 'Labelling us as dole bludgers who get handouts all the time' (Dubbo women)⁵⁴
 - 'We get treated like we are dumb, I remember growing up thinking that I was dumb that I didn't know anything at all, all through my schooling, and I still do today, I don't know why, it shouldn't be like that, but I still feel like that today' (Dubbo women)⁵⁵
 - 'Security follow Aboriginal people around the shops thinking that we're going to steal' (Dubbo girls)⁵⁶
 - 'You could be standing in line and they will just totally ignore you, serve someone behind you or beside you and you have be like "hiiii, am I invisible?", so it brings low self-esteem (Nowra women and girls).⁵⁷
116. *Wiyi Yani U Thangani* made 7 recommendations and outlined a comprehensive pathway to address challenges affecting Aboriginal and Torres Strait Islander

women and girls. It also noted the importance of revisiting and implementing the recommendations of the 1986 Aboriginal Women's Taskforce [*Women's Business Report*](#).

Other Commission Projects

Keeping kids safe & well

117. In 2021, the National Children's Commissioner published *Keeping kids safe & well: Your voices*. It drew on consultations held across the country which also informed the first 5-year action plan under the *Safe and Supported: The National Framework for Protecting Australia's Children 2021–2031*.
118. Aboriginal and Torres Strait Islander children, young people and parents frequently identified experiencing systemic racism. They noted that white or non-Indigenous superiority is often assumed. One parent said that 'racism is basically everyday life'.⁵⁸
119. Aboriginal and Torres Strait Islander parents and young people identified the impact of intergenerational trauma and subsequent disconnection between generations and across families. Aboriginal and Torres Strait Islander young people described a constant fear of state intervention in their families, 'even if they're doing well'.⁵⁹
120. Children described being racially profiled, for example being approached by security in shops. One child from South Australia said 'Psychologically, for a child, if you're getting that treatment, it makes you feel like a thief, it's very demoralising to get followed. Most of the time they just stereotype it as you're a person of colour, you're here to steal'.⁶⁰
121. Children gave examples of police entering homes uninvited without warrants. Police sent children as young as 10 years old 'to the cells' without notifying families.⁶¹
122. Aboriginal and Torres Strait Islander young people in New South Wales reported that at school they were regularly pulled aside for their uniform and how they presented themselves. They spoke about teachers ignoring racist comments in the classroom and the general expectations of them as Aboriginal students being different to non-Indigenous children.⁶²
123. A child in Victoria told the National Children's Commissioner as part of that report that 'nothing is done' about racism.⁶³

Help Way Earlier!

124. In 2024, the National Children's Commissioner published *Help Way Earlier! How Australia can transform child justice to improve safety and wellbeing*. The focus was on children and young people in the criminal justice system. It involved

consultations with children and young people across the country, including First Peoples.

125. *Help Way Earlier!* detailed the multiple and complex reasons for the continuing overrepresentation of Aboriginal and Torres Strait Islander children in criminal justice systems. Many stakeholders attributed this to Australia's history of colonialism, cultural dispossession and discriminatory laws and policies. Collectively, these legacies have created intergenerational impacts which affect the social, economic and mental wellbeing of First Peoples.
126. The report noted that systemic racism manifests in subtle ways. Some examples were low expectations in the classroom, deficit language, absence of accurate, relevant content about First Peoples from curricula and harmful media narratives.⁶⁴
127. Aboriginal and Torres Strait Islander children reported encounters with police that they described as racist. They reported being 'targeted from birth' if they had the 'wrong skin colour'. They noted that police are 'always assuming Aboriginal kids are at fault'.⁶⁵

Speaking from Experience

128. In 2024, the Sex Discrimination Commissioner conducted the Speaking from Experience project. Speaking from Experience involved consultations with 318 victim-survivors of workplace sexual harassment. There was a particular emphasis on hearing from women from diverse backgrounds, including First Peoples.
129. Speaking from Experience took an intersectional approach. It highlighted the ways that sexism was intertwined with other forms of discrimination, including racism.
130. One important First Peoples-specific finding was around the value of cultural safety in the workplace. Cultural safety creates environments free from racism and where First Peoples feel respected, understood and safe to express themselves without fear of discrimination or exclusion.⁶⁶
131. The report also noted how systemic and structural racism impacts on Aboriginal and Torres Strait Islander women's willingness to report sexual harassment and gendered violence. In this context, distrust of police and mainstream legal services is a significant barrier.⁶⁷

Harms of racism

132. Racism produces negative outcomes for First Peoples individually and collectively. All these Commission projects found similar outcomes which echo other research.

133. *Informing the Agenda* participants spoke about how racism makes them feel ashamed, angry and disconnected. It changes how they see themselves and how they relate to others. The emotional toll is heavy, especially when racism comes from multiple directions at once. Participants' experiences align with research showing that racism increases the risk of mental health problems and suicide among First Peoples.⁶⁸
134. Racism produces biased decision-making. That can have flow-on effects on outcomes such as limiting educational and employment opportunities for First Peoples. In its worst form racism, and the bias it fosters, directly relates to deaths in custody.⁶⁹
135. Racism leads to significant educational disparities, disproportionate exclusionary discipline and lower academic outcomes for Aboriginal and Torres Strait Islander students. The enduring psychological effects of experiencing racism include reduced self-esteem, diminished motivation and increased mental health barriers.⁷⁰
136. In the health sector, racism leads to the provision of inadequate healthcare, poorer health outcomes, and ongoing distrust of the health sector.⁷¹ First Peoples may choose not to seek healthcare, which only exacerbates poor health outcomes.
137. Racism in the criminal justice system leads to over-policing, increased imprisonment and deaths in custody.

5 Existing mechanisms to prevent and respond to racism against First Peoples

This section contributes to:

ToR 3 regarding initiatives that are effective in combating racism targeted at First Nations people and reduce individual and collective harm

ToR 5 regarding the effectiveness of avenues for reporting and responding to racism against Aboriginal and Torres Strait Islander people, including the consistency, timeliness and appropriateness of outcomes across jurisdictions and institutions.

It addresses the strengths and necessary reforms for existing mechanisms to respond to racism perpetrated against First Peoples:

- Racial Discrimination Act 1975 (Cth)
- United Nations Committee on the Elimination of Racial Discrimination
- National Agreement on Closing the Gap
- other parliamentary accountability.

Racial Discrimination Act 1975 (Cth)

138. The *Racial Discrimination Act 1975* (Cth) (RDA) was Australia's first major piece of federal anti-discrimination law. Its enactment was a powerful moment in Australian history and a turning point for race relations. The RDA explicitly prohibits racial discrimination. In 1995 the RDA was extended to make racial vilification unlawful.⁷²
139. Section 9 of the RDA defines racial discrimination: 'It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.'⁷³
140. Section 10 of the RDA provides for a general right to equality before the law. It applies to Commonwealth, state or territory laws that are alleged to be discriminatory – either in their terms or their practical effect. For a complainant to make a successful claim under section 10 of the RDA, they must be able to show:
 - by reason of a law of the Commonwealth or of a state or territory (or a provision of the law);

- persons of a particular race, colour or national or ethnic origin do not enjoy a right that is enjoyed by persons of another race; or
- persons of a particular race, colour or national or ethnic origin enjoy a right to a more limited extent than persons of another race.⁷⁴

If a state or territory law is inconsistent with section 10 of the RDA it is, by virtue of section 109 of the Constitution, inoperative.

141. First Peoples have used Section 10 to bring actions to recognise their human rights and affect structural change. Section 10 has been central to many legal cases. The most high-profile examples were *Mabo v Queensland (Nos. 1 and 2)*.⁷⁵
142. Section 18C of the RDA prohibits racial vilification in public. This section says: 'It is unlawful to do an act, otherwise than in private, if:
 - the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate that person or group of people; and
 - the act is done because of the race, colour, or national or ethnic origin of that person or group of people.'⁷⁶
143. Section 18D sets out exemptions. The racial vilification provisions maintain a balance between the right to live free from racial vilification and freedom of expression.⁷⁷
144. Since 1975 thousands of First Peoples have used the RDA to make complaints and to seek redress for discrimination they experienced. First Peoples have also regularly made representative complaints about systemic issues. Representative complaints are those made on behalf of a class or group of people who are aggrieved.
145. First Peoples, lawyers, community groups and academics have identified areas where there is scope for reform to improve the effectiveness of the RDA. This submission highlights only some of the most significant challenges, noting that it is not an exhaustive list.
146. Advocates for reform have identified several barriers to First Peoples using the RDA to counter racism. These include exhaustion, resignation, disillusionment, lack of knowledge regarding rights and remedies, inaccessibility of complaints handling processes (discussed below), and a lack of advocacy and support such as legal services.⁷⁸
147. Legal commentators and others have also identified aspects of the RDA and the courts' use of it which have impeded its effectiveness in the fight against racism.
148. The RDA has barely changed since it was introduced in 1975, aside from the introduction of racial vilification provisions in 1995. Accordingly, it is a relatively old piece of legislation in need of modernisation to improve its accessibility and increase access to justice.

149. The Commission's Free and Equal position paper *A reform agenda for federal discrimination law* identifies a range of reforms for the RDA such as simplifying the definition of discrimination, increasing the capacity for representative actions and improving the regulatory provisions of the RDA consistent with other areas of law.
150. A further issue which restricts the effectiveness of the RDA relates to special measures outlined in section 8. A special measure is an action or suite of measures taken to promote equality, and which accordingly justifies actions that target a particular group defined by race. They are intended to be positive in nature.
151. In *Maloney* the High Court held that 'special measures' under the RDA do not require either consultation with, or the informed consent of, an affected community.⁷⁹ This has meant that the Australian Government can decide, in the absence of the views of First Peoples, whether a measure is positive or negatively discriminates against a person. This has distinguished the meaning of special measures in international law from that in Australian law to the detriment of First Peoples.
152. Because the RDA is a piece of legislation, Federal Parliament can override the RDA and adopt laws that discriminate based on race. As noted in section 1, this has happened 3 times since the RDA was passed. On all 3 occasions the Australian Government was restricting the rights of First Peoples.
153. Despite criticism of the RDA, it has had very significant impacts since its enactment and continues to develop in its usefulness to combat racism. More information about complaints made to the Commission by First Peoples is provided below.

The Commission and complaint-processes under the RDA

154. Making a complaint to the Commission is the first step in any action under the RDA for racial discrimination. If an Aboriginal or Torres Strait Islander person believes that they have experienced racial discrimination or racial vilification, they can make a complaint to the Commission.
155. The Commission inquires into, and attempts to resolve through conciliation, complaints alleging unlawful discrimination. This function is vested in the President and delegated to staff.
156. The Commission does not have the power to hear and determine matters and decide if unlawful racial discrimination or racial vilification has occurred.
157. Where a complaint does not result in a resolution through conciliation and the Commission has terminated the complaint, a complainant has the option of taking the case to a federal court. The court has the power to determine

whether unlawful racial discrimination or racial vilification occurred and make orders to address it including compensation.

158. Each year the Commission receives many complaints alleging racial discrimination and racial vilification under the RDA. However, these complaints represent only a fraction of the incidents involving racism, hate and violence being directed at First Peoples.
159. First Peoples may not lodge complaints to the Commission for a range of reasons, including:
 - First Peoples who believe they have experienced racism may not know that the Commission exists, what the RDA covers or how to make a complaint. People may also feel hesitant or uncertain about making a complaint – particularly if they do not have access to legal assistance or an organisation that can advocate on their behalf.
 - People may make complaints about racial discrimination and racial vilification under state and territory anti-discrimination laws. The Commonwealth and some states also have criminal laws covering hate crimes.
 - People who have been physically assaulted or have had their personal safety threatened can make a report to state or territory police.
 - In the area of employment, people can make applications to the Fair Work Commission if they believe they have been unlawfully dismissed or subjected to other harmful adverse actions because of their race, colour or national extraction.
 - For the Commission to progress a complaint, an individual needs to name the person or organisation that they believe has discriminated against them. This may not be possible for some actions like racist graffiti, racist abuse from unknown members of the public, racist chants or signs at public rallies or some social media posts.
160. Once the Commission terminates a complaint, an affected person can make an application to the Federal Court of Australia or the Federal Circuit and Family Court of Australia to hear and determine the matter.
161. The Commission does not have an independent role to proactively commence legal proceedings in the Federal courts about conduct alleged to constitute racial discrimination or racial vilification under the RDA.
162. The majority of complaints received by the Commission do not proceed onto the Federal court system.

Human rights and discrimination complaint data

163. The period 2017 to 2025 saw a general upward trend in complaints from First Peoples to the Commission.

164. The greatest number of complaints received from First Peoples each year concerned racial discrimination under the RDA. These were between 56.6–70.5% of all complaints made by First Peoples during the period.¹
165. The second and third most common complaints from First Peoples were disability discrimination and sex discrimination respectively.

Table 1: Complaints received by the Commission from First Peoples under each discrimination regime by year, 2017-2025.

Year	RDA	ADA ²	DDA ³	SDA ⁴	ILO ⁵	HR ⁶
2017	56	3	27	10	3	0
2018	98	2	20	11	6	2
2019	54	0	24	9	4	0
2020	90	6	35	13	4	6
2021	114	10	35	23	5	3
2022	112	9	33	21	3	2
2023	119	7	26	18	2	3
2024	103	1	26	17	1	2
2025	89	4	21	15	0	1

¹ There are fewer complaints by First Peoples recorded under the [Disability Discrimination Act 1992 \(Cth\)](#), [Sex Discrimination Act 1984 \(Cth\)](#), [Age Discrimination Act 2004 \(Cth\)](#) and [Australian Human Rights Commission Act 1986 \(Cth\)](#). Unless a person's race is relevant to the subject matter of the complaint or otherwise disclosed to the Commission, we would not necessarily have a record that they are an Aboriginal or Torres Strait Islander person. The lower numbers of complaints under these acts need to be understood in this context.

² [Age Discrimination Act 2004 \(Cth\)](#).

³ [Disability Discrimination Act 1992 \(Cth\)](#).

⁴ [Sex Discrimination Act 1984 \(Cth\)](#).

⁵ International Labour Organization complaints in employment.

⁶ [Australian Human Rights Commission Act 1986 \(Cth\)](#).

Table 2: Percentage of RDA complaints made by First Peoples by year, 2017-2025.

Year	Number of First Peoples' complaints under RDA	Total number of RDA complaints	% of RDA complaints by First Peoples
2017	56	300	19
2018	98	408	24
2019	54	339	16
2020	90	489	18
2021	114	542	21
2022	112	456	25
2023	119	462	26
2024	103	400	26
2025	89	523	17

166. Between 2017 and 2025, legal representatives lodged 40 representative complaints under the RDA on behalf of First Peoples complainants.
167. The majority of representative complaints raise systemic issues about the administration of state/territory or Commonwealth laws, practices and/or policies. In many cases these are not amenable to resolution through the Commission's conciliation processes.

Table 3: Representative complaints received by First Peoples under the RDA by year and area, 2017–2025

Year	Number of representative complaints received	Section 9 – racial discrimination ⁷	Goods, services and facilities	Access to places and facilities	Land, housing and accommodation	Employment	Racial hatred
2017	Nil						
2018	4	4	3				
2019	4	4	4	2			2
2020	7	5	1				2
2021	2	1	1				1
2022	7	7	3		2		1
2023	2	2	1				
2024	7	7	1			1	1
2025	7	5	1		1		2
TOTAL	40	35	15	2	3	1	9

168. Issues raised in the representative complaints received by the Commission since 2017 include the following:

- use of force by police officers and alleged failure to provide medical care in relation to injuries sustained or while in police custody
- conditions and treatment of Aboriginal and Torres Strait Islander children in juvenile justice centres and facilities
- claims that police have not provided sufficient services to protect members of a clan from the actions of another Indigenous group
- decisions and actions by state child protection agencies to investigate, remove and not reunify Aboriginal and Torres Strait Islander children from their families
- claims that residents of a remote community were provided with an inadequate range of health services when compared with other communities with similar populations
- the ability of native title holders to participate in ballots about the selection of sites for nuclear waste management facilities and claims that technical testing damaged cultural heritage

⁷ One complaint may raise multiple areas.

- claims wages of Aboriginal people were withheld over a period of 40 years and individuals were ineligible for ex gratia payments under a reparations scheme set up by a state government
- allegations income support payments for remote areas, which are predominately comprised of First Peoples, are discriminatory, as the obligations imposed are more onerous than those imposed in non-remote areas
- provision of housing by state governments, including using without grounds termination of fixed term tenancies and alleged failures to provide and maintain habitable housing for tenants in remote communities
- alleged restrictions and interference with the practice of First Peoples' cultural fishing by state government agencies
- alleged refusal of service by hotels to a group of First Peoples and actions by police, including use of force, when called to the hotels
- allegations of racial hatred in relation to the publication of online content by media outlets about the allocation and spending of damages paid to a group of Indigenous people
- claims an Aboriginal community police officer program is discriminatory in terms of receiving less favourable pay and conditions of employment and being targeted by racist conduct.

Reflections on the protections in the RDA and associated complaint processes

169. The Commission's complaint processes provide people across Australia with a free, fair, confidential, accessible and trauma-informed dispute resolution process for racial discrimination and racial vilification complaints under the RDA.
170. Appendix 1 contains de-identified summaries of complaints made by First Peoples that the Commission's conciliation process successfully resolved. These summaries show that the Commission's complaint processes can provide important outcomes for First Peoples. These outcomes may include financial compensation and apologies, and they can produce systemic change.
171. Concerns regarding the accessibility of the Commission's complaints processes are a part of broader concerns with the way the RDA operates. In 2019, First Peoples were still 'using processes of dispute resolution in this area to a limited degree, relative to the extent to which they encounter race-based discrimination'.⁸⁰
172. *Informing the Agenda* participants expressed frustration about the inaccessibility and complexity of complaints mechanisms in general (not just at the Commission). Participants described how red tape, legal jargon and poor

communication about processes and next steps discourage people from pursuing complaints.

173. *Informing the Agenda* participants suggest a need for greater public awareness and culturally responsive supports to inform and assist First Peoples to make complaints.
174. Community legal services, Aboriginal and Torres Strait Islander Legal Services, Aboriginal and Torres Strait Islander Family Prevention Services, Legal Aid and First Peoples advocacy services remain under-resourced to assist First Peoples to make complaints to the Commission (and state and territory commissions) and participate in conciliation processes.

Way to improve the RDA to address racism and racial vilification

175. The Commission released a position paper setting out a reform agenda for federal discrimination laws in 2021. This identified reforms for all 4 federal discrimination laws that would improve their effectiveness. It would ensure appropriate legal coverage, improve the usability of the legislation making it more accessible for people who have suffered discrimination and harassment, and assist businesses and other organisations to comply with the law and to take actions to prevent discrimination from occurring in the first place. This includes through some new regulatory powers for the Commission and standardising key provisions across the 4 discrimination laws – such as definitions of discrimination, how to evidence discrimination and to allow people to bring complaints that cross between the discrimination laws more easily (intersectionality).
176. In addition to these proposals, some practical amendments to the RDA would increase the protections provided to First Peoples against racism and racial vilification.
177. The victimisation provisions in the RDA are narrower and at a higher threshold than other federal anti-discrimination acts. Under the RDA, for a person to make a valid complaint alleging victimisation, they either need:
 - to have made or proposed to make a complaint to the Commission, or
 - to have participated in the Commission’s complaint process.
178. Under other federal acts, such as the *Sex Discrimination Act 1984* (Cth) and the *Disability Discrimination Act 1992* (Cth), the threshold to make a claim of victimisation is lower. A person can make a claim of victimisation if they asserted rights that they have under the law and experienced a detriment because of this. They are not required to have already made a complaint to the Commission or proposed to do this.

179. People who experience racism should not have fewer rights to protection from victimisation than people who are subject to other forms of unlawful discrimination.
180. The RDA also contains no aiding and abetting or incitement provisions for racial hatred. A provision of this nature would enhance the protections provided to First Peoples against racial hatred and violence.
181. There are some challenges around protecting First Peoples and other communities from racial harassment and hostility while at work. The racial vilification provisions in section 18C of the RDA only cover acts that take place 'otherwise than in private'. An act is not done in private if it is somewhere accessible to the public, or if it is in the sight or hearing of members of the public.
182. These provisions raise a question of whether 18C of the RDA covers racial vilification in areas of workplaces where members of the public may not be present.
183. This potential gap in protections could be addressed by amending the RDA to mirror recent legislative changes to the *Sex Discrimination Act 1984* (Cth). Those amendments introduced new sections 28AA (Meaning of harassment based on sex) and 28M (Hostile workplace environments). To better protect First Peoples at work from harassment and racism, the RDA should contain similar provisions which protect workers in a business or undertaking from both:
- harassment based on race
 - hostile workplace environments on the ground of race.
184. The National Anti-Racism Framework includes key recommendations to strengthen the RDA and take proactive steps to address systemic and structural racism. Recommendation 10 calls for the introduction of a positive duty within the RDA. A positive duty would require employers, businesses or undertakings to actively prevent racial discrimination from occurring, rather than relying on people who have experienced discrimination to take action after harm occurs. This would apply in the provision of goods or services, with a particular focus on health, education, retail and hospitality, sport, housing, and financial settings, in access to places and facilities, and in the provision of land, housing and other accommodation.
185. Recommendation 11 of the National Anti-Racism Framework recommends that the RDA also be amended to provide powers to the AHRC to assess compliance with, and enforcement of, the positive duty. This includes providing the AHRC with the power and funding to:
- undertake assessments of the extent to which an organisation has complied with the duty, and issue compliance notices if it considers that an organisation has failed to comply

- enter into agreements or enforceable undertakings with the organisation
- apply to the Court for orders requiring compliance with the duty.

186. Introducing a positive duty aligns with Australia's human rights obligations, including pursuing all appropriate means and without delay a policy of eliminating racial discrimination in all its forms under article 2(1) of ICERD. A positive duty for government agencies, employers, businesses and undertakings to take reasonable steps to eliminate racism would help address gaps in the coverage of the RDA. It would also bring the RDA closer to the positive duty provisions of the *Sex Discrimination Act 1984* (Cth).

Recommendation 5: The Australian Government should strengthen anti-discrimination laws through implementing the reforms to all 4 federal anti-discrimination laws set out in *Free and Equal: A reform agenda for federal discrimination laws* (2021), and particularly through legislating the following specific amendments to strengthen the *Racial Discrimination Act 1975* (Cth):

1. Introduce a positive duty requiring government agencies, service providers, businesses and employers to take reasonable and proportionate measures to eliminate, as far as practicable, racial discrimination and racial vilification.
2. Introduce sections relating to workplace harassment and hostile work environments on the ground of race similar to the protections provided by sections 28AA and 28M of the *Sex Discrimination Act 1984* (Cth).
3. Amend the victimisation (sections 18AA and 27) and incitement/aiding and abetting (section 17) provisions to bring them in line with other federal anti-discrimination laws.
4. Amend the special measures provision (section 8) to require a process of consultation and consent with the people impacted by the measure.

Access to justice and the resourcing of the Commission's complaint function.

187. The Covid-19 pandemic generated an unprecedented surge in complaints to the Commission. This increase in complaints without any associated increase in resources contributed to a backlog of complaints.
188. In 2022 the Australian Government provided short term funding to assist in managing the backlog. The temporary additional funding allowed the Commission to stabilise the complaint backlog. However, because of an ongoing increase in complaints since Covid-19 (approximately 30% compared with pre-pandemic levels), the number of complaints on hand and awaiting allocation remains very high.

189. The Commission has taken proactive steps to address the significant increased demand on its complaint services through:

- increasing staffing levels within its allocated budget
- triaging and prioritising complaints
- introducing innovative and more streamlined complaint handling processes.

Even with these changes and adaptations, the Commission lacks sufficient resources to meet the demands on its complaint services efficiently.

190. The increase in complaints to the Commission without an associated increase in funding has resulted in continuing delays to allocate complaints to officers and for conciliation processes to occur. This is especially pronounced for complaints not assessed as priority matters.

191. These delays have a real impact on First Peoples' access to justice and the ability of the Commission to provide an effective and timely complaint handling service. Delays to action complaints have multiple effects; they:

- deter people from lodging complaints
- contribute to an increase in people withdrawing their complaints
- contribute to a decrease in the percentage of complaints being resolved through our conciliation processes.

192. The Commission cannot absorb such a significant increase in complaints, provide an effective and efficient Investigation and Conciliation service and deliver on our other statutory functions for human rights advocacy, monitoring, education and regulatory functions.

193. The increase in complaints, backlog and insufficient resources all compromise the Commission's ability to deliver community outreach, information and liaison sessions about peoples' rights under federal discrimination law. In the past the Investigation and Conciliation Service had sufficient resources to undertake specific community engagement and outreach with First Peoples.

194. The Commission could significantly enhance the accessibility and cultural responsiveness of its complaint processes for First Peoples by the creation of specific First Peoples liaison officer positions. This is consistent with [Closing the Gap Priority Reform Three – Transforming Government Organisations](#).

Recommendation 6: The Australian Government should provide additional funding to the Australian Human Rights Commission to resource:

1. the Investigation and Conciliation Service to process the high volume of complaints and to conduct conciliations in a timely manner
2. the creation of specific First Peoples liaison roles to conduct outreach about First Peoples' rights under the Racial Discrimination Act 1975 (Cth), and to

provide information about how to make complaints and the complaints process.

United Nations Committee on the Elimination of Racial Discrimination

195. The *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) includes a complaints mechanism that Australians, including First Peoples, can access. Under ICERD, individuals and groups can make complaints to the United Nations Committee on the Elimination of Racial Discrimination (CERD) if they believe Australia has failed to protect them from racial discrimination.
196. People can only make complaints to CERD if they have already tried all reasonable legal options within Australia – including those under the RDA.
197. Complaints under CERD are not about individual incidents alone. They often raise broader concerns about laws, policies or practices that cause ongoing racial discrimination.
198. CERD complaints do not replace Australian courts or tribunals, and they do not result in fines or penalties. Instead, they provide independent international scrutiny of Australia's laws and actions.
199. In the past 5 years, CERD has examined at least 2 complaints from Australian First Peoples:
 - a. In 2021, 5 Aboriginal leaders from Western Australia lodged a complaint after the destruction of Juukan Gorge and broader concerns about cultural heritage legislation in the state.⁸¹ CERD's review found that both the Australian and Western Australian Governments had:
 - failed to seek free, prior and informed consent from First Peoples in reforms to cultural heritage legislation
 - failed to adequately protect First Peoples' cultural heritage
 - potentially breached ICERD.
 - b. In March 2025, Associate Professor Hannah McGlade and Professor Megan Davis lodged an urgent complaint with CERD. The complaint argues that youth justice reforms in Queensland and the Northern Territory constitute racial discrimination under international law because they disproportionately target Aboriginal and Torres Strait Islander children.⁸²
200. The outcomes of these and other CERD complaints are not binding on Australian Governments. Still, they are an important accountability mechanism, particularly when domestic law has failed to address systemic or structural racism adequately.

National Agreement on Closing the Gap

201. In 2020, all Australian governments, along with the Coalition of Aboriginal and Torres Strait Islander Peak Organisations, signed the National Agreement on Closing the Gap (CTG).
202. The CTG framework identifies 4 priority reforms to transform how governments at all levels work with First Peoples:
 - a. Strengthen and establish formal partnerships and shared decision-making.
 - b. Build the Aboriginal and Torres Strait Islander community-controlled sector.
 - c. Transform government organisations so they work better for Aboriginal and Torres Strait Islander people.
 - d. Improve and share access to data and information to enable Aboriginal and Torres Strait Islander communities make informed decisions.⁸³
203. Each CTG target – whether around life expectancy, school attendance or housing – points to breaches of basic human rights. In most cases, the existence of a target is itself evidence of a failure to uphold rights already guaranteed to all Australians under international law. These entrenched inequalities are the outcomes of systemic and structural racism.
204. Priority reform 3 about transforming government organisations is the only priority reform which explicitly mentions racism. It has as its target: ‘Decrease in the proportion of Aboriginal and Torres Strait Islander people who have experiences of racism.’
205. Priority reform 3 transformation elements and government actions include a commitment to identify and eliminate racism, challenge unconscious biases that result in decisions based on stereotypes and develop mechanisms to make mainstream agencies and institutions culturally safe.⁸⁴
206. Current and former Social Justice Commissioners have emphasised the importance of independent mechanisms to monitor and report on the progress of CTG targets.
207. Victoria is the only jurisdiction in Australia to have meaningfully progressed towards implementation of an independent, First Peoples-led accountability mechanism to appropriately measure and report on progress towards CTG targets. As part of its CTG Implementation Plan, Victoria is in the later stages of establishing Nginma Ngainga Wara (meaning ‘to hold to account’ in Wadi Wadi) as its independent CTG accountability mechanism. The *Statewide Treaty Act 2025* (Vic) established the body as the accountability arm within the new, permanent representative body, Gellung Warl. The Victorian First Peoples' Assembly will

make appointments to provide First Peoples leadership in monitoring the Victorian Government's efforts against CTG targets.

Recommendation 7: All Australian government should urgently introduce rigorous independent accountability, monitoring and evaluation mechanisms around the National Agreement on Closing the Gap.

Other parliamentary accountability

208. At every *Informing the Agenda* consultation, participants raised government accountability to First Peoples. Participants shared concerns that governments and institutions are not held responsible when they fail to act on the findings and recommendations of inquiries, royal commissions and other formal processes.
209. State and territory jurisdictions with human rights acts – namely Victoria, the ACT and Queensland – require proposed legislation to include an accompanying statement of compatibility with human rights. However, parliaments can and do pass laws overriding their human rights acts.
210. For example, as part of its tough on crime agenda, the Queensland Government amended several laws around the criminal justice system, and especially youth justice. Several bills included Statements of Compatibility which expressly acknowledged that the proposed legislation is incompatible with human rights.⁸⁵
211. At the federal level, the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) requires a statement of compatibility for all bills and disallowable instruments. The law also established the Parliamentary Joint Committee on Human Rights to review legislation against human rights standards.
212. None of these federal mechanisms requires governments to systematically assess the rights of First Peoples against international human rights law, including the UNDRIP.
213. The Commission has consistently expressed concern that statements of compatibility are often of insufficient quality. Furthermore, the absence of explicit consideration of the UNDRIP weakens attention to combatting racism against First Peoples.

6 Proposed mechanisms to prevent and respond to racism against First Peoples

This section contributes to:

ToR 3 regarding initiatives that are effective in combating racism targeted at First Nations people and reduce individual and collective harm

ToR 6 regarding other matters related to racism, hatred and violence directed at First Peoples people.

This section discusses proposed mechanisms which, if implemented in Australia, can combat racism:

- the National Anti-Racism Framework
- domestic implementation of the UNDRIP
- a national Human Rights Act

National Anti-Racism Framework

214. The National Anti-Racism Framework provides a national roadmap for governments, business and community organisations to address all forms of racism in Australia. It calls for community-centric, intersectional and co-designed strategies to tackle racism.
215. The Framework includes 63 recommendations for a whole of society approach to combating racism. The proposed reforms cross multiple sectors, including:
 - legal
 - justice
 - health
 - education
 - workplaces
 - media and arts
 - data collection
216. The Framework names racism for what it is and locates it within the structures that surround us. Implementation of each recommendation is essential to transform those structures and embed cultural competence, cultural safety, cultural integrity and cultural humility.
217. The second Framework recommendation calls for the Australian Government to set up a National Anti-Racism Taskforce. It also calls for 'Australian governments [to] fund and work in partnership with the National Anti-Racism Taskforce to develop and implement a First Nations Anti-Racism Framework Implementation Plan.'⁸⁶

218. Other priority recommendations with specific relevance to First Peoples include:

- developing a nationally recognised definition of First Peoples cultural safety, with minimum standards, for application across sectors (Rec 3)
- committing to full implementation and accountability mechanisms for the National Agreement on Closing the Gap (Rec 4)
- incorporating provisions in the United Nations Declaration on the Rights of Indigenous Peoples into all relevant domestic laws (Rec 9)
- including First Peoples-focused anti-racism content in education curricula (from early childhood through to tertiary) (Rec 30)
- formalising partnerships between Australian governments and First Peoples community-controlled organisations (Rec 5)
- introducing strategies to address racism experienced by First Peoples in workplaces (Recs 21, 22 and 24)
- reviewing the adequacy of anti-racism and cultural safety training in the justice sector, including for police and the courts (Rec 43)
- investing in First Peoples community-controlled legal and support services to provide culturally safe and trauma-informed access to justice (Rec 41)
- funding First Peoples experts to partner with First Peoples communities to embed Indigenous Data Sovereignty and Indigenous Data Governance on a national and state and territory level (Rec 58).

Recommendation 8: The Australian Government should implement the [National-Anti Racism Framework](#). The Framework includes a dedicated focus on racism against First Peoples, in addition to broader, more generalist reforms that would also benefit First Peoples.

Domestic implementation of the United Nations Declaration on the Rights of Indigenous Peoples

219. As noted in section 1, the Australian Government endorsed the UNDRIP in 2009. The UNDRIP represents the minimum standard and guiding document for addressing structural and systemic racism against First Peoples in Australia.
220. However, as also noted above, the Australian Government has never implemented UNDRIP in domestic law other than its inclusion in the recent legislation establishing the National Commissioner for Aboriginal and Torres Strait Islander Children.
221. Several *Informing the Agenda* participants voiced frustration about the lack of meaningful implementation of UNDRIP. They noted that embedding the UNDRIP in domestic law would help to ensure that policies and laws align with human rights standards and include accountability mechanisms.

222. Implementing the UNDRIP in domestic law would require all levels of government to engage collaboratively with First Peoples organisations and communities around matters such as health, education, criminal justice, law and employment. It would enable policy development and accountability which moves away from deficit-based narratives towards structural change.
223. Notably, article 8 of the UNDRIP would require governments to ‘provide effective mechanisms for prevention of, and redress for ... Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against [First Peoples].’⁸⁷ This is particularly pertinent given the discussions above in relation to misinformation and disinformation (sections 3 and 4), as well as the discussion on the need to reform the RDA (section 5).

Recommendation 9: The Australian Government should comprehensively adopt the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in Australia, including by:

- a) taking steps to implement the UNDRIP into law, policy and practice
- b) co-designing with First Peoples a National Action Plan to implement the UNDRIP
- c) independently auditing existing laws, policies, and practice for compliance with the UNDRIP.

National Human Rights Act

224. In 2023, the Commission published *Revitalising Australia’s Commitment to Human Rights: Free & Equal Final Report* (Free & Equal). Free & Equal recommends a new National Human Rights Framework.
225. The Framework would include the Federal Parliament legislating a Human Rights Act, creating a human rights indicator index, annual statements to Parliament and education programs. Collectively, these reforms would ensure better accountability, awareness and access to justice.
226. Free & Equal identified numerous ways that a national Human Rights Framework would support the rights of First Peoples. Some of the points particularly relevant to combating racism are:
 - Federal discrimination laws will be more accessible to First Peoples, by simplifying their operation, reducing costs barriers, and shifting the focus of the laws to proactively preventing discrimination in the first place.
 - Reform to the Racial Discrimination Act will better support the implementation of special measures to address inequality experienced by First Peoples (by building confidence to undertake

such measures and by ensuring that such measures are truly beneficial and do not negatively discriminate against First Peoples).

- Federal discrimination laws will better recognise the intersectional experiences of First Peoples and the multiple bases of discrimination that is experienced.
- Human rights indicators will identify progress, or lack thereof, in addressing human rights issues facing First Peoples. Independent reporting will hold government to account for its progress on a regular basis.
- Data from the National Human Rights Indicator Index will be available to First Peoples to support their advocacy for better protection of human rights.
- Better understanding of human rights and discrimination among law enforcement, media, government, service providers and others who interact with First Peoples will contribute to greater respect and dignity of treatment.
- An Australian Human Rights Commission that is properly resourced with enhanced scrutiny and regulatory functions will be better placed to engage with First Peoples communities and highlight the human rights issues faced within these communities.⁸⁸

227. Free and Equal also identified how an Australian Human Rights Act would protect the rights of Aboriginal and Torres Strait Islander peoples as follows:

- A national Human Rights Act would provide recognition of the cultural rights of Aboriginal and Torres Strait Islander peoples.
- The voices of Aboriginal and Torres Strait Islander peoples would matter in decision making about them. The positive duties under the Human Rights Act will hold government to account for this.
- The Human Rights Act's access to justice duty would improve the fairness and operation of decision-making processes that involve Aboriginal and Torres Strait Islander peoples.
- The impact of laws, policies and programs on Aboriginal and Torres Strait Islander peoples would be better considered, with reference to the right to self-determination and the rights as set out in the UNDRIP.
- There would be remedies for Aboriginal and Torres Strait Islander peoples if their rights are breached by the Australian Government.
- There would be pathways for direct dialogue between Aboriginal and Torres Strait Islander peoples and the Parliamentary Joint Committee on Human Rights at the stage that draft legislation is scrutinised for its human rights compliance.

- There would be improved community awareness and understanding of human rights, including Aboriginal and Torres Strait Islander people's rights.
- There would be better understanding of human rights among law enforcement, media, government, service providers and others who interact with Aboriginal and Torres Strait Islander peoples. This would contribute to greater respect and dignity of treatment.

Recommendation 10: The Australian Government should legislate a national Human Rights Act, in line with the recommendations of the [Free & Equal](#) report. This includes specific provisions to protect First Peoples in Australia by ensuring their participation in decision making that affects them, interpreting human rights consistent with the UNDRIP and protecting their cultural rights.

7 Appendix: Case summaries of resolved conciliations under the RDA involving First Peoples

Trigger warning: Please note that some of these case studies include racist language which might be upsetting for some people to read.

228. The following are de-identified case summaries of a selection of complaints made by First Peoples that the Commission's conciliation process successfully resolved. More case summaries of conciliated complaints are available at the Commission's [Conciliation Register](#).⁸⁹

Claim of racial discrimination in employment

229. A 19-year-old Aboriginal woman worked at a fast-food outlet. She complained to the Commission that other workers at the outlet made racist and derogatory comments about Aboriginal people. She alleged that, on one occasion, her manager said she did not like 'those dirty Aboriginals'. She said she raised the issue with the store owner, but nothing was done. She claimed she felt she had no option but to resign.
230. The store owner and franchise advised that the store owner had investigated her claims and provided statements given by the 2 colleagues concerned. The respondents said the woman's former manager had been issued with a formal warning. The respondents said no action was taken against the other colleague because there was no evidence that he made inappropriate statements and because the woman was alleged to have made offensive comments about his sexuality.
231. The complaint was resolved. The store owner and franchise undertook to direct the 2 staff members referred to in the complaint to undertake an online training module on appropriate workplace conduct. They also agreed to pay the woman compensation and write to her apologising for the comment and any distress she had experienced. The franchise also undertook to investigate the workplace culture at the outlet where the woman worked.

Claim of racial discrimination in employment

232. A Torres Strait Islander man had been employed by the respondent private school for over ten years. He made a complaint to the Commission and said that, during a discussion with a colleague about a possible lift to another colleague's wedding, he was vague about his pick-up address. He alleged the colleague asked him, 'why you don't want to tell me where you live, is that because you are a Boonga?' He said that the term 'boonga' is offensive to people

of Indigenous heritage and that the colleague asked the question to be disparaging of his race and to imply he lived in sub-standard housing. The man claimed the school failed to respond appropriately to his complaint about the incident. He resigned his employment before lodging a complaint with the Commission.

- 233. The school confirmed that the man was subjected to an offensive and insensitive comment in the workplace but denied not responding appropriately to the incident.
- 234. The complaint was resolved with an agreement that the school pay him compensation, undertake to update its policies and procedures (including policies regarding non-discrimination and its code of conduct) and arrange training in relation to the above policies.

Claim of racial discrimination in education

- 235. A mother complained to the Commission on behalf of her 16-year-old son who attended a public high school. The mother and her son are First Peoples. The mother alleged her son was required to complete a comprehension test with statements such as 'universities started accepting all women in 1875' and 'all women were granted suffrage in 1902'. She said her son would be required to treat such statements as accurate to pass the test despite the statements not being accurate in the case of Aboriginal women. She alleged the test did not treat Aboriginal women as Australian women and was therefore discriminatory.
- 236. On being advised of the complaint, the school indicated a willingness to participate in conciliation to try and resolve the complaint.
- 237. The complaint was resolved. The school acknowledged not all statements on the test were accurate and undertook to correct this. The school expressed regret for hurting her son's feelings and agreed to pay him compensation.

Claim of racial discrimination in education

- 238. An Aboriginal student attended a faith-based high school. The student complained to the Commission that there was a general lack of recognition and respect within the school environment for Aboriginal and Torres Strait Islander culture and history. She said teachers made inappropriate and disrespectful comments, including that Aboriginal people had received sufficient acknowledgment for past mistreatments and that there were positive aspects to the Stolen Generation. She said a teacher used the phrase 'your people' when talking about First Peoples and expressed negative views about the practice of acknowledging Country. The student said the school disciplined her when she raised concerns about this conduct.

239. The school denied some of the alleged comments. The school indicated a willingness to participate in conciliation to try to resolve the complaint.
240. The complaint was resolved by conciliation with an agreement that the school pay the student compensation. The school also undertook to commemorate three events per year of cultural significance to Aboriginal and Torres Strait Islander people and to form a committee of families of Aboriginal and Torres Strait Islander students.

Claim of racial discrimination in goods and services

241. An Aboriginal man made a complaint to the Commission that staff at a retail outlet watched him in an unwelcoming manner and treated him differently from other customers. He said he raised concerns about this treatment with the retailer but received no response. He alleged he was racially profiled and treated less favourably because of his skin colour and because he is Aboriginal.
242. The retailer apologised for not making contact with the man about his concerns but denied allegations of unlawful discrimination.
243. The complaint was resolved with an agreement that the retailer pay him compensation.

Claim of racial discrimination in goods and services

244. An Aboriginal woman went to a hotel for a meal. She made a complaint to the Commission that alleged a crowd controller required her to undertake a breath test for alcohol but did not require non-Aboriginal patrons to undergo the test.
245. On being advised of the complaint, the hotel agreed to participate in conciliation.
246. The complaint was resolved with an agreement that the hotel pay an amount as a refund of the cost of her meal, implement cultural awareness training for staff and prominently display signage regarding the hotel's commitment to non-discrimination. The hotel also agreed to brief crowd controllers on the concerns raised in the complaint.

Endnotes

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- ¹⁸ Northern Territory Treaty Commission, *Final Report* (2022).
- ¹⁹ The reports can be found on the Queensland Parliament website: Community Support and Services Committee, *Report No. 30, 57th Parliament - Path to Treaty Bill 2023*.
- ²⁰ Ian Anderson, Yin Paradies, Marcia Langton, Ray Lovett and Tom Calma, 'Racism and the 2023 Australian constitutional referendum', *The Lancet*, 21 October 2023, 402(10411): 1400–1403.
- ²¹ *2024 Australian Reconciliation Barometer: Racism and First Nations Peoples* [media release], Reconciliation Australia, 18 June 2025.
- ²² Fiona Allison, Chris Cunneen, Lindon Coombes and A Selcuk, 'If you don't think racism exists come take a walk with us', *The Call It Out Racism Register 2023-2024*, 2025, Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney, p. 68.
- ²³ Mike Burgess AM, 'Director-General's Annual Threat Assessment 2025', ASIO, 19 February 2025.
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