



NATSILS

National Aboriginal and
Torres Strait Islander Legal Services

TRUE JUSTICE FOR OUR PEOPLE

**Submission to 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**

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About NATSILS

The National Aboriginal and Torres Strait Islander Legal Services (**NATSILS**) represents and is the national voice of community-controlled Aboriginal and Torres Strait Islander Legal Services (**ATSILS**) in Australia. We advocate at the national level for the rights of Aboriginal and Torres Strait Islander peoples within the justice system and work to ensure that Aboriginal and Torres Strait Islander people have equitable access to culturally safe legal assistance services.

NATSILS' submission is endorsed by its members which include:

- Aboriginal Legal Rights Movement South Australia (ALRM)
- Aboriginal Legal Service (NSW/ACT) Limited (ALS NSW/ACT)
- Aboriginal and Torres Strait Islander Legal Service Queensland (ATSILS QLD)
- Aboriginal Legal Service Western Australia (ALSWA)
- North Australian Aboriginal Justice Agency (NAAJA)
- Tasmanian Aboriginal Legal Service (TALS)
- Victorian Aboriginal Legal Service (VALS)

NATSILS thanks the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs (Joint Standing Committee) for the opportunity to make a submission on this most pressing issue.

If it would assist, NATSILS representatives would be pleased to appear before the Committee to speak further on this submission. NATSILS strongly supports the recommendations made by our members in separate submissions provided to the Committee. This submission is supplementary to those submissions and should be read in conjunction with those submissions.

Closing the Gap - Justice Policy Partnership

NATSILS Co-Chairs and provides Secretariat support to the Justice Policy Partnership (**JPP**), which is one of five formal policy partnerships established under the National Agreement on Closing the Gap (The Agreement). The JPP is co-chaired by NATSILS and the Commonwealth Attorney-General's Department and provides advice to the Joint Council on The Agreement and measures to reduce the overrepresentation of Aboriginal and Torres Strait Islander adults and young people in the criminal justice system.¹

One of the projects currently being delivered is the JPP's Anti-Racism Initiative, which comprises two Anti-Racism Projects:

¹Commonwealth of Australia, Department of the Prime Minister and Cabinet *Closing the Gap targets and outcomes*, Target 10 and Target 11 at <https://www.closingthegap.gov.au/national-agreement/targets>

- An evidence-based review of systemic racism experienced by Aboriginal and/or Torres Strait Islander people in Australia in contact with the criminal justice system; and
- Development of a racism assessment tool for justice institutions around Australia to raise organisational awareness by assessing racism in their institutions.

NATSILS would be happy to provide the Committee with further information on progress of the JPP's Anti-Racism Initiative, should that be of interest.

Introduction

NATSILS supports the establishment of this Inquiry, which comes at a time when Aboriginal and Torres Strait Islander people are experiencing “a dramatic rise in racist abuse and hatred directed at First Peoples, both online and in everyday life”.²

In delivering our services, every day, ATSILS are privy to incidents of racism, discrimination, degradation and deep pain that Aboriginal and Torres Strait Islander people and communities experience in Australia.

For Aboriginal and Torres Strait Islander people racism is nothing new, it is an inescapable feature of daily life.

NATSILS submits that the racism towards Aboriginal and Torres Strait Islander peoples in Australia cannot be properly understood, or effectively addressed without a detailed examination its structural, institutional origins and dimensions.

Racism is foundational to the colonisation of Australia in 1788 racism remained unchallenged and actively fostered in the frontier massacres committed by colonists until the 1930s. Racism has been structurally embedded in successive legislative policies designed to enforce demographic and cultural homogeneity.

Structural racism is not incidental to the negative outcomes experienced by Aboriginal and Torres Strait Islander people across the criminal legal and so-called “child protection” systems. Structural racism establishes the architecture to facilitate, enable, support and justify other forms of racism.

In the lead up to and since the Voice Referendum in October 2023, Australia saw a “dramatic rise in racist abuse and hatred directed at First Peoples, both online and in everyday life”.³

Recent key examples of the significant rise in racist abuse and hatred directed at Aboriginal and Torres Strait Islander peoples include the arguments put forward by the Federation Council proposing to remove the Aboriginal flag from council chambers,⁴ organised jeering of several Aboriginal Elders during Welcome to Country proceedings at ANZAC Day events,⁵ the violent attacks on Aboriginal and Torres Strait Islander people at Camp Sovereignty in Melbourne,⁶ the attack on Aboriginal and Torres Strait Islander people at the Boorloo/ Perth Invasion Day/Survival Day gathering on January 2026,⁷ the racially motivated attack and

² Rueben Berg, co-chair of the First Peoples Assembly in Victoria, interview with Al Jazeera, Ali MC, (2023, 6 October) *As vote nears, 'horrific racism' mars Australian Voice referendum campaign*, Aljazeera at <https://www.aljazeera.com/news/2023/10/6/as-vote-nears-horrific-racism-mars-australian-voice-referendum-campaign>

³ Rueben Berg, Co-Chair of the First Nations Assembly, Victoria, , Ali MC, (2023, 6 October) *As vote nears, 'horrific racism' mars Australian Voice referendum campaign*, Aljazeera at <https://www.aljazeera.com/news/2023/10/6/as-vote-nears-horrific-racism-mars-australian-voice-referendum-campaign>

⁴ Phillippe Perez and Melinda Hayter (2026, 17 March) *Federation Council to remove Indigenous flags despite overwhelming community support*, ABC at <https://www.abc.net.au/news/2026-03-17/federation-council-to-remove-indigenous-flags/106462970>

⁵ ABC (2026, 25 April) *Booing during Welcome to Country at Melbourne, Sydney and Perth Anzac Day services draws condemnation*, at <https://www.abc.net.au/news/2026-04-25/anzac-day-booing-heckling-melbourne-sydney-condemnation/106605674>

⁶ Carly Williams and Dana Morse, (2025, 2 September) *Calls for inquiry into Camp Sovereignty attack after Melbourne March for Australia rally*, at <https://www.abc.net.au/news/2025-09-02/iat-camp-sovereignty-follow/105722830>

⁷ Stephanie Boltje, Tahnee Jash and Kirstie Wellauer, (2026, 3 February) *Federal parliament condemns attempted bombing at Perth/Boorloo Invasion Day rally* at <https://www.abc.net.au/news/2026-02-03/lidia-thorpe-motion-invasion-day-alleged-bomb-attack-parliament/106298440>

murder of Cassius Turvey,⁸ a 15-year-old Noongar Yamatji boy in Perth's eastern suburbs in October 2022, and the deaths of Kumanjayi Walker,⁹ in 2019 and Kumanjayi White,¹⁰ in 2025 in the Northern Territory. Only two weeks ago, Kunmanara Inkatji died while being arrested by police in South Australia. The circumstances of his death are currently being investigated.

At the same time, racism at the government and political level has intensified.

The delayed recognition of the attack at Boorloo as a 'terrorist act' and the muted political and media response,¹¹ stands in stark contrast to the swift condemnation and confident characterisation of the Bondi massacre which occurred just a month prior, followed quickly by the establishment of the Royal Commission on Antisemitism and Social Cohesion and the introduction of legislation to combat antisemitism.¹² Given the timing of this submission, it is important to acknowledge how little media coverage this Inquiry has been afforded, in comparison to the Royal Commission into antisemitism. During some of the hearings of this inquiry, racism and violence is being perpetrated against First Nations people. The lack of media coverage reflects a critical need to ensure the recommendations of this submission are accepted and implemented in a timely manner.

The conditions in youth detention facilities in the Northern Territory,¹³ the unchecked rise of punitive State and Territory "law and order" legislation such as "adult time for adult crime"¹⁴ alongside ; the recently passed dismantling of the Aboriginal and Torres Strait Islander Child Placement Principles in the Northern Territory¹⁵ in response to the death of Kumanjayi Little Baby, with proposed reforms in Queensland¹⁶ to significantly weaken the operation of the Aboriginal and Torres Strait Islander Child Placement Principle in permanency decision-making likely to follow; in addition to calls by One Nation Leader Pauline Hanson for a "monocultural Australia"¹⁷.

⁸ Carly Williams, Jedda Costa and Kirstie Wellauer (2022, 2 November) *Collective grief ripples through Indigenous community after Cassius Turvey's death* at <https://www.abc.net.au/news/2022-11-02/cassius-turvey-collective-grief-ripples-indigenous-community/101597410>

⁹ Steve Vivian and Katrina Beavan, (2019, 10 November), *Yuendumu residents grieve loss of teenager Kumanjayi Walker after police shooting*, at <https://www.abc.net.au/news/2019-11-10/yuendumu-residents-mourn-loss-after-nt-police-shooting/11690670>

¹⁰ Lillian Rangiah, (2025, 10 June) *NAAJA calls for 'emergency intervention' in NT justice system, after second death in custody*, at <https://www.abc.net.au/news/2025-06-10/nt-deaths-in-custody-naaja-urges-emergency-intervention/105393430>

¹¹ Kirstie Wellauer, (2026, 31 January) *First Nations people say 'silence' on alleged Perth bomb attack weighs heavily*, at <https://www.abc.net.au/news/2026-01-31/perth-bomb-attack-analysis-first-nations-people/106289032>

¹³ Jason Walls, (2026, 29 January) *NT Children's Commissioner calls for 'urgent reform' after youth detention probe*, at <https://www.abc.net.au/news/2026-01-29/nt-childrens-commissioner-youth-detention-transfer-report/106280082>

¹⁴ Premier of Victoria, Hon Jacinta Allen MP (2025, 4 December) *Adult Time For Violent Crime Is Now Law* at <https://www.premier.vic.gov.au/adult-time-violent-crime-now-law> ; and Minister for Police and Emergency Services, Hon Dan Purdie and Minister for Youth Justice and Victim Support and Minister for Corrective Services, Hon Laura Gerber (2026, 23 April) *Crisafulli Government expands landmark Adult Crime, Adult Time* at <https://statements.qld.gov.au/statements/104935>

¹⁵ Australian Human Rights Commission (2026, 18 May) *Australia's First Peoples and Children's Commissioners urge Northern Territory government to halt weakening of child placement principle* at <https://humanrights.gov.au/about-us/media-centre/media-releases/aboriginal-and-torres-strait-islander-peoples/australias-first-peoples-and-childrens-commissioners-urge-northern-territory-government-to-halt-weakening-of-child-placement-principle>

¹⁶ Declan Brennan (2026, 6 June) *Advocates warn against adoption expansion in Queensland child protection reform* National Indigenous Times at <https://nit.com.au/06-06-2026/24672/advocates-warn-against-adoption-expansion-in-queensland-child-protection-reform>

¹⁷ Niv Sadrolodabae (2026, 18 June) *Hanson says one of Australia's biggest ideas has 'failed'. The reality is more complex* SBS News at <https://www.sbs.com.au/news/article/hanson-says-one-of-australias-biggest-ideas-has-failed-the-reality-is-more-complex/9fcxaonn8>

While presented in language around concerns of community safety, all of the above examples are racist manifestations based on a deficit-based mindset about Aboriginal and Torres Strait Islander people.¹⁸

This type of structural racism is open, sinister and dangerous in its impact. Governments are resorting to increasingly coercive interventions resulting in escalating imprisonment rates and the increased removal of children from their families and communities. This systemic and structural racism perpetuates centuries of emotional, psychological and cultural harm from efforts to destroy Aboriginal and Torres Strait Islander identity “either by physical extermination or by genetic or cultural absorption.”¹⁹

By signing up to the National Agreement on Closing the Gap (The Agreement)²⁰, all Australian Governments have committed to transforming their institutions and the way they work with Aboriginal and Torres Strait Islander people. This commitment includes confronting institutional racism and sharing decision-making power with Aboriginal and Torres Strait Islander people, represented by their Community Controlled Organisations and Peaks on the policies that impact our lives. However, as the Productivity Commission review²¹ and the Jumbunna Independent Aboriginal and Torres Strait Islander-led review²² of The Agreement make clear, Governments are failing to deliver on their Closing the Gap commitments, and have not meaningfully implemented the transformational change the Agreement demands.

Government failure on their commitments to close the gap has drawn international criticism. The United Nations Working Group on Arbitrary Detention released a statement²³ after their visit to Australia in December 2025. In the statement, they expressed “profound concern at the grossly disproportionate representation of First Nations peoples in the criminal justice system”. They commented on the distressingly high rates of deaths in custody and critiqued the lack of implementation of the RCIADIC²⁴ recommendations “of the 339 recommendations in the 1991 Royal Commission into Aboriginal Deaths in Custody, only 64% have been implemented”.²⁵ NATSILS and our member ATSILS do not necessarily accept this number as being accurate, including across all jurisdictions. We agree that failure to implement the intent of the RCIADIC recommendations in a sustainable, ongoing manner, has led to further preventable deaths in custody. We completely reject the government-commissioned Deloitte report’s review. Although some governments have, at times,

¹⁸ Chris Cunneen (2019), Institutional Racism and (In)Justice: Australia in the 21st Century, *Decolonization of Criminology and Justice* 1(1), 2019, pg 35 at <https://ojs.aut.ac.nz/dcj/article/view/9/2>.

¹⁹ Royal Commission into Aboriginal Deaths in Custody (1991), *Regional Report of Inquiry in New South Wales, Victoria And Tasmania*, at pg 5 at https://apo.org.au/sites/default/files/resource-files/1991-04/apo-nid30017_4.pdf

²⁰ Commonwealth of Australia, Department of the Prime Minister and Cabinet (2020) *National Agreement on Closing the Gap* at <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap>

²¹ Productivity Commission (2024) *Review of the National Agreement to close the Gap* at <https://assets.pc.gov.au/inquiries/completed/closing-the-gap-review/report/closing-the-gap-review-report.pdf>

²² Jumbunna Institute for Indigenous Education and Research (2025) *Closing the Gap Independent Aboriginal and Torres Strait Islander Led Review* at <https://www.coalitionofpeaks.org.au/independent-review-of-closing-the-gap>

²³ United Nations (2025) *United Nations Working Group on Arbitrary Detention statement - Working Group on Arbitrary Detention: Preliminary Findings from its visit to Australia (1 to 12 December 2025)* at <https://www.ohchr.org/sites/default/files/statements/20251212-eom-stm-australia-wg-arbitrary-detention-en.pdf>

²⁴ Royal Commission into Aboriginal Deaths in Custody (1991), *National report*, Australian Government Publishing Service, Canberra at <https://apo.org.au/node/30017>

²⁵ United Nations (2025) *United Nations Working Group on Arbitrary Detention statement - Working Group on Arbitrary Detention: Preliminary Findings from its visit to Australia (1 to 12 December 2025)* at <https://www.ohchr.org/sites/default/files/statements/20251212-eom-stm-australia-wg-arbitrary-detention-en.pdf>

conducted a self-review of implementation, it is not appropriate for governments to determine when recommendations can be closed off as complete. Aboriginal communities and their representative bodies are who should be making this determination. For example, ALRM's Report, Unfinished Business: Royal Commission into Aboriginal Deaths in Custody assesses the lack of implementation of the RCIADIC Recommendations in SA. Of the 127 Recommendations assessed; 25 were not implemented, 78 were not sufficiently implemented and 24 were implemented.

They specifically mentioned the failure of Australia to meet its Target's within the Agreement "Achievement of the National Agreement on Closing the Gap criminal justice targets is worsening rather than improving in several respects, suggesting that a reorientation of approach is needed".²⁶

The United Nations Committee on the Elimination of Racial Discrimination released a statement²⁷ in May 2026, condemning the overrepresentation of Aboriginal and Torres Strait Islander children and young people in the criminal legal system. In their statement, they warned that the overrepresentation "reflects systemic and structural racial discrimination against Aboriginal and Torres Strait Islander communities."²⁸ The fact that increased interpersonal and systemic racism is occurring at the same time that governments have committed to the Agreement makes this all the more unfathomable.²⁹ Framing the identity of Aboriginal and Torres Strait Islander people in a negative, deficit-centric way, encourages the broader community to also assume that Aboriginal and Torres Strait Islander people are an issue that needs to be fixed. Narratives around failure and negativity support underlying racist beliefs about Aboriginal and Torres Strait Islander people. The belief that Aboriginal and Torres Strait Islander people are the cause of their challenges, completely erases the role that colonisation, ongoing racial discrimination, over-policing and overincarceration play in the current structural disadvantages experienced by Aboriginal and Torres Strait Islander people.³⁰

Senator McCarthy's efforts to put this right through this Inquiry is gratefully acknowledged by NATSILS.³¹

NATSILS hope is that the outcomes from this Inquiry will lead to an overdue public reckoning of the impact of racism, hate and violence inflicted on Aboriginal and Torres Strait Islander people. Racism is normalised in Australia; this is because of

²⁶United Nations (2025) *United Nations Working Group on Arbitrary Detention statement - Working Group on Arbitrary Detention: Preliminary Findings from its visit to Australia (1 to 12 December 2025)* at

<https://www.ohchr.org/sites/default/files/statements/20251212-eom-stm-australia-wg-arbitrary-detention-en.pdf>

²⁷ United Nations (2026) *United Nations Committee on the Elimination of Racial Discrimination Statement 1 2026 - Overrepresentation of Indigenous children in Australia's criminal justice system* at

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2F5WA%2FAUS%2F11498&Lang=en

²⁸United Nations (2026) *United Nations Committee on the Elimination of Racial Discrimination Statement 1 2026 - Overrepresentation of Indigenous children in Australia's criminal justice system* at

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2F5WA%2FAUS%2F11498&Lang=en

³⁰ Australian Human Rights Commission (2022) *National Anti-Racism Framework Scoping Report* at

https://humanrights.gov.au/_data/assets/file/0028/46828/National_anti-racism_framework_scoping_report_2022.pdf

³¹ Dechlan Brennan (2026, 9 February) *McCarthy raises First Nations racism concerns as NIAA to attend Royal Commission meetings* National Indigenous Times at <https://nit.com.au/09-02-2026/22568/mccarthy-raises-first-nations-racism-concerns-as-niaa-to-attend-royal-commission-meetings>

the violent history on which this country was built and the ongoing systemic normalisation of racism. Racism is often not seen as “an issue” or something that needs addressing by the broader community. The fact that it is common and rife is something known deeply by Aboriginal and Torres Strait Islander people. This normalisation and frequency of experiences of racism is reflected in the fact that people will often opt to refrain from reporting or seeking action in response to instances of racism; because it is only the most egregious instances that are treated as legitimate.

We repeat our call to the highest levels of the Federal Government to step up to its leadership responsibilities in condemning and countering racism, hate and violence towards Aboriginal and Torres Strait Islander people, in all its forms, including by the very government institutions who are supposed to “protect” them. Failure to do so risks giving the perpetrators of racially motivated violence a sense of impunity and further fuels extremist views.

Leadership includes the responsibility to challenge racist rhetoric and its embodiment in state and territory government policy by, for example, invoking the legal and political authority given to it to override punitive State and Territory justice system legislation that is contributing to the mass incarceration of Aboriginal and Torres Strait Islander children and by fulfilling Australia’s human rights obligations to protect children’s best interests.³² Failure to do so legitimises racist policy.

If Governments truly want an Australia built on social trust, they need to accept the truth of the historical and ongoing impacts of racism towards Aboriginal and Torres Strait Islander peoples and work in genuine partnership with Aboriginal Community Controlled Organisations (**ACCos**) including NATSILS, to dismantle the systemic racism pervasive in the government’s laws, policies, practices and agencies.

Terminology: "criminal justice" and "child protection"

In this submission NATSILS occasionally uses the terminology “youth justice” and “child protection” where these terms are used in primary sources and commentary. NATSILS prefers the terms “youth legal systems,” or “criminal legal systems” which do not give legitimacy or moral cover to these often coercive and harmful systems, policies and practices.

The word “justice” implies or suggests fairness, care, accountability and proportionality. However, many so-called “youth justice” systems prioritise and deliver punishment, surveillance, control and incarceration over fairness and care. Similarly, the use of the term “child protection systems” implies these systems afford protection and care and do not cause or lead to harm of children.

³² United Nations (2007) *United Nations Declaration on the Rights of Indigenous Peoples* at https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf ; and United Nations Convention on the Rights of the Child, November 20, (1989) Article 30 at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>; and United Nations Convention on the Rights of the Child (2009) *General comment No. 11: Indigenous children and their rights under the Convention [on the Rights of the Child]* at <https://www.refworld.org/legal/general/crc/2009/102812>).

Executive Summary

NATSILS submission is that the racism directed at Aboriginal and Torres Strait Islander peoples in Australia cannot be properly understood, or addressed without a detailed examination of its structural and institutional origins, and manifestations.

In our response to Terms of Reference 1, NATSILS draws from key Royal Commissions and Inquiries dating back to 1990 to highlight the overwhelming evidence of structural racism in Australia and subsequent governments' failures to implement recommendations aimed at addressing structural racism in the laws, policies, and practices of Australia's public institutions, with a particular focus on the criminal justice and "child protection" systems.

We also look at how these past and ongoing failures have enabled racism towards Aboriginal and Torres Strait Islander people to evolve and proliferate, with devastating and sometimes lethal consequences.

Online platforms have enabled blatant racism and hate to be directed towards Aboriginal and Torres Strait Islander people at unprecedented levels. While acknowledging the disproportionate harm caused to Aboriginal and Torres Strait Islander people by online platforms, NATSILS submission is that online racism is a direct result of governments' failures to dismantle structural racism. NATSILS also acknowledges the global context in which online platforms exist and the difficulties in regulating platforms which actively promote and thrive from unrestricted behaviour.

Under Terms of Reference 3 NATSILS considers four key areas that have the potential to shift the narratives about Aboriginal and Torres Strait Islander peoples from deficit based, to strengths based. This shift would transform the systems and structures in which racism is currently embedded. Through Truth Telling, the National Anti-Racism Framework, government leadership, solutions in "child protection" and culturally safe legal assistance services.

In our response to Term of Reference 4, we express our concerns about the focus of this term on ideologically motivated extremism towards First Nations peoples when the more persistent threat is structural racism in policing. The lack of acknowledgement of the significant role of racism in the culture of law enforcement and broader policing practices across all Australian jurisdictions is disappointing. First Nations peoples cannot have confidence in the ability of law enforcement agencies to protect them from racial violence, until racial violence perpetrated by law enforcement agencies is acknowledged, addressed and eradicated.

In relation to Terms of Reference 5, NATSILS notes the findings in the Australian Human Rights Commission (**AHRC**) National Anti-Racism Framework regarding the lack of available data about racism, complaints about racism and hate crimes and the perpetrators of racism.³³

Through its NATSILS members,³⁴ NATSILS is aware that official avenues for reporting and responding to racism are not widely used by Aboriginal and Torres Strait Islander

³³ Australian Human Rights Commission (2024) *National Anti-Racism Framework – A roadmap to eliminating racism in Australia* at https://humanrights.gov.au/data/assets/pdf_file/0019/25381/NARF_Full_Report_FINAL_DIGITAL_ACCESSIBLE.pdf

³⁴ For example, NAAJA has spoken to the inadequate funding and resourcing of their Anti-Discrimination Commission

people. Some of the causes of the lack of reports include a lack of trust in the available avenues to address their issues fairly, if at all and the significant under resourcing of these mechanisms. The AHRC's findings about governments' reluctance to acknowledge the existence of racism;³⁵ and the continued failure to respond meaningfully to key reports such as the Royal Commission into Aboriginal Deaths in Custody, do not inspire confidence.

Under Terms of Reference 6, NATSILS discusses the relevance of Australia's human rights obligations to structural racism. We raise how the failure of successive Federal Governments to ensure compliance with international obligations has allowed extraordinary and repeated violations of the rights of Aboriginal and Torres Strait Islander children to occur, unchecked. NATSILS submits the way forward, is for the Federal Government to fully commit to implementing its human rights obligations, including its obligation to implement the *United Nations Declaration on the Rights of Indigenous Peoples*.

The structural nature of racism towards Aboriginal and Torres Strait Islander people has been addressed in previous submissions by NATSILS. Many past submissions are relevant to this Inquiry. Please consider the six linked submissions and papers which each contain findings and recommendations which are relevant to this Inquiry at Appendix A. NATSILS encourages the Inquiry to consider the recommendations at appendix A alongside this submission.

³⁵ Australian Human Rights Commission (2024) *Mapping government anti-racism programs and policies* at https://humanrights.gov.au/_data/assets/pdf_file/0025/25378/mapping_government_anti-racism_programs_and_policies_report_1.pdf

Recommendations

In this submission, NATSILS calls on the Committee to centre structural racism as a key finding of this Inquiry and to recommend:

RECOMMENDATION 1

That the Federal, State and Territory governments agree to adequately implement the recommendations from the reports listed in this submission as a matter of priority, this must be done in partnership with peak Aboriginal representative bodies like NATSILS.

RECOMMENDATION 2

The Federal Government lead a national approach to independent police oversight, working with States and Territories, ACCOs and Elders to establish independent police oversight bodies with genuine investigative powers in every jurisdiction, and set minimum national standards for accountability for police conduct and the use of force towards Aboriginal and Torres Strait Islander people.

RECOMMENDATION 3

That the Federal and all State and Territory Governments implement the recommendations from the [SCAG Bail and Remand Reform Working Group Final Report](#) including bail reform, funding ATSILS and ACCOs to deliver bail support services and exploring the adoption of alternative first responder models.³⁶

RECOMMENDATION 4

NATSILS calls for a national emergency summit on youth justice so that key decision makers in government can listen to the voices of Aboriginal and Torres Strait Islander legal experts and leaders in a setting where community-controlled organisations lead the discussion which should include implementation of national minimum youth justice standards.

RECOMMENDATION 5.1

That the Federal and State and Territory Governments acknowledge and address the direct link between structural racism and the over-representation of Aboriginal and Torres Strait Islander adults and children in custody, the lethal risks of incarceration, the failure of incarceration to address underlying issues contributing to incarceration, the high financial and social costs of incarceration, and their commitments under the National Agreement on Closing the Gap.

RECOMMENDATION 5.2

That the Federal and State and Territory Governments make urgent, genuine and tangible efforts to invest in coordinated, multi-agency, multidisciplinary pathways for Aboriginal and

³⁶ Justice Policy Partnership and Standing Council of Attorneys General Bail and Remand Working Group (2025) *Bail and Remand Reform Working Group Final Report* at https://www.ag.gov.au/sites/default/files/2026-03/scag_bail-and-remand-reform-working-group-final-report.pdf

Torres Strait Islander adults and young people at risk of contact with the criminal legal system.

RECOMMENDATION 6

That there is ACCHO led healthcare in prisons. Aboriginal and Torres Strait Islander people in prison should have access to fully funded and culturally safe Medicare-funded health services, including the pharmaceutical benefits scheme.

RECOMMENDATION 7

That all Governments, with leadership from the Commonwealth, preserve and strengthen or reinstate **the Aboriginal and Torres Strait Islander Child Placement Principle**, within relevant child protection legislations and Safe and Supporter: The National Framework for Protecting Australia's Children 2021–2031 consistent with Australia's international law obligations.

RECOMMENDATION 8

That the Federal Government **reform the online regulatory environment in Australia to prevent the commission of further harms to Aboriginal and Torres Strait Islander people via online platforms**. Reforms must include the ability to take down racist and race filled posts that are addressed to specific groups (i.e. Aboriginal and Torres Strait Islander people), mandatory take-down timelines and proactive monitoring obligations.

RECOMMENDATION 9

That the Australian Government commit to implementing the **National Anti-Racism Framework** to eliminate racism in Australia and all the recommendations as a matter of priority.

RECOMMENDATION 10

That, consistent with the Uluru Statement of the Heart, and learnings from the Yoorrook Justice Commission in Victoria, Governments commit to, and fully resource, truth telling and treaty processes at the national and other state and territory levels.

RECOMMENDATION 11

That the Federal, State and Territory Governments **exercise leadership** by following and implementing the advice and recommendations on anti-racism from Aboriginal and Torres Strait Islander experts, as already articulated in Reports, Inquiries and Frameworks.

RECOMMENDATION 12

That the Federal, State and Territory Governments implement the Recommendations in SNAICC's *Family Matters Report 2025* with specific reference to self-determined early intervention and prevention approaches, ACCO-led investment and resourcing of ACCOs, national standards.

RECOMMENDATION 13

That Federal, State and Territory Governments implement the recommendations in the *Barriers experienced by Aboriginal and Torres Strait Islander Children and Families Accessing Legal Supports - Scoping Study Final Report* as an immediate priority.

RECOMMENDATION 14

Governments invest in ATSILS long-term organisational capacity to provide comprehensive holistic and culturally appropriate legal assistance services, and address state/territory wide legal need in all areas of law, including civil law.

This includes investment to expand the geographical reach of ATSILS, ensuring all Aboriginal and Torres Strait Islander people, regardless of their postcode have the choice of culturally safe place-based community-controlled legal assistance services within metropolitan, regional, rural, and remote locations, in all areas of law.

RECOMMENDATION 15

The *Disability Discrimination Act* should be amended to introduce an enforceable positive duty on all duty-holders to eliminate disability discrimination, and protections under the *Disability Discrimination Act* should not be confined to discrimination solely involving a “service” but it must cover discrimination experienced during all interactions with all employees of public authorities performing the powers and duties and functions of their office.

RECOMMENDATION 16

As recommended by the Disability Royal Commission (Recommendation 8.19), the *Disability Discrimination Act* should be amended to explicitly include services provided by police. NATSILS submits there should be no exclusions or carve-outs to this inclusion. NATSILS recommends this protection against discrimination be specifically extended to corrections, youth detention and child protection officeholders.

RECOMMENDATION 17

Noting the link between school disciplinary actions, school exclusion and criminalisation of children, the Disability Discrimination Act should include provisions that protect the rights of children with disabilities to learn and participate in education.

RECOMMENDATION 18

That Governments review the role of police as first responders in call outs where disability issues are in play, and that alternative responder models that provide therapeutic support and lower incarceration on remand should be explored as an alternative. NATSILS notes that this was a recommendation to the recent [Bail and Remand Reform Report](#) to the Standing Council of Attorneys-General and would make an impact on socio-economic targets 10 and 11 and Government commitments under the National Agreement on Closing the Gap.

RECOMMENDATION 19

To increase accountability and address racism across justice systems, Federal, State and Territory Governments commit specialist funding to ATSILS to establish dedicated services and programs aimed at holding government agencies to account in areas like police misconduct, mistreatment in custodial settings, strengthening support for families in coronial inquests and exploring new opportunities to address systemic issues through strategic litigation.

RECOMMENDATION 20

That the Australian Government introduce legislation to incorporate the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) into domestic law as a binding interpretive framework for all Commonwealth legislation and policy affecting Aboriginal and Torres Strait Islander peoples.

This legislation should:

- (a) establish free, prior and informed consent (FPIC) as a legal requirement before any policy or legislative measure affecting Aboriginal and Torres Strait Islander peoples rights is adopted;
- (b) establish an Aboriginal and Torres Strait Islander Peoples Rights Commissioner within the Australian Human Rights Commission with a specific mandate to monitor, report on, and investigate UNDRIP compliance; and
- (c) require all Commonwealth agencies to produce annual UNDRIP compliance reports tabled in Parliament.

RECOMMENDATION 21

The Australian Government should take immediate and proactive steps to protect and promote the rights of Aboriginal and Torres Strait Islander children and prevent further harm as set out in paragraph 11 of the Early Warning and Urgent Action complaint to the United Nations Committee on the Elimination of Racial Discrimination by Professor Megan Davis and Associate Professor Hannah McGlade.

These steps include:

- a. full and prompt response to the National Children's Commissioner's *Help Way Earlier!* report;
- b. ratification of the UN Optional Protocol to the *Convention on the Rights of the Child*;
- c. withdrawal of the reservation to article 37(c) of the UN *Convention on the Rights of the Child*, which requires that children not be detained with adults; and

full implementation of the Optional Protocol to the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT), in particular by the Commonwealth Government ensuring robust National Preventive Mechanisms are operating in every state and territory.

Part 1: The nature, prevalence and impact of racism (ToR1)

1.1 Previous inquiries and reports

Numerous Inquiries and Reports over the last 35 years have called out the nature, prevalence and impact of racism, hate and violence towards Aboriginal and Torres Strait Islander people.

They include, among others:

- The 1991 Human Rights and Equal Opportunity Commission report: *Racist Violence: Report of the National Inquiry into Racist Violence in Australia*; ³⁷
- The 1991 *Royal Commission into Aboriginal Deaths in Custody* (RCIADIC); ³⁸
- The 1997 *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*; ³⁹
- The 2017 *Royal Commission into the Protection and Detention of Children in the Northern Territory*; ⁴⁰
- The 2018 the Australian Law Reform Commission *Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* and the *Pathways to Justice* Report; ⁴¹
- The establishment of the Yoorrook Justice Commission in Victoria in 2021 and the 2023 *Yoorrook for Justice Report*; ⁴²

In 2024, the Australian Human Rights Commission released *the National Anti-Racism Framework*, a practical roadmap for all governments, businesses and organisations to address racism across Australia.⁴³

Most recently, the Australian Human Rights Social Justice Commissioner's *Social Justice Report 2025* refers to:

“the overwhelming pervasiveness of structural and systemic discrimination and interpersonal racism directed towards and experienced by First Peoples.”⁴⁴

³⁷ Human Rights and Equal Opportunity Commission (1991) *Racist Violence: Report of the National Inquiry into Racist Violence in Australia*, at <https://humanrights.gov.au/data/assets/file/0016/50542/NIRV.pdf>

³⁸ T Anthony, K Jordan, T Walsh, F Markham and M Williams (2021) *30 Years On: Royal Commission into Aboriginal Deaths in Custody Recommendations remain unimplemented*, at https://cipr.cass.anu.edu.au/files/docs/2025/6/WP_140_Anthony_et_al_2021_0.pdf

³⁹ Human Rights and Equal Opportunity Commission (1997), *Bringing them home: Report of the National Inquiry into the separation of Aboriginal and Torres Strait Islander children from their families*. Commonwealth of Australia at <https://humanrights.gov.au/resource-hub/older-peoples-rights/bringing-them-home-full-contents-page>

⁴⁰ Commonwealth of Australia (2017) *Report of the Royal Commission and Board of Inquiry into the protection and detention of children in the Northern Territory* at <https://www.royalcommission.gov.au/child-detention>

⁴¹ Australian Law Reform Commission (2018) *Pathways to Justice - Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* at <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/>

⁴² Yoorrook Justice Commission (2021) *About the Yoorrook Justice Commission* at <https://www.yoorrook.org.au/about-yoorrook/about-yjc> Yoorrook Justice Commission (2023) *Yoorrook for Justice Report* at <https://cdn.craft.cloud/06ad3276-b3d9-4912-bcbb-37795aade9a8/assets/documents/Yoorrook-for-justice-report.pdf>; and

⁴³ Australian Human Rights Commission (2024) *National Anti-Racism Framework* at <https://humanrights.gov.au/resource-hub/race/anti-racism-framework>

⁴⁴ Australian Human Rights Commission (2026) *A Fair and Just Future for First Peoples Social Justice Report 2025* at https://humanrights.gov.au/data/assets/pdf_file/0031/91759/A-Fair-and-Just-Future-for-First-Peoples-Social-Justice-Report-2025-WEB-FOR-UPLOAD.pdf

All of these Inquiries have been informed by lived experience and expertise from our communities, and all provide solutions to address racism. Regrettably, the majority of the recommendations drawn from this knowledge have been met by inaction from successive governments.

At the core of this failure is structural racism.

In submitting their urgent complaint to the United Nations Committee on the Elimination of Racial Discrimination about the crisis of mass incarceration of Aboriginal and Torres Strait Islander children in Australia, Professor Megan Davis and Associate Professor Hannah McGlade expressed their concerns about the Federal Government's "*culture of inaction*" including their own "... *experience of Australian governments failing to engage with reports and processes that relate to the rights of Aboriginal and Torres Strait Islander people.*"⁴⁵

NATSILS echoes these concerns. It is however NATSILS and our members' hope that the findings and recommendations from *this Inquiry* do not join this already long list.

The unbroken line between past and present racism

Established in 2021 the Yoorrook Justice Commission⁴⁶ was the first formal truth telling process on the historical and continuing injustices experienced by First Peoples in Victoria. It received over 1,320 submissions, more than 250 witnesses provided evidence, it held sixty-five hearing days and sixty-seven round tables over four years of Inquiry.⁴⁷

A key submission to the Yoorrook Justice Commission was on the impact of massacres, provided during oral submissions on the Colonial Frontier Massacres in Australia, 1788-1930 project.⁴⁸ Conservative estimates are that there were 438 known massacres, where over 10,657 women, children and men were killed over a 134-year period.

Prior to 1901, British Colonial Government officials and after 1901, Australian Government officials, mounted police and native police were explicitly involved through official policy or government direction in 51% of the massacres which included sexual violence, abduction and rape.

The impacts of the massacres continue to be felt deeply by Aboriginal and Torres Strait Islander people today. This is not a long-forgotten history, in the 2023 case of *Thorpe-Young v DPP* the Court acknowledged the intergenerational trauma caused by the massacres, and how this underpins contemporary experiences of systemic racism and interactions with police.⁴⁹

⁴⁵ Professor Megan Davis and Associate Professor Hannah McGlade, (2025) International Convention on the Elimination of All Forms of Racial Discrimination – *Early Warning and Urgent Action submission* at paras [38] - [42] at https://www.hrlc.org.au/app/uploads/2025/04/United-Nations-CERD-complaint_youth-justice-in-Australia.pdf

⁴⁶ Yoorrook Justice Commission (2021) *About the Yoorrook Justice Commission* at <https://www.yoorrook.org.au/about-yoorrook/about-yjc>

⁴⁷ See About the Yoorrook Justice Commission at <https://www.yoorrook.org.au/about-yoorrook/about-yjc> and Key Findings at <https://www.yoorrook.org.au/reports-and-recommendations/key-findings>

⁴⁸ Dr William (Bill) Pascoe, Submission to the Yoorrook Justice Commission on the Colonial Frontier Massacres in Australia 1788-1930 project at <https://www.yoorrook.org.au/submissions/submission-dr-william-bill-pascoe>

⁴⁹ Thorpe-Young v DPP [2023] VCC 2473 (2 October 2023) at (https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCC/2023/2473.html?context=1;query=Thorpe-Young%20v%20DPP;mask_path=) at [73]

The systemic racism that fuelled and underpinned the massacres that took place between 1788 and 1930 did not disappear, once it was no longer socially acceptable to the Commonwealth to actively and explicitly engage in the genocide of Aboriginal and Torres Strait Islander people. The systemic structures that facilitated and allowed for this violence continued and were used to underpin the rationale behind the forced removal of Aboriginal and Torres Strait Islander children.

The Yoorrook Justice Commission's examination of the forced child removal practices that took place under assimilationist and protectionist laws between 1886 and 1970, found that they followed the 'logic of elimination', constituting genocide under the United Nations Convention on the Prevention and Punishment of the Crime of Genocide.⁵⁰

The Yoorrook Justice Commission found⁵¹:

- There is an unbroken line between past atrocities and present injustice. Colonisation caused, and continues to cause, profound loss and trauma to First Peoples in Victoria across all areas of life.
- Victoria's criminal justice, "child protection", health, housing, education and political systems are each found to perpetuate systemic discrimination.
- First Peoples are drastically over-represented in prison and (so-called) "child protection" systems and that racism is at the heart of both systems.
- Child removal rates have increased since the Stolen Generations era. Western conceptions of family drive discriminatory removal decisions.
- Over-policing, racially biased bail laws, and the criminalisation of disadvantage are primary drivers of incarceration, not higher rates of offending.

Bringing Them Home

The *Bringing Them Home* Report⁵² found that the forced removal of Aboriginal and Torres Strait Islander children fell within the international legal definition of genocide under the *United Nations Convention on the Prevention and Punishment of the Crime of Genocide*.⁵³ Australia ratified the Convention in 1949, and it entered into force in 1951, but Aboriginal and Torres Strait Islander children continue to be removed from their families and communities at ever increasing rates.

⁵⁰ Yoorrook Justice Commission (2023) *Yoorrook for Justice Report* at <https://cdn.craft.cloud/06ad3276-b3d9-4912-bcbb-37795aade9a8/assets/documents/Yoorrook-for-justice-report.pdf>

⁵¹ Yoorrook Justice Commission (2025) *Yoorrook: Truth be Told, Recommendations* at <https://www.yoorrook.org.au/reports-and-recommendations/recommendations>

⁵² Human Rights and Equal Opportunity Commission (1997), *Bringing them home: Report of the National Inquiry into the separation of Aboriginal and Torres Strait Islander children from their families*. Commonwealth of Australia at <https://humanrights.gov.au/resource-hub/older-peoples-rights/bringing-them-home-full-contents-page>

⁵³ Human Rights and Equal Opportunity Commission (1997), *Bringing them home: Report of the National Inquiry into the separation of Aboriginal and Torres Strait Islander children from their families*. Commonwealth of Australia at <https://humanrights.gov.au/resource-hub/older-peoples-rights/bringing-them-home-full-contents-page>

*Bringing Them Home*⁵⁴ documented the profound intergenerational trauma caused by the policies of forced child removals, effects that continue to manifest in elevated rates of family separation, mental illness, substance use, incarceration, and early mortality among Aboriginal and Torres Strait Islander peoples today.

The Human Rights and Equal Opportunity Commission Inquiry into Racist Violence

Thirty-five years ago, the (then) Human Rights and Equal Opportunity Commission (HREOC) initiated an Inquiry into Racist Violence, following representations to it about an apparent increase in the incidence of racially motivated violence in Australia.

The Inquiry recognised from the outset that racist violence against Aboriginal people was a long-standing problem which was likely to differ significantly in extent and effect to that directed against people of non-English speaking background. This was confirmed by the evidence given to the Inquiry.

The seriousness of this evidence was reflected in the conclusions and recommendations of its 1991 report *Racist Violence: Report of the National Inquiry into Racist Violence in Australia*,⁵⁵ including the following findings:

- “1. Racist violence, intimidation and harassment against Aboriginal and Torres Strait Islander people are social problems resulting from racism in our society, rather than isolated acts of maladjusted individuals.*
- 2. The fact that Aboriginal and Torres Strait Islander people are faced with racism in almost every aspect of their daily lives, is the underlying reason for the high levels of racist violence against Aborigines and Torres Strait Islanders reported to this Inquiry.*
- 3. Racist violence is an endemic problem for Aboriginal and Torres Strait Islander people in all Australian States and Territories.*
- 4. Racist attitudes and practices (conscious and unconscious) pervade our institutions, both public and private.*
- 5. Aboriginal-police relations have reached a critical point due to the widespread involvement of police in acts of racist violence, intimidation and harassment.”*

Significantly, HREOC observed that

*“the level of racist violence and harassment presented in evidence to the Inquiry, particularly against Aboriginal and Torres Strait Islander people, should be a matter of concern to all Australians. It could increase in intensity and extent unless addressed firmly now.”*⁵⁶

⁵⁴ Human Rights and Equal Opportunity Commission (1997), *Bringing them home: Report of the National Inquiry into the separation of Aboriginal and Torres Strait Islander children from their families*. Commonwealth of Australia at <https://humanrights.gov.au/resource-hub/older-peoples-rights/bringing-them-home-full-contents-page>

⁵⁵ Human Rights and Equal Opportunity Commission (1991) *Racist Violence: Report of the National Inquiry into Racist Violence in Australia*, at https://humanrights.gov.au/_data/assets/file/0016/50542/NIRV.pdf

⁵⁶ Human Rights and Equal Opportunity Commission (1991) *Racist Violence: Report of the National Inquiry into Racist Violence in Australia*, at https://humanrights.gov.au/_data/assets/file/0016/50542/NIRV.pdf, Finding 7 at pg 387.

Deaths in Custody and The Royal Commission into Aboriginal Deaths in Custody

The Royal Commission into Aboriginal Deaths in Custody (RCIADIC)⁵⁷, reported in 1991. It delivered 339 recommendations addressing every aspect of Aboriginal and Torres Strait Islander Peoples' interaction with government and Australian society, more broadly⁵⁸.

Commissioner Muirhead set out the RCIADIC's overall findings as follows:

"The conclusions are clear. Aboriginal people die in custody at a rate relative to their proportion of the whole population which is totally unacceptable and which would not be tolerated if it occurred in the non-Aboriginal community. But this occurs not because Aboriginal people in custody are more likely to die than others in custody but because the Aboriginal population is grossly over-represented in custody. Too many Aboriginal people are in custody too often. (1.3.3)

However, the more fundamental causes for the over-representation of Aboriginal people in custody are not to be found in the criminal justice system but in those factors which bring Aboriginal people into conflict with the criminal justice system in the first place. The view propounded by this report is that the most significant contributing factor is the disadvantaged and unequal position in which Aboriginal people find themselves in the society-socially, economically and culturally (1.7.1)"

And further:

"It shows how the attitudes of the dominant non-Aboriginal society, racism both overt and hidden and institutional racism, adversely affect Aboriginal people. It shows how some laws bear unequally upon Aboriginal people. (1.7.2)"

More than 35 years after the RCIADIC⁵⁹ report, and more than three decades of awareness of its findings, the evidence of continued structural failure is clear.⁶⁰ Since 1991, over 638 Aboriginal and Torres Strait Islander people have died in custody.⁶¹ The rate of Aboriginal and Torres Strait Islander deaths in custody has not fallen; in fact it has worsened in every jurisdiction (to varying degrees).⁶²

In 2021, the Centre for Aboriginal Economic Policy Research⁶³ wrote a paper on the unimplemented recommendations of the RCIADIC. The paper⁶⁴ found that 30 years

⁵⁷ Royal Commission into Aboriginal Deaths in Custody 1991, *National report*, Australian Government Publishing Service, Canberra. At <https://apo.org.au/node/30017>

⁵⁸ Royal Commission into Aboriginal Deaths in Custody 1991, *National report*, Australian Government Publishing Service, Canberra. At <https://apo.org.au/node/30017>

⁵⁹ Royal Commission into Aboriginal Deaths in Custody 1991, *National report*, Australian Government Publishing Service, Canberra. At <https://apo.org.au/node/30017>

⁶⁰ National Aboriginal and Torres Strait Islander Legal Service (2025) *Our people are paying with their lives" Aboriginal deaths in custody reaches record high* media release at <https://www.natsils.org.au/wp-content/uploads/2025/12/NATSILS-2512-MR-Record-number-of-deaths-in-custody.pdf>

⁶¹ Australian Institute of Criminology *Deaths in custody in Australia real time dash-board* at <https://www.aic.gov.au/statistics/deaths-custody-australia>

⁶² Australian Institute of Criminology *Deaths in custody in Australia real time dash-board* at <https://www.aic.gov.au/statistics/deaths-custody-australia>

⁶³ T Anthony, K Jordan, T Walsh, F Markham and M Williams (2021) *30 Years On: Royal Commission into Aboriginal Deaths in Custody Recommendations remain unimplemented*, at https://cipr.cass.anu.edu.au/files/docs/2025/6/WP_140_Anthony_et_al_2021_0.pdf

⁶⁴ T Anthony, K Jordan, T Walsh, F Markham and M Williams (2021) *30 Years On: Royal Commission into Aboriginal Deaths in Custody Recommendations remain unimplemented*, at https://cipr.cass.anu.edu.au/files/docs/2025/6/WP_140_Anthony_et_al_2021_0.pdf

on from RCIADIC⁶⁵, the Australian Government has failed to act on the overincarceration of Aboriginal and Torres Strait Islander people, to stop deaths in custody and to enforce accountability for these deaths. Aboriginal and Torres Strait Islander leadership was identified as an essential aspect of reviewing the criminal legal system, overseeing change and reducing deaths in custody.⁶⁶

In December 2025, the Australian Institute of Criminology (AIC) reported that in the 2024-2025 period, 33 Indigenous deaths in prison custody occurred, the highest number of Indigenous deaths recorded since they began keeping records in 1979.⁶⁷

RECOMMENDATION 1

That the Federal, State and Territory governments agree to adequately implement the recommendations from the reports listed in this submission as a matter of priority, this must be done in partnership with peak Aboriginal representative bodies like NATSILS.

1.2 Structural racism in the criminal legal system

Policing

NATSILS' members consistently report examples of systemic racism and concerning police culture towards their clients in the form of racial profiling, and unconscious bias in police investigations⁶⁸ that often result in harm.⁶⁹

The role of racism in policing has been highlighted in a number of reports and Coronial Inquests. Acknowledgement of racism has been relatively uncommon in the past, slowly this has started to change.

In *A Call for Change* the Commission of Inquiry into Queensland Police Service (QPS) responses to domestic and family violence, several findings were made about racism within policing.⁷⁰ Racism was identified as a significant problem within the QPS, including racism in the context of police service delivery to Aboriginal and Torres Strait Islander people as well as systemic racism within the police force.⁷¹

Discriminatory policing is a contributory factor to the increasingly high numbers of deaths in custody. As referenced earlier in this submission, since 1991, over 638

⁶⁵ Royal Commission into Aboriginal Deaths in Custody (1991), *National report*, Australian Government Publishing Service, Canberra at <https://apo.org.au/node/30017>

⁶⁶ T Anthony, K Jordan, T Walsh, F Markham and M Williams (2021) *30 Years On: Royal Commission into Aboriginal Deaths in Custody Recommendations remain unimplemented*, at https://cpr.cass.anu.edu.au/files/docs/2025/6/WP_140_Anthony_et_al_2021_0.pdf

⁶⁷ Australian Institute of Criminology *Deaths in custody in Australia 2024–25* at https://www.aic.gov.au/sites/default/files/2025-12/sr57_deaths_in_custody_in_australia_2024-25.pdf

⁶⁸ Grahame, H.(2026) *Inquest into the Death of Mark Anthony Haines* (File no. 2022/00343305) Coroners Court of New South Wales at https://coroners.nsw.gov.au/documents/findings/2026/Inquest_into_the_death_of_Mark_Anthony_Haines.pdf

⁶⁹ James Tugwell and Tahlia Roy, (2025, 20 November) *Police pulling Aboriginal teenager from bus at gunpoint was 'racial profiling', family alleges*, at <https://www.abc.net.au/news/2025-11-20/aboriginal-17yo-pulled-bus-gunpoint-mistaken-racial-profiling/106029782>

⁷⁰ Commission of Inquiry into Queensland Police Service responses to domestic and family violence (2022) at <https://www.qpsdfvinquiry.qld.gov.au/about/assets/commission-of-inquiry-dpsdfv-report-part-1.pdf>

⁷¹ Commission of Inquiry into Queensland Police Service responses to domestic and family violence (2022) at <https://www.qpsdfvinquiry.qld.gov.au/about/assets/commission-of-inquiry-dpsdfv-report-part-1.pdf>

Aboriginal and Torres Strait Islander people have died in custody.⁷² In late 2025,⁷³ the NSW State Coroner made public comments about the “profoundly distressing” high number Indigenous deaths in custody:

“These figures reflect the entrenched over-representation of First Nations peoples in the criminal justice system — a systemic issue that compounds the risks and vulnerabilities contributing to the rising number of deaths in custody”⁷⁴

In Victoria, the Victorian Police Commissioner, in giving evidence before the Yoorrook Justice Commission, apologised to Aboriginal and Torres Strait Islander people in the following terms:

“As a result of systemic racism, racist attitudes and discriminatory actions of police have gone undetected, unchecked, unpunished or without appropriate sanctions, and have caused significant harm across generations of Aboriginal families.”⁷⁵

In Western Australia, a Research Paper⁷⁶ by the Australian Institute of Criminology explored Aboriginal and Torres Strait Islander people’s experiences of the Western Australian criminal legal system. In the paper, interviewees recounted their experiences of police brutality, racist comments and the targeting of Indigenous people, often from a very young age.⁷⁷

The NSW Law Enforcement and Conduct Commission (LECC)⁷⁸ acknowledged racially discriminatory policies within its current *First Nations Strategy*:

“The legacy of racially discriminatory past policies, including the forced removal of children, the dispossession of land and resources and the instrumental use of police in enforcing these policies, has entrenched institutional racism within the Australian justice system. For many First Nations peoples, law enforcement is not only associated with the past injustices but with ongoing harm, over-policing, racial profiling and disproportionate incarceration. This has created a profound and enduring mistrust of police and justice institutions—one that cannot be repaired without structural reform, cultural accountability and proactive engagement with community.”⁷⁹

⁷² Australian Institute of Criminology *Deaths in custody in Australia real time dash-board* at <https://www.aic.gov.au/statistics/deaths-custody-australia>

⁷³ Anton Rose, Isabella Ross and Charles Rushford (2025, 15 October) *Coroner makes rare public statement as NSW records most Indigenous deaths in custody in a year* ABC news at <https://www.abc.net.au/news/2025-10-15/nsw-coroner-confirms-12-first-nations-deaths-in-custody-2025/105890400>

⁷⁴ Anton Rose, Isabella Ross and Charles Rushford (2025, 15 October) *Coroner makes rare public statement as NSW records most Indigenous deaths in custody in a year* ABC news at <https://www.abc.net.au/news/2025-10-15/nsw-coroner-confirms-12-first-nations-deaths-in-custody-2025/105890400>

⁷⁵ Shane Patton (2023) *statement to Yoorrook Justice Commission* Opening Comments of the Chief Commissioner of Police Shane Patton APM at <https://www.yoorrook.org.au/submissions/opening-comments-of-the-chief-commissioner-of-police-shane-patton-aph>

⁷⁶ Australian Institute of Criminology (2026) *Stories that matter: Learning from Aboriginal and Torres Strait Islander people's experiences of the Western Australian criminal legal system* at https://www.aic.gov.au/sites/default/files/2026-03/ti725_stories_that_matter.pdf

⁷⁷ Australian Institute of Criminology (2026) *Stories that matter: Learning from Aboriginal and Torres Strait Islander people's experiences of the Western Australian criminal legal system* at https://www.aic.gov.au/sites/default/files/2026-03/ti725_stories_that_matter.pdf

⁷⁸ Law Enforcement and Conduct Commission (2025) *Law Enforcement and Conduct Commission First Nations Strategy 2026-2029* at <https://www.lecc.nsw.gov.au/pdf-files/lecc-first-nations-strategy-2026-2029>

⁷⁹ Law Enforcement and Conduct Commission (2025) *Law Enforcement and Conduct Commission First Nations Strategy 2026-2029* at <https://www.lecc.nsw.gov.au/pdf-files/lecc-first-nations-strategy-2026-2029>

Research confirms the operation of structural racism in policing and how the discretionary decisions of police, work against the interests of Indigenous people.⁸⁰ The lack of action in policing responses to Aboriginal victims of crime and the risks they are put at of being overpoliced, criminalised, having warrants executed and misidentified as a perpetrator when asking for assistance are substantial. Police are not a safe agency for Aboriginal People to engage with, the challenges in reporting to police or be supported when they are victims of crime reflects this. For example, in disproportionate stop-and-search practices, the enforcement of public order offences and police decisions (not) to divert young people away from the criminal legal system.⁸¹ Additionally, there is systemic under-policing of violence against Aboriginal and Torres Strait Islander women,⁸² despite Aboriginal and Torres Strait Islander women being 35 times more likely to be hospitalised than non-Indigenous women as a result of family violence.⁸³

In 2015, Victoria Police officially banned racial profiling, but no mechanisms were established to monitor police compliance with the ban.⁸⁴ The Racial Profiling Data Monitoring Project⁸⁵ found in their 2024 report that:

“Police were 10 times more likely to use force against a person they perceived to be Aboriginal, than against someone they perceived to be white; and they were also 13 times more likely to use a taser. Aboriginal women were 10.6 times more likely to have force used against them than white women”⁸⁶

The cost benefits of the over-policing Aboriginal and Torres Strait Islander peoples in NSW were examined by NSW Treasury in its Indigenous Expenditure Report 2023-2024⁸⁷. NSW Treasury considered the disproportionate personal searches and use of force against Aboriginal and Torres Strait Islander peoples, citing research by BOCSAR that showed in over 80% of instances personal searches do not reveal any evidence of crime, and referred to data by Redfern Legal Centre showing that the use of force against Aboriginal and Torres Strait Islander people accounted for 47% of all instances of the police use of force in 2021-22.⁸⁸ Noting the significant costs of

⁸⁰ Cunneen, C. and Porter, A. (2017) *Indigenous Peoples and Criminal Justice in Australia*, The Palgrave Handbook of Australian and New Zealand Criminology, Crime and Justice, pp 667-682 at https://opus.lib.uts.edu.au/bitstream/10453/127631/4/Indigenous%20Peoples%20and%20Criminal%20Justice%20in%20Australia_am.pdf

⁸¹ Chris Cunneen (2013, 31 January) *Third Report of Professor Chris Cunneen* [unpublished expert report] Daniel Haile-Michael & Ors V Nick Konstantinidis & Ors Victoria Registry, Federal Court of Australia, Melbourne, VIC, Australia at https://www.policeaccountability.org.au/wp-content/uploads/2014/03/6_-Professor-Chris-Cunneen-Third-Report-31-Jan-13.pdf

⁸² Chris Cunneen (2013, 31 January) *Third Report of Professor Chris Cunneen* [unpublished expert report] Daniel Haile-Michael & Ors V Nick Konstantinidis & Ors Victoria Registry, Federal Court of Australia, Melbourne, VIC, Australia at https://www.policeaccountability.org.au/wp-content/uploads/2014/03/6_-Professor-Chris-Cunneen-Third-Report-31-Jan-13.pdf

⁸³ Australian Institute of Health and Welfare (2023) *Family violence among Aboriginal and Torres Strait Islander peoples* at pg 71 at <https://www.aihw.gov.au/getmedia/26f5e907-d1cb-4eac-b26f-a46a88665f3b/fvaatsip-c01.pdf.aspx>

⁸⁴ Alex Gallagher (2024, 24 November) *Victoria Police banned racial profiling a decade ago. Has it made a difference?* SBS News at <https://www.sbs.com.au/news/article/victoria-police-banned-racial-profiling-decade-ago/z73w3ya19>

⁸⁵ Racial Profiling Data Monitoring Project *Tracking Victoria Police data over time to investigate systemic racism* at <https://www.racialprofilingresearch.org/>

⁸⁶ Alex Gallagher (2024, 24 November) *Victoria Police banned racial profiling a decade ago. Has it made a difference?* SBS News at <https://www.sbs.com.au/news/article/victoria-police-banned-racial-profiling-decade-ago/z73w3ya19>

⁸⁷ NSW Treasury, (2024) *2022-2023 NSW Indigenous Expenditure Report* at <https://www.nsw.gov.au/sites/default/files/noindex/2024-07/2023-24-nsw-indigenous-expenditure-report.pdf>

⁸⁸ NSW Treasury, (2024) *2022-2023 NSW Indigenous Expenditure Report* at <https://www.nsw.gov.au/sites/default/files/noindex/2024-07/2023-24-nsw-indigenous-expenditure-report.pdf>

policing, NSW Treasury went on to comment on the social and economic benefits of raising the age of criminal responsibility.⁸⁹ Looking at over policing and the overcriminalisation of Aboriginal people through the lens of a cost-benefit analysis is in itself racism. This lens reduces distressing experiences of racism to dollar amounts and fails to acknowledge the harm of racism, instead highlighting the financial implications for governments.

The death of Kumanjayi Walker, who was shot and killed at Yuendumu by former Constable Zachary Rolfe from the Alice Springs Police Station in the Northern Territory in 2019, provides a stark reminder of the lethality of structural racism in policing. In that matter, Judge Elisabeth Armitage of the Northern Territory's Coroner's Court found:

*“Mr Rolfe held and expressed racist views about Aboriginal people and that his use of force history, and telephone messages, demonstrated that he had dehumanised the Aboriginal population he was policing. I find that he engaged in “everyday” or “interpersonal” racism and that he worked in, and was the beneficiary of, an organisation with significant hallmarks of institutional racism.”*⁹⁰

Judge Armitage also found:

*“Mr Rolfe was racist, and that there is a risk that this racism affected his interactions with the community of Yuendumu on 9 November 2019, including his entry into their houses and his perception of, and possibly his response to, the young Aboriginal man he shot and killed, in a way that increased the likelihood of a fatal outcome.”*⁹¹

The 2024 Parliamentary Inquiry into Missing and Murdered First Nations women heard evidence that police forces do not appropriately engage with Aboriginal and Torres Strait Islander people, and highlighted instances of delayed responses to reports of missing and murdered Aboriginal and Torres Strait Islander people, inadequate responses to reports of domestic violence from Aboriginal and Torres Strait Islander women; and discriminatory and racist attitudes towards Aboriginal and Torres Strait Islander people.⁹² Examples of the impact of discriminatory and racist attitudes towards Aboriginal and Torres Strait Islander women include the cases of Ms Dhu and Ms Mullaley.

Ms Dhu died in Police custody after being arrested for outstanding fines.⁹³ She was arrested when Police were called to attend her home on the basis of a family violence order breach. As the protected person, she should have been protected and supported. Instead she was mocked and dismissed by Police. She was paralysed, then dragged from her cell and thrown into the back of a police car, with a police officer telling her to “shut up” shortly before she

⁸⁹ NSW Treasury, (2024) 2022-2023 NSW Indigenous Expenditure Report at

<https://www.nsw.gov.au/sites/default/files/noindex/2024-07/2023-24-nsw-indigenous-expenditure-report.pdf> at pg 55.

⁹⁰ Armitage, E (2025) *Inquest into the death of Kumanjayi Walker* (File no. A51 of 2019) Coroners Court of Alice Springs at para [211] at <https://agd.nt.gov.au/attorney-general-and-justice/courts/inquests-findings/kumanjayi-walker/files-exhibits-and-media/Inquest-into-the-death-of-Kumanjayi-Walker-2025-NTLC-8.pdf>

⁹¹ Armitage, E (2025) *Inquest into the death of Kumanjayi Walker* (File no. A51 of 2019) Coroners Court of Alice Springs at para [198] at <https://agd.nt.gov.au/attorney-general-and-justice/courts/inquests-findings/kumanjayi-walker/files-exhibits-and-media/Inquest-into-the-death-of-Kumanjayi-Walker-2025-NTLC-8.pdf>

⁹² Parliament of Australia (2024) *Chapter 4 - Police culture and practices* Report into the Inquiry into Missing and Murdered First Nations women and children, Senate Legal and Constitutional Affairs Committee, at para (4.5) and onwards at https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/FirstNationswomenchildren/Report/Chapter_4_-_Police_culture_and_practices

⁹³ Human Rights Law Centre, Project First Nations Justice *Supporting the family of Ms Dhu* at <https://www.hrlc.org.au/projects/supporting-the-family-of-ms-dhu/>

died from septicaemia and pneumonia.⁹⁴ Those infections had lodged into a fractured rib, which was one of the many injuries she sustained during a violent relationship.

Ms Mullaley was beaten nearly to death by her ex-partner Mr Bell, she was left naked, bleeding and with life threatening injuries.⁹⁵ When the police attended the matter, Ms Mullaley was arrested, along with her father who had attended the scene to help his child. While the Mullaley's were taken into police custody; Mr Bell kidnapped, tortured and murdered her young son Charlie who was in the care of family friends after his mother's arrest.⁹⁶ There was a Corruption and Crime Commission review into the police conduct in this case, while it was criticised, they found that no serious misconduct had occurred.⁹⁷

Other examples that display racism in policing practices include police failure to fulfil important duties to vulnerable persons in custody. For example in June 2025 LECC made a finding of serious misconduct against an officer performing the role of Custody Manager.⁹⁸

In that matter, CCTV footage played to the LECC showed an Aboriginal man in mental distress repeatedly self-harming by banging his head on a metal seat and the dock wall leading to visible head injuries. The sound of banging was loud enough to be heard in other parts of the police station. Other officers came into the custody room to see what was happening and could see the risk to the man in custody and suggested that an ambulance be called. However, the Custody Manager decided not to call an ambulance. Instead, and despite the man's visible injuries, the Custody Manager decided that it was appropriate to drive him for over an hour in the back of a police-caged vehicle. The man continued to self-harm, using such force that it shook the police vehicle as it travelled along the highway.

The LECC found that the Custody Manager's decisions were "driven by unconscious racism"⁹⁹. Because the man in custody was an Aboriginal man, the Custody Manager treated him as if he was deliberately engaging in poor behaviour, rather than seeing the self-harm as a sign of distress.

In some cases, as highlighted by the RCIADIC and more recently, the deaths of Aunty Tanya Day and Rebecca Maher, police failure to exercise their duty to vulnerable persons in their care results in death.¹⁰⁰ Aunty Tanya Day's uncle

⁹⁴ Human Rights Law Centre, Project First Nations Justice *Supporting the family of Ms Dhu* at <https://www.hrlc.org.au/projects/supporting-the-family-of-ms-dhu/>

⁹⁵ Australian Associated Press (2023, 1 May) *Tamica's story broke hearts across the country. By sharing it, she says she's starting to heal* SBS News NITV at <https://www.sbs.com.au/nitv/article/tamicas-story-broke-the-nations-heart-by-sharing-it-she-says-shes-starting-to-heal/9grzto35h>

⁹⁶ Australian Associated Press (2023, 1 May) *Tamica's story broke hearts across the country. By sharing it, she says she's starting to heal* SBS News NITV at <https://www.sbs.com.au/nitv/article/tamicas-story-broke-the-nations-heart-by-sharing-it-she-says-shes-starting-to-heal/9grzto35h>

⁹⁷ Australian Associated Press (2023, 1 May) *Tamica's story broke hearts across the country. By sharing it, she says she's starting to heal* SBS News NITV at <https://www.sbs.com.au/nitv/article/tamicas-story-broke-the-nations-heart-by-sharing-it-she-says-shes-starting-to-heal/9grzto35h>

⁹⁸ Law Enforcement and Conduct Commission (2025, 23 June) *Media Release - Law Enforcement Conduct Commission finds Custody Manager who ignored an Aboriginal man self-harming in custody engaged in serious misconduct*, at <https://www.lecc.nsw.gov.au/news/media-release-law-enforcement-conduct-commission-finds-custody-manager-who-ignored-an-aboriginal-man-self-harming-in-custody-engaged-in-serious-misconduct>

⁹⁹ Law Enforcement and Conduct Commission (2025, 23 June) *Media Release - Law Enforcement Conduct Commission finds Custody Manager who ignored an Aboriginal man self-harming in custody engaged in serious misconduct*, at <https://www.lecc.nsw.gov.au/news/media-release-law-enforcement-conduct-commission-finds-custody-manager-who-ignored-an-aboriginal-man-self-harming-in-custody-engaged-in-serious-misconduct>

¹⁰⁰ English, C (2020) *Inquest into the Death of Tanya Louise Day* (File No COR 2017 6424) Coroners Court of Victoria at <https://coronerscourt.vic.gov.au/sites/default/files/2020-04/Finding%20-%20Tanya%20Day-%20COR%202017%206424%20-%20AMENDED%2017042020.pdf> and O'Sullivan, T (2019) *Inquest into the death of Rebecca Maher* (File No 2016/218940)

Harrison Day also passed away in police custody, in 1982 he was left unchecked in a police cell for 3 hours and was killed by an epileptic fit.¹⁰¹ Uncle Harrison Day was among the 99 deaths in custody that was investigated in the RCIADIC.¹⁰²

In his investigations into deaths in NSW, Victoria and Tasmania RCIADIC Commissioner Wootten made the telling observation that between the many examples he found of professional failures, unreasonable discretionary decisions, inattention and victim blaming, at the core of all these “*is a lack of humanity*”.

Commissioner Wootten describes the circumstances in which these persons died as examples of “... *a revolting display of inhumanity*”¹⁰³, “*shocking and callous disregard for his welfare*”¹⁰⁴, “*The story is one of shocking and mindless inhumanity*”¹⁰⁵ and

*“I find it impossible to believe that so many experienced people could have been so reckless in the care of a seriously ill person dependent on them, were it not for the dehumanised stereotype of Aboriginals so common in Australia and in the small towns of western New South Wales in particular. In that stereotype a police cell is a natural and proper place for an Aboriginal.”*¹⁰⁶

Recommendation 224 of the RCIADIC called for:

*“..appropriate steps be taken to make it mandatory for Aboriginal Legal Services to be notified upon the arrest or detention of any Aboriginal person..”*¹⁰⁷

This recommendation of a Custody Notification Service (CNS) exists now in each state and territory. The CNS plays an important role; they are often an intervening factor for poor treatment. The CNS in our member ATSILS frequently advocate on behalf of people in custody who are being mistreated by police. An example of the positive impact of the CNS from our member ATSILS, is since ALRM's CNS was introduced 5 years ago in South Australia there have been no Aboriginal deaths in police cells.

In 2017 Auntie Tanya Day, a Yorta Yorta woman was asleep on a train when police were called, she was subsequently taken into police custody from a regional Victorian train in 2017. Auntie Tanya Day was asleep and her arrest was under the offence of public drunkenness. While in the lock-up, she suffered a traumatic brain

Coroners Court of New South Wales at <https://coroners.nsw.gov.au/documents/findings/2019/Findings%20-%20Rebecca%20Maher.pdf>

¹⁰¹ Tammy Mills (2021, April 15) *Three decades on, officials still under fire over Aboriginal deaths in custody* The Age at <https://www.theage.com.au/national/victoria/three-decades-on-officials-still-under-fire-over-aboriginal-deaths-in-custody-20210414-p57j78.html>

¹⁰² Tahnee Jash and Stephanie Boltje (2025, 29 July) *Six hundred lives lost since Royal Commission into Aboriginal Deaths in Custody* ABC News at <https://www.abc.net.au/news/2025-07-29/600-aboriginal-deaths-in-custody-since-the-royal-commission/105567164>

¹⁰³ Royal Commission into Aboriginal Deaths in Custody 1991, *Report of the inquiry into the Death of Mark Anthony Quayle*, Part 1 Blaming the victims at <https://classic.austlii.edu.au/au/other/IndigLRes/rciadic/individual/quayle/12.html>

¹⁰⁴ Royal Commission into Aboriginal Deaths in Custody 1991, *Report of the inquiry into the Death of Mark Anthony Quayle*, Part 1 A most peculiar custody at <https://classic.austlii.edu.au/au/other/IndigLRes/rciadic/individual/quayle/3.html>

¹⁰⁵ Royal Commission into Aboriginal Deaths in Custody 1991 *Regional report of Inquiry in New South Wales, Victoria and Tasmania*, at pg 30 at https://apo.org.au/sites/default/files/resource-files/1991-04/apo-nid30017_4.pdf

¹⁰⁶ Royal Commission into Aboriginal Deaths in Custody 1991 *Report of the inquiry into the Death of Mark Anthony Quayle*, Part 1 A most peculiar custody at <https://classic.austlii.edu.au/au/other/IndigLRes/rciadic/individual/quayle/3.html>

¹⁰⁷ Royal Commission into Aboriginal Deaths in Custody 1991 *National Report Volume 5* at [244] at <https://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol5/5.html#Heading5>

injury. She died seventeen days later, without regaining consciousness.¹⁰⁸ The inquest heard that later the same officers were called to the Cumberland Hotel for a "heavily intoxicated" non-Indigenous woman. Instead of arresting her or placing her in a cell, the police drove the woman home to her address.¹⁰⁹ The contrast is striking, with the Day family arguing that this discrepancy was clear evidence of unconscious bias and systemic racism.

While the Coroner did not go so far as to find that the actions of Victoria Police were influenced by systemic racism, the coroner detailed a "culture of complacency regarding intoxicated detainees"¹¹⁰. The coroner concluded that the police officers "thought at all times they were looking at Ms Day as a conscious, breathing drunk doing what all drunks do. This illustrates the power of stereotype and its resistance to correction".¹¹¹

Victoria decriminalised public intoxication on 7 November 2023. The Victorian Government publicly committed to decriminalising public intoxication at the beginning of the coronial inquest into the death in custody of Yorta Yorta woman Aunty Tanya Day.¹¹² The public commitment by the Victoria Government, so early into the Coronal Inquest shows that they knew public intoxication should be decriminalised but waited until a tragic preventable death happened before they took any action.

In 2019 Rebecca Maher¹¹³, a Wiradjuri woman, was placed under protective custody in NSW. When officers did not call an ambulance for her overnight and failed to adequately care for her in their custody, she died.

Ms Maher's case bears striking similarities to the death in custody of Paul Lawrence Kearney¹¹⁴, whose death was investigated by the RCIADIC back in 1990. Paul Kearney died while in police custody from sleep apnoea contributed to by excessive intake of alcohol and doxepin. Police in that case failed to carry out their legislative obligations to him under the (then) *Intoxicated Persons Act 1979* which was to take him to a proclaimed place. Police also failed to obtain medical assistance for him despite his unfit state.¹¹⁵

¹⁰⁸ English, C (2020) *Inquest into the Death of Tanya Louise Day* (File No COR 2017 6424) Coroners Court of Victoria at paras [2]-[45] <https://coronerscourt.vic.gov.au/sites/default/files/2020-04/Finding%20-%20Tanya%20Day-%20COR%202017%206424%20-%20AMENDED%2017042020.pdf>

¹⁰⁹ English, C (2020) *Inquest into the Death of Tanya Louise Day* (File No COR 2017 6424) Coroners Court of Victoria at paras [322]-[329] <https://coronerscourt.vic.gov.au/sites/default/files/2020-04/Finding%20-%20Tanya%20Day-%20COR%202017%206424%20-%20AMENDED%2017042020.pdf>

¹¹⁰ English, C (2020) *Inquest into the Death of Tanya Louise Day* (File No COR 2017 6424) Coroners Court of Victoria at para [513] <https://coronerscourt.vic.gov.au/sites/default/files/2020-04/Finding%20-%20Tanya%20Day-%20COR%202017%206424%20-%20AMENDED%2017042020.pdf>

¹¹¹ English, C (2020) *Inquest into the Death of Tanya Louise Day* (File No COR 2017 6424) Coroners Court of Victoria at para [529-530] <https://coronerscourt.vic.gov.au/sites/default/files/2020-04/Finding%20-%20Tanya%20Day-%20COR%202017%206424%20-%20AMENDED%2017042020.pdf>

¹¹² Victorian Aboriginal Legal Service (Media Release) (November 2023) *Public intoxication to finally be decriminalised* at <https://www.vals.org.au/news-updates/public-intoxication-to-finally-be-decriminalised/>

¹¹³ O'Sullivan, T (2019) *Inquest into the death of Rebecca Maher* (File No 2016/218940) Coroners Court of New South Wales at <https://coroners.nsw.gov.au/documents/findings/2019/Findings%20-%20Rebecca%20Maher.pdf>

¹¹⁴ Royal Commission into Aboriginal Deaths in Custody 1991 *Report of the inquiry into the Death of Paul Lawrence Kearney* at <https://classic.austlii.edu.au/au/other/IndigLRes/rciadic/individual/paul/>

¹¹⁵ O'Sullivan, T (2019) *Inquest into the death of Rebecca Maher* (File No 2016/218940) Coroners Court of New South Wales at <https://coroners.nsw.gov.au/documents/findings/2019/Findings%20-%20Rebecca%20Maher.pdf>

It is worth noting that in the 35 years since the RCIADIC¹¹⁶, there is little evidence of police being held accountable for misconduct and failures in the exercise of their duties to towards Aboriginal and Torres Strait Islander people, including where this has resulted in the death of an Aboriginal or Torres Strait Islander person in their custody.¹¹⁷

The current system does not work, the lack of oversight and accountability for police has facilitated a national culture of unchecked racist policing. As demonstrated in the above footnote, across 5 newspaper articles; when complaints are made about racism, a large number of complaints are referred back to policing agencies to investigate and determine themselves.

RECOMMENDATION 2

The Federal Government lead a national approach to independent police oversight, working with States and Territories, ACCOs and Elders to establish independent police oversight bodies with genuine investigative powers in every jurisdiction, and set minimum national standards for accountability for police conduct and the use of force towards Aboriginal and Torres Strait Islander people.

Police investigations

Echoes of the RCIADIC's 98 findings about the impacts of structural racism in police investigations continue to be heard.¹¹⁸ In her June 2026 findings into the death of Mark Haines,¹¹⁹ in 1988 in Tamworth, the Deputy State Coroner concluded that:

*"This inquest has laid bare the flawed investigation that took place after Mark's death. Plainly these matters were not considered by Coroner Byrne. The importance of examining the way the investigation progressed lies with properly understanding how it impacted the task before me. Loss of evidence at an early stage cannot be rectified. While some inadequacies identified may have been driven by resourcing constraints or failures to implement existing policies, racism or unconscious bias within the court and coronial system is also a factor."*¹²⁰

¹¹⁶ Royal Commission into Aboriginal Deaths in Custody 1991, *National report*, Australian Government Publishing Service, Canberra. At <https://apo.org.au/node/30017>

¹¹⁷ Danny Tran, (2020, 4 September) *Aboriginal man Korey Penny accuses Victoria Police officers of assaulting, racially abusing him* ABC News at <https://www.abc.net.au/news/2020-09-04/aboriginal-man-accuses-victoria-police-officers-of-assault/12631358>; Selby Stewart and Michael Inman (2021, 17 February) *Indigenous man 'in disbelief' after NSW police officer acquitted of assaulting him in custody* ABC News at <https://www.abc.net.au/news/2021-02-17/nsw-police-officer-acquitted-assault-indigenous-man-in-custody/13162640>; Australian Associated Press (2021, 22 October) *Police officer who shot dead Indigenous woman on WA street found not guilty of murder* The Guardian at <https://www.theguardian.com/australia-news/2021/oct/22/police-officer-who-shot-dead-indigenous-woman-on-wa-street-found-not-guilty-of>; Nino Bucci (2022, 19 March) *Zachary Rolfe was allegedly violent during arrests of four Aboriginal males before Kumanjaya Walker shooting* The Guardian at <https://www.theguardian.com/australia-news/2022/mar/19/zachary-rolfe-was-allegedly-violent-during-arrests-of-four-aboriginal-males-before-kumanjaya-walker-shooting>; Will Murray (2022, 25 October) *Police review recommends 'no immediate action' against officers accused of Tasmanian Aboriginal man's alleged assault* ABC News at <https://www.abc.net.au/news/2022-10-25/officers-accused-of-assaulting-aboriginal-man/101573696>

¹¹⁸ Royal Commission into Aboriginal Deaths in Custody 1991, *National report*, Australian Government Publishing Service, Canberra. At <https://apo.org.au/node/30017>

¹¹⁹ Grahame, H. (2026) *Inquest into the Death of Mark Anthony Haines* (File no. 2022/00343305) Coroners Court of New South Wales at [https://coroners.nsw.gov.au/documents/findings/2026/Inquest into the death of Mark Anthony Haines.pdf](https://coroners.nsw.gov.au/documents/findings/2026/Inquest%20into%20the%20death%20of%20Mark%20Anthony%20Haines.pdf)

¹²⁰ Grahame, H. (2026) *Inquest into the Death of Mark Anthony Haines* (File no. 2022/00343305) Coroners Court of New South Wales at [https://coroners.nsw.gov.au/documents/findings/2026/Inquest into the death of Mark Anthony Haines.pdf](https://coroners.nsw.gov.au/documents/findings/2026/Inquest%20into%20the%20death%20of%20Mark%20Anthony%20Haines.pdf)

Findings of a similar nature were made in 2024 by the State Coroner in the Inquest into the death of Mona Lisa and Jacinta Smith in 1987¹²¹ who, while acknowledging that improvements have been made since 1987, found that:

*“The uncomfortable truth, to my mind, is that had two white teenage girls died in the same circumstances, I cannot conceive of there being such a manifestly deficient police investigation into the circumstances of their deaths”.*¹²²

Reforms to criminal laws

The RCIADIC¹²³, and many Reports since have made a number of recommendations for reform to criminal laws to divert Aboriginal and Torres Strait Islander people from custody. These reforms include the decriminalisation of public drunkenness and offensive language, alongside reforms to bail, fines, and sentencing legislation.

The RCIADIC¹²⁴ recommended that public drunkenness be decriminalised, in part, because of the highly racialised enforcement of this offence.¹²⁵ Despite this, in 2017 Aunty Tanya Day was arrested for this offence, which still remained in Victoria.¹²⁶

Rebecca Maher died despite public drunkenness having been decriminalised in NSW.¹²⁷ Ms Maher was detained under section 206 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) which allows police to detain intoxicated persons as a “protective measure”.¹²⁸

The RCIADIC,¹²⁹ also recommended that legislation that decriminalises public drunkenness also places a statutory duty upon police to utilise alternatives to police cells to detain an intoxicated person (Recommendation 81). NSW has not implemented that Recommendation.

Had Ms Maher been taken to an alternative safe place with a responsible person, she may not have passed away.

Several state and territory governments maintain mandatory sentencing regimes, fine default imprisonment provisions, and bail laws that produce racially disparate outcomes. The RCIADIC¹³⁰ specifically recommended against such measures.

¹²¹ O’Sullivan, T (2024) *Inquest into the death of Mona Lisa and Jacinta Smith* (File no 2022/209698 & 2022/209975) Coroners Court of New South Wales at

https://coroners.nsw.gov.au/documents/findings/2024/Inquest_into_the_deaths_of_Mona_Lisa_and_Jacinta_Smith_.pdf

¹²² O’Sullivan, T (2024) *Inquest into the death of Mona Lisa and Jacinta Smith* (File no 2022/209698 & 2022/209975) Coroners Court of New South Wales at

https://coroners.nsw.gov.au/documents/findings/2024/Inquest_into_the_deaths_of_Mona_Lisa_and_Jacinta_Smith_.pdf

¹²³ Royal Commission into Aboriginal Deaths in Custody 1991, *National report*, Australian Government Publishing Service, Canberra. At <https://apo.org.au/node/30017>

¹²⁴ Royal Commission into Aboriginal Deaths in Custody 1991, *National report*, Australian Government Publishing Service, Canberra. At <https://apo.org.au/node/30017>

¹²⁵ Royal Commission into Aboriginal Deaths in Custody 1991, *National Report Volume 5 Recommendations* at 79-81 at <https://classic.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol5/5.html#Heading5>

¹²⁶ Yoorook Justice Commission (2023) *Background Brief – Priority Issue: Public Intoxication Laws* at <https://www.yoorook.org.au/additional-materials/background-brief-priority-issue-public-intoxication-laws>

¹²⁷ O’Sullivan, T (2019) *Inquest into the death of Rebecca Maher* (File No 2016/218940) Coroners Court of New South Wales at <https://coroners.nsw.gov.au/documents/findings/2019/Findings%20-%20Rebecca%20Maher.pdf>

¹²⁸ *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) at Part 16 at <https://legislation.nsw.gov.au/view/html/inforce/current/act-2002-103>

¹²⁹ Royal Commission into Aboriginal Deaths in Custody 1991, *National report*, Australian Government Publishing Service, Canberra. At <https://apo.org.au/node/30017>

¹³⁰ Royal Commission into Aboriginal Deaths in Custody (1991), *National report*, Australian Government Publishing Service, Canberra at <https://apo.org.au/node/30017>

The 2018 *Pathways to Justice Report*¹³¹ made legislative reform recommendations that would reduce the discriminatory and disproportionate rate of incarceration of Aboriginal and Torres Strait Islander people, including the abolition of imprisonment for fine default and mandatory sentencing provisions.¹³²

Punitive laws such as bail laws in jurisdictions like the Northern Territory, Queensland or Victoria continue to disproportionately impact Aboriginal and Torres Strait Islander people and are not neutral in their effects. In their design and application, they produce outcomes that map onto colonial-era policies of over-surveillance and punishment of Aboriginal and Torres Strait Islander peoples. They constitute a form of structural racism that Government has the power to change as recommended previous reports.

Many of the recommendations from these Reports, Inquiries and Coronial Inquests are languishing on shelves, ignored and unimplemented. Organisations including NATSILS and our member ATSILS diligently write submissions and represent the families of loved ones who have passed to bring to governments' attention collective and individual experiences of racism. Yet we see little change, and the harm continues.

Bail

Aboriginal and Torres Strait Islander people are more likely to be bail refused, while those that are granted bail are more likely to be prosecuted for breaches of bail and to have their bail revoked.¹³³

Data published by the NSW Bureau of Crime Statistics and Research (BOCSAR) provides evidence of significant differences in bail refusals for Aboriginal and Torres Strait Islander defendants in NSW compared to the rest of the population.

In the 12-month period from January to December 2025,¹³⁴ BOCSAR found that 20.3 per cent of Aboriginal and Torres Strait Islander people were refused bail at their first court appearance compared with 10.7 per cent of non-Aboriginal people.¹³⁵

In 2026, the Australian Institute of Criminology's (AIC) Indigenous Justice Clearinghouse research report on Bail and Remand across Australia confirmed that the imprisonment rate continues to rise for Aboriginal and Torres Strait Islander people, with the increase in the remand population driven in part by higher rates of bail refusal.¹³⁶

In the 11-years between 2013 and 2024 the adult remand population increased by 83 per cent. According to the AIC's Bail and Remand report, contributing to this is the

¹³¹ Australian Law Reform Commission (2018), *Pathways to Justice - Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* at https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf

¹³² Australian Law Reform Commission (2018), *Pathways to Justice - Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* at https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf

¹³³ Australian Institute of Criminology (2026) *Stories that matter: Learning from Aboriginal and Torres Strait Islander people's experiences of the Western Australian criminal legal system* at https://www.aic.gov.au/sites/default/files/2026-03/ti725_stories_that_matter.pdf

¹³⁴ NSW Bureau of Crime Statistics and Research, Bail status at first court appearance, Bail dashboard, see: <https://bocsar.nsw.gov.au/topic-areas/bail.html>

¹³⁵ NSW Bureau of Crime Statistics and Research, Bail status at first court appearance, Bail dashboard, see: <https://bocsar.nsw.gov.au/topic-areas/bail.html>

¹³⁶ Amy McDonald, Merran McAlister and Samantha Bricknell, Bail and remand across Australia, Indigenous Justice Clearinghouse, Australian Institute of Criminology 2026 at: https://www.aic.gov.au/sites/default/files/2026-02/iic_bail_and_rem_and_across_australia.pdf

trend of increasingly “punitive” bail laws. The below table documents the number of punitive amendments to State and Territory bail laws from 2019-2025.¹³⁷

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
Number of punitive* changes	6	4	4	7	5	0	4	6	36
% of all amendments	67	36	44	64	56	0	33	55	49

Note the percentages presented are the proportion of punitive legislation that has been enacted from all amendments passed in each jurisdiction in the 6-year period of 2019-2025

[* The Australian Institute of Criminology Report categorises amendments as “punitive”, as opposed to administrative (or both) where one or more amendments would have a direct impact on bail determinations and reduce the probability of bail being granted.]¹³⁸

During the *Royal Commission into the Protection and Detention of Children in the Northern Territory*,¹³⁹ increasingly risk averse and punitive attitudes by police towards Aboriginal and Torres Strait Islander people were identified as driving factors in bail refusals and the increasing remand population. Aboriginal and Torres Strait Islander people were more likely to be placed on stringent bail conditions and more likely to have those conditions over policed. Strict bail conditions can set people up to fail resulting in further entrenchment within the criminal legal system. Breach of bail conditions was identified as a key driver of a direct path to remand and the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal legal system.¹⁴⁰

In recognition of this trend, the Justice Policy Partnership (JPP), established under the Agreement was tasked with providing a report¹⁴¹ to the Standing Council of Attorneys-General (SCAG) on bail reform. A Working Group, co-chaired by NATSILS and the Commonwealth Attorney-General's Department (AGD), included representatives from all ATSILS and State and Territory Governments who contributed their expertise to the report.

¹³⁷ Amy McDonald, Merran McAlister and Samantha Bricknell, *Bail and remand across Australia*, Indigenous Justice Clearinghouse, Australian Institute of Criminology 2026 at: https://www.aic.gov.au/sites/default/files/2026-02/jjc_bail_and_rem_and_across_australia.pdf

¹³⁸ McDonald A, McAlister M & Bricknell (2026) *Bail and remand across Australia* Indigenous Justice Clearinghouse publications, Australian Institute of Criminology. at https://www.aic.gov.au/sites/default/files/2026-02/jjc_bail_and_rem_and_across_australia.pdf

¹³⁹ McDonald A, McAlister M & Bricknell (2026) *Bail and remand across Australia* Indigenous Justice Clearinghouse publications, Australian Institute of Criminology. at https://www.aic.gov.au/sites/default/files/2026-02/jjc_bail_and_rem_and_across_australia.pdf

¹⁴⁰ McDonald A, McAlister M & Bricknell (2026) *Bail and remand across Australia* Indigenous Justice Clearinghouse publications, Australian Institute of Criminology. at https://www.aic.gov.au/sites/default/files/2026-02/jjc_bail_and_rem_and_across_australia.pdf

¹⁴¹ Justice Policy Partnership and Standing Council of Attorneys General Bail and Remand Working Group (2025) *Bail and Remand Reform Working Group Final Report* at https://www.ag.gov.au/sites/default/files/2026-03/scag_bail-and-rem-and-reform-working-group-final-report.pdf

The *SCAG Bail and Remand Working Group Final Report*¹⁴² (Bail and Remand Report) made a number of recommendations for reform to bail legislation. Recommendations included exploration of the use of alternative responder models to lower interactions with police and to decrease the risk of being taken into custody.¹⁴³

Regrettably, SCAG declined to act on the Bail and Remand Report, releasing a communique deferring responsibility to the States and Territories, "*any legislative change is a matter for individual jurisdictions*."¹⁴⁴

For NATSILS and its members, the failure of Government to take a leadership role, and uphold its commitments under the Agreement is disappointing. Choosing not to act on the Bail and Remand Report¹⁴⁵ represents wasted efforts by Aboriginal and Torres Strait Islander people to work in partnership with governments to make transformative change.

In Victoria, on January 2, 2020, Veronica Nelson died alone in her cell, in a prison in Melbourne after she was arrested for shoplifting-related offences.¹⁴⁶ Veronica was a Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman who self-represented herself in a court hearing days before her death, where she was refused bail. During evidence from Victoria Police at the Coronial Inquiry, Ms Nelson's bail refusal was linked to the "unwritten internal policy" that since the 2017 Bourke Street attacks, bail decision makers were less likely to grant bail.¹⁴⁷

The NSW Government's decision in 2024 to introduce amendments to the *Bail Act 2013* (NSW) is an example of punitive legislation, which undermines Government commitments to the Agreement. Section 22C of the *Bail Act 2013* only applies to children aged 14-17 who are charged with certain types of alleged offences while they are already on bail for similar charges. It applies to some break and enter offences, and some offences related to motor vehicle theft. Before a court is allowed to grant bail to a child under s 22C, the court must have a 'high degree of confidence' that the child will not commit further offences while they are on bail – even less serious offences, like minor property damage or shoplifting.

The introduction of s 22C of the *Bail Act 2013* was an unprecedented, punitive and unnecessary reform. Since its enactment, s 22C has caused harm to some of the most vulnerable Aboriginal children represented by the ALS in NSW, and, despite

¹⁴² Justice Policy Partnership and Standing Council of Attorneys General Bail and Remand Working Group (2025) *Bail and Remand Reform Working Group Final Report* at https://www.ag.gov.au/sites/default/files/2026-03/scag_bail-and-remand-reform-working-group-final-report.pdf

¹⁴³ Justice Policy Partnership and Standing Council of Attorneys General Bail and Remand Working Group (2025) *Bail and Remand Reform Working Group Final Report* at https://www.ag.gov.au/sites/default/files/2026-03/scag_bail-and-remand-reform-working-group-final-report.pdf

¹⁴⁴ Standing Council of Attorneys General *Communique* (2025, 15 August) at <https://www.ag.gov.au/sites/default/files/2026-03/scag-communique-15-august-2025.pdf>

¹⁴⁵ Justice Policy Partnership and Standing Council of Attorneys General Bail and Remand Working Group (2025) *Bail and Remand Reform Working Group Final Report* at https://www.ag.gov.au/sites/default/files/2026-03/scag_bail-and-remand-reform-working-group-final-report.pdf

¹⁴⁶ Mcgreggor, S (2023) *Inquest into the passing of Veronica Nelson* (File No COR 2020 0021) Coroners Court of Victoria at <https://coronerscourt.vic.gov.au/sites/default/files/2023-08/COR%202020%200021%20-%20Veronica%20Nelson%20Inquiry%20-%20Form%2037%20-%20Finding%20into%20Death%20with%20Inquest%20-%2030%20January%202023%20-%20Amended%2024%20August%202023.pdf>

¹⁴⁷ Mcgreggor, S (2023) *Inquest into the passing of Veronica Nelson* (File No COR 2020 0021) Coroners Court of Victoria at para [269] at <https://coronerscourt.vic.gov.au/sites/default/files/2023-08/COR%202020%200021%20-%20Veronica%20Nelson%20Inquiry%20-%20Form%2037%20-%20Finding%20into%20Death%20with%20Inquest%20-%2030%20January%202023%20-%20Amended%2024%20August%202023.pdf>

being described by the NSW Government as a targeted reform, has had statewide and continuing impacts. Section 22C of the *Bail Act 2012* was introduced despite the NSW Government openly admitting that it would impact its ability to meet Closing the Gap targets.¹⁴⁸

*“The Government is aware that tightening bail laws, especially for young people, gives rise to concerns about the risk of increasing the number of young people in detention and the ability for the Government to meet its Closing the Gap targets.”*¹⁴⁹

The NSW Supreme Court subsequently found that section 22C¹⁵⁰ places a heavier onus on young people in relation to bail than *“than does the show cause provisions, where someone may have been, for example, charged with murder, and probably more serious and more onerous than the exceptional circumstances provision, which is required by Commonwealth legislation if someone has been charged with terrorism offences.”*¹⁵¹

Justice Rothman was scathing in his assessment of section 22C:

*“... [Section 22C] is a ham-fisted attempt to deal with a political difficulty in a manner which, in my view, creates significant problems for the administration of justice and does not deal with the problem that was sought to be overcome.”*¹⁵²

There is documented “institutional bias” of police bail practices,¹⁵³ and we know the impact these types of amendments have on the clients and communities that ATSILS serve, in addition to undermining government commitments under the Agreement. Despite this, State and Territory governments continue to introduce punitive bail laws founded on law-and-order rhetoric and sloganeering.¹⁵⁴

RECOMMENDATION 3

That the Federal and all State and Territory Governments implement the recommendations from the [SCAG Bail and Remand Reform Working Group Final Report](#) including bail reform, funding ATSILS and ACCOs to deliver bail support services and exploring the adoption of alternative first responder models.¹⁵⁵

¹⁴⁸ Bail and Crimes Amendment Bill 2024 (NSW) Second Reading Speech, at <https://www.parliament.nsw.gov.au/parliamentary-business/hansard/hansard-full-details?id=HANSARD-1323879322-138973§ion=HANSARD-1323879322-139003>

¹⁴⁹ Bail and Crimes Amendment Bill 2024 (NSW) Second Reading Speech, at <https://www.parliament.nsw.gov.au/parliamentary-business/hansard/hansard-full-details?id=HANSARD-1323879322-138973§ion=HANSARD-1323879322-139003>

¹⁵⁰ *Bail Act 2013* (NSW) s22C at <https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-2013-026>

¹⁵¹ Rothman J, *R v TW* [2024] NSWSC 1504 (17 June 2024) at [5] at <https://www.caselaw.nsw.gov.au/decision/1936697ce4bbc037f3e8dfa0>

¹⁵² Rothman J, *R v TW* [2024] NSWSC 1504 (17 June 2024) at [16] at <https://www.caselaw.nsw.gov.au/decision/1936697ce4bbc037f3e8dfa0>

¹⁵³ Ilya Klauzner, (2023) *Investigating bias towards Aboriginal people in police bail decisions* (Crime and Justice Bulletin No. 256, June 2023) Bureau of Crime Statistics and Research at <https://bocsar.nsw.gov.au/documents/publications/cjb/cjb251-300/cjb256-report-investigating-bias-in-police-bail-decisions-2023.pdf>

¹⁵⁴ Premier of Victoria, Hon Jacinta Allen MP (2025, 4 December) *Adult Time For Violent Crime Is Now Law* at <https://www.premier.vic.gov.au/adult-time-violent-crime-now-law>; and Minister for Police and Emergency Services, Hon Dan Purdie and Minister for Youth Justice and Victim Support and Minister for Corrective Services, Hon Laura Gerber (2026, 23 April) *Crisafulli Government expands landmark Adult Crime, Adult Time* at <https://statements.qld.gov.au/statements/104935>

¹⁵⁵ See Standing Council of Attorneys-General (SCAG) Bail and Remand Working Group Final Report (2025) at https://www.ag.gov.au/sites/default/files/2025-11/scag_bail-and-remand-reform-working-group-final-report.PDF

Youth detention

The *Northern Territory Royal Commission into the Protection and Detention of Children*¹⁵⁶ (2017) found that the Don Dale Youth Detention Centre exposed Aboriginal and Torres Strait Islander children to conditions amounting to cruel, inhumane and degrading treatment. The Commission found systemic failures across the “youth justice” system in the Territory, including inadequate oversight, a culture of impunity among staff, and the fundamental failure to treat Aboriginal and Torres Strait Islander children as children entitled to the full protection of international human rights law.

Some of the Commission’s findings¹⁵⁷ include:

- children being subject to verbal abuse, physical control and humiliation, including being denied access to basic human needs such as water, food and the use of toilets
- children being dared or bribed to carry out degrading and humiliating acts, or to commit acts of violence on each other
- “youth justice” officers restraining children using force to their head and neck areas, ‘ground stabilising’ children by throwing them forcefully onto the ground, and applying pressure or body weight to their ‘window of safety’, being their torso area, and
- the continued, inappropriate and punitive use of isolation, used inconsistently with the “Youth Justice” Act (NT) which has caused suffering to many children and young people and, very likely in some cases, lasting psychological damage.¹⁵⁸

In July 2025 the Northern Territory Government announced¹⁵⁹ that it would reinstate spit hoods on young people in youth detention centres. Spit hoods were banned in response to the Northern Territory Royal Commission, eight years earlier.¹⁶⁰

There is no evidence that locking up children increases community safety,¹⁶¹ but rather, evidence points to the opposite.¹⁶² Investment in prevention, early intervention and diversion away from criminal legal processes, results in better social

¹⁵⁶ Commonwealth of Australia (2017) *Report of the Royal Commission and Board of Inquiry into the protection and detention of children in the Northern Territory* at <https://www.royalcommission.gov.au/child-detention>

¹⁵⁷ Commonwealth of Australia (2017) *Report of the Royal Commission and Board of Inquiry into the protection and detention of children in the Northern Territory* at <https://www.royalcommission.gov.au/child-detention>

¹⁵⁸ Commonwealth of Australia (2017) *Report of the Royal Commission and Board of Inquiry into the protection and detention of children in the Northern Territory* at <https://www.royalcommission.gov.au/child-detention/final-report>

¹⁵⁹ Grace Atta, (2025, 28 July) *NT to reinstate use of spit hoods in youth detention, eight years after royal commission sparked ban* ABC News at <https://www.abc.net.au/news/2025-07-28/nt-government-flags-youth-justice-act-changes-spit-hoods/105580798>

¹⁶⁰ Grace Atta, (2025, 28 July) *NT to reinstate use of spit hoods in youth detention, eight years after royal commission sparked ban* ABC News at <https://www.abc.net.au/news/2025-07-28/nt-government-flags-youth-justice-act-changes-spit-hoods/105580798>

¹⁶¹ Productivity Commission, (2026) *Report on Government Services - Youth justice services* at <https://www.pc.gov.au/ongoing/report-on-government-services/community-services/youth-justice/>

¹⁶² Australian Human Rights Commission, (2025) *Help Way Earlier! Transforming Child Justice Safety and Wellbeing* at <https://humanrights.gov.au/resource-hub/children-and-youth-rights/help-way-earlier!-transforming-child-justice-for-safety-and-wellbeing>; United Nations (2019) *Global Study on Children Deprived of Liberty* at <https://digitallibrary.un.org/record/3813850?ln=en&v=pdf>; Royal Australian College of Physicians (2026, 3 July) *Media Release Locking up children is causing lasting harm, doctors warn politicians* at <https://www.racp.edu.au/news-and-events/media-releases/locking-up-children-is-causing-lasting-harm--doctors-warn-politicians>

and economic outcomes than incarceration.¹⁶³ Incarceration is also not cost-effective, the cost of locking up a child is now upwards of \$1.2m a year.¹⁶⁴

This money could be spent on culturally safe wrap-around and therapeutic supports for children and their families to address the underlying issues in children's lives.

Structural racism in youth detention

Structural racism is prevalent in all youth detention settings. The below case study is one example of many, that highlights the impact of structural racism on the treatment of Aboriginal children and young people. In this example racism has been acknowledged by the Director General of the Justice Department as an example of how systems abuse is worse than individual acts of abuse.

Case study¹⁶⁵:

Cleveland Dodd was 16 years old when he died in 2023 in Unit 18 at Casuarina Prison in Western Australia. Unit 18 had been created in 2022 within the adult male, high security Casuarina Prison to temporarily house male young offenders. The death was the subject of a coronial inquest.

Master Dodd spent the last three (3) months of his life in Unit 18 in circumstances where he had no access to running water, sunlight or fresh air. Master Dodd's out of cell time was such that his opportunities to exercise, mix and eat with other detainees and undertake education was at vanishing point. On his last night, Master Dodd was even deprived of sufficient water.

For several hours leading up to the discovery of his body in his cell, Master Dodd made multiple calls on an intercom to the control desk in Unit 18, asking for water. Over time, his requests for water merged with increasing threats of self-harm. His threats were ignored and ultimately escalated to action.

Underpinning Master Dodd's living conditions prior to his death was the grim reality that Aboriginal children are disproportionately represented in youth detention. Of the first cohort of 16 children sent from Banksia Hill Detention Centre to Unit 18, 13 were Aboriginal. Of those 13 boys, 10 of them were listed as at risk on the Department of Correction's risk management system and nine (9) of those 10 were recorded as having a disability. On the night of Master Dodd's death, all the children detained in Unit 18 were Aboriginal boys. At any one time, Unit 18 almost exclusively held Aboriginal boys. Experts called to give evidence at the inquest observed that Unit 18 was a prison for Aboriginal children.

Over time, the failure to appropriately care for the psychological needs, general welfare and cultural needs of Aboriginal boys in Unit 18 prior to the death of Master Dodd became systemic and eventually institutional. Regardless of intention, it was institutionally cruel by failing to address the

¹⁶³ Sentencing Advisory Council (2024) *The Criminal Justice Diversion Program in Victoria Second Statistical Profile* at pg 33 at https://www.sentencingcouncil.vic.gov.au/sites/default/files/2024-06/criminal_justice_diversion_program_second_statistical_profile_0.pdf

¹⁶⁴ Productivity Commission (2026, 29 January) *Media Release Report on Government Services 2026* at <https://www.pc.gov.au/ongoing/report-on-government-services/community-services/youth-justice/>

¹⁶⁵ Prepared by ALSWA

specific needs of Aboriginal children. This included the acute effects of isolation and separation from culture and community experienced by Master Dodd and other Aboriginal boys in Unit 18.

The effects of how Unit 18 operated from its commencement quickly became discriminatory. Because it was institutionally harmful to Aboriginal boys, it was appropriate to characterise Unit 18 as an institutionally racist detention centre.

The deprivations Master Dodd endured were prolonged. The time he spent alone, and the negligible amount of education or stimulating activities he was given, became the norm. As the Director General of the Justice Department at the time of Master Dodd's death conceded in his evidence at the inquest, this kind of systems abuse was worse than individual acts of abuse

Commonwealth powers

NATSILS and others continue to call on the Commonwealth Government and the Prime Minister to use their constitutional powers and exercise leadership in “youth justice”, in particular setting the minimum age of criminal responsibility and minimum standards for the treatment and safety of children in State and Territory criminal legal systems. According to advice provided to NATSILS by Senior Counsel, the Commonwealth has the power to legislate in line with its international obligations on children’s rights – including setting a national minimum age of criminal responsibility and setting minimum standards for the treatment and safety of children in State and Territory youth legal systems.¹⁶⁶

NATSILS also notes international concern about discriminatory treatment and overrepresentation of Aboriginal and Torres Strait Islander children in Australia’s legal systems, in violation of their rights and Australia’s human rights obligations.

NATSILS (and hundreds of supporters) continue to call on the Prime Minister to hold an emergency “youth justice” summit with Aboriginal and Torres Strait Islander legal experts and leaders recognising our expertise in what our children need.¹⁶⁷

RECOMMENDATION 4

NATSILS calls for a national emergency summit on youth justice so that key decision makers in government can listen to the voices of Aboriginal and Torres Strait Islander legal experts and leaders in a setting where community-controlled organisations lead the discussion which should include implementation of national minimum youth justice standards.

¹⁶⁶ National Aboriginal and Torres Strait Islander Legal Service (2025, 16 September) *Prime Minister has the power to ensure children are safe and protected. It's time for action* media Release at <https://www.natsils.org.au/wp-content/uploads/2025/09/250916-MR-Prime-Minister-has-the-power-to-ensure-children-are-safe-and-protected-its-time-for-action.pdf>; National Aboriginal and Torres Strait Islander Legal Service (2026, 20 January) *The external affairs power as a constitutional basis for commonwealth intervention in National child rights reform* legal advice at <https://www.natsils.org.au/wp-content/uploads/2026/01/Legal-Advice-on-National-Child-Rights-Reform-23-June-2025.pdf>

¹⁶⁷ National Aboriginal and Torres Strait Islander Legal Service (2026, 8 April) *200-plus organisations and leaders urge PM to call emergency youth justice summit* media release at <https://www.natsils.org.au/wp-content/uploads/2026/04/NATSILS-2603-MR-National-open-letter-launch.pdf>

Adult detention

Governments' failures since, to address and implement the RCIADIC's recommendations is damning. These failures are highlighted by the persistent occurrence of preventable deaths in custody, including by hanging points in cells, which the RCIADIC recommended all be removed.

In June 2025, a Guardian Australia investigation revealed that, despite committing to remove hanging points in gaols in response to the RCIADIC, 57 incarcerated people across 19 correctional facilities had died using hanging points that prison authorities and state governments knew about but had failed to remove.¹⁶⁸

At Brisbane's Arthur Gorrie correctional centre, a set of exposed bars in cells were used in 10 hanging deaths across almost two decades, despite early, clear warnings by coroners that they should be removed or covered with mesh.¹⁶⁹

And in Victoria, an investigation by the coroner into four deaths in custody found that the Victorian government and Group 4 had contributed to the deaths for failing to address hanging points.¹⁷⁰

In its 2024 report into its investigation into inmate discipline in NSW Correctional Centres, the NSW Ombudsman cites a number of examples where young Aboriginal people in NSW Corrections custody with mental health issues were being penalised by being confined to cell alone, despite this being prohibited by the Policy and contrary to the recommendations of the Royal Commission into Aboriginal Deaths in Custody¹⁷¹.

*Case Study 4:*¹⁷² *Charged with disobeying a direction while self-harming Kent, an Aboriginal man with a recorded history of self-harm, was charged with, and found guilty of, disobeying a direction (Regulation clause 130) and penalised with 28 days off buy-ups. The misconduct report stated that Kent was found sitting in his cell with a razor blade and was threatening self-harm. The correctional officer gave 'multiple directions' to Kent to hand over the razor, then threatened to remove it by force or 'chemical munitions' if he did not comply within 2 minutes. Kent did not comply at first, but eventually put the razor down. The witness statement recorded that Kent was then cuffed and strip searched. According to the case notes he was placed on hourly suicide watch. OIMS contains no record or indication an ISP was developed in response to this incident.*¹⁷³

¹⁶⁸ Christopher Knaus and Ariel Bogle (2025, 10 June) 'Astounding' negligence revealed: governments turn blind eye to staggering prison death toll The Guardian at <https://www.theguardian.com/australia-news/2025/jun/10/astounding-negligence-revealed-governments-turn-blind-eye-to-staggering-prison-death-toll-hanging-points-ntwnfb>

¹⁶⁹ Christopher Knaus and Ariel Bogle (2025, 10 June) 'Astounding' negligence revealed: governments turn blind eye to staggering prison death toll The Guardian at <https://www.theguardian.com/australia-news/2025/jun/10/astounding-negligence-revealed-governments-turn-blind-eye-to-staggering-prison-death-toll-hanging-points-ntwnfb>

¹⁷⁰ Christopher Knaus and Ariel Bogle (2025, 11 July) *New data reveals increase in staggering death toll from known hanging points in Australian jails* The Guardian at <https://www.theguardian.com/australia-news/2025/jul/11/death-toll-from-suicides-using-known-ligature-points-in-australian-prisons-climbs-on-release-of-new-information-ntwnfb>

¹⁷¹ New South Wales Ombudsman (2024) *Investigation into inmate discipline in NSW correctional centres* at <https://www.ombo.nsw.gov.au/reports/report-to-parliament/investigation-into-inmate-discipline-in-nsw-correctional-centres>

¹⁷² New South Wales Ombudsman (2024) *Investigation into inmate discipline in NSW correctional centres* at pg 26 at <https://www.ombo.nsw.gov.au/reports/report-to-parliament/investigation-into-inmate-discipline-in-nsw-correctional-centres>

¹⁷³ New South Wales Ombudsman (2024) *Investigation into inmate discipline in NSW correctional centres* at pg 26 at <https://www.ombo.nsw.gov.au/reports/report-to-parliament/investigation-into-inmate-discipline-in-nsw-correctional-centres>

Case Study 12:¹⁷⁴ Young Aboriginal inmate with history of self-harm confined to cell Lachlan was charged with, pleaded guilty to and was found guilty of damage, destroy or deface cell (CAS Regulation clause 58) and damage or destroy property (CAS Regulation clause 142) after setting fire to the cell in which he resided alone. He was penalised 7 days cell confinement and 56 days withdrawal of all privileges, and ordered to pay \$500 compensation. The Checklist recorded he was a young Aboriginal adult offender, with a history of self-harm. The medical information section on the Checklist was left blank. The delegate also recorded on the Checklist that, 'due to poor institutional behaviour max penalty given.'¹⁷⁵

Case Study 13:¹⁷⁶ Young Aboriginal inmate with mental health alert confined to cell Glen was charged with, pleaded guilty to and was found guilty of assault (CAS Regulation clause 141), throw article or operate device from which article is projected (CAS Regulation clause 141) and tamper with food or drink (CAS Regulation clause 142). The misconduct report recorded that Glen started yelling and throwing salmon patties at a correctional officer through the grill of his cell door after a disagreement about the meal. He was penalised 7 days cell confinement and 56 days off buy ups. The discipline cover sheet recorded that Glen was in medical/segregation unit and the IDAF confirmed that he was in a cell alone. The Checklist recorded that he is a young Aboriginal adult offender, with a history of self-harm and mental health notifications. The delegate also recorded on the Checklist: 'Self-harm history, mental health history, epileptic, asthmatic, one out cell placement, previously completed cellular confinement, 7 days cells & 56 days off buy-ups.' It appears the delegate was aware of several risk factors to confining Glen in his cell alone when he decided to impose the penalty.¹⁷⁷

The cost of locking up an adult in prison in Australia is now upwards of \$159,000 a year.¹⁷⁸ As with children, rather than carceral responses, this money would be more effectively spent on supporting adults and their families to address factors that contribute to incarceration like housing, health, fines and access to social services support like social security and disability support.

RECOMMENDATION 5.1

That the Federal and State and Territory Governments acknowledge and address the direct link between structural racism and the over-representation of Aboriginal and Torres Strait Islander adults and children in custody, the lethal risks of incarceration, the failure of incarceration to address underlying issues contributing to incarceration, the high financial and social costs of incarceration, and their commitments under the National Agreement on Closing the Gap.

¹⁷⁴ New South Wales Ombudsman (2024) *Investigation into inmate discipline in NSW correctional centres* at pg 27 at <https://www.ombo.nsw.gov.au/reports/report-to-parliament/investigation-into-inmate-discipline-in-nsw-correctional-centres>

¹⁷⁵ New South Wales Ombudsman (2024) *Investigation into inmate discipline in NSW correctional centres* at pg 27 at <https://www.ombo.nsw.gov.au/reports/report-to-parliament/investigation-into-inmate-discipline-in-nsw-correctional-centres>

¹⁷⁶ New South Wales Ombudsman (2024) *Investigation into inmate discipline in NSW correctional centres* at pg 27 at <https://www.ombo.nsw.gov.au/reports/report-to-parliament/investigation-into-inmate-discipline-in-nsw-correctional-centres>

¹⁷⁷ New South Wales Ombudsman (2024) *Investigation into inmate discipline in NSW correctional centres* at pg 27 at <https://www.ombo.nsw.gov.au/reports/report-to-parliament/investigation-into-inmate-discipline-in-nsw-correctional-centres>

¹⁷⁸ Productivity Commission, (2026) *Report on Government Services, Corrective Services* <https://www.pc.gov.au/ongoing/report-on-government-services/justice/corrective-services/>

RECOMMENDATION 5.2

That the Federal and State and Territory Governments make urgent, genuine and tangible efforts to invest in coordinated, multi-agency, multidisciplinary pathways for Aboriginal and Torres Strait Islander adults and young people at risk of contact with the criminal legal system.

Healthcare in prisons

The failure of correctional facilities to properly exercise their duties to Aboriginal and Torres Strait Islander prisoners is well documented, by the RCIADIC¹⁷⁹ and since then, by the numerous coronial recommendations aimed at addressing deficits in the healthcare of Aboriginal and Torres Strait Islander prisoners who have died while in the custody of a correctional facility.

There is strong evidence that the health of Aboriginal and Torres Strait Islander peoples in prison is significantly worse than that of the general population, and their health needs more complex than those of non-Indigenous prisoners.¹⁸⁰ This includes evidence of a much higher burden of chronic health issues and risk factors such as higher rates of mental health issues than people in the community.

Aggravating this further is the fact that custodial health services are fragmented, with poor continuity between prison and community health services, lack of cultural safety, and responses to mental health, social and emotional wellbeing and preventable harm issues are often inadequate.

Health care for incarcerated people should be of at least equivalent standard as that which people receive in the community consistent with international law such as the *United Nations Standard Minimum Rules for the Treatment of Prisoners* (the “Nelson Mandela Rules”).¹⁸¹ Rule 24 of the Nelson Mandela rules states:

“The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status”¹⁸²

Some coroners have raised the lack of access to Medicare in prisons as an issue, noting that as incarcerated people cannot access Medicare or subsidised medications that are available to people in the community, their choices of treatment can be limited.¹⁸³

¹⁷⁹ Royal Commission into Aboriginal Deaths in Custody (1991), *National report*, Australian Government Publishing Service, Canberra at <https://apo.org.au/node/30017>

¹⁸⁰ Australian Institute of Health and Welfare Health (2024) *Health of people in prison* at <https://www.aihw.gov.au/reports/australias-health/health-of-people-in-prison>

¹⁸¹ United Nations Office on Drugs and Crime (2015) *United Nations Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules) at <https://docs.un.org/en/A/RES/70/175>

¹⁸² United Nations Office on Drugs and Crime (2015) *United Nations Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules) at Rule 24 at <https://docs.un.org/en/A/RES/70/175>

¹⁸³ Baptie, J (2022) *Inquest into the death of Mootijah Douglas Andrew Shillingsworth* (File no 2018/54603) Coroners Court of New South Wales at

https://coroners.nsw.gov.au/documents/findings/2022/Inquest_into_the_death_of_Mootijah_Douglas_Andrew_Shillingsworth.pdf; Ryan T (2023) *Inquest into the death of Edgar Hugh Sandow (aka Conlon)* (File no 2021/3246) Coroners Court of New South Wales at https://www.courts.qld.gov.au/data/assets/pdf_file/0004/770314/conlon-edgar.pdf; Grahame H (2022) *Inquest into*

Consistent with our submission to the current Senate *Inquiry into rural, regional and remote Medicare access and funding*, NATSILS submission is that Medicare be made available to people in prison.

Not only will this help address the deficits in custodial health care, it will help ensure continuity of care pre- and post-release and go some way to addressing health issues (and related issues like disability) where these are a contributing factor to the incarceration of Aboriginal and Torres Strait Islander peoples.¹⁸⁴

RECOMMENDATION 6

That there is ACCHO led healthcare in prisons. Aboriginal and Torres Strait Islander people in prison should have access to fully funded and culturally safe Medicare-funded health services, including the pharmaceutical benefits scheme.

1.3 Structural racism in youth legal systems

The Continuation of the Stolen Generations

The removal of Aboriginal and Torres Strait Islander children from their families and communities represents one of the most acute and ongoing manifestations of structural racism in Australian institutions.

Despite the *Bringing Them Home* report¹⁸⁵ (1997) documenting the catastrophic harm caused by forced removal policies, and formal government apologies, the rate of removal of Aboriginal and Torres Strait Islander children has continued to accelerate.

According to AIHW data from its “Child Protection” Australia series¹⁸⁶:

- In 2024 the rate of Aboriginal and Torres Strait Islander children in out of home care is 11 times higher than that of non-Indigenous children, an increase of 1.4% since 2020;
- As at 30 June 2024, of the 44,900 children who were in out-of-home care, 20,000 were Aboriginal and Torres Strait Islander children (50 per 1,000 Aboriginal and Torres Strait Islander children) while 24,800 were non-Indigenous children (4.6 per 1,000 non-Indigenous children).;

the death of Kevin Bugmy (File no 2019/120612) Coroners Court of New South Wales at https://coroners.nsw.gov.au/documents/findings/2022/Bugmy_Findings_Final.pdf

¹⁸⁴ National Aboriginal and Torres Strait Islander Legal Service (2026) Submission to Senate Standing Committees on Rural and Regional Affairs and Transport, Submission 149 at https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/Medicareaccess/Submissions

¹⁸⁵ Human Rights and Equal Opportunity Commission (1997), *Bringing them home: Report of the National Inquiry into the separation of Aboriginal and Torres Strait Islander children from their families*. Commonwealth of Australia at <https://humanrights.gov.au/resource-hub/older-peoples-rights/bringing-them-home-full-contents-page>

¹⁸⁶ Australian Institute of Health and Welfare (2026) *Child protection Australia 2023–24* at <https://www.aihw.gov.au/getmedia/558c05da-13a9-4a2f-9afb-86a158318290/child-protection-australia-2023-24.pdf?v=20260408140444&inline=true>

- The absolute number of Aboriginal and Torres Strait Islander children in care has increased every year since *Bringing Them Home*¹⁸⁷ was published; and
- A significant proportion of Aboriginal and Torres Strait Islander children in out-of-home care are placed with non-Aboriginal and Torres Strait Islander carers, breaking connection to culture, community and Country in ways that mirror — and in some cases replicate — Stolen Generations policies.

In their 2025 Family Matters Report¹⁸⁸ SNAICC found:

*“Each removal is a rupture in kinship that is felt through generations, disrupting cultural and Country connections and compounding intergenerational trauma.”*¹⁸⁹

There is a misconception that the Stolen Generations were limited to a historical fixed period. While explicitly racist legislative frameworks and policies are no longer in force, structural racism is inherent in every stage of the so-called “child protection” system in every State and Territory.¹⁹⁰

This includes the impact of racial bias, whether conscious or unconscious on: reports and notifications about Aboriginal and Torres Strait Islander children and families; oversurveillance and intervention in the lives of Aboriginal and Torres Strait Islander families including pre-birth reports; decision making tools that perpetuate inequality; the devaluing and misunderstanding of Aboriginal and Torres Strait Islander parenting practices; discriminatory judgements by “child protection” decision-makers; chronic failure to implement the Aboriginal and Torres Strait Islander Child Placement Principles and an overreliance on non-Indigenous concepts in “child protection” legislation and policies.¹⁹¹

In their Family Matters Reports, SNAICC¹⁹² has documented the ways that the “Child Protection” systems interact with other systems of disadvantage, including housing, health, domestic violence, and income support. Racism is a common theme within each of the aforementioned systems.

Removing children from their families and communities without addressing underlying structural disadvantage does not protect children; it worsens harm and accelerates risk.

There is a large volume of reports on the failures of “child protection” systems with regards to Aboriginal and Torres Strait Islander children and young people across all States and Territories. These reports have found that ACCOs working in family support are chronically underfunded, services designed to keep families together are consistently deprioritised in favour of out-of-home care placements; and these

¹⁸⁷ Human Rights and Equal Opportunity Commission (1997), *Bringing them home: Report of the National Inquiry into the separation of Aboriginal and Torres Strait Islander children from their families*. Commonwealth of Australia at <https://humanrights.gov.au/resource-hub/older-peoples-rights/bringing-them-home-full-contents-page>

¹⁸⁸ SNAICC National Voice for our Children (2025) *Family Matters Report 2025* at <https://www.snaicc.org.au/wp-content/uploads/2026/01/Family-Matters-Report-2025-v3.pdf>

¹⁸⁹ SNAICC National Voice for our Children (2025) *Family Matters Report 2025* at <https://www.snaicc.org.au/wp-content/uploads/2026/01/Family-Matters-Report-2025-v3.pdf>

¹⁹⁰ SNAICC National Voice for our Children (2025) *Family Matters Report 2025* at <https://www.snaicc.org.au/wp-content/uploads/2026/01/Family-Matters-Report-2025-v3.pdf>

¹⁹¹ SNAICC National Voice for our Children (2025) *Family Matters Report 2025* at pg 20 at <https://www.snaicc.org.au/wp-content/uploads/2026/01/Family-Matters-Report-2025-v3.pdf>

¹⁹² SNAICC National Voice for our Children *Family Matters* at *Resources* at <https://www.snaicc.org.au/our-work/child-and-family-wellbeing/family-matters/>

placements are more expensive with worse long-term outcomes.¹⁹³ This is a structural choice, not an accident.

The relationship between “Child Protection” and “Youth Justice”

The intersection and cross-over of Aboriginal and Torres Strait Islander children between involvement in “child protection” systems and future criminal legal system involvement continues to be of increasing concern.¹⁹⁴ This issue is further compounded by the disproportionately high number of Aboriginal and Torres Strait Islander children in out of home care.

For example, in the final report of the South Australian Dual Involved Project,¹⁹⁵ Aboriginal and Torres Strait Islander children were found to make up 37.5 per cent of all of the children in out of home care, and 42.2 per cent of the children who were dual involved while only making up five per cent of South Australia’s child population.¹⁹⁶

The connection between child separation and subsequent involvement in the criminal legal system is well documented. The RCIADIC noted that close to 50% of those Aboriginal and Torres Strait Islander peoples whose deaths were reviewed had experienced removal from their families.¹⁹⁷ The *Bringing them Home Report* further documents this connection.¹⁹⁸

Research by the Australian Institute of Health and Welfare (AIHW) in 2024¹⁹⁹ found that about 3 in 4 (76%) Aboriginal and Torres Strait Islander young people under “youth justice” supervision during 2022-23 had had an interaction with “child protection” services in previous 10 years.²⁰⁰ More than half (55%) of non-Indigenous young people had an interaction with “child protection” services in the same 10-year period.²⁰¹

¹⁹³ SNAICC National Voice for our Children *Family Matters at Resources* at <https://www.snaicc.org.au/our-work/child-and-family-wellbeing/family-matters/>; Megan Davis (2019) *Family is Culture Final Report Independent review into Aboriginal Out-of-Home Care in NSW* at <https://dcj.nsw.gov.au/documents/children-and-families/family-is-culture/family-is-culture-review-report.pdf>

¹⁹⁴ SNAICC National Voice for our Children (2025) *Family Matters Report 2025*, p 105 at <https://www.snaicc.org.au/wp-content/uploads/2026/01/Family-Matters-Report-2025-v3.pdf>.

¹⁹⁵ Guardian for Children and Young People (2022) *Final Report of the South Australian Dual Involved Project Children and young people in South Australia’s child protection and youth justice systems* at <https://gcyp.sa.gov.au/wordpress/wp-content/uploads/2022/07/OGCYP-Final-Report-of-the-South-Australian-Dual-Involved-Project.pdf>

¹⁹⁶ Guardian for Children and Young People (2022) *Final Report of the South Australian Dual Involved Project Children and young people in South Australia’s child protection and youth justice systems* at pg 22 at <https://gcyp.sa.gov.au/wordpress/wp-content/uploads/2022/07/OGCYP-Final-Report-of-the-South-Australian-Dual-Involved-Project.pdf>

¹⁹⁷ Royal Commission into Aboriginal Deaths in Custody (1991), *National report*, Australian Government Publishing Service, Canberra <https://apo.org.au/node/30017>

¹⁹⁸ Human Rights and Equal Opportunity Commission (1997), *Bringing them home: Report of the National Inquiry into the separation of Aboriginal and Torres Strait Islander children from their families*. Commonwealth of Australia at pg 58, pg 156, pg 165, pg 166, pg 169 at <https://humanrights.gov.au/resource-hub/older-peoples-rights/bringing-them-home-full-contents-page>

¹⁹⁹ Australian Institute of Health and welfare (2024), *Young people under youth justice supervision and their interaction with the child protection system 2022–23*, at <https://www.aihw.gov.au/reports/youth-justice/young-people-youth-justice-supervision-2022-23/summary>

²⁰⁰ Australian Institute of Health and welfare (2024), *Young people under youth justice supervision and their interaction with the child protection system 2022–23*, at <https://www.aihw.gov.au/reports/youth-justice/young-people-youth-justice-supervision-2022-23/summary>

²⁰¹ Australian Institute of Health and welfare (2024), *Young people under youth justice supervision and their interaction with the child protection system 2022–23*, at <https://www.aihw.gov.au/reports/youth-justice/young-people-youth-justice-supervision-2022-23/summary>

Aboriginal and Torres Strait Islander children were 26 times as likely²⁰² as non-Indigenous children to have been under “youth justice” supervision during 2022–23 and to have had an interaction with the “child protection” system in the previous 10 years (211 per 10,000 compared with 8.1 per 10,000, respectively).²⁰³ The Centre for Excellence in Child and Family Welfare has created the Framework to Reduce Criminalisation of Young People in Residential Care (RCLDS).²⁰⁴ The RCLDS is an e-learn resource that has been developed to support residential care staff to understand their responsibilities and roles in reducing the criminalisation of young people in residential care.²⁰⁵

Aboriginal and Torres Strait Islander children with disabilities are also overrepresented in both out of home care and criminal legal systems.²⁰⁶

As Professor Megan Davis noted in 2019:²⁰⁷

“it has now been demonstrated that placement in OOHC exacerbates the existing risk that maltreated children will become involved in criminal offending. This occurs by way of a ‘care-criminalisation’ process, by which children and young people in OOHC are arrested for behaviour that would usually result in a disciplinary response from parents and not a criminal justice related response from police officers. For example, children may be arrested for offences that occur in their placements, such as damage to property or assaults against staff or kinship carers.”²⁰⁸

The Aboriginal and Torres Strait Islander Child Placement Principle

The Aboriginal Child Placement Principle or Aboriginal and Torres Strait Islander Child Placement Principle,²⁰⁹ is a broad principle that applies to the involvement of Aboriginal children and families in the “child protection” system.

The Aboriginal Child Placement Principle sets out a placement hierarchy for Aboriginal and Torres Strait Islander children being placed into out of home care.²¹⁰ Under the Aboriginal Child Placement Principle, priority (in order) is given to placement of a child with Aboriginal and Torres Strait Islander kin, with members of the child’s Aboriginal or Torres Strait Islander community, or with an Aboriginal or

²⁰² Australian Institute of Health and welfare (2024), *Young people under youth justice supervision and their interaction with the child protection system 2022–23*, at <https://www.aihw.gov.au/reports/youth-justice/young-people-youth-justice-supervision-2022-23/summary>

²⁰³ Australian Institute of Health and welfare (2024), *Young people under youth justice supervision and their interaction with the child protection system 2022–23*, at <https://www.aihw.gov.au/reports/youth-justice/young-people-youth-justice-supervision-2022-23/summary>

²⁰⁴ The Centre for Excellence in Child and Family Welfare Tas Vic *Framework to Reduce Criminalisation of Young People in Residential Care (RCLDS)* at <https://cfecfw.org.au/learning-development/learning-and-development-programs/framework-to-reduce-criminalisation-of-young-people-in-residential-care-rclds/>

²⁰⁵ The Centre for Excellence in Child and Family Welfare Tas Vic *Framework to Reduce Criminalisation of Young People in Residential Care (RCLDS)* at <https://cfecfw.org.au/learning-development/learning-and-development-programs/framework-to-reduce-criminalisation-of-young-people-in-residential-care-rclds/>

²⁰⁶ Australian Institute of Health and welfare (2025) *Safety and justice for First Nations people* at <https://www.aihw.gov.au/reports/australias-welfare/indigenous-community-safety>

²⁰⁷ Megan Davis (2019) *Family is Culture Final Report Independent Review of Aboriginal Children and Young People in Out-of-Home Care in NSW* at pg 236 at <https://dcj.nsw.gov.au/documents/children-and-families/family-is-culture/family-is-culture-review-report.pdf>

²⁰⁸ Megan Davis (2019) *Family is Culture Final Report Independent Review of Aboriginal Children and Young People in Out-of-Home Care in NSW* at pg 236 at <https://dcj.nsw.gov.au/documents/children-and-families/family-is-culture/family-is-culture-review-report.pdf>

²⁰⁹ SNAICC National Voice for our Children *Aboriginal and Torres Strait Islander Child Placement Principle* at <https://www.snaicc.org.au/our-work/child-and-family-wellbeing/child-placement-principle/>

²¹⁰ SNAICC National Voice for our Children *Aboriginal and Torres Strait Islander Child Placement Principle* at <https://www.snaicc.org.au/our-work/child-and-family-wellbeing/child-placement-principle/>

Torres Strait Islander family-based carer.²¹¹ A child should only be placed with a non-Indigenous carer or residential setting as a last resort. The Aboriginal Child Placement Principle is informed by five interrelated elements of prevention, partnership, placement, participation and connection.²¹²

Grounded in the principles of the *Convention on the Rights of the Child*²¹³ and the *United Nations Declaration on the Rights of Indigenous Peoples*²¹⁴ (UNDRIP), the Aboriginal Child Placement Principle seeks to protect Aboriginal children from the known harms of unnecessary separation from family, community and Country by requiring prevention, participation, partnership, cultural connection and placement with kin wherever possible.

The need for an Aboriginal Child Placement Principle was first identified in the 1970s. Concerned by the number of Aboriginal children in the care of non-Aboriginal families, and inspired by the *Indian Child Welfare Act 1978*,²¹⁵ Aboriginal community organisations campaigned for the issue of the placement of Aboriginal children removed from their families to be better considered by governments.

Today it is enshrined to varying degrees in legislation in most states and territory and is embedded in the National Framework for Protecting Australia's Children 2021–2031.²¹⁶ As of July 2026, the Aboriginal Child Placement Principle has been removed in the Northern Territory.

In practice, the Aboriginal Child Placement Principle is systematically breached. Research by Daryl Higgins, Professor Megan Davis and others, and data from AIHW, demonstrate that across Australia, a substantial proportion of Aboriginal and Torres Strait Islander children in care are placed with non-Indigenous carers, not because compliant placements are unavailable but because systems are not resourced, designed, or culturally equipped to identify, assess, and support Aboriginal and Torres Strait Islander carers.

According to the Productivity Commission,²¹⁷ in 2024, two of every five (40.7%) Aboriginal and Torres Strait Islander children in out-of-home care were living with Aboriginal and Torres Strait Islander relatives, kin or with Aboriginal and Torres Strait Islander carers. This proportion has declined since 2019 (43.4%) when governments

²¹¹ SNAICC National Voice for our Children *Aboriginal and Torres Strait Islander Child Placement Principle* at <https://www.snaicc.org.au/our-work/child-and-family-wellbeing/child-placement-principle/>

²¹² SNAICC National Voice for our Children *Aboriginal and Torres Strait Islander Child Placement Principle* at <https://www.snaicc.org.au/our-work/child-and-family-wellbeing/child-placement-principle/>

²¹³ United Nations (1989) *United Nations Convention on the Rights of the Child*, November 20, at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

²¹⁴ United Nations (2007) *United Nations Declaration on the Rights of Indigenous Peoples* at https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

²¹⁵ *Indian Child Welfare Act 1978* (25 U.S.C. §§ 1901-63) at <https://www.nicwa.org/wp-content/uploads/2025/02/Indian-Child-Welfare-Act-of-1978.pdf>

²¹⁶ Commonwealth of Australia Department of Social Services (2021) *Safe & Supported The National Framework for Protecting Australia's Children 2021–2031* at <https://www.dss.gov.au/system/files/documents/2024-10/dess5016-national-framework-protecting-childrenaccessible.pdf>

²¹⁷ Productivity Commission *Closing the Gap Information Repository Dashboard, Socio-economic outcome area 12 - Aboriginal and Torres Strait Islander children are not overrepresented in the child protection system* at <https://www.pc.gov.au/closing-the-gap-data/dashboard/outcome-area/child-protection/#application-of-the-aboriginal-and-torres-strait-islander-child-placement-principle>

signed up to reducing the rate of Aboriginal and Torres Strait Islander children in out of home care under the National Agreement on Closing the Gap.²¹⁸

The Northern Territory Care and Protection of Children Legislation Amendment (Every Child Matters) Bill 2026 (NT)

In July 2026 the Northern Territory Government passed the *Care and Protection of Children Legislation Amendment (Every Child Matters) Bill 2026*²¹⁹.

The Bill, was introduced in response to the death of Kumanjayi Little Baby, whose death is referred to earlier in this submission, despite the NT's own Department of Children and Families finding no link between Kumanjayi Little Baby's "child protection" involvement and death. Hundreds of organisations raised concerns the proposed amendments as part of a Legislative Scrutiny Committee inquiry into the Bill, convened by the Northern Territory Government. Despite this, the Legislative Scrutiny Committee recommended that the Bill pass with minor amendments.

The key concern is that the Bill fundamentally reshapes the legislative framework for Aboriginal children by introducing a new "universal principle" that substantially weakens the long-standing legislative protections that recognise connection to family, community, culture and Country as integral to an Aboriginal child's safety and wellbeing. These amendments make it easier for Aboriginal children to be permanently separated from their families while failing to address the underlying systemic drivers of "child protection" involvement, including housing insecurity, poverty and inadequate investment in Aboriginal community-controlled early intervention and family support services. This change "risks repeating the structural failures that have been identified and left unaddressed by every major review of Aboriginal "child protection" in this jurisdiction for more than three decades".²²⁰

Following a scathing assessment by Queensland's Commission of Inquiry into Child Safety of that state's child safety sector, the Queensland Government is also, somewhat inexplicably considering adoption as a "genuine permanency option" for children who cannot return to their families, including Indigenous children.²²¹

Weakening of the Aboriginal Child Placement Principle also runs counter to Australia's obligations under the UNDRIP²²² at Article 9 the right of Indigenous peoples to belong to their community, Articles 14 & 22 special protections for Indigenous children and Articles 18 & 19 the right to participate in decisions and free,

²¹⁸ Productivity Commission *Closing the Gap Information Repository Dashboard, Socio-economic outcome area 12 - Aboriginal and Torres Strait Islander children are not overrepresented in the child protection system* at <https://www.pc.gov.au/closing-the-gap-data/dashboard/outcome-area/child-protection/#application-of-the-aboriginal-and-torres-strait-islander-child-placement-principle>

²¹⁹ *Care and Protection of Children Legislation Amendment (Every Child Matters) Bill 2026* at <https://legislation.nt.gov.au/en/LegislationPortal/Bills/~link.aspx?id=920E67AA4C0C40DF9B16EDD905E3C125&z=z>

²²⁰ Professor Fiona Stanley AC and Professor Marcia Langton AO (2026) *Submission to the Inquiry into the Care and Protection of Inquiry into Care and Protection of Children Legislation Amendment (Every Child Matters) Bill 2026* at Submission 54 at https://parliament.nt.gov.au/_data/assets/pdf_file/0003/1615044/Submission-No.-54-Dr-Marcia-Langton-AO-and-Prof-Fiona-Stanley.pdf

²²¹ *Child safety changes risk separating Australia's First Nations children from their culture – and causing even more harm*, see: <https://www.theguardian.com/australia-news/2026/jun/22/australia-indigenous-first-nations-children-queensland-northern-territory-child-safety-changes-ntwnfb>

²²² United Nations (2007) *United Nations Declaration on the Rights of Indigenous Peoples* at https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

prior and informed consent.²²³ Additionally, any weakening of the Aboriginal Child Placement Principle goes against existing commitments under The National Framework for Protecting Australia's Children 2021–2031.²²⁴

It also raises potential breaches of the United Nations *Convention on the Rights of the Child*,²²⁵ at Article 30 the right to culture and at Article 20 continuity of cultural identity in care.

RECOMMENDATION 7

That all Governments, with leadership from the Commonwealth, preserve and strengthen or reinstate **the Aboriginal and Torres Strait Islander Child Placement Principle**, within relevant child protection legislations and Safe and Supported: The National Framework for Protecting Australia's Children 2021–2031 consistent with Australia's international law obligations.

²²³ United Nations (2007) *United Nations Declaration on the Rights of Indigenous Peoples* at https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

²²⁴ Commonwealth of Australia Department of Social Services (2021) *Safe & Supported The National Framework for Protecting Australia's Children 2021–2031* at <https://www.dss.gov.au/system/files/documents/2024-10/dess5016-national-framework-protecting-childrenaccessible.pdf>

²²⁵ United Nations (1989) *United Nations Convention on the Rights of the Child*, November 20 at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

Part 2: The effect of racism and discrimination towards Aboriginal people on online platforms (ToR 2)

Online racism does not exist in isolation from the historical and structural issues referred to above. Online platforms simply provide a space in which existing structural and individual racism is amplified, normalised, and weaponised.

Through their work, our ATSILS members are aware of the prevalence of online racism directed towards Aboriginal and Torres Strait Islander people, and that it is becoming increasingly ugly, harmful, "easy" to do and getting worse.

Aboriginal and Torres Strait Islander public figures such as activists, artists, and community leaders, in particular women and young people, experience disproportionate levels of online racism and abuse, including racially targeted harassment, death threats and coordinated pile-ons.

In the lead up to and after the 2023 Voice to Parliament campaign, Aboriginal and Torres Strait Islander people reported the impact of being confronted, humiliated and ridiculed both in public and in private online as visceral and traumatic.²²⁶

Social and traditional media expressed racist and derogatory views about Aboriginal and Torres Strait Islander people. A range of tools designed to silence the voices of Aboriginal and Torres Strait Islander people included harassment, fear mongering, misinformation, exclusion and the politicisation of Indigenous issues.²²⁷

The Jumbunna Institute for Indigenous Education and Research's Report²²⁸ on their 'Call it Out' Register,²²⁹ found that in 2024 Aboriginal and Torres Strait Islander people reported that 42% of racist incidents they had experienced related to the Voice referendum occurred via social media.²³⁰ 'Call it Out' received screenshots of racist posts on Facebook, Twitter/X and Instagram.²³¹

The eSafety Commissioner has also documented the disproportionate harm experienced by Aboriginal and Torres Strait Islander peoples from online abuse.²³² Existing remedies are slow, inaccessible to people with limited resources or digital literacy. Current remedies are also routinely ineffective against large platforms with offshore operations. Reform of the online regulatory environment, including mandatory take-down timelines and proactive monitoring obligations, is required.

²²⁶Allison, F. Cunneen, C., Coombes, L. and Selcuk, A. (2025) "If you don't think racism exists come take a walk with us". *The Call It Out Racism Register 2023-2024* Jumbunna Institute for Indigenous Education and Research at <https://callitout.com.au/wp-content/uploads/2025/02/Jumbunna-Call-It-Out-Annual-Report-2023-2024-Final.pdf>

²²⁷Allison, F. Cunneen, C., Coombes, L. and Selcuk, A. (2025) "If you don't think racism exists come take a walk with us". *The Call It Out Racism Register 2023-2024* Jumbunna Institute for Indigenous Education and Research at <https://callitout.com.au/wp-content/uploads/2025/02/Jumbunna-Call-It-Out-Annual-Report-2023-2024-Final.pdf>

²²⁸Allison, F. Cunneen, C., Coombes, L. and Selcuk, A. (2025) "If you don't think racism exists come take a walk with us". *The Call It Out Racism Register 2023-2024* Jumbunna Institute for Indigenous Education and Research at <https://callitout.com.au/wp-content/uploads/2025/02/Jumbunna-Call-It-Out-Annual-Report-2023-2024-Final.pdf>

²²⁹ Call it Out Register at <https://callitout.com.au/>

²³⁰Allison, F. Cunneen, C., Coombes, L. and Selcuk, A. (2025) "If you don't think racism exists come take a walk with us". *The Call It Out Racism Register 2023-2024* Jumbunna Institute for Indigenous Education and Research at <https://callitout.com.au/wp-content/uploads/2025/02/Jumbunna-Call-It-Out-Annual-Report-2023-2024-Final.pdf>

²³¹ Allison, F. Cunneen, C., Coombes, L. and Selcuk, A. (2025) "If you don't think racism exists come take a walk with us". *The Call It Out Racism Register 2023-2024*, Jumbunna Institute for Indigenous Education and Research at <https://callitout.com.au/wp-content/uploads/2025/02/Jumbunna-Call-It-Out-Annual-Report-2023-2024-Final.pdf>

²³² eSafety Commissioner (2025), *Fight the Tide – Encounters with online hate among targeted groups*, at https://www.esafety.gov.au/sites/default/files/2025-02/Online-hate-report_Main-Feb25.pdf?v=1782176615499

The failure of platform companies to enforce their own standards in relation to content targeting Aboriginal and Torres Strait Islander peoples reflects a structural feature of the digital economy: that harms to racialised minorities are systematically underweighted relative to the harms to dominant groups.

Inquiries on right-wing extremism have pointed to the use of online platforms to disseminate hate and racism.²³³ The unwillingness of these online platforms to tackle racism and the unwillingness and/or ineffectiveness of enforcement mechanisms to stop online racism is now well-known.²³⁴

Compounding this are the limitations on the eSafety Commissioner's powers and the eSafety Commission's threshold for action, the absence of enforceable online safety standards specific to racial vilification targeting Aboriginal and Torres Strait Islander people,²³⁵ and weaknesses in racial discrimination and vilification complaints mechanisms including under the *Racial Discrimination Act* 1975.

We refer the Inquiry to submissions made by our members on online racism, which include examples of racist online posts.²³⁶

RECOMMENDATION 8

That the Federal Government **reform the online regulatory environment in Australia to prevent the commission of further harms to Aboriginal and Torres Strait Islander people via online platforms.** Reforms must include the ability to take down racist and race filled posts that are addressed to specific groups (i.e. Aboriginal and Torres Strait Islander people), mandatory take-down timelines and proactive monitoring obligations.

²³³ Legislative Assembly Committee on Law and Safety (2026) *Inquiry into Measures to combat right-wing extremism in New South Wales Final Report* at <https://files.parliament.nsw.gov.au/fileapi/ParlFiles/GetArtifact?serverRelativeUrl=%2Fdocs%2FInquiries%2F3160%2FFinal+Report+-+Measures+to+combat+right-wing+extremism+in+NSW.pdf> ; Parliament of Australia Senate Standing Committee on Legal and Constitutional Affairs (2024) *Inquiry into Right Wing Extremist Movements in Australia* at https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/RB000315/toc_pdf/RightwingextremistmovementsinAustralia.pdf ; Parliament of Victoria Legal and Social Issues Committee (2022) *Inquiry into extremism in Victoria* at https://www.parliament.vic.gov.au/4a9228/contentassets/bc54c5064f8a44f3a536e0856690aaf1/lclsc-59-12_extremism-in-victoria.pdf

²³⁴ eSafety Commission (2025, 6 March) *eSafety report reveals serious gaps in how tech industry is tackling terror and violent extremism* Media Release at <https://www.esafety.gov.au/newsroom/media-releases/esafety-report-reveals-serious-gaps-in-how-tech-industry-is-tackling-terror-and-violent-extremism>; eSafety Commission(2025) *Basic Online Safety Expectations Summary of industry responses to mandatory transparency notices addressing terrorist and violent extremist material and activity* at <https://www.esafety.gov.au/sites/default/files/2025-07/BOSE-responses-to-mandatory-notices-tvec-March2025-updatedJuly2025.pdf?v=1778031521147>

²³⁵ Tory Shepherd (2026, 2 July) *Social media platforms 'monetise gore and fringe content', eSafety regulator tells antisemitism commission* The Guardian at <https://www.theguardian.com/australia-news/2026/jul/02/antisemitism-royal-commission-social-media-julie-inman-grant-esafety-ntwnfb>

²³⁶ Victorian Aboriginal Legal Service (2026) *VALS Submission to the Inquiry into racism, hate and violence directed at Aboriginal and Torres Strait Islander people* at https://www.vals.org.au/wp-content/uploads/2026/06/VALS_Submission_CthRacism-Inquiry_1June26.pdf ; and Aboriginal Legal Service of Western Australia (2026) *Submission to the Inquiry into racism, hate and violence directed at Aboriginal and Torres Strait Islander people* at submission 511 at https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Aboriginal_and_Torres_Strait_Islander_Affairs/ResponsestoRacism/Submissions

Part 3: Initiatives that are effective in combating racism (ToR3)

Anti-racism initiatives and recommendations have been already set out in the 1991 Human Rights and Equal Opportunity Commission report: *Racist Violence: Report of the National Inquiry into Racist Violence in Australia* and the Final RCIADIC provided seminal opportunities to address racism towards Aboriginal and Torres Strait Islander peoples. The RCIADIC in particular, continues to be referenced in contemporary calls for a national response.

More contemporary anti-racism initiatives are set out below.

3.1 National Anti-Racism Framework

The Australian Human Rights Commission (AHRC) released the National Anti-Racism Framework in 2024.²³⁷ Developed after extensive consultation with communities, it provides a clear understanding of racism as experienced by Aboriginal and Torres Strait Islander through a systemic, intersectional and community-centred lens. In developing the Framework, the AHRC noted the lack of public awareness of the harms and violence experienced by Aboriginal and Torres Strait Islander communities since colonisation, which are intergenerational and have ongoing impacts.²³⁸ The AHRC found that limited public awareness created a barrier to fostering an understanding of, and solidarity with, Aboriginal and Torres Strait Islander communities. Key priorities for Aboriginal and Torres Strait Islander peoples include the need for truth telling about Australia's violent colonial history and acknowledgement that colonisation is ongoing.²³⁹

The Framework²⁴⁰ makes it clear that racism in Australia is not confined to individual acts of prejudice but is systemic; woven through the laws, institutions, and practices that shape society.²⁴¹ Racism, and its harmful impacts, cannot be addressed without acknowledging this reality and taking deliberate, sustained action to dismantle it.

The Framework²⁴² sets out 63 recommendations for a whole-of-society approach to addressing racism across law, justice, education, health, education, media, and the arts, transformative changes which governments need to commit to, to achieve equity for Aboriginal and Torres Strait Islander peoples.

²³⁷ Australian Human Rights Commission (2024), *The National Anti-Racism Framework: A Roadmap to eliminating racism in Australia* at

https://humanrights.gov.au/data/assets/pdf_file/0019/25381/NARF_Full_Report_FINAL_DIGITAL_ACCESSIBLE.pdf

²³⁸ Australian Human Rights Commission (2024), *The National Anti-Racism Framework: A Roadmap to eliminating racism in Australia* at

https://humanrights.gov.au/data/assets/pdf_file/0019/25381/NARF_Full_Report_FINAL_DIGITAL_ACCESSIBLE.pdf

²³⁹ Australian Human Rights Commission (2024), *The National Anti-Racism Framework: A Roadmap to eliminating racism in Australia* at

https://humanrights.gov.au/data/assets/pdf_file/0019/25381/NARF_Full_Report_FINAL_DIGITAL_ACCESSIBLE.pdf

²⁴⁰ Australian Human Rights Commission (2024), *The National Anti-Racism Framework: A Roadmap to eliminating racism in Australia* at

https://humanrights.gov.au/data/assets/pdf_file/0019/25381/NARF_Full_Report_FINAL_DIGITAL_ACCESSIBLE.pdf

²⁴¹ Australian Human Rights Commission (2024), *The National Anti-Racism Framework: A Roadmap to eliminating racism in Australia* at

https://humanrights.gov.au/data/assets/pdf_file/0019/25381/NARF_Full_Report_FINAL_DIGITAL_ACCESSIBLE.pdf

²⁴² Australian Human Rights Commission (2024), *The National Anti-Racism Framework: A Roadmap to eliminating racism in Australia* at

https://humanrights.gov.au/data/assets/pdf_file/0019/25381/NARF_Full_Report_FINAL_DIGITAL_ACCESSIBLE.pdf

Despite public calls from community organisations and in Parliament for the Federal Government to implement the National Anti-Racism Framework, the Government is yet to take action.

RECOMMENDATION 9

That the Australian Government commit to implementing the **National Anti-Racism Framework** to eliminate racism in Australia and all the recommendations as a matter of priority.

3.2 Truth Telling

Truth telling is widely used to restore dignity to victims of human rights violations and their families, minimise denial of wrongdoing and safeguard against reoccurrence of violations.

The ‘right to truth’ has developed as a field in international human rights discourse and has a unique application in the context of settler colonial states, including Australia. Truth telling was identified in the 2017 *Uluru Statement from the Heart*²⁴³ (‘the Uluru Statement’) as an essential step, along with Voice and Treaty, to advance Aboriginal and Torres Strait Islander peoples’ rights and recognition in the life of the nation.²⁴⁴

In Victoria, the Yoorrook Justice Commission, the first formal truth telling Commission in Australia, reported on the historical and ongoing systemic injustice experienced by First Peoples in Victoria in all areas of life since colonisation.²⁴⁵

International examples of truth telling include the National Centre for Truth and Reconciliation (NCTR) in Canada.²⁴⁶ The NCTR is a place of dialogue and learning where the truths of residential school survivors, families and communities are kept safe and honoured for future generations. The NCTR promotes continued research and preserves the record of the forced removal and human rights abuses experienced by First Nations Inuit and the Métis Nation, to honour survivors and foster healing on the foundation of truth telling.²⁴⁷

In South Africa, the Truth and Reconciliation Commission was established to deal with the violence, and human rights abuses under apartheid.²⁴⁸ The Commission was identified to be necessary to enable South Africans to advance the cause of reconciliation though coming to terms with their past.²⁴⁹

²⁴³ *Uluru Statement from the Heart* (2017) at <https://ulurustatemdev.wpengine.com/wp-content/uploads/2022/01/UluruStatementfromtheHeartPLAINTEXT.pdf>

²⁴⁴ Anne Maree Payne and Heidi Norman (2025) ‘From The heart’: strengthening community-based truth-telling practice in Australia, *Australian Journal of Human Rights* 31(1) at <https://www.tandfonline.com/doi/epdf/10.1080/1323238X.2025.2533541?needAccess=true>

²⁴⁵ Yoorrook Justice Commission (2021) *About the Yoorrook Justice Commission* at <https://www.yoorrook.org.au/about-yoorrook/about-yjc>

²⁴⁶ National Centre for Truth and Reconciliation *About the NCTR* at <https://nctr.ca/about/>

²⁴⁷ National Centre for Truth and Reconciliation *About the NCTR* at <https://nctr.ca/about/>

²⁴⁸ Truth and Reconciliation Commission *Welcome to the official Truth and Reconciliation Commission Website* at <https://www.justice.gov.za/trc/index.html>

²⁴⁹ Truth and Reconciliation Commission *Welcome to the official Truth and Reconciliation Commission Website* at <https://www.justice.gov.za/trc/index.html>

A further benefit of truth telling is that it provides Aboriginal and Torres Strait Islander people with a public platform from which to address deficit-based narratives on how Aboriginal and Torres Strait Islander people are a problem that needs to be fixed.²⁵⁰

A commitment by governments to truth telling is a positive step towards dismantling these deficit-based narratives.

Treaty, following truth telling would embed a rights-based framework. Using Victoria as an example Recommendations 1 and 2 of the Yoorrook Justice Commission called for transformative change through treaty.²⁵¹

RECOMMENDATION 10

That, consistent with the Uluru Statement of the Heart, and learnings from the Yoorrook Justice Commission in Victoria, Governments commit to, and fully resource, truth telling and treaty processes at the national and other state and territory levels.

3.3 Leadership

The message from history is clear, changing the systems that perpetuate racism requires Australia's leaders at the Federal, State and Territory level, to change. Australia requires leadership²⁵² that:

- Is clear, visible, present, vocal and doesn't sit on the fence
- Addresses indifference to racism, hate and violence towards Aboriginal and Torres Strait Islander people and holds others to account for their words and actions
- Challenges racism when Aboriginal and Torres Strait Islander people are not present – commitment and practice that challenges colleagues, and names racism in all-white spaces; and where Aboriginal people are absent
- Challenges decisions made about Aboriginal and Torres Strait Islander people which are not made in true partnership with Aboriginal and Torres Strait Islander people
- Support Aboriginal and Torres Strait Islander people who speak the truth about racism, and
- Supports self-determination²⁵³

There is a need for acknowledgment of how racism, causes hurt, harm and damage to Aboriginal and Torres Strait Islander peoples including the sometimes lethal consequences of racism.

RECOMMENDATION 11

²⁵⁰ Australian Human Rights Commission (2022) *National Anti-Racism Framework Scoping Report* at https://humanrights.gov.au/data/assets/file/0028/46828/National_anti-racism_framework_scoping_report_2022.pdf

²⁵¹ Yoorrook Justice Commission (2021) *Recommendations* at <https://www.yoorrook.org.au/reports-and-recommendations/recommendations>

²⁵² Spillerr, M (2024) *Anti-racist systems leadership to address systemic racism 'be who you ought to be so we can be who we ought to be'* National Children's Bureau: Research in Practice at https://www.researchinpractice.org.uk/media/sooflams/anti-racist-practice-strategic-briefing-joint_web.pdf

²⁵³ Spillerr, M (2024) *Anti-racist systems leadership to address systemic racism 'be who you ought to be so we can be who we ought to be'* National Children's Bureau: Research in Practice at https://www.researchinpractice.org.uk/media/sooflams/anti-racist-practice-strategic-briefing-joint_web.pdf

That the Federal, State and Territory Governments **exercise leadership** by following and implementing the advice and recommendations on anti-racism from Aboriginal and Torres Strait Islander experts, as already articulated in Reports, Inquiries and Frameworks.

3.4 Keeping our children safe with family

As SNAICC points out in its *Family Matters Report 2025*²⁵⁴, “child protection” systems continue to be rooted in racism, perpetuating the legacy of the unjust removal of Aboriginal and Torres Strait Islander children from their families.²⁵⁵

NATSILS supports SNAICC's articulation of what change to these systems looks like:

*“Transformation of the system is only possible when solutions are designed and led by Aboriginal and Torres Strait Islander communities. Closing the Gap acknowledges this by focusing on supporting the ACCO sector and other aspects of self-determination.”*²⁵⁶

Self-determination is the answer. As SNAICC notes:

*“Embedding self-determination within governance, policy frameworks, child protection decision-making, and service delivery is crucial to ensuring Aboriginal and Torres Strait Islander children and families can be liberated from cycles of intervention and disempowerment from the child welfare system.”*²⁵⁷

RECOMMENDATION 12

That the Federal, State and Territory Governments implement the Recommendations in SNAICC's *Family Matters Report 2025* with specific reference to self-determined early intervention and prevention approaches, ACCO-led investment and resourcing of ACCOs, national standards.

Barriers experienced by Aboriginal and Torres Strait Islander Children and Families Accessing Legal Supports - Scoping Study

*Barriers experienced by Aboriginal and Torres Strait Islander Children and Families Accessing Legal Supports - Scoping Study*²⁵⁸ (Scoping Study) is a key initiative under the *Safe and Supported Aboriginal Torres Strait Islander First Action Plan 2023-2026*.²⁵⁹ The scoping study is intended to contribute to improved outcomes for

²⁵⁴ SNAICC National Voice for our Children (2025) *Family Matters Report 2025* at pg 74 at <https://www.snaicc.org.au/wp-content/uploads/2026/01/Family-Matters-Report-2025-v3.pdf>

²⁵⁵ SNAICC National Voice for our Children (2025) *Family Matters Report 2025* at pg 74 at <https://www.snaicc.org.au/wp-content/uploads/2026/01/Family-Matters-Report-2025-v3.pdf>

²⁵⁶ SNAICC National Voice for our Children (2025) *Family Matters Report 2025* at pg 73 at <https://www.snaicc.org.au/wp-content/uploads/2026/01/Family-Matters-Report-2025-v3.pdf>

²⁵⁷ SNAICC National Voice for our Children (2025) *Family Matters Report 2025* at pg 73 at <https://www.snaicc.org.au/wp-content/uploads/2026/01/Family-Matters-Report-2025-v3.pdf>

²⁵⁸ SNAICC National Voice for our Children and National Aboriginal and Torres Strait Islander Legal Service (2026) *Barriers experienced by Aboriginal and Torres Strait Islander Children and Families Accessing Legal Supports - Scoping Study* at <https://www.natsils.org.au/wp-content/uploads/2026/01/Legal-Scoping-Study-Report-FINAL-2026.pdf>

²⁵⁹ Commonwealth of Australia Department of Social Services (2021) *Safe & Supported The National Framework for Protecting Australia's Children 2021–2031* at <https://www.dss.gov.au/system/files/documents/2024-10/dess5016-national-framework-protecting-childrenaccessible.pdf>

Aboriginal and Torres Strait Islander children and families.²⁶⁰ The Scoping Study examines the intersections between “child protection” systems, relevant legal services and “youth justice” systems to assess the barriers experienced by Aboriginal and Torres Strait Islander children and families in accessing legal supports.

With a focus on the rights and needs of Aboriginal and Torres Strait Islander children, the Scoping Study identifies opportunities and options to address systemic discrimination and barriers, improve legal and related supports, and reduce the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care.

RECOMMENDATION 13

That Federal, State and Territory Governments implement the recommendations in the *Barriers experienced by Aboriginal and Torres Strait Islander Children and Families Accessing Legal Supports - Scoping Study Final Report* as an immediate priority.

3.5 Culturally safe legal assistance services

Failure to adequately fund ATSILS to deliver comprehensive civil law assistance, even though it is well-recognised that unaddressed civil law issues are a precursor to downstream “child protection” and criminal legal system involvement, is another manifestation of structural racism in funding allocations by government across the legal assistance sector.

Access to culturally safe legal assistance across the full spectrum of Aboriginal and Torres Strait Islander people’s legal needs is key component of any anti-racism strategy.

The Independent Review into the National Legal Assistance Partnership ²⁶¹ (NLAP Review), the key funding agreement for legal assistance services in Australia, found that:

- Current funding for Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services is insufficient to service the legal needs of Aboriginal and Torres Strait Islander peoples;
- The current funding framework has failed to deliver on Closing the Gap, and governments including states and territories must be held accountable to progressing outcomes; and
- The legal need of Aboriginal and Torres Strait Islander peoples is the highest of all priority groups under federal legal assistance funding arrangements.²⁶²

²⁶⁰ SNAICC National Voice for our Children and National Aboriginal and Torres Strait Islander Legal Service (2026) *Barriers experienced by Aboriginal and Torres Strait Islander Children and Families Accessing Legal Supports - Scoping Study* at <https://www.natsils.org.au/wp-content/uploads/2026/01/Legal-Scoping-Study-Report-FINAL-2026.pdf>

²⁶¹ Dr Warren Mundy (2024) *Independent Review of the National Legal Assistance Partnership* at <https://apo.org.au/sites/default/files/resource-files/2024-05/apo-nid327026.pdf>

²⁶² Dr Warren Mundy (2024) *Independent Review of the National Legal Assistance Partnership* at <https://apo.org.au/sites/default/files/resource-files/2024-05/apo-nid327026.pdf>

The findings of the NLAP Review ²⁶³ highlight that funding for ATSILS continues to be based on a deficit view of the legal needs of Aboriginal and Torres Strait Islander people.

It has been 46 years since The Standing Committee on Aboriginal Affairs held the *Inquiry into Aboriginal Legal Aid*. ²⁶⁴ During the Inquiry it identified the civil law needs of Aboriginal people and the limited capacity of Aboriginal legal services to meet increasing demand for these services. In the 46 years since this Inquiry, the demand for Aboriginal legal has substantially increased. While a significant amount of time has passed since this Inquiry, commentary on the racist practices underpinning many of the civil law problems experienced by Aboriginal people, remain relevant in 2026.

“Problems commonly faced by Aboriginals in the civil law area relate to tenancy matters, social security entitlements, consumer protection claims, hire purchase agreements, appeals against administrative actions or decisions, and family law matters. The majority of civil work conducted by the Aboriginal legal services is therefore in the field of so-called poverty law and it is likely that this will be the case for some time to come. It is a matter of concern that Aboriginals are sometimes singled out as a group for particular treatment, whether it is in the area of consumer credit or in relation to housing or employment. Aboriginals are often regarded by unscrupulous individuals or organisations as gullible prey, not only because of their disadvantaged position in Australian society but also because of their ignorance of their civil rights and lack of access to remedies when those rights have been abused”. ²⁶⁵

There are aspects of the Inquiry into Aboriginal Legal Aid²⁶⁶, outside of its findings that should also be acknowledged. The language choice of the above statement, and inference that an entire community is “ignorant” to their experiences of racism, is demonstrative of the racism that Aboriginal and Torres Strait Islander persistently face, even from “well-meaning” parliamentarians.

The 2014 Productivity Commission's *Access to Justice Arrangements Inquiry Report*²⁶⁷ also made findings and recommendations in relation to access to civil law services for Aboriginal and Torres Strait Islander people. The report found the nature and complexity of Aboriginal and Torres Strait Islander people's civil law needs justifies the need for specialist legal assistance.²⁶⁸

²⁶³ Dr Warren Mundy (2024) *Independent Review of the National Legal Assistance Partnership* at <https://apo.org.au/sites/default/files/resource-files/2024-05/apo-nid327026.pdf>

²⁶⁴ Parliament of Australia House of Representatives Standing Committee on Aboriginal Affairs (1980) *Inquiry into Aboriginal Legal Aid* at https://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=reports/1980/1980_pp_149report.htm

²⁶⁵ Parliament of Australia House of Representatives Standing Committee on Aboriginal Affairs (1980) *Inquiry into Aboriginal Legal Aid* at pg 113 at https://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=reports/1980/1980_pp_149report.htm

²⁶⁶ Parliament of Australia House of Representatives Standing Committee on Aboriginal Affairs (1980) *Inquiry into Aboriginal Legal Aid* at https://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=reports/1980/1980_pp_149report.htm

²⁶⁷ Productivity Commission (2015) *Access to Justice Arrangements* at <https://www.pc.gov.au/inquiries-and-research/access-justice/report/>

²⁶⁸ Productivity Commission (2015) *Access to Justice Arrangements* at <https://www.pc.gov.au/inquiries-and-research/access-justice/report/>

The Australian Indigenous Legal Needs Project²⁶⁹ involved jurisdictional analyses of civil and family law needs of Aboriginal and Torres Strait Islander people. The Reports²⁷⁰ found Aboriginal and Torres Strait Islander people experience high and often unmet civil law need. The reports²⁷¹ found that civil and family law issues are often precursors to criminal legal system involvement and economic or social exclusion.

Civil law issues with a particular impact on Aboriginal and Torres Strait Islander peoples are briefly referred to below. It is NATSILS submission that structural racism is prevalent within civil law systems in the same way as the criminal legal system. The harms caused in a civil context, may be less obvious but if left unaddressed, escalate into downstream interactions with the criminal legal system.

Most ATSILS have no capacity to expand their services to meet existing legal need by undertaking civil, family and care work within their current funding. For ATSILS to expand their services to meet existing legal need areas with their current resources, they would need to divest their criminal law practices, which is untenable.

The gap created by ATSILS inability to provide the assistance across all practice areas results in demand being met by mainstream services. Mainstream services do not possess the same cultural knowledge, and in some instances cannot provide culturally safe services. Self-determination is referred to in our core funding agreements, but it is not being substantively adhered to. The absence of a genuine collective choice for communities undermines self-determination for Aboriginal and Torres Strait Islander people and ATSILS as ACCOs.

Fines

Aboriginal and Torres Strait Islander peoples are disproportionately impacted by the imposition of fines in relation to criminal matters and breaches of civil legislation.²⁷²

The disparity arises because Aboriginal and Torres Strait Islander people are more likely to receive certain types of fines. These fines are more likely to escalate into debt, consequential licence suspension, secondary offending, and deeper criminal legal system involvement.²⁷³

As with other areas of law, most ATSILS are not sufficiently resourced to assist our clients deal with fines, nor to undertake advocacy to lower the disproportionate issuing of fines against Aboriginal and Torres Strait Islander people, unlike many mainstream legal assistance services.

²⁶⁹ James Cook University *Indigenous Legal Needs Project About* at <https://www.jcu.edu.au/indigenous-legal-needs-project/about>

²⁷⁰ James Cook University *ILNP Reports and Papers* at <https://www.jcu.edu.au/indigenous-legal-needs-project/resources/ilnp-reports-and-papers>

²⁷¹ James Cook University *ILNP Reports and Papers* at <https://www.jcu.edu.au/indigenous-legal-needs-project/resources/ilnp-reports-and-papers>

²⁷² Australian Law Reform Commission (2018), *Pathways to Justice - Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* at https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf

²⁷³ Australian Law Reform Commission (2018), *Pathways to Justice - Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* at https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf

Social security

In 2025, the Guardian reported²⁷⁴ on data collated by the Antipoverty Centre indicating that Aboriginal and Torres Strait Islander people, and people with disability were over-represented in payment suspension notices issued under Centrelink's "mutual obligations" regime. Data showed that at least 26% of all suspensions relate to Aboriginal and Torres Strait Islander people, while 33% of all suspensions relate to people with disability.²⁷⁵ In the past, suspensions could lead to cancellation of benefits. There has now been a pause in suspensions due to concerns raised by the Commonwealth Ombudsman about their legal basis.²⁷⁶

In its 2025 Report *Fairness in the Targeted Compliance Framework: when decisions are made beyond your control*,²⁷⁷ the Commonwealth Ombudsman found that between 1 April 2022 and 4 July 2024, 46% of people who had their benefits cancelled were Aboriginal or Torres Strait Islander people. In that same time period, Aboriginal or Torres Strait Islander people represented 16% of people who accessed Workforce Australia Services.²⁷⁸

There is extensive evidence, independent reviews and national commitments under the Agreement; yet ATSILS continue to operate in funding settings that are insufficient, inequitable, and disconnected from legal need.

The Independent Review of the NLAP²⁷⁹ confirmed that ATSILS are chronically underfunded, subject to unsafe workloads, and unable to meet demand.

The National Access to Justice Partnership²⁸⁰ (NAJP) has entrenched a funding model that does not assess or respond to increasing demand in criminal legal and does not meet its full spectrum of legal needs.

Aboriginal and Torres Strait Islander women and children are the fastest-growing prison populations in Australia.²⁸¹ Children continue to be detained at extraordinary rates, and families are drawn deeper into "child protection" and justice systems.

²⁷⁴ Cait Kelly (2025, 2 November) *Centrelink threatening payment suspensions at rate of five a minute, new analysis suggests* the Guardian at <https://www.theguardian.com/australia-news/2025/nov/02/centrelink-payment-2025-payments-suspended-cancellations-mutual-obligation>

²⁷⁵ Cait Kelly (2025, 2 November) *Centrelink threatening payment suspensions at rate of five a minute, new analysis suggests* The Guardian at <https://www.theguardian.com/australia-news/2025/nov/02/centrelink-payment-2025-payments-suspended-cancellations-mutual-obligation>

²⁷⁶ Commonwealth Ombudsman (2025) *Fairness in the Targeted Compliance Framework: when decisions are made beyond your control* at https://www.ombudsman.gov.au/data/assets/pdf_file/0015/323205/Fairness-in-the-Targeted-Compliance-Framework.pdf

²⁷⁷ Commonwealth Ombudsman (2025) *Fairness in the Targeted Compliance Framework: when decisions are made beyond your control* at https://www.ombudsman.gov.au/data/assets/pdf_file/0015/323205/Fairness-in-the-Targeted-Compliance-Framework.pdf

²⁷⁸ Commonwealth Ombudsman (2025) *Fairness in the Targeted Compliance Framework: when decisions are made beyond your control* at https://www.ombudsman.gov.au/data/assets/pdf_file/0015/323205/Fairness-in-the-Targeted-Compliance-Framework.pdf

²⁷⁹ Dr Warren Mundy (2024) *Independent Review of the National Legal Assistance Partnership* at <https://apo.org.au/sites/default/files/resource-files/2024-05/apo-nid327026.pdf>

²⁸⁰ Attorney-General's Department (2025) *National Access to Justice Partnership* at <https://federalfinancialrelations.gov.au/sites/federalfinancialrelations.gov.au/files/2025-09/agreement-national-access-to-justice-partnership-signed.pdf>

²⁸¹ Australian Human Rights Commission (2024) *Statistics about Aboriginal and Torres Strait Islander Women and Girls* at <https://humanrights.gov.au/human-rights-education/stats-and-facts-about-discrimination/statistics-about-aboriginal-and-torres-strait-islander-women-and-girls>

These outcomes directly undermine progress against Closing the Gap Targets 10 to 13.²⁸²

Levels of unmet need are significantly higher in remote parts of the country.²⁸³ A person's postcode should not determine our communities' right to equitable access to justice.

The Independent Review of the NLAP,²⁸⁴ found “with a high degree of certainty that the legal needs of Aboriginal and Torres Strait Islander peoples are higher than any other group in Australia”.²⁸⁵ The NLAP review was “confident that in remote parts of the country, especially where there are relatively large populations of Aboriginal and Torres Strait Islander peoples, levels of met and unmet legal need are significantly higher”.²⁸⁶

ATSILS have the specialist expertise, relationships with community and geographical spread that mainstream legal assistance services are not able to provide.

*“Aboriginal and Torres Strait Islander community-controlled services are better for Aboriginal and Torres Strait Islander people, achieve better results, employ more Aboriginal and Torres Strait Islander people and are often preferred over mainstream services”*²⁸⁷

If properly resourced, ATSILS could provide a service that better reflects the multiple and often complex legal problems of our Aboriginal and Torres Strait Islander clients. This additional resourcing would help prevent civil law problems from escalating into criminal law problems.²⁸⁸

RECOMMENDATION 14

Governments invest in ATSILS long-term organisational capacity to provide comprehensive holistic and culturally appropriate legal assistance services, and address state/territory wide legal need in all areas of law, including civil law.

This includes investment to expand the geographical reach of ATSILS, ensuring all Aboriginal and Torres Strait Islander people, regardless of their postcode have the choice of culturally safe place-based community-controlled legal assistance services within metropolitan, regional, rural, and remote locations, in all areas of law.

²⁸² ²⁸² Commonwealth of Australia, Department of the Prime Minister and Cabinet *Closing the Gap targets and outcomes*, Target 10-13 at <https://www.closingthegap.gov.au/national-agreement/targets>

²⁸³ Dr Warren Mundy (2024) *Independent Review of the National Legal Assistance Partnership* at <https://apo.org.au/sites/default/files/resource-files/2024-05/apo-nid327026.pdf>

²⁸⁴ Dr Warren Mundy (2024) *Independent Review of the National Legal Assistance Partnership* at <https://apo.org.au/sites/default/files/resource-files/2024-05/apo-nid327026.pdf>

²⁸⁵ Dr Warren Mundy (2024) *Independent Review of the National Legal Assistance Partnership* at <https://apo.org.au/sites/default/files/resource-files/2024-05/apo-nid327026.pdf>

²⁸⁶ Dr Warren Mundy (2024) *Independent Review of the National Legal Assistance Partnership* at <https://apo.org.au/sites/default/files/resource-files/2024-05/apo-nid327026.pdf>

²⁸⁷ National Agreement on Closing the Gap, cl 43 at <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap/6-priority-reform-areas/two>

²⁸⁸ Delphine Bellerose and Catriona Mirrlees-Black (2024) *Need for Legal Assistance Services (Aboriginal & Torres Strait Islander peoples)* at https://lawfoundation.net.au/wp-content/uploads/2025/02/NLASAboriginal-and-Torres-Strait-Islander-peoples_for-publication.pdf

People with Disability

The experiences of discrimination and inequity are intersectional, and Aboriginal and Torres Strait Islander people are subject to disproportionate and harmful discrimination on the basis of race as well as disability in both the criminal and care systems. Aboriginal and Torres Strait Islander peoples with disability face double discrimination from both racism and prejudice against people with disabilities. Aboriginal and Torres Strait Islander people experience disability at significantly higher rates than of other Australians²⁸⁹ but face severe barriers to accessing culturally safe healthcare, employment, and the NDIS.

NATSILS and our member ATSILS are keenly aware that Aboriginal and Torres Strait Islander people are under-represented in Federal administrative appeal processes including appeals to the Administrative Review Tribunal in disability and NDIS access and social security matters and in State and Territory administrative processes for tenancy matters and fines.²⁹⁰

ATSILS are also aware that undiagnosed and unaddressed disability is correlated with a higher prevalence of interactions with all aspects of the criminal legal system. Examples of this overrepresentation include over-policing, lack of access to bail, lower rates of diversion and poorer criminal matter outcomes. Additionally overrepresentation is seen within “child protection” systems; over-surveillance, increased child removals and poorer rates of restoration.

The Disability Royal Commission²⁹¹ found that culturally safe and inclusive schools were identified as critical to support First Nations children avoiding interactions with the “child protection” and justice systems.²⁹² The Disability Royal Commission²⁹³ also found that when a person is identified as Aboriginal or Torres Strait Islander in criminal legal settings, support needs associated with their disability become less of a priority. The Royal Commission heard that this lack of support may be exacerbated by limited access to advocacy and legal services with disability expertise.²⁹⁴ In these settings, Aboriginal and Torres Strait Islander people with disability need alternative culturally safe disability-safe responders not policing responses.

System biases against Aboriginal and Torres Strait Islander people are present in the way they are treated at every point across the legal system, and in particular in

²⁸⁹ Australian Institute of Health and Welfare National Indigenous Australian Agency *Tier 1 - Health status and outcomes 1.14 Disability* at <https://www.indigenoushpf.gov.au/measures/1-14-disability>

²⁹⁰ K Davies, S Ratcliffe, E Kothe and S Takchi (2025) ‘I would have given up without it’: An evaluation of the NDIS Appeals Program Legal Services. Law and Justice Foundation of NSW at pg 20 at <https://lawfoundation.net.au/wp-content/uploads/2025/08/NDIS-Report-LJF-Jun25-final.pdf>

²⁹¹ Commonwealth of Australia (2023) *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability First Nations people with disability*, 9, at pg 139 at <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%209%2C%20First%20Nations%20people%20with%20disability.pdf>

²⁹² Commonwealth of Australia (2023) *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability First Nations people with disability*, 9, at pg 67 at <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%209%2C%20First%20Nations%20people%20with%20disability.pdf>

²⁹³ Commonwealth of Australia (2023) *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability First Nations people with disability*, 9, at pg 139 at <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%209%2C%20First%20Nations%20people%20with%20disability.pdf>

²⁹⁴ Commonwealth of Australia (2023) *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability First Nations people with disability*, 9, at pg 139 at <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%209%2C%20First%20Nations%20people%20with%20disability.pdf>

interactions with police.²⁹⁵ The Royal Commission heard about ableist and racist attitudes towards First Nations people with disability, and instances where chemical and physical restraints were used.²⁹⁶ In the Royal Commission, they found that the use of restraints, or restrictive practices represented coercion, violence and contravened human rights obligations of people with disability.²⁹⁷ The relationship between racially biased policing and the prevalence of Aboriginal and Torres Strait Islander people with a disability in the criminal legal systems; presents a need to include a positive duty for Police not to discriminate. The positive duty should be extended to all correctional settings due to the well-documented and increasing over-representation of Aboriginal and Torres Strait Islander adults and children in prisons.

The Disability Royal Commission²⁹⁸ pointed to the “hidden national crisis” reflected in the proportion of Aboriginal and Torres Strait Islander peoples with disability in adult and youth custody. The Roal Commission recommended that ACCOs be funded to provide culturally appropriate disability services to Aboriginal and Torres Strait Islander people.²⁹⁹ This should include funding for ATSILS to address the civil law needs of Aboriginal and Torres Strait Islander peoples with disability.

The recommendations below address the intersectionality between structural racism, and disability discrimination, highlighting the need for funding to provide culturally safe services to support Aboriginal and Torres Strait Islander people with disability.

RECOMMENDATION 15

The *Disability Discrimination Act* should be amended to introduce an enforceable positive duty on all duty-holders to eliminate disability discrimination, and protections under the *Disability Discrimination Act* should not be confined to discrimination solely involving a “service” but it must cover discrimination experienced during all interactions with all employees of public authorities performing the powers and duties and functions of their office.

RECOMMENDATION 16

As recommended by the Disability Royal Commission (Recommendation 8.19), the *Disability Discrimination Act* should be amended to explicitly include services provided by

²⁹⁵ Commonwealth of Australia (2023) *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability First Nations people with disability*, 9, at pg 142 at <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%209%2C%20First%20Nations%20people%20with%20disability.pdf> .

²⁹⁶ Commonwealth of Australia (2023) *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability First Nations people with disability*, 9, at pg 142 at <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%209%2C%20First%20Nations%20people%20with%20disability.pdf> .

²⁹⁷ Commonwealth of Australia (2023) *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability Research Report July 2023 Restrictive practices: A pathway to elimination*, at pg 15, at <https://disability.royalcommission.gov.au/system/files/2023-07/Research%20Report%20-%20Restrictive%20practices%20-%20A%20pathway%20to%20elimination.pdf>

²⁹⁸ Commonwealth of Australia (2023) *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability First Nations people with disability*, 9, at pg 139 at <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%209%2C%20First%20Nations%20people%20with%20disability.pdf> .

²⁹⁹ Commonwealth of Australia (2023) *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability First Nations people with disability*, 9, at pg 139 at <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%209%2C%20First%20Nations%20people%20with%20disability.pdf> .

police. NATSILS submits there should be no exclusions or carve-outs to this inclusion. NATSILS recommends this protection against discrimination be specifically extended to corrections, youth detention and child protection officeholders.

RECOMMENDATION 17

Noting the link between school disciplinary actions, school exclusion and criminalisation of children, the Disability Discrimination Act should include provisions that protect the rights of children with disabilities to learn and participate in education.

RECOMMENDATION 18

That Governments review the role of police as first responders in call outs where disability issues are in play, and that alternative responder models that provide therapeutic support and lower incarceration on remand should be explored as an alternative. NATSILS notes that this was a recommendation to the recent [Bail and Remand Reform Report](#) to the Standing Council of Attorneys-General and would make an impact on socio-economic targets 10 and 11 and Government commitments under the National Agreement on Closing the Gap.

Part 4: Ideologically motivated extremism (ToR 4)

NATSILS has difficulty with the framing of Term of Reference 4.

Addressing the threat of ideologically motivated extremism towards Aboriginal and Torres Strait Islander peoples is not, just a law enforcement issue, it is a prevention issue. Ideologically motivated extremism is more likely to thrive in a society, where structural racism towards Aboriginal and Torres Strait Islander peoples is endemic.

With regards to law enforcement, it also fails to acknowledge the significant role of racism in State/Territory police culture and law enforcement practices.³⁰⁰ This issue cannot be properly examined without also looking at the role law enforcement agencies across all Australian jurisdictions play in perpetuating racism against Aboriginal and Torres Strait Islander people. Evidence of this role is set out in NATSILS' response to Term of Reference 1. NATSILS would be able to explore this issue further in oral evidence before the Inquiry.

NATSILS notes the role of law enforcement in protecting the community from threats, and the trust deficit felt by Aboriginal and Torres Strait Islander people when our communities continue to experience rising incarceration rates and deaths in custody, alongside the selective and discriminatory protective support provided to our communities. We again point to the delay in calling out the attack in Boorloo as terrorism. We refer the Committee to the submission made by our member Aboriginal Legal Services of Western Australia³⁰¹ which sets out community feedback on the attack³⁰².

NATSILS refers the Inquiry to submissions made by each of our member ATSILS on violent extremism, in particular Victoria Aboriginal Legal Service³⁰³ (VALS) submission.

³⁰⁰ Armitage, E (2025) *Inquest into the death of Kumanjari Walker* (File no. A51 of 2019) Coroners Court of Alice Springs at para [211- 213] at <https://agd.nt.gov.au/attorney-general-and-justice/courts/inquests-findings/kumanjari-walker/files-exhibits-and-media/Inquest-into-the-death-of-Kumanjari-Walker-2025-NTLC-8.pdf>

³⁰¹ Aboriginal Legal Service of Western Australia (2026) *Submission to the Inquiry into racism, hate and violence directed at Aboriginal and Torres Strait Islander people* at submission 511 at https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Aboriginal_and_Torres_Strait_Islander_Affairs/Responsesto_racism/Submissions

³⁰³ Victorian Aboriginal Legal Service (2026) *VALS Submission to the Inquiry into racism, hate and violence directed at Aboriginal and Torres Strait Islander people* at https://www.vals.org.au/wp-content/uploads/2026/06/VALS_Submission_CthRacism-Inquiry_1June26.pdf

Part 5: The effectiveness of avenues for reporting and responding to racism (ToR 5)

Through its ATSILS members, NATSILS understands that even with limited funding, members support clients who are seeking civil remedy for racism. NATSILS is also aware that avenues for reporting and responding to racism are not generally used by Aboriginal and Torres Strait Islander peoples.

The nature of racism in daily life, lack of confidence in complaints processes, previous unsatisfactory responses, the time and energy required to engage in a complaints process and lack of access to legal support all have a deterrent effect.

A 2024 LECC report³⁰⁴ provides a useful analysis of complaints made by or on behalf of Aboriginal and Torres Strait Islander peoples in NSW and in other States and Territories. Of the 181 complaints made by Aboriginal and Torres Strait Islander people in Victoria, the most common allegation (40%) related to assault by police during arrest while allegations of racist language and abuse accounted for 17%. Many also believed that making a complaint about police behaviour was futile.³⁰⁵

NATSILS notes the AHRC's findings³⁰⁶ about the lack of available data on racism, complaints about racism and hate crimes and the perpetrators of racism. The AHRC identified that lack of data "can be partly explained by the historical and ongoing reluctance to recognise and confront issues about race and racism."³⁰⁷ The AHRC also found that "Complaints (or incident) data about racism are also not collected consistently across states and territories and are generally collected through community and research efforts with little government support."³⁰⁸

The AHRC's findings from its 2024 review of anti-racism work³⁰⁹ conducted or funded by the three tiers of government across Australia, provided context to reluctance by Aboriginal and Torres Strait Islander peoples to report racism.

Relevant findings³¹⁰ include:

Key Finding 1: Avoiding 'racism'

³⁰⁴ Law Enforcement Conduct Commission (2024) *Analysis of complaints made by or on behalf of Aboriginal and Torres Strait Islander people - An Observations Paper* at <https://www.lecc.nsw.gov.au/publications/publications/analysis-of-complaints-made-by-or-on-behalf-of-aboriginal-and-torres-strait-islander-people-an-observations-paper-8.pdf>

³⁰⁵ Law Enforcement Conduct Commission (2024) *Analysis of complaints made by or on behalf of Aboriginal and Torres Strait Islander people - An Observations Paper* at <https://www.lecc.nsw.gov.au/publications/publications/analysis-of-complaints-made-by-or-on-behalf-of-aboriginal-and-torres-strait-islander-people-an-observations-paper-8.pdf>

³⁰⁶ Australian Human Rights Commission (2024) *National Anti-Racism Framework – A roadmap to eliminating racism in Australia* at

https://humanrights.gov.au/data/assets/pdf_file/0019/25381/NARF_Full_Report_FINAL_DIGITAL_ACCESSIBLE.pdf

³⁰⁷ Australian Human Rights Commission (2024) *National Anti-Racism Framework – A roadmap to eliminating racism in Australia* at

https://humanrights.gov.au/data/assets/pdf_file/0019/25381/NARF_Full_Report_FINAL_DIGITAL_ACCESSIBLE.pdf

³⁰⁸ Australian Human Rights Commission (2024) *National Anti-Racism Framework – A roadmap to eliminating racism in Australia* at

https://humanrights.gov.au/data/assets/pdf_file/0019/25381/NARF_Full_Report_FINAL_DIGITAL_ACCESSIBLE.pdf

³⁰⁹ Australian Human Rights Commission (2024) *Mapping government anti-racism programs and policies* at

https://humanrights.gov.au/data/assets/file/0024/47256/Mapping_government_anti-racism_programs_and_policies_report.pdf

³¹⁰ Australian Human Rights Commission (2024) *Mapping government anti-racism programs and policies* at

https://humanrights.gov.au/data/assets/file/0024/47256/Mapping_government_anti-racism_programs_and_policies_report.pdf

Overall, there is a reluctance on the part of government to use the term ‘racism’. Government preference over the past decade for the use of ‘social cohesion’ has weakened approaches to anti-racism work. There is a current lack of a systemic government-led strengths-based, inter-sectional and coordinated approach to addressing racism in Australian society.

Key Finding 2: Failure to measure impact

Work that is being done is failing to enter public awareness in any meaningful way. Limited or no monitoring and evaluation means there is little or no impact assessment of work already being undertaken, including government funded programs run by community organisations.

Key Finding 3: Blaming the victims

There remains a focus on victims and/or those communities experiencing racism or racist behaviours to ‘fix the problem’ with little or no focus on the broader community to address the issue.

Key Finding 4: Ad hoc, disjointed, disconnected and reactive

Government work at all levels appears to be ad-hoc, disjointed, often disconnected from other similar approaches, and frequently reactive to situations arising domestically or internationally.

Key Finding 8: Limited focus on racism and First Nations communities

The equity work undertaken by government focused on First Nations communities is focused into those communities aimed at addressing disadvantage and does not include a focus on addressing the racism experienced by those communities from external forces. No evidence could be found to support work being undertaken aimed at those who perpetrate racism towards First Nations communities. Post-Voice Referendum, 4 there is a need for government to reaffirm support for addressing racism towards First Nations peoples.

Key Finding 11: Failure of political bipartisanship

Unlike other policy areas, continuity in work on racism is heavily reliant on, and susceptible to, the attitudes of the government of the day. More recent conservative governments have stepped away from traditional bipartisan approaches in this space and, unlike their predecessors, can no longer be seen as drivers of anti-racism work. This has led to a gap in corporate knowledge in the public sector, and a current sense of ‘reinventing of the wheel’.³¹¹

There are several civil legal avenues of concern to this Inquiry including personal injuries claims, discrimination claims, submissions to complaints and oversight bodies and coronial inquiries. Accessibility to civil legal remedies for Aboriginal and Torres Strait Islander peoples, would enable them to seek redress for the harms caused by racist behaviour.

46 years ago, during the 1980 *Inquiry into Aboriginal Legal Aid*³¹², the Standing Committee noted “the specialised knowledge which allows Aboriginal legal services

³¹¹ Australian Human Rights Commission (2024) *Mapping government anti-racism programs and policies* at https://humanrights.gov.au/_data/assets/file/0024/47256/Mapping_government_anti-racism_programs_and_policies_report.pdf

³¹² Parliament of Australia House of Representatives Standing Committee on Aboriginal Affairs (1980) *Inquiry into Aboriginal Legal Aid* at

to provide effective legal services to their clients". The Standing Committee identified the critical role of ATSILS in seeking redress for clients who had suffered harm as a result of police conduct.³¹³

ATSILS are significantly constrained in their ability to assist Aboriginal and Torres Strait Islander peoples whose rights have been violated by racist behaviour. For ATSILS to enforce those rights through existing legal avenues, we require dedicated funding to be able to hold those who would perpetrate racist harm to account.

RECOMMENDATION 19

To increase accountability and address racism across justice systems, Federal, State and Territory Governments commit specialist funding to ATSILS to establish dedicated services and programs aimed at holding government agencies to account in areas like police misconduct, mistreatment in custodial settings, strengthening support for families in coronial inquests and exploring new opportunities to address systemic issues through strategic litigation.

https://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=reports/1980/1980_pp149report.htm

³¹³ Parliament of Australia House of Representatives Standing Committee on Aboriginal Affairs (1980) *Inquiry into Aboriginal Legal Aid* at

https://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=reports/1980/1980_pp149report.htm

Part 6: Other matters related to racism, hatred and violence directed at First Nations people (ToR 6).

6.1 Australia's obligations under International Law - an opportunity

Protecting Aboriginal and Torres Strait Islander peoples from racism requires Australia to recommit to its international human rights obligations. Australia has existing obligations under the *International Covenant on Civil and Political Rights*³¹⁴ (ICCPR), the *International Covenant on Economic, Social and Cultural Rights*³¹⁵ (ICESCR), the *Convention on the Elimination of All Forms of Racial Discrimination*³¹⁶ (CERD) and the *Convention of the Rights of the Child*³¹⁷ (CRC).

Australia should implement the United Nations Declaration on the Rights of Indigenous Peoples³¹⁸ (UNDRIP) in domestic law and policy.

6.2 The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

UNDRIP³¹⁹ was adopted by the UN General Assembly on 13 September 2007 by a majority of 144 states. Australia was one of only four states to vote against adoption, alongside the United States, Canada and New Zealand. In 2009, Australia reversed its position and formally endorsed UNDRIP³²⁰.

UNDRIP³²¹ is the most comprehensive international human rights instrument specifically addressing the rights of Indigenous peoples. Its 46 articles articulate a framework of rights covering: self-determination; cultural identity and practice; land, territory and resources; education; health; language; and the right to free, prior and informed consent (FPIC) for decisions that affect Indigenous peoples.

UNDRIP³²² gives specific expression to rights already recognised in binding international human rights law, including those already adopted, above.

Several UN Treaty Bodies, including the CERD Committee, the Human Rights Committee, and the Committee on the Rights of the Child have consistently recommended that Australia implement UNDRIP³²³ in domestic law and policy.

Full implementation, alongside the other recommendations in this submission, would represent a material step in protecting the rights and dignity of Aboriginal and Torres

³¹⁴ United Nations International Covenant on Civil and Political Rights, December 16, (1966) at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

³¹⁵ United Nations International Covenant on Economic, Social and Cultural Rights, December 16 (1966) at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

³¹⁶ United Nations International Convention on the Elimination of All Forms of Racial Discrimination, December 21 (1965) at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>

³¹⁷ United Nations (1989) *United Nations Convention on the Rights of the Child*, November 20 at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

³¹⁸ United Nations (2007) *United Nations Declaration on the Rights of Indigenous Peoples* at https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

³¹⁹ United Nations (2007) *United Nations Declaration on the Rights of Indigenous Peoples* at https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

³²⁰ United Nations (2007) *United Nations Declaration on the Rights of Indigenous Peoples* at https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

³²¹ United Nations (2007) *United Nations Declaration on the Rights of Indigenous Peoples* at https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

³²² United Nations (2007) *United Nations Declaration on the Rights of Indigenous Peoples* at https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

³²³ United Nations (2007) *United Nations Declaration on the Rights of Indigenous Peoples* at https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

Strait Islander peoples. The Committee is respectfully urged to take this opportunity to inform the Federal Government of its lack of progress in implementing UNDRIP.³²⁴

The following UNDRIP³²⁵ articles are of direct relevance to the structural racism documented in this submission:

Article 2 — *Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.*

Article 3 — *Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

Article 7 — *Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence.*

Article 14 — *Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.*

Article 18 — *Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures.*

Article 19 — *States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent (FPIC) before adopting and implementing legislative or administrative measures that may affect them.*

Article 21 — *Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.*

Article 22 — *Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.*

Article 25 — *Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources.*

Article 38 — *States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.*³²⁶

Each of these articles describes rights that are systematically violated by structurally racist laws, institutions and practices referred to throughout this submission.

³²⁴ United Nations (2007) *United Nations Declaration on the Rights of Indigenous Peoples* at https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

³²⁵ United Nations (2007) *United Nations Declaration on the Rights of Indigenous Peoples* at https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

³²⁶ United Nations (2007) *United Nations Declaration on the Rights of Indigenous Peoples* at https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

6.3 Australia's record of implementation

Despite the endorsement of UNDRIP³²⁷ in 2009, Australia has not incorporated UNDRIP into domestic legislation, adopted a national implementation plan, or established any formal accountability mechanism for compliance with its standards. Canada, and several Nordic countries, have moved toward legislative implementation or formal incorporation frameworks.³²⁸

The UN Committee on the Elimination of Racial Discrimination (CERD) has repeatedly expressed concern about Australia's failure to implement UNDRIP. In its most recent Concluding Observations on Australia³²⁹, the CERD Committee noted:

- The continuing over-representation of Aboriginal and Torres Strait Islander peoples in incarceration and the failure to implement RCIADIC recommendations, in violation of CERD's core non-discrimination obligations;
- The escalating removal of First Nations children from their families without adequate measures to preserve family unity or cultural connection, constituting a potential violation of Article 5 of CERD and multiple UNDRIP articles;
- The absence of a treaty process or formal mechanism for First Nations peoples to exercise the right of self-determination as recognised under UNDRIP Article 3 and the International Covenants; and
- The persistent and widening socio-economic disparities between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians across health, housing, education and employment, which CERD has consistently identified as evidence of systemic racial discrimination.³³⁰

The UN Special Rapporteur on the Rights of Indigenous Peoples has voiced similar concerns³³¹, noting that government policies including the Northern Territory Intervention and its successor arrangements was in direct contravention of UNDRIP Articles 19 and 3.

In its Universal Periodic Review (UPR) appearances before the UN Human Rights Council, member states have urged Australia to legislate UNDRIP domestically, establish a treaty process, and implement the RCIADIC's recommendations. While

³²⁷ United Nations (2007) *United Nations Declaration on the Rights of Indigenous Peoples* at https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

³²⁸ Government of Canada *Implementing the United Nations Declaration on the Rights of Indigenous Peoples Act, About the Act* at <https://www.justice.gc.ca/eng/declaration/legislation.html> and *Implementing the United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan 2023-2028* at <https://www.justice.gc.ca/eng/declaration/ap-pa/index.html>; Finland in United Nations (20 April 2026) *Joint Statement on behalf of the Nordic Countries at the UN Permanent Forum on Indigenous Issues on Indigenous Peoples and climate change: articles 3, 4, 25 and 26 of the United Nations Declaration on the Rights of Indigenous Peoples* at https://finlandabroad.fi/web/un/current-affairs/-/asset_publisher/TMs3SoX45i0K/content/joint-statement-on-behalf-of-the-nordic-countries-at-the-un-permanent-forum-on-indigenous-issues-on-indigenous-peoples-and-climate-change-articles-3-4-25-and-26-of-the-united-nations-declaration-on-the-rights-of-indigenous-peoples/384951

³²⁹ United Nations (2026) *United Nations Committee on the Elimination of Racial Discrimination Statement 1 2026 - Overrepresentation of Indigenous children in Australia's criminal justice system* at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FSWA%2FAUS%2F11498&Lang=en

³³⁰ United Nations (2026) *United Nations Committee on the Elimination of Racial Discrimination Statement 1 2026 - Overrepresentation of Indigenous children in Australia's criminal justice system* at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FSWA%2FAUS%2F11498&Lang=en

³³¹ United Nations (2009, August 27) *Statement of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, as he concludes his visit to Australia* at <https://www.ohchr.org/en/statements-and-speeches/2009/10/statement-special-rapporteur-situation-human-rights-and-fundamental>

accepting some of these recommendations in principle, none have been implemented. Earlier this year, the Albanese Government rejected 204 of the 334 recommendations put forward and declined to implement UNDRIP.³³² It also rejected calls to legislate a national Human Rights Act.

6.4 The Case for Domestic Legislative Implementation

Structural racism thrives in the absence of legally enforceable rights. Legislative implementation of UNDRIP³³³ would:

- Create enforceable standards against which the actions of the Federal, state and territory governments could be assessed by courts and independent bodies;
- Require all government agencies to demonstrate UNDRIP-compliance in the design and delivery of programs affecting Aboriginal and Torres Strait Islander peoples;
- Establish FPIC (Article 19) as a legal requirement prior to any policy or legislative measure affecting Aboriginal and Torres Strait Islander peoples rights, lands, territories or wellbeing;
- Provide Aboriginal and Torres Strait Islander peoples with domestic legal remedies for violations of UNDRIP rights; and
- Signal a genuine commitment to the minimum standards of dignity, equality and self-determination that Australia has already acknowledged are owed to Aboriginal and Torres Strait Islander peoples.

Several models for domestic implementation exist, such as Canada's Indigenous Rights Framework and the UN Expert Mechanism on the Rights of Indigenous Peoples' Action Plan.

At a minimum, Australia should enact legislation incorporating UNDRIP³³⁴ as the framework for interpreting Commonwealth laws affecting Aboriginal and Torres Strait Islander peoples. Australia should also establish a dedicated First Nations Rights Commissioner in the AHRC, with a specific mandate to monitor and report on UNDRIP³³⁵ implementation.

RECOMMENDATION 20

That the Australian Government introduce legislation to incorporate the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) into domestic law as a binding

³³² see United Nations Human Rights Council, Sixty-second session, 18 June 2026, Universal Periodic Review, Report of the Working Group on the Universal Periodic Review : Australia, View on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review at <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session62/a-hrc-62-13-add-1-av-australia-e.pdf> - referring to the United Nations Report of the Working Group on the Universal Periodic Review, available at <https://docs.un.org/en/A/HRC/62/13>

³³³ United Nations (2007) *United Nations Declaration on the Rights of Indigenous Peoples* at https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

³³⁴ United Nations (2007) *United Nations Declaration on the Rights of Indigenous Peoples* at https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

³³⁵ United Nations (2007) *United Nations Declaration on the Rights of Indigenous Peoples* at https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

interpretive framework for all Commonwealth legislation and policy affecting Aboriginal and Torres Strait Islander peoples.

This legislation should:

- (a) establish free, prior and informed consent (FPIC) as a legal requirement before any policy or legislative measure affecting Aboriginal and Torres Strait Islander peoples rights is adopted;
- (b) establish an Aboriginal and Torres Strait Islander Peoples Rights Commissioner within the Australian Human Rights Commission with a specific mandate to monitor, report on, and investigate UNDRIP compliance; and
- (c) require all Commonwealth agencies to produce annual UNDRIP compliance reports tabled in Parliament.

6.5 The UN Committee on the Elimination of Racial Discrimination

In 2025, Professor Megan Davis and Associate Professor Hannah McGlade lodged a complaint³³⁶ with the United Nations Committee on the Elimination of Racial Discrimination (CERD complaint). The CERD complaint was regarding the mass incarceration of Aboriginal and Torres Strait Islander children.³³⁷

In the complaint, endorsed by NATSILS, Professor Davis and Associate Professor McGlade assessed:

*“the status of youth justice in Australia to be dire and constitute, in many respects, a serious violation of the Convention on the Elimination of All Forms of Racial Discrimination ... as well as other UN treaties and instruments including United Nations standards and norms in juvenile justice”.*³³⁸

The complaint³³⁹ highlights:

- criminal laws in Australia’s constitutional system which increasingly and disproportionately impact and harm Aboriginal and Torres Strait Islander children;
- recent state and territory laws and policies that violate Australia’s international human rights law obligations and are having a deleterious effect on Aboriginal and Torres Strait Islander children;
- The irreversible harm and even death caused by imprisoning children, and the instances of self-harm and attempted suicide by Aboriginal and Torres Strait Islander children in custody across Australia;
- Aboriginal and Torres Strait Islander children being subjected to extensive trauma, cruel, inhuman and degrading treatment, segregation from society,

³³⁶ Professor Megan Davis and Associate Professor Hannah McGlade (2025) *International Convention on the Elimination of All Forms of Racial Discrimination – Early Warning and Urgent Action submission* at https://www.hrlc.org.au/app/uploads/2025/04/United-Nations-CERD-complaint_youth-justice-in-Australia.pdf

³³⁷ Professor Megan Davis and Associate Professor Hannah McGlade (2025) *International Convention on the Elimination of All Forms of Racial Discrimination – Early Warning and Urgent Action submission* at https://www.hrlc.org.au/app/uploads/2025/04/United-Nations-CERD-complaint_youth-justice-in-Australia.pdf

³³⁸ Professor Megan Davis and Associate Professor Hannah McGlade (2025) *International Convention on the Elimination of All Forms of Racial Discrimination – Early Warning and Urgent Action submission* at https://www.hrlc.org.au/app/uploads/2025/04/United-Nations-CERD-complaint_youth-justice-in-Australia.pdf

³³⁹ Professor Megan Davis and Associate Professor Hannah McGlade (2025) *International Convention on the Elimination of All Forms of Racial Discrimination – Early Warning and Urgent Action submission* at https://www.hrlc.org.au/app/uploads/2025/04/United-Nations-CERD-complaint_youth-justice-in-Australia.pdf

exclusion from their own community, exclusion from culture and loss of life because of the criminal legal system.

The complaint³⁴⁰ requests that CERD issue a decision finding that the Federal Government is in breach of the Convention on the Elimination of All Forms of Racial Discrimination and urges the Federal Government to take immediate and proactive steps to protect and promote the rights of Aboriginal and Torres Strait Islander children and prevent further harm.

These steps should include:

- full and prompt response to the National Children's Commissioner's *Help Way Earlier!*³⁴¹ report;
- ratification of the *Optional Protocol to the Convention on the Rights of the Child*³⁴²;
- withdrawal of the reservation to article 37(c) of the *Convention on the Rights of the Child*³⁴³, which requires that children not be detained with adults; and
- full implementation of the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*³⁴⁴ (OPCAT), in particular by the Federal Government ensuring a robust National Preventive Mechanism operates across every state and territory.

CERD's response

In May this year, CERD issued a Statement³⁴⁵ to the Australian Government in response to the CERD complaint³⁴⁶. The Statement³⁴⁷ noted, amongst other things, that CERD was:

“Alarmed about the reported persistent overrepresentation of Indigenous children in the criminal justice system as a result of systematic and structural racial discrimination against Indigenous communities in Australia;

Gravely concerned that the reported structural racial discrimination faced by Indigenous children and communities in accessing and enjoying of their economic, social and cultural rights protected under the Convention, which is reflected in the low attendance rates and high dropout rates in education, inadequate and limited access to healthcare and social

³⁴⁰ Professor Megan Davis and Associate Professor Hannah McGlade (2025) *International Convention on the Elimination of All Forms of Racial Discrimination – Early Warning and Urgent Action submission* at

https://www.hrlc.org.au/app/uploads/2025/04/United-Nations-CERD-complaint_youth-justice-in-Australia.pdf

³⁴¹ Australian Human Rights Commission (2024). *‘Help way earlier!’: How Australia can transform child justice to improve safety and wellbeing* at https://humanrights.gov.au/_data/assets/pdf_file/0025/25477/1807_help_way_earlier_-_accessible_0-1-2.pdf

³⁴² United Nations *Optional Protocols to the Convention on the Rights of the Child* at

<https://research.un.org/c.php?g=1331357&p=10072557>

³⁴³ United Nations (1989) *United Nations Convention on the Rights of the Child*, November 20 at

<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

³⁴⁴ United Nations (2002) *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* at <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-against-torture-and-other-cruel>

³⁴⁵ United Nations (2026) *United Nations Committee on the Elimination of Racial Discrimination Statement 1 2026 -*

Overrepresentation of Indigenous children in Australia's criminal justice system at

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FWSA%2FAUS%2F11498&Lang=en

³⁴⁶ Professor Megan Davis and Associate Professor Hannah McGlade (2025) *International Convention on the Elimination of All Forms of Racial Discrimination – Early Warning and Urgent Action submission* at

https://www.hrlc.org.au/app/uploads/2025/04/United-Nations-CERD-complaint_youth-justice-in-Australia.pdf

³⁴⁷ United Nations (2026) *United Nations Committee on the Elimination of Racial Discrimination Statement 1 2026 -*
Overrepresentation of Indigenous children in Australia's criminal justice system at

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FWSA%2FAUS%2F11498&Lang=en

security, and poor housing conditions, is a key factor contributing to their heightened vulnerability to arrest, incarceration and re-offending;

Deeply concerned that the legislative frameworks in several states and territories, which provide for a lower minimum age of criminal responsibility than the threshold under international human rights law and standards and in some cases as young as 10 year-old, apply harsh adult penalties on Indigenous children, including life imprisonment in some cases, and permit the detention of children on remand, exacerbate these disparities and results in Indigenous children being placed at a heightened risk of incarceration;

Deeply concerned about the reported racial profiling in law enforcement operations and the overpolicing that lead to higher incarceration rates among Indigenous children; Gravely concerned about the reported inadequate conditions and healthcare services in detention facilities for children, detention of Indigenous children with adults and holding them in solitary confinement for prolonged duration, ill-treatment and the use of spit hoods, and cases of self harm and suicide by Indigenous children in detention”

Concerned about the lack of information on the factors that are impeding the effectiveness of the measures taken to address the overrepresentation of Indigenous children in the criminal justice system;

Concerned about the reported delays in the consideration and the adoption of effective measures by the Commonwealth Government to implement the recommendations contained in the National Children’s Commissioner report on transforming the youth justice system and to address the overrepresentation of Indigenous children, which was tabled in the Parlement in August 2024.”³⁴⁸

“Calls upon Australia to fully respect its international law obligations and standards, in particular those arising from the Convention, to which it is a party;

Urges the State Party to strengthen its efforts in combatting structural discrimination, including addressing its root causes, faced by the Indigenous communities, particularly by developing and implementing special measures, to ensure their access to education, employment, healthcare and housing without discrimination;

Calls upon the State Party to intensify and accelerate its efforts to eliminate racial discrimination against Indigenous children, including its institutional and systemic dimensions, in the administration of criminal justice and to address the persistent overrepresentation of Indigenous children in the criminal justice system, including by conducting a human rights-based review to its legislative framework, particularly at the states and territories level, to repeal legislations with possible discriminatory effects and prevent any further discriminatory impact on the rights of Indigenous children, to guarantee their full conformity with international human rights principles and the objectives and purposes of the Convention, particularly to raise the minimum age for criminal liability in accordance with international human rights law, establish human rights-based non-custodial alternatives to detention, advance alternatives to arrest and incarceration for minor offences and guarantee that children are not prosecuted as adults;

Urges the State Party to review its legislative framework on law enforcement to explicitly prohibit racial profiling by law enforcement officials and to avoid over policing and ensure that law enforcement operations are conducted in a non-arbitrary and non-discriminatory

³⁴⁸ United Nations (2026) *United Nations Committee on the Elimination of Racial Discrimination Statement 1 2026 - Overrepresentation of Indigenous children in Australia's criminal justice system* at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FSWA%2FAUS%2F11498&Lang=en

manner, on the basis of reasonable suspicion, and with rigorous monitoring and review mechanisms;

Calls upon the State Party to promptly adopt measures to improve detention conditions in accordance with international standards and ensure that Indigenous children deprived of their liberty have access to medical care, legal counsel, adequate food and social services and to their families;

Urges the State Party to implement effectively its policies on addressing the overrepresentation of Indigenous children in the criminal justice system, particularly the National Agreement on Closing the Gap 2019–2029, and adopt measures to implement the recommendations contained in the National Children’s Commissioner’s report on transforming the youth justice system, while allocating adequate resources, ensuring the full implementation at the states and territorial levels, and ensuring the effective monitoring and evaluation of these measures;

Calls upon the State Party to provide detailed information on measures taken and their impacts to address the concerns expressed and recommendations made in this statement in its combined twenty-first and twenty-second periodic reports overdue since 30 October 2020.³⁴⁹

The Federal Government is yet to respond.

RECOMMENDATION 21

The Australian Government should take immediate and proactive steps to protect and promote the rights of Aboriginal and Torres Strait Islander children and prevent further harm as set out in paragraph 11 of the Early Warning and Urgent Action complaint to the United Nations Committee on the Elimination of Racial Discrimination by Professor Megan Davis and Associate Professor Hannah McGlade.

These steps include:

- d. full and prompt response to the National Children’s Commissioner’s *Help Way Earlier!* report;
- e. ratification of the UN Optional Protocol to the *Convention on the Rights of the Child*;
- f. withdrawal of the reservation to article 37(c) of the UN *Convention on the Rights of the Child*, which requires that children not be detained with adults; and
- g. full implementation of the Optional Protocol to the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT), in particular by the Commonwealth Government ensuring robust National Preventive Mechanisms are operating in every state and territory.

6.6 United Nations Working Group on Arbitrary Detention

In December 2025, the United Nations Working Group on Arbitrary Detention (UNWGAD) visited Australia. At the end of its visit UNWGAD released its 'Preliminary

³⁴⁹ United Nations (2026) *United Nations Committee on the Elimination of Racial Discrimination Statement 1 2026 - Overrepresentation of Indigenous children in Australia's criminal justice system* at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FSWA%2FAUS%2F11498&Lang=en

Findings'.³⁵⁰ The UNWGAD called out the 'systemic discrimination' of Aboriginal and Torres Strait Islander people in the criminal legal system.

In their preliminary findings³⁵¹, the UNWGAD:

- **Expressed** *"profound concern at the grossly disproportionate representation of First Nations peoples in the criminal justice system"*,
- **Noted** the addressing the over-incarceration of Aboriginal and Torres Strait Islander people requires solutions prior to, during and after contact with the criminal justice system, and that the "pernicious factors" including unaddressed health conditions, poor socio-economic conditions, insufficient access to housing, domestic violence *"result in contact with the criminal justice system being far more likely for First Nations people than other groups, while at the same time decreasing the likelihood of them being granted bail"*.
- **Specifically noted** that these factors are: *"the legacy of systemic discrimination and racism, which was previously enshrined in laws such as the removal of Aboriginal children from their families" and though Australia's laws are now "facially neutral ... the circumstances in which many First Nations people continue to live mean that some criminal laws, as well as the strong crackdown on domestic violence, result in significantly higher rates of their detention. Moreover, despite discrimination and racial profiling being prohibited, the Working Group heard that those practices have not been fully removed."*

The UNWGAD was denied access to all adult and youth custodial facilities in the Northern Territory and some detention facilities in Western Australia.

The disregard by some States and Territories of the United Nations' mandate and lack of any apparent consequences is to say the least, concerning.

Australia must ensure that the National Preventive Mechanism³⁵² (NPM) is operational across every State and Territory.

³⁵⁰ United Nations (2025) *United Nations Working Group on Arbitrary Detention statement - Working Group on Arbitrary Detention: Preliminary Findings from its visit to Australia (1 to 12 December 2025)* at <https://www.ohchr.org/sites/default/files/statements/20251212-eom-stm-australia-wg-arbitrary-detention-en.pdf>

³⁵¹ United Nations (2025) *United Nations Working Group on Arbitrary Detention statement - Working Group on Arbitrary Detention: Preliminary Findings from its visit to Australia (1 to 12 December 2025)* at <https://www.ohchr.org/sites/default/files/statements/20251212-eom-stm-australia-wg-arbitrary-detention-en.pdf>

³⁵² Commonwealth Ombudsman Australian National Preventive Mechanism (NPM) at <https://www.ombudsman.gov.au/industry-and-agency-oversight/monitoring-places-of-detention-opcat/australian-national-preventive-mechanism-npm>

Appendix A – relevant recommendations from previous NATSILS and NATSILS co-authored submissions

Please see the below relevant recommendations made in six previous NATSILS and NATSILS co-authored submissions that should be considered alongside this submission to the Inquiry into racism, hate and violence directed at Aboriginal and Torres Strait Islander people.

They have been included in this submission due to their relevance to Term of reference 3, each of the listed recommendations provide proposed actions to combating racism targeted at First Nations people and reducing individual and collective harm.

The topics that are covered in the below recommendations are: elimination of racial discrimination, culturally safe legal assistance, “youth justice”, “child protection”, bail and remand.

The first submission is 9 years old, however given the relevance of the recommendations it has been included to the Committee for their consideration. All subsequent suggested recommendations are more contemporary.

Index			
Appendix	Pages	Number of relevant recommendations	Topic
A1	68-72	25	Elimination of Racial Discrimination
A2	72-79	27	Culturally safe legal assistance
A3	79-80	7	“Youth Justice”
A4	81-84	6	Bail and Remand
A5	84-87	18	“Youth Justice”
A6	87-92	13	“Child Protection”

Appendix A1	
Year of publication	2017
Title	Joint NGO Submission to the United Nations Committee on the Elimination of Racial Discrimination
Link to submission	Australian NGO Coalition Submission to the UN Committee on the elimination of racial discrimination Australia’s Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination

Relevant ToR (s)	ToR1 - The nature, prevalence and impact of racism, hate and violence towards First Nations people, including trends over time ToR3 - Initiatives that are effective in combating racism targeted at First Nations people and reduce individual and collective harm
Relevance to this Inquiry	The recommendations listed below are of relevance to this inquiry because they step out, the collective recommendations of the Australian NGO Coalition to the United Nations in relation to the elimination of racial discrimination. NATSILS was a co-author in this submission, and the below recommendations have been identified as having relevance to this inquiry and provide clear suggestions that align with ToR3 of this Inquiry.
Relevant Recommendations:	
• Australia should provide increased and secure funding to Aboriginal and Torres Strait Islander community-controlled organisations to deliver effective services to Aboriginal and Torres Strait Islander peoples. • Australia should reinstate and commit to ongoing sufficient funding to peak Aboriginal and Torres Strait Islander community-controlled organisations and remove restrictions to funding agreements, including limitations on the right to engage in law reform and advocacy. • Australia should take concrete steps to establish a Makaratta Commission that incorporates and facilitates a process for truth telling, as recommended by the Referendum Council and the Uluru Statement. • Australia should strengthen federal legislative protection of human rights by: ○ introducing a comprehensive, judicially enforceable federal Human Rights Act to ensure consistent human rights protection for all Australians; ○ improving the quality of Statements of Compatibility and responses to the findings of the Parliamentary Joint Committee on Human Rights (PJCHR); ○ amending section 7(c) of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth) to allow the PJCHR to conduct own motion inquiries into human rights issues • Australia should provide ongoing and sufficient funding and support for the National Congress of Australia's First Peoples in a way that acknowledges and respects decision-making by Aboriginal and Torres Strait Islander peoples, consistent with the United Nations Declaration on the Rights of Indigenous Peoples. • Australia should develop a national action plan to implement, raise awareness about and achieve the imperatives of the UN Declaration on the Rights of Indigenous Peoples. The plan should promote self-determination	

and outline consultation protocols and strategies for increasing Aboriginal and Torres Strait Islander people's participation in all institutions of democratic governance. Specific strategies should promote Aboriginal and Torres Strait Islander women's participation, including an annual 'National Gathering'.

- Australia should work in close collaboration with the National Congress of Australia's First Peoples and Aboriginal and Torres Strait Islander organisations to implement the recommendations of the Redfern Statement.
- Australia should work with Aboriginal and Torres Strait Islander and migrant communities to develop an effective plan to address online racial vilification.
- Australia should:
 - support Aboriginal and Torres Strait Islander communities, organisations and representative bodies to design and implement a national Youth Justice Action Plan, to reduce detention rates of children and to prevent the abuse of children in detention; and
 - work cooperatively with state and territory governments through COAG to fully implement the recommendations to be made by the Royal Commission into the Protection and Detention of Children in the Northern Territory both in the Northern Territory and in other jurisdictions, where relevant.
- Australia should prioritise and invest in the health of Aboriginal and Torres Strait Islander people in prison, including through culturally appropriate services, delivered by Aboriginal community-controlled health organisations through properly trained medical staff and liaison and wellbeing officers in all prisons.
- Australia should ensure that culturally sensitive rehabilitation programs are available for Aboriginal and Torres Strait Islander people in the criminal justice system, including those serving short sentences and on remand.
- Australia should work with Aboriginal and Torres Strait Islander organisations to develop culturally appropriate diversion options, including bail support and community-based sentencing options, with a particular emphasis on ensuring availability in rural and remote locations.
- Australian governments should work with peak Aboriginal and Torres Strait Islander organisations to ensure equitable access to interpreter services nationwide.
- Australia should adopt national justice targets, focusing on reducing imprisonment rates of, and violence against, Aboriginal and Torres Strait Islander people, as part of the Closing the Gap framework, together with sub-targets that focus on the importance of resourcing Aboriginal and Torres Strait Islander community-controlled organisations.
- Australia should implement outstanding recommendations of the Royal Commission into Aboriginal Deaths in Custody and monitor and publicly report on the implementation of the recommendations.

- Australia should ensure that paperless arrest laws in the Northern Territory are repealed and not replicated in other jurisdictions.
- Australia should reform punitive public order laws and policies to ensure that they are not unfairly and disproportionately applied to Aboriginal and Torres Strait Islander people and do not unjustifiably deprive people of their liberty.
- Australia should introduce a mandatory statutory custody notification system, in partnership with Aboriginal and Torres Strait Islander legal services, in every state and territory. Aboriginal and Torres Strait Islander legal services should be resourced to respond to notifications and provide welfare checks.
- Australia should commit to adequate, long-term (5 yearly) funding agreements with Aboriginal and Torres Strait Islander Legal Services and Aboriginal Family Violence Prevention Legal Services.
- Australia should develop and resource a dedicated plan to reduce violence against Aboriginal and Torres Strait Islander women, designed and led by Aboriginal and Torres Strait Islander women and community-controlled organisations working to prevent violence. Detailed action plans should also be developed in each state and territory.
- Australia should make Aboriginal and Torres Strait Islander histories a mandatory part of the national curriculum throughout primary and secondary school.
- Australia should, through the Council of Australian Governments (COAG), establish a national target to eliminate the overrepresentation of Aboriginal and Torres Strait Islander children in out of home care by 2040, supported by a resourced national strategy developed in partnership with Aboriginal and Torres Strait Islander peoples. Australia should:
 - increase investment for family support services to 30 per cent of all state and territory annual child protection expenditure;
 - commit to an Aboriginal and Torres Strait Islander community-controlled organisation capacity building and investment strategy to ensure organisations can provide child and family support services, universal services including early childhood education and care, and representative participation;
 - prioritise and resource processes for the genuine participation of Aboriginal and Torres Strait Islander children, families, and communities in child protection decision-making, such as through the process of Aboriginal and Torres Strait Islander Family-Led-Decision-Making; and
 - establish and resource Commissioners for Aboriginal and Torres Strait Islander children in each state and territory.
- Australia should abolish the Stronger Futures legislation and work with Aboriginal and Torres Strait Islander representatives in the Northern

Territory to implement policies which uphold their rights including the right to self-determination.

- Australia should lower the standard of proof for native title claims by introducing a rebuttable presumption of continuity to relieve the burden on Aboriginal and Torres Strait Islander peoples in native title processes.
- Australia should strengthen mechanisms to ensure Aboriginal and Torres Strait Islander people are able to fully and properly participate in decisions about their land and resources, including through free, prior and informed consent in decision making.

Appendix A2	
Year of publication	2024
Title	2024 NATSILS Submission on The National Legal Assistance Partnership review
Link to submission	Submission to the Independent Review of the National Legal Assistance Partnership 2020-25
Relevant ToR (s)	ToR1 - The nature, prevalence and impact of racism, hate and violence towards First Nations people, including trends over time ToR3 - Initiatives that are effective in combating racism targeted at First Nations people and reduce individual and collective harm
Relevance to this Inquiry	The recommendations listed below are of relevance to this inquiry because they step out, the importance of providing adequate funding to Aboriginal Community Controlled Organisations to support culturally safe legal assistance, free from discrimination and racism. With the overrepresentation of Aboriginal people within the criminal justice system, the need for culturally safe legal assistance, and adequate funding to support the provision of those legal services is significant. NATSILS authored this submission, and the below recommendations have been identified as having relevance to this inquiry and provide clear suggestions that align with ToR3 of this Inquiry.
Relevant Recommendations:	
NATSILS recommends: <i>Sustainable, long term, needs-based resourcing shared by all levels of government, and informed by self-determination</i>	

Embedding Self-Determination

1. The embedding of self-determination in the next national partnership arrangements on legal assistance services, and across the legal assistance sector as an essential pillar of reform, to achieve substantive change in respect of Aboriginal and Torres Strait Islander people accessing justice.

Embedding self-determination would include:

- a. Actioning commitments set out in the National Agreement on Closing the Gap, including that the roles and responsibilities of Governments and Government funded services within the national legal assistance arrangements be reviewed and realigned to ensure consistency with the priorities and commitments under the

National Agreement on Closing the Gap;

- b. Expressly incorporating the fundamental importance of Aboriginal community control and the rights, strengths, lived experience and expertise of Aboriginal and Torres Strait Islander people;
- c. Embedding and operationalising the purpose, principles, goals, priorities and strategic initiatives of the Closing the Gap National Justice Policy Partnership;
- d. When making funding allocation decisions, consideration as to whether:
 - i. ATSILSs, as preferred providers, would be better placed to deliver that funded service;
 - ii. non-Aboriginal Community-Controlled legal services should partner with ATSILSs when providing services to Aboriginal and Torres Strait Islander people.
- e. Government and government-funded legal services partnering with NATSILS and ATSILSs to develop a Legal Assistance Service Transition Strategy, to guide transition of services to Aboriginal and Torres Strait Islander people which are more appropriately delivered by community-controlled organisations.

Cultural safety

2. Commonwealth, State and Territory governments seek advice from the national Coalition of Aboriginal Peaks on adopting a nationally consistent definition of cultural safety in line with Priority Reform 3 and clause 59 of the National Agreement on Closing the Gap and which might form part of the next national legal assistance partnership arrangements.

Legal need and accessing justice

3. The Commonwealth Government and all jurisdictional governments work in partnership with NATSILS and ATSILSs and the legal assistance sector to develop a national legal needs analysis strategy and operational plan which includes the method and frequency of a periodic national legal needs survey to be undertaken, with a national legal needs analysis to be commenced prior to December 2024.

- a) Legal needs analyses should use and incorporate cross-sector research and insights, for example social services, child protection and education data, recognising that non-legal issues give rise to legal needs.
- 4. To ensure Aboriginal and Torres Strait Islander people have genuine access to justice, including fair trials and just outcomes, Governments must resource interpreter services in locations where English is not the main spoken language.

Needs based funding – models and allocations

- 5. To assist ATSILSs deliver these services and improve outcomes for Aboriginal and Torres Strait Islander people, NATSILS requests the Attorney-General's Department and State and Territory justice departments commit to the following two priorities phased over the next 12 months: investment parity
 - a. Immediate investment for operational parity which includes three funding priorities as a minimum:
 - i. Salary parity for staff;
 - ii. Increase the existing workforce to support safe work practices;
 - iii. Capital injection for critical infrastructure (buildings and systems).
 - b. Co-design a future-fit funding model which better reflects the legal needs of Aboriginal and Torres Strait Islander people across Australia, which is more appropriate for ATSILSs, allocates resources efficiently and enables ATSILSs to provide effective and sustainable supports for Aboriginal and Torres Strait Islander people engaged with the justice system.
 - i. Co-designing a needs-based funding model with NATSILS and ATSILSs should be informed by key elements of legal need, service demand and population forecasts, with shared funding responsibility between the Commonwealth and State/Territory governments and aligned with the Closing the Gap Priority Reforms and targets.
 - ii. Investment is required to support comprehensive and genuine deliberation with ATSILSs on the key components of the funding model. In addition to the elements outlined above, in line with the principle of self-determination the co-design process must:
 - a) be Aboriginal and Torres Strait Islander-led;
 - b) include equal representation from all ATSILSs to incorporate jurisdictional perspectives and promote shared decision-making;
 - c) occur over a 9-month period at minimum to promote genuine engagement and information sharing;
 - d) be supported by the Attorney-General's Department and various state and territory government justice departments.
- 6. To increase transparency, reduce competitiveness and move to an evidence-based approach, funding provided throughout the life of the national legal assistance arrangements is allocated to ATSILSs in line with the future-fit funding model, thus retiring the funding distribution model.

- a. It is suggested that these arrangements and the model also include provision for periodic and real time review of funding allocations driven by demand for legal assistance services resulting from changes to law and policy and identifiable through justice impact assessments.
- 7. The Commonwealth, States and Territories partner with NATSILS and ATSILSs to include long term sustainable (recurrent and sufficient funding) government investment for ATSILSs' Custody Notification Services (CNS) in the ATSILSs' future-fit funding model, ensuring:
 - a. critical lifesaving CNS services are no longer the subject of intergovernmental disagreements relating to which government is responsible for funding;
 - b. 12-month funding agreements renewed weeks before they expire are a thing of the past.
 - c. funding arrangements, funding quantum, monitoring and evaluations reflect the needs of Aboriginal and Torres Strait people.

Data, monitoring and reporting, and outcomes focused frameworks

- 8. Commonwealth, States and Territories work in partnership with NATSILS and ATSILSs to identify the resources, including data systems, required for ATSILSs and NATSILS to collect, aggregate, analyse, translate and report on data that is identified as useful by Governments, ATSILSs and communities for ongoing service improvement, including meaningful strengths-based data identified by ATSILSs.
 - a. Any new data schema in development should be co-designed with NATSILS and ATSILSs and informed by the principles of self-determination, Indigenous Data Sovereignty and Governance and Priority Reform 4 of the National Agreement on Closing the Gap.
- 9. Commonwealth, States and Territories streamline performance monitoring and reporting processes including the frequency (bi-annually) to avoid the significant drain on resources and the detraction from a service-delivery focus.
- 10. Commonwealth, States and Territories partner with NATSILS and ATSILSs to co-design new NLAP reporting processes which establish collaborative and outcomes-focused monitoring and reporting requirements so that expenditure can be properly monitored for its impact on the lives of Aboriginal and Torres Strait Islander peoples and communities, at the national, regional and local level. This may include ATSILSs testing the collection and internal reporting of outcomes information initially.
- 11. While NATSILS would like to investigate the utility for priority client categories in a future-fit funding model which better reflects the legal needs of Aboriginal and Torres Strait Islander peoples across Australia, additional priority client categories of Aboriginal and Torres Strait Islander people with disability and Aboriginal and Torres Strait Islander people caught up in the

care and protection systems be added in the context of the existing framework.

Substantially increase access to effective, culturally appropriate, and comprehensive legal assistance for Aboriginal and Torres Strait Islander people – in recognition and fulfillment of the right of all Aboriginal and Torres Strait Islander people to access justice through culturally appropriate and community-controlled legal services

Addressing legal need through expanding ATSILSs' services

12. Commonwealth, States and Territories invest in expanding the geographical reach of ATSILSs, ensuring all Aboriginal and Torres Strait Islander people, regardless of their postcode, have the choice of culturally safe place-based community-controlled legal assistance services within metropolitan, regional, rural, and remote locations.

13. Governments invest in ATSILSs' long-term organisational capacity to provide comprehensive holistic and culturally appropriate legal assistance services, and address state/territory wide legal need in:

- a. Criminal law, including Children's law;
- b. Civil law, including Commonwealth administrative review;
- c. Family law;
- d. Child protection law.

Appendix A3	
Year of publication	2025
Title	2025 NATSILS Submission on Youth Justice
Link to submission	Submission to the 2024 Senate Legal and Constitutional Affairs References Committee Inquiry on Australia's youth justice and incarceration system (submission 202)
Relevant ToR (s)	ToR1 - The nature, prevalence and impact of racism, hate and violence towards First Nations people, including trends over time ToR3 - Initiatives that are effective in combating racism targeted at First Nations people and reduce individual and collective harm
Relevance to this Inquiry	The recommendations listed below are of relevance to this inquiry because the overrepresentation of Aboriginal children and young people within the Youth Justice system is influenced by racism in policing and child protection practices. NATSILS authored this submission, and the below recommendations have been identified as having relevance to this inquiry and provide clear suggestions that align with ToR3 of this Inquiry.

Relevant Recommendations:

1. Provide needs-based and sustained funding increases for ATSILS to deliver culturally safe, holistic legal services and wraparound supports for Aboriginal and Torres Strait Islander children and young people, and to partner with governments to transform youth justice in line with the Closing the Gap priority reforms and to meet Socio-Economic Target 11.
2. Establish a new independent statutory body or expand the functions of an existing independent, statutory entity with dedicated resources to monitor and report directly to Parliament on the youth justice system, focusing on the treatment and outcomes of Aboriginal and Torres Strait Islander children.
3. Reform Bail and Remand Frameworks by reversing regressive changes and adopting evidence-based, youth-centred approaches that prioritise rehabilitation over detention.
4. End harmful practices in youth detention by implementing enforceable national minimum standards and supporting trauma-informed, culturally safe, community-based alternatives to detention, with a focus on early intervention and diversion strategies, and justice reinvestment approaches that are self-determined and address the root causes of youth offending. Minimum standards must be developed in partnership with Aboriginal and Torres Strait Islander people.
5. The Commonwealth ensure compliance with international human rights standards and obligations including by immediately raising the minimum age of criminal responsibility and eliminate detention of children. The Commonwealth should work with states and territories.
6. Implement Indigenous Data Sovereignty in youth justice by ensuring the Australian Government works in partnership with ACCOs, specifically ATSILS to lead national efforts in the collection, coordination, reporting and interpretation of youth justice data, consistent with Priority Reform 4 of Closing the Gap.
7. Embed national anti-racism strategies across youth justice systems that includes agency self-assessment tools and independent accountability mechanisms to eliminate systemic racism and promote equality for Aboriginal and Torres Strait Islander children, in line with Priority Reform 3 of Closing the Gap.

Appendix A4**Year of publication**

2025

Title**2025 NATSILS Co-Authored Report to SCAG on Bail and Remand**

Link to submission	SCAG Bail and Remand Reform Working Group Final Report
Relevant ToR (s)	ToR1 - The nature, prevalence and impact of racism, hate and violence towards First Nations people, including trends over time ToR3 - Initiatives that are effective in combating racism targeted at First Nations people and reduce individual and collective harm
Relevance to this Inquiry	The recommendations listed below are of relevance to this inquiry because the overrepresentation of Aboriginal people in Bail and remand numbers is influenced by racism in policing practices. NATSILS authored this submission, and the below recommendations have been identified as having relevance to this inquiry and provide clear suggestions that align with ToR3 of this Inquiry.
Relevant Recommendations:	
Recommendation 1 Noting the success of ATSILS-led bail support services, all Governments should provide increased and long-term funding to ACCOs, in particular ATSILS, to establish, expand and provide long term funding of bail support services which enable access to holistic supports with a particular emphasis on: - Aboriginal and Torres Strait Islander children and young people, to immediately address Target 11. - Aboriginal and Torres Strait Islander women, as the fastest growing cohort of people being imprisoned. - Access to bail supports and programs, including social service and cultural supports such as housing, alcohol and other drug support services, and therapeutic social and emotional wellbeing for adults, children (and their families) seeking bail, including the provision of reports to assist bail decision-makers. - Accessibility across all locations including regional, rural and remote. Recommendation 2 A Working Group consisting of representatives of the JPP and officials from justice and policing (and other agencies as deemed relevant by the Working Group) be established to explore options and recommendations for alternative and co-responder models, including funding frameworks, to address factors such as domestic violence, children and young people, mental health, disability, alcohol and drug use and child protection in partnership with ACCOs including ATSILS and FVPLS. A report on alternative and co-responder models should be prepared for SCAG by mid-2026. Recommendation 3 A Working Group consisting of representatives of the JPP and officials from justice and policing (and other agencies as deemed relevant by the Working Group)	

develop a resource for bail decision-makers, being courts and police, that sets out guidance and 'best practice' approaches to bail that embed the foundational and common law principles of bail, with reference to relevant international human rights standards and conventions, and further considerations in relation to:

- a. Children and young people.
- b. Cultural and community norms and protocols, including to support individuals to remain within community and on country, which are specific to the local context.
- c. Diversionary and early-intervention options, particularly for alleged low-level offences that are unlikely to attract a term of imprisonment.
- d. The use of irrelevant, unsuitable or onerous bail conditions that may result in breaches of bail and over-incarceration.
- e. Accessibility and appropriateness of bail conditions for people with disability.
- f. Suitable housing, noting cultural, social and family and domestic violence implications.
- g. The use of electronic monitoring, including where electronic monitoring is not practical or available.

A report on the development of a resource for bail decision-makers should be prepared for SCAG by mid-2026.

Once the resource for bail decision-makers is developed, Attorney-General's Departments or Departments of Justice (or equivalent) in each jurisdiction should co-design and co-deliver training with local Aboriginal and Torres Strait Islander organisations to support bail decision-makers to implement the guidance materials, within their own jurisdictional context, by mid-2027.

Recommendation 4

People on remand should have equitable access to support, education and rehabilitation programs.

Recommendation 5

To have an immediate impact on remand rates and assist them in meeting Targets 10 and 11 under the National Agreement, jurisdictions should consider reform of bail laws for both adults and young people to:

- a. ensure bail laws explicitly provide that imprisonment be a last resort
- b. explicitly require that a person must not be remanded for an offence that is unlikely to result in a sentence of imprisonment
- c. remove bars on second (and subsequent) bail applications
- d. remove standalone bail offences
- e. remove presumptions against bail and provisions which reverse the onus of proof
- f. mandate bail authorities to consider any matters that arise in relation to a person's status as an Aboriginal or Torres Strait Islander person
- g. include a presumption in favour of bail for children and young people
- h. include a presumption in favour of bail for people with cognitive, psycho-social, mental health or other disability-related issues

- i. remove bail tests that establish very high thresholds for bail being granted and curtail bail decision-makers'-discretion
- j. ensure bail is not refused where electronic monitoring is not practical or available
- k. ensure bail conditions are:
 - i. targeted at an identified risk
 - ii. able to be complied with by the individual (taking into account the individual's capacity to understand/comply), and
 - iii. not overly onerous

so as to prevent irrelevant, unsuitable or onerous bail conditions that may result in breaches of bail and over-incarceration, such as conditions that require onerous daily reporting, impractical non-association conditions and inappropriate curfew conditions that are not relevant to bail concerns or risk

Recommendation 6

- a. Recognising that further work is required on uplifting data systems and identifying funding and resourcing requirements, in line with Priority Reform 4, all Governments should commit to improving data collection on bail and remand (through police, courts and ATSILS) on areas related to an individual, such as:
 - i. Aboriginal and Torres Strait Islander status
 - ii. Gender
 - iii. Age
 - iv. Disability status
 - v. Primary offence category
 - vi. Whether a child is under guardianship of the Minister or their delegate
 - vii. Whether previous domestic or family violence victimisation has occurred.
- b. The Working Group referenced in Recommendation 2 and 3 should work with the Data Policy Partnership and other relevant data bodies across governments to create an evidence base to better understand the following:
 - i. Whether access to a bail support service was a factor in the decision whether or not to grant bail, including whether a lack of access to a bail support service (i.e. housing, alcohol and other drugs, reoffending, non-attendance) led to bail refusal and how this was assessed in each case.
 - ii. The incidence of bail being granted by a court after being refused by police.
 - iii. Reasons for imposing bail conditions, including how relevant legislative criteria were addressed.
 - iv. Police use of cautions, warnings and other 'diversionary' options as alternatives to arrest.
 - v. Trend data on:

1. Bail decision comparability between metropolitan, rural, regional and remote areas and differences across police commands and court venues.
 2. Relative periods of remand over time to understand any trends related to changes in remand periods and therefore the efficiency of the justice system.
- c. Governments should consider additional resourcing to ATSILS for the necessary capital upgrades and capabilities uplift to strengthen and support their ability to collect, aggregate, analyse, translate and report on their service delivery data. A report on progress should be prepared for SCAG by mid-2027.

Appendix A5	
Year of publication	2026
Title	2026 NATSILS Submission to Youth Justice Inquiry
Link to submission	Submission to the Senate Legal and Constitutional Affairs References Committee Inquiry into Australia's youth justice and incarceration system (submission 120)
Relevant ToR (s)	ToR1 - The nature, prevalence and impact of racism, hate and violence towards First Nations people, including trends over time ToR3 - Initiatives that are effective in combating racism targeted at First Nations people and reduce individual and collective harm
Relevance to this Inquiry	The recommendations listed below are of relevance to this inquiry because the overrepresentation of Aboriginal people in the youth justice system is influenced by racism in policing and child protection practices. NATSILS authored this submission, and the below recommendations have been identified as having relevance to this inquiry and provide clear suggestions that align with ToR3 of this Inquiry.
Relevant Recommendations:	
Recommendation 1 NATSILS calls for the Prime Minister to exercise leadership and call an emergency summit on Australia's youth legal systems, so that key decision makers in government can listen to the voices of Aboriginal and Torres Strait Islander children, Aboriginal and Torres Strait Islander legal experts and leaders in a setting where community-controlled organisations lead the discussion. Recommendation 2	

The Commonwealth Government should use its constitutional powers to raise the age of criminal responsibility to at least 14 across all jurisdictions.

Recommendation 3

The Commonwealth Government should work with child rights experts, including NATSILS, to set minimum standards for the treatment of children in youth justice systems, consistent with international human rights norms and standards.

Recommendation 4

The Commonwealth Government should make a law that a child or young person can only be arrested or held as a last resort – when there is no other option – and for as short a period of time as possible.

Recommendation 5

The Commonwealth Government should make a law that forbids any child or young person being held in solitary confinement (and solitary confinement is defined, as in the Mandela Rules).

Recommendation 6

The Australian Government should take immediate and proactive steps to protect and promote the rights of Aboriginal and Torres Strait Islander children and prevent further harm as set out in paragraph 11 of the Early Warning and Urgent Action complaint to the United Nations Committee on the Elimination of Racial Discrimination by Professor Megan Davis and Associate Professor Hannah McGlade.

These steps include:

- a) full and prompt response to the National Children's Commissioner's Help Way Earlier! report;
- b) ratification of the UN Optional Protocol to the Convention on the Rights of the Child;
- c) withdrawal of the reservation to article 37(c) of the UN Convention on the Rights of the Child, which requires that children not be detained with adults; and
- d) full implementation of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ("OPCAT"), in particular by the Commonwealth Government ensuring robust National Preventive Mechanisms are operating in every state and territory.

Recommendation 7

Commonwealth, State and Territory governments should work in partnership with NATSILS, ATSILS and the First Peoples Disability Network to develop an Aboriginal and Torres Strait Islander Disability Framework and operational plan which would co-locate disability advocates within NATSILS, ATSILS and First People's Disability Network.

Recommendation 8

As a measure to prevent children's early interactions with the criminal legal systems, Governments should invest in ATSILS to enhance our intersectional practices and provide early intervention and wrap-around, prevention, diversion, rehabilitation, through-care and therapeutic support for Aboriginal and Torres Strait Islander people with disability, including specific resourcing for disability discrimination matters, as well as National Disability Insurance Scheme (NDIS) appeals.

Recommendation 9

The Commonwealth, States and Territories should fund the development and implementation of alternative responder models in the youth legal system that provide culturally safe therapeutic supports to Aboriginal children that will reduce contact with police and lower remand rates.

Recommendation 10

The criminalisation of children in out-of-home care must end. Commonwealth, State and Territory governments should introduce clearer accountability mechanisms for State and Territory justice and child protection agencies, related statutory services and funded services to ensure justice-impacted children in out-of-home care are not further criminalised by the State if in the out-of-home system, and are assisted to access the National Disability Insurance Scheme and culturally appropriate disability diagnosis, treatment and support before entry into custody, while in custody and upon release from custody.

Recommendation 11

A positive duty to not discriminate on the basis of disability should be extended to police through amendments to the Disability Discrimination Act. This protection against disability discrimination should additionally be extended to corrections, youth detention and child protection officeholders.

Recommendation 12

The Australian Government should implement the recommendations in the recently released Barriers Experienced by Aboriginal and Torres Strait Islander Children and Families Accessing Legal Support Scoping Study to reduce child removals and prevent the criminalisation of children in care.

Recommendation 13

Noting the link between school disciplinary actions, school exclusion and criminalisation of children, the Disability Discrimination Act should be amended to include provisions that protect the rights of children with disabilities to learn and participate in education.

Recommendation 14

Governments should implement the recommendations of the Standing Council of Attorneys-General Justice Policy Partnership Bail and Remand Reform Working Group Final Report.

Recommendation 15

Australia must ensure its obligations under the United Nations Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment

or Punishment are fully implemented and resourced, including ensuring there are robust members of the National Preventative Mechanism (NPM) in place in every State and Territory.

Recommendation 16

The Commonwealth Government must implement the United Nations Working Group on Arbitrary Detention's calls for Australia to take urgent action to:

- address the remand crisis and end the gross overrepresentation of First Nations peoples in detention,
- raise the age of criminal responsibility to at least 14, and
- prohibit the solitary confinement of children.

Recommendation 17

The Commonwealth Government must implement the United Nations Working Group on Arbitrary Detention's recommendation to "ensure prisoners are not held in police watchhouses beyond short-term processing, that alternatives to pre-trial detention be prioritized, and that adequate correctional facility capacity be assured when detention is necessary as a last resort."

Recommendation 18

The Commonwealth Government should accept and implement the recommendations of the current United Nations' Universal Periodic Review, as well as the recommendations from earlier United Nations bodies as they relate to justice for Aboriginal and Torres Strait Islander people.

Appendix A6	
Year of publication	2026
Title	2026 NATSILS and SNAICC Co-Authored Scoping Study on Child Protection
Link to submission	Barriers experienced by Aboriginal and Torres Strait Islander children and families accessing legal supports – A scoping Study
Relevant ToR (s)	ToR1 - The nature, prevalence and impact of racism, hate and violence towards First Nations people, including trends over time ToR3 - Initiatives that are effective in combating racism targeted at First Nations people and reduce individual and collective harm
Relevance to this Inquiry	The recommendations listed below are of relevance to this inquiry because the overrepresentation of Aboriginal children within the child protection system is influenced by racism in child protection practices. NATSILS co-authored this submission with SNAICC, and the below recommendations have been identified as having

	relevance to this inquiry and provide clear suggestions that align with ToR3 of this Inquiry.
Relevant Recommendations:	
1. Provide increased funding and resourcing to deliver accessible legal supports to Aboriginal and Torres Strait Islander children and families by: 1.1 All governments establishing formal partnerships with relevant national and jurisdictional Aboriginal and Torres Strait Islander Legal Services (ATSILS) and Family Violence Prevention Legal Services (FVPLS) that include core funding to adequately cover the holistic cost of service provision in all service areas, including: • delivery of early legal support and advice in relation to child protection matters, as well as during and post court proceedings, • holistic legal services models, and • service delivery in regional, remote and cross-border areas. 1.2 In addition to core funding, state and territory governments providing dedicated funding to jurisdictional ATSILS and FVPLS to: • implement place-based and culturally safe specialised youth programs dedicated to providing legal assistance and representation to Aboriginal and Torres Strait Islander young people, and • review, establish and deliver place-based community legal education that is culturally relevant, accessible and in line with community needs. 1.3 Establishing mechanisms for Aboriginal and Torres Strait Islander communities to guide decision-making for the growth and delivery of high-quality, culturally responsive legal supports within their communities. 1.4 State and territory governments funding specialist legal services that adopt a disability informed approach for Aboriginal and Torres Strait Islander children and parents with disability who come into contact with child protection systems, including opportunities to co-design these specialist services with existing ACCOs. 1.5 Partnering with ACCO peak bodies to explore ways to reduce administrative burden for ATSILS, FVPLS and their national peak bodies, in alignment with Recommended Action 4 of the Stronger ACCOs, Stronger Families Report. 1. Increase the cultural capability of mainstream legal and court systems for Aboriginal and Torres Strait Islander children and families through: 2.1 State and territory governments partnering with jurisdictional ACCOs and communities to design and embed cultural capability frameworks in relation to child protection and youth criminal justice policy development, practice and service delivery, including the appointment and training of children's legal representatives.	

2.2 State and territory governments partnering with jurisdictional ACCOs to co-design programs of judicial education for court and judicial staff that address the Aboriginal and Torres Strait Islander Child Placement Principle, intergenerational trauma, the effects of colonisation, domestic violence, poverty, substance abuse and mental health issues that may affect Aboriginal and Torres Strait Islander parents' interactions with the Court in child protection proceedings.

2.3 Requiring tertiary education institutions to implement cultural capability courses for students studying Law and other associated disciplines, which address the Aboriginal and Torres Strait Islander Child Placement Principle, intergenerational trauma, the effects of colonisation, domestic violence, poverty, substance abuse and mental health issues that may affect Aboriginal and Torres Strait Islander parents' interactions with legal systems.

2.4 Review and amend the Priestley 11 core legal subjects to include a subject that examines the impact of colonisation on Aboriginal and Torres Strait Islander communities as a mandatory part of Law degrees.

- 2. Strengthen and grow the Aboriginal and Torres Strait Islander legal sector through the Australian Government directly funding the cost of obtaining Graduate Diploma/Certificate in Legal Practice, Bachelor of Laws, Juris Doctor and other legal, court and justice related tertiary qualifications for Aboriginal and Torres Strait Islander students.**
- 3. Increase early and ongoing access to legal supports and legal advocacy, outside of specific legal processes. This should be done through all governments' funding partnerships between ACCOs delivering child and family services, ATSILS and FVPLS to support access to early legal advice and referral pathways between ACCO legal services and ACCO child and family services.**
- 4. State and territory governments to assess—and provide funding to meet—the internal legal capacity required for ACCO child and family services to effectively exercise delegated statutory authority through the transfer of decision-making power, authority, control and resources for Aboriginal and Torres Strait Islander children in contact with child protection services.**
- 5. Ensure all Aboriginal and Torres Strait Islander children and young people have access to high-quality, culturally responsive, independent legal representation through:**

6.1 State and territory governments funding the establishment of specialist children's legal representation services for Aboriginal and Torres Strait Islander children and young people involved in child protection proceedings within ATSILS and FVPLS.

6.2 State and territory governments funding the establishment of specialist children and youth legal representation services for Aboriginal and Torres Strait Islander children and young people involved in youth justice proceedings within ATSILS and FVPLS.

6.3 Establishing National Minimum Standards for children's legal representatives to be enshrined in legislation across all jurisdictions. These standards should embed human rights foundations, include Representation Principles focused on the representation of Aboriginal and Torres Strait Islander children and young people, and be administered by a relevant Aboriginal and Torres Strait Islander community-controlled authority.

6.4 Commissioning an independent review of training and ongoing professional development requirements for children's legal representatives to ensure they are adequately trained to provide accessible, culturally responsive legal services.

6. **The Australian Government, in partnership with NATSILS and First Nations Advocates Against Family Violence (FNAAFV), to develop an implementation strategy for the administration of children's legal representation in child protection proceedings (currently occurring through Legal Aid Commissions and the Northern Territory Attorney-General's Department) to be transferred to ATSILS and FVPLS for Aboriginal and Torres Strait Islander children and young people by 2026.**
7. **State and territory governments to partner with ACCO peak bodies and ATSILS and FVPLS to establish specialist courts and/or dedicated court lists for Aboriginal and Torres Strait Islander families in care and protection matters in all jurisdictions, including providing adequate funding and resourcing for their design, implementation and evaluation.**

8.1 Resourcing for specialist courts and/or dedicated court lists must include funding for Aboriginal and Torres Strait Islander judicial officers, or non-Indigenous judicial officers with specialist training, and for ATSILS and FVPLS to facilitate participation and navigate complexities within these courts as a core funding requirement.

8.2 This should also include specialised courts and/or dedicated court lists within youth justice for children in out-of-home care.

8. **To address imbalances in power between parties, each Court responsible for child protection matters should have in place Practice Directions that require disclosure of evidence by child protection departments, within 14 days of the filing of a care and protection application by a department, to legal representatives for Aboriginal and Torres Strait Islander children, young people and their families.**

9.1 The implementation of this recommendation should be undertaken in partnership with NATSILS, FNAAFV and jurisdictional ATSILS and FVPLS.

9.2 The effectiveness of the Practice Directions should be reviewed and evaluated regularly in partnership with NATSILS, FNAAFV and jurisdictional ATSILS and FVPLS.

9. **All governments to invest in system reform for Aboriginal and Torres Strait Islander children in—or at risk of—entering out-of-home care, to promote wellbeing and prevent contact with the youth justice system by**

funding ACCO child and family services to provide child-centred, holistic and therapeutic supports.

10.1 Implementation of this recommendation should include all governments increasing early and tailored supports for children and families in line with the approach outlined in the National Child and Family Investment Strategy from the Safe and Supported: Aboriginal and Torres Strait Islander Action Plan 2023–2026.

10. State and territory child protection departments to partner with jurisdictional ATSILS and FVPLS to establish an automatic notification service, which will notify the relevant ACCO legal support service and ACCO child and family service that an Aboriginal and Torres Strait Islander child, young person or family has had contact with child protection and/or other statutory services, providing a timely opportunity for review, oversight, support and advocacy.

11.1 The implementation of this recommendation, including the design of the automatic notification service, should be overseen by an independent Aboriginal and Torres Strait Islander governance group, external to government, in each jurisdiction.

11.2 To support this recommendation, state and territory governments should amend child protection legal procedures and/or introduce legislative provisions in all jurisdictions to embed the referral of families to culturally safe legal services at the onset of child protection involvement, along with a referral to have a support person/advocate present to support children and/or parents in child protection meetings and court proceedings.

11. All governments to partner with jurisdictional ACCOs, ATSILS and FVPLS to improve understanding of—and ability to respond to—unmet legal support needs in the context of child protection through:

12.1 Developing robust national guidelines for implementing management and collection of data relating to Aboriginal and Torres Strait Islander children and families involved in child protection services, court proceedings and out-of-home care systems.

12.2 Jointly undertaking jurisdictional mapping activities to understand areas of unmet need, including reviewing legal support services available for people with disability and for children and families in remote/regional areas and cross-border regions.

12.3 Co-designing and agreeing on jurisdictional implementation plans to increase the availability of legal supports in areas of unmet need.

12.4 Reporting biannually to the Justice Policy Partnership on each government's progress towards meeting unmet need within their jurisdiction. Copies of these reports should also be shared with Safe and Supported governance structures and the Early Childhood Care and Development Policy Partnership.

12. Increase accountability and oversight mechanisms, through Aboriginal and Torres Strait Islander governance and self-determination, to support

the legal needs and rights of Aboriginal and Torres Strait Islander children and families by:

13.1 Establishing a fully independent, empowered and legislated National Commissioner for Aboriginal and Torres Strait Islander Children and Young People through a shared decision-making process, as per Action 7 of the Safe and Supported Aboriginal and Torres Strait Islander First Action Plan 2023–2026.

13.2 Establishing independent advocates in each state/territory for children and young people in all matters relating to family and domestic violence, youth justice and child protection, including out-of-home care.

13.3 Implementing National Minimum Requirements for Aboriginal and Torres Strait Islander Children's Commissioners in all jurisdictions, as per Action 7 of the Safe and Supported Aboriginal and Torres Strait Islander First Action Plan 2023–2026, ensuring that independent, empowered and effective Aboriginal and Torres Strait Islander Children's Commissioners in each jurisdiction are developed in partnership with Aboriginal and Torres Strait Islander representatives.

13.4 Ratifying the Optional Protocol to the United Nations Convention on the Rights of the Child on a communications procedure that would allow Aboriginal and Torres Strait Islander children to raise complaints directly with the United Nations when domestic remedies are exhausted.