

Submission on the Development of a National Anti-Racism Framework

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The NSW Young Lawyers Human Rights Committee (the **Committee**) makes the following submission on the development of a National Anti-Racism Framework (the **Framework**).

NSW Young Lawyers

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NSW Young Lawyers Human Rights Committee

The NSW Young Lawyers Human Rights Committee comprises of all those interested in human rights law, including lawyers working in academia, for government, private and the NGO sectors and other areas of practice that intersect with human rights law, as well as barristers and law students. The objectives of the Committee are to raise awareness about human rights issues and provide education to the legal profession and wider community about human rights and their application under both domestic and international law. Members of the Committee share a commitment to effectively promoting and protecting human rights and to examining legal avenues for doing so. The Committee takes a keen interest in providing comment and feedback on legal and policy issues that relate to human rights law and its development and support.

Summary of Recommendations

1. The Committee recommends that the Framework be underpinned by clear and multi-faceted definitions of 'racism' and 'anti-racism'.
2. The Committee recommends that the Framework be compliant with Australia's obligations under the Convention on the Elimination of All Forms of Racial Discrimination (**CERD**).
3. The Committee recommends that the Framework reflects best practice in addressing systemic and individual racism, including through historical truth-telling, large-scale education and awareness-raising programs and initiatives, the development of inter-cultural networks, and the encouragement of bystander action and allyship.
4. The Committee recommends that the Framework account for uniquely Australian experiences of racism, particularly as it relates to First Nations people.
5. The Committee recommends that the Victorian Equal Opportunity & Human Rights Commission's minimum standards for compliance with section 15 of the *Equal Opportunity Act 2010* (Vic) inform the enforcement of outcomes under the Framework.
6. The Committee recommends that the Framework include provisions requiring institutional self-reporting and self-regulation.
7. The Committee recommends that the Framework is subject to a clear, regular, effective, and accurate evaluation mechanism.
8. The Committee recommends that any evaluation of the Framework is conducted in consultation with individuals and leading organisations within the relevant marginalised groups.

Part 1 – Clarity of Definition

1. The Committee submits that any national anti-racism framework (the **Framework**) must be underpinned by clear definitions of '*racism*' and '*anti-racism*'. The need for such clarity has been observed by the Australian Human Rights Commission (the **Commission**) in its Concept Paper¹ and Submission Guide.² Race is not singular. Equally, there is no singular form of '*racism*' or '*anti-racism*'. Rather, both '*racism*' and '*anti-racism*' manifest in multiple forms. The Committee submits that the Framework should thus articulate the different *types* of '*racism*' and '*anti-racism*' that it seeks to address, and that this diversity should be reflected in an adapted and sufficiently broad definition.

Defining 'racism'

2. As noted by geographers Dunn and Geeraert, '*[t]here is no absolute, single definition of racism. Racist expressions are various, sometimes concealed*'.³
3. Naming the different types of racism that manifest in modern Australian society is crucial to adequately capturing the true prevalence, extent, and intersectional nature of racism. Feedback from the Commission's first stage of consultations evinced the importance of placing *systemic* racism at the forefront of the definitions of racism used in the proposed framework.⁴ These considerations are particularly salient to the further development of National Outcome Area 1.⁵
4. The Committee suggests that '*racism*' thus be defined broadly to capture multiple types of racism. For example, racism can be defined as conduct which '*maintains or exacerbates inequality of*

¹ Australian Human Rights Commission, 'Concept Paper for a National Anti-Racism Framework' (March 2021) [1]-[10] (**Concept Paper**).

² Australian Human Rights Commission, 'National Anti-Racism Framework Submission Guide' (October 2021) 16 (**Submission Guide**).

³ Kevin M Dunn and Pierrick Geeraert, 'The geography of race and racisms' (2003) *GeoDate* 2.

⁴ Australian Human Rights Commission, 'National Anti-Racism Framework Submission Guide' (October 2021) 7.

⁵ Australian Human Rights Commission, 'National Anti-Racism Framework Submission Guide' (October 2021) 9-10.

opportunity among ethnoracial groups'.⁶ Such a definition enables the Framework to recognise that racism can occur at multiple conceptual levels, including:

- a. internalised racism;⁷
- b. interpersonal racism;⁸ and
- c. systemic or institutional racism - which occurs '*when the production and control of, and access to, material, informational and symbolic resources within society serve to maintain or exacerbate the unequal distribution of opportunity across ethnoracial groups*'.⁹

Defining 'anti-racism'

5. Defining '*anti-racism*' is equally crucial to the development of a suitable response.
6. Defining '*anti-racism*' will elucidate precisely what it is that the Commission is setting out to achieve - from simply the *absence* of racism, to, more ambitiously, radical racial equality, or even a post-racial society.¹⁰ Such a definition will be key to the further development of the national outcome areas, which will in turn inform the initiatives developed by institutions in response to the national outcomes, and the metrics used to measure the success of any such initiatives. It will determine whether organisations will be encouraged to adopt a more passive or proactive approach to tackling racism. Stakeholder feedback collected to date suggests there is appetite for organisations to be emboldened in adopting more proactive measures.¹¹
7. The Committee submits that '*anti-racism*' should be defined in such a way as to encompass a variety of anti-racisms. The Committee suggests that, following on from the definition of '*racism*'

⁶ Gabrielle Berman and Yin Paradies, 'Racism, disadvantage and multiculturalism: towards effective anti-racist praxis' (2010) 33(2) *Ethnic and Racial Studies* 4.

⁷ See, e.g., Kaine Grigg and Lenore Manderson, 'The Australian Racism, Acceptance, and Cultural-Ethnocentrism Scale (RACES): item response theory findings' (2016) 15(1) *International Journal for Equity in Health*; Kevin M Dunn and Pierrick Geeraert, 'The geography of race and racisms' (2003) *GeoDate* 2.

⁸ See, e.g., Kaine Grigg and Lenore Manderson, 'The Australian Racism, Acceptance, and Cultural-Ethnocentrism Scale (RACES): item response theory findings' (2016) 15(1) *International Journal for Equity in Health*; Kevin M Dunn and Pierrick Geeraert, 'The geography of race and racisms' (2003) *GeoDate* 2.

⁹ Gabrielle Berman and Yin Paradies, 'Racism, disadvantage and multiculturalism: towards effective anti-racist praxis' (2010) 33(2) *Ethnic and Racial Studies* 4.

¹⁰ As noted in Australian Human Rights Commission, 'Concept Paper for a National Anti-Racism Framework' (March 2021) [35].

¹¹ Australian Human Rights Commission, 'National Anti-Racism Framework Submission Guide' (October 2021) 8.

proposed earlier, '*anti-racism*' be defined not simply as the absence of racism but as '*that which promotes equality of opportunity among ethnoracial groups*'.¹²

8. According to University of Melbourne Professor Ghassan Hage, '*anti-racism*' serves six central functions:¹³
- a. reducing the incidence of racist practices – both in society at large ('*everyday racism*') and within institutions ('*structural racism*');
 - b. fostering a non-racist culture – to ensure people are not racist in the first place;
 - c. supporting the victims of racism – for example, via shelter and counselling to victims of racist violence and abuse;
 - d. empowering racialised subjects – by cultivating autonomy and agency in racialised communities;
 - e. transforming racist relations into better relations – via the presentation of alternative, non-racist modes of coexisting and relating; and
 - f. fostering an a-racist culture – that is, an ideal state where race has no significance as a criterion of identification in society.
9. The Committee submits that the definition of '*anti-racism*' adopted in the Framework should be multi-faceted and comprise of the elements identified by Professor Hage.

Recommendation 1: The Committee recommends that the Framework be underpinned by clear and multi-faceted definitions of '*racism*' and '*anti-racism*'.

¹² Gabrielle Berman and Yin Paradies, 'Racism, disadvantage and multiculturalism: towards effective anti-racist praxis' (2010) 33(2) *Ethnic and Racial Studies* 6.

¹³ Ghassan Hage, 'Recalling anti-racism' (2016) 39(1) *Ethnic and Racial Studies* 124-125.

Part 2 – Existing Protections

Existing protections

10. While statutes prohibiting racial discrimination exist in Australia at both federal and state levels,¹⁴ the Committee views the emphasis which these systems place on individual complainants as insufficient to address the breadth of harms which result from racism. Current laws prohibit discrimination on the basis of race in limited and specific contexts, including education and employment, and while complaints of unlawful discrimination can be lodged with the Commission and equivalent state and territory agencies for investigation and conciliation,¹⁵ this passive, individual claimant-focused approach does not rise to the standard of proactive *anti*-racism. Racial discrimination remains current and ongoing within the Australian community,¹⁶ but the current state and federal individual claim systems place the burden of rectifying said racial discrimination upon those who experience race-based discrimination and limit the availability of redress to narrowly defined circumstances.

Part 3 – Guiding Principles

International Convention

¹⁴ *Racial Discrimination Act 1975* (Cth); *Anti-Discrimination Act 1977* (NSW) Pt 2; *Discrimination Act 1991* (ACT) s 7(1)(q); *Anti-Discrimination Act 1992* (NT) s 19(1)(a); *Anti-Discrimination Act 1991* (Qld) s 7(g); *Equal Opportunity Act 1984* (SA) Pt 4; *Anti-Discrimination Act 1998* (Tas) s 16(a); *Equal Opportunity Act 2010* (Vic) s 6(m); *Equal Opportunity Act 1984* (WA) Pt III; see also *Racial and Religious Tolerance Act 2001* (Vic).

¹⁵ Attorney-General's Department, 'Australia's anti-discrimination law', *Attorney-General's Department* (Web Page, 2021) <<https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/australias-anti-discrimination-law>>.

¹⁶ See, e.g., Alison Markwick et al., 'Experiences of racism among Aboriginal and Torres Strait Islander adults living in the Australian state of Victoria: a cross-sectional population-based study' (2019) 19 *BMC Public Health* 309; Tanja Dreher, 'Racism and media: a response from Australia during the global pandemic' (2020) 43(13) *Ethnic and Racial Studies* 2363; Rose Burford-Rice et al., "That's what they say in our language: one onion, all smell": the impact of racism on the resettlement experiences of South Sudanese women in Australia' (2020) 20(2) *Language and intercultural communication* 95.

11. The Framework should reflect and give effect to those rights articulated in the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), to which Australia is a state party.¹⁷
12. Particular consideration should be given to CERD Articles 2 and 7,¹⁸ which collectively oblige state parties to promote racial understanding, encourage multi-racial integration, and adoption of effective measures to these ends, particularly in the spheres of education, culture, and information-sharing. Accordingly, the Framework should seek to reflect best practice in addressing systemic and individual racism, including through historical truth-telling,¹⁹ large-scale education and awareness-raising,²⁰ the development of inter-cultural networks,²¹ and the encouragement of bystander action and allyship.²²

Recommendation 2: The Committee recommends that the Framework be compliant with Australia's obligations under the CERD.

Recommendation 3: The Committee recommends that the Framework reflects best practice in addressing systemic and individual racism, including through historical truth-telling, large-scale education and awareness-raising programs and initiatives, the development of inter-cultural networks, and the encouragement of bystander action and allyship.

¹⁷ *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969)

¹⁸ *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) arts 2, 7.

¹⁹ See *Uluru Statement from the Heart* (National Constitutional Convention, 26 May 2017); Reconciliation Australia, *State of Reconciliation in Australia* (Report, 15 January 2021).

²⁰ See Kathleen Blair et al., *Challenging Racism Project* (Survey Report, 2016) 6-10.

²¹ See Winnifred Louis et al., 'Effective anti-racism strategies and conversations: Lessons from the literature' (2013) 35(4) *InPsych* (Online) <<https://psychology.org.au/publications/inpsych/2013/august/louis>>.

²² See Jenifer Becker, 'Active Allyship' (2017) 13(1) *Public Services Quarterly* 27; Winnifred Louis et al., 'Effective anti-racism strategies and conversations: Lessons from the literature' (2013) 35(4) *InPsych* (Online) <<https://psychology.org.au/publications/inpsych/2013/august/louis>>.

Australian Racism

13. Beyond the CERD, the Framework should also be informed by the unique experience of racism in Australia.
14. Racism occurs in both physical (workplaces, educational facilities, public transport, consumer services, housing, police custody, and healthcare providers) and online spaces in Australia, and can include abuse, differential treatment, racial slurs, name-calling, and physical intimidation.²³
15. First Nations people experience racism at a rate far greater than non-indigenous people,²⁴ in legal,²⁵ health,²⁶ and education settings.²⁷ The impact of racism on First Nations people in Australia is widespread, with more than one-third of depression diagnoses amongst First Nations people attributable to racism.²⁸
16. Racism is also prevalent across other racial minorities in Australia;²⁹ resulting in similar adverse mental health outcomes.³⁰ According to research conducted by Western Sydney University in 2016, large proportions of surveyed Australians expressed negative attitudes towards Muslims (63%), people from the Middle East (51%), people from Africa (44%), people from South Asia

²³ See Kathleen Blair et al., *Challenging Racism Project* (Survey Report, 2016) 10-13.

²⁴ Kathleen Blair et al., *Challenging Racism Project* (Survey Report, 2016) 10.

²⁵ See, e.g., Nicole Watson, *Indigenous Legal Judgments: Bringing Indigenous Voices into Judicial Decision Making* (Routledge, 2021).

²⁶ See, e.g., Anna Socha, 'Addressing Institutional Racism Against Aboriginal and Torres Strait Islanders of Australia in Mainstream Health Services: Insights from Aboriginal Community Controlled Health Services' (2020) 16(1) *International Journal of Indigenous Health* 291.

²⁷ See, e.g., Rhonda G. Craven and Anthony Dillon, 'Racism, Aboriginal and Torres Strait Islander Identities, and Higher Education: Reviewing the Burden of Epistemological and Other Racisms' in Rhonda Craven and Janet Moody, *Seeding success in indigenous Australian higher education* (Emerald Group Publishing, 2013) 29.

²⁸ Yin Paradies, 'Race, Racism, Stress and Indigenous Health' (PhD Thesis, University of Melbourne, 2006); see also Angeline Ferdinand et al., 'Mental Health Impacts of Racial Discrimination in Victorian Aboriginal Communities' (Survey Report, Lowitja Institute 2013) 21.

²⁹ See Kathleen Blair et al., *Challenging Racism Project* (Survey Report, 2016) 4, 7, 10-12.

³⁰ See Angeline Ferdinand et al, 'Mental health impacts of racial discrimination in Australian culturally and linguistically diverse communities: a cross-sectional survey' (2015) 15 *BMC Public Health* 401.

(38%) and refugees (19%).³¹ The advent of the COVID-19 pandemic has also seen a worrying rise in racist sentiment towards people of Asian descent.³²

Recommendation 4: The Committee recommends that the Framework account for uniquely Australian experiences of racism, particularly as they relate to First Nations people.

Part 4 – Enforcement

Positive Obligations and Enforcement

17. A positive obligation to be ‘*anti-racist*’ poses a challenge in terms of accountability, enforcement, and the imposition of penalties. However, though uncommon, the Committee views that other examples of positive obligations exist in the Australian legal landscape, such that a system of positive obligation in the context of the Framework would be consistent and could be usefully informed by existing state-based mechanisms.

18. Amongst an abundance of ‘*negative obligations*’ in civil and criminal laws,³³ Australian lawmakers appear reluctant to incorporate the positive obligations found in many international conventions into domestic law.³⁴ Rather, most state and federal anti-discrimination legislation in Australia merely imposes a negative obligation, or prohibition, on discriminatory conduct, including discrimination on the basis of race.³⁵

³¹ Kathleen Blair et al., *Challenging Racism Project* (Survey Report, 2016) 4, 7, 10-12.

³² Australian Asian Alliance, *COVID-19 Racism Incident Report Survey Comprehensive Report 2021* (Report, 2021) <<https://asianaustrianalliance.net/covid-19-racism-incident-report-survey-comprehensive-report-2021/>>.

³³ A ‘*negative obligation*’ being a direct or implied requirement to *not* do something; see, e.g., *Crimes Act 1900* (NSW) s 19A; *Companion Animals Act 1988* (NSW) s 52A; *Fair Trading Act 1987* (NSW) ss 58G, 58N; *Control of Weapons Act 1990* (Vic) ss 5AA-5AB; *Registration to Work with Vulnerable People Act 2013* (Tas) s 16; *Food Act 2001* (SA) s 13; *Building Act 2011* (WA) s 9; *Criminal Code* (NT) Pt VI, Div 7A.

³⁴ See *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) arts 2, 5; c.f. *Racial Discrimination Act 1975* (Cth) s 9.

³⁵ *Racial Discrimination Act 1975* (Cth) Pt II; *Anti-Discrimination Act 1977* (NSW) Pt 2, Div 2-3A; *Anti-Discrimination Act 1991* (Qld) s 7; *Anti-Discrimination Act 1992* (NT) s 19; *Equal Opportunity Act 1984* (WA) Pt III, Div 2-3A; *Equal Opportunity Act 1984* (SA) Pt 4, Div 2-6; *Anti-Discrimination Act 1998* (Tas) s 17; Dominique Allen, ‘Thou shalt not discriminate: moving from a negative prohibition to a positive obligation on business to tackle discrimination’ (2020) 26(1) *Australian Journal of Human Rights* 110, 112; Neil Rees et al, *Australian Anti-Discrimination and Equal Opportunity Law* (2018, The Federation

19. The positive obligation that underpins the Framework is altogether different, but not entirely alien to many different areas of law in Australia. The *Corporations Act 2001* (Cth), for example, imposes a number of positive obligations on the directors and officers of a company,³⁶ while the *Conveyancing Act 1919* (NSW) recognises the imposition and effect of positive covenants on landowners.³⁷ By the same token, the *Civil Liability Act 2002* (NSW) imposes heightened positive duties on professionals and organisations that are responsible for vulnerable groups such as children.³⁸
20. Returning to the context of human rights law, the disability discrimination concept of ‘*reasonable adjustments*’ could also be argued as imposing a positive obligation to take such action as is reasonably required to accommodate another person’s disability.³⁹ It should be noted, however, that the person with disability still bears the burden of requesting adjustments, meaning that no obligation to accommodate exists – positive or otherwise – until that request is made.⁴⁰
21. The most direct example is section 15 of the *Equal Opportunity Act 2010* (Vic) (**EOA**), which imposes a positive duty on employers, providers of accommodation, education, or goods and services, and clubs and sporting organisations to ‘*eliminate discrimination, sexual harassment or victimisation*’.⁴¹ The duty is framed in the following terms: ‘*A person must take reasonable and proportionate measures to eliminate ... discrimination, sexual harassment or victimisation as far as possible*’.⁴²

Press); Beth Gaze and Belinda Smith, *Equality and Discrimination Law in Australia: An Introduction* (2017, Cambridge University Press).

³⁶ *Corporations Act 2001* (Cth) Part 2D.1, ss 588G-588GAB.

³⁷ *Conveyancing Act 1919* (NSW) ss 88BA, 88F.

³⁸ *Civil Liability Act 2002* (NSW) ss 5O, 6F.

³⁹ See *Disability Discrimination Act 1992* (Cth) ss 4, 5(2), 6(2); *Innes v Rail Corporation of NSW (No 2)* [2013] FMCA 36; Emma Purdue, ‘Scoping Reasonable Adjustments in the Workplace: A Comparative Analysis of an Employer’s Obligation to Accommodate a Worker’s Disability under Australian and Canadian Laws’ (2017) 30(2) *Australian Journal of Labour Law* 185, 192; Belinda Smith, ‘Fair and Equal in the World of Work: Two Significant Federal Developments in Australian Discrimination Law’ (2010) 23 *Australian Journal of Labour Law* 199, 207.

⁴⁰ Dominique Allen, ‘Thou shalt not discriminate: moving from a negative prohibition to a positive obligation on business to tackle discrimination’ (2020) 26(1) *Australian Journal of Human Rights* 110, 116; Australian Human Rights Commission, ‘Improved Rights Protection for People with Disability’, *Australian Human Rights Commission* (Web Page, 2009) 6 <https://humanrights.gov.au/sites/default/files/content/legal/publications/improved_dda2009.pdf>; see also *Sklavos v Australasian College of Dermatologists* [2017] FCAFC 128; *Watts v Australia Post* (2014) 222 FCR 220.

⁴¹ *Equal Opportunity Act 2010* (Vic) s 15.

⁴² *Equal Opportunity Act 2010* (Vic) s 15(2).

22. While the duty is yet to be thoroughly considered by the Courts,⁴³ the Victorian Equal Opportunity & Human Rights Commission (**VEOHRC**) has identified six '*minimum standards*' that organisations must meet in order to be compliant, namely: knowledge, prevention plan, organisational capability, risk management, reporting and response, and monitoring and evaluation.⁴⁴ Standards 1-4 are concerned with the prevention of discrimination, sexual harassment and victimisation, while standards 5-6 deal with responses to such incidents.
23. Importantly, because section 15 of the EOA is only investigated and enforced at the discretion of the VEOHRC (and there is no public knowledge as to whether any such investigation has ever taken place),⁴⁵ there is some question as to whether it practically imposes any additional obligation over and above those imposed by pre-existing anti-discrimination legislation.⁴⁶
24. Nonetheless, the Committee considers that section 15 of the EOA has '*valuable educative and normative force*'⁴⁷ and demonstrates that the imposition of a positive obligation to be anti-racist is lawful in the Australian context.
25. The Committee recommends that the Victorian standards inform the enforcement of Framework outcomes, as well as any adjacent accountability measures.

⁴³ See *Collins v Smith* [2015] VCAT 1029 at 44-47 (Jenkins VP); *Rigoni v Carnival PLC (t/as Princess Cruises)* [2019] VCAT 995.

⁴⁴ Victorian Equal Opportunity & Human Rights Commission, 'Positive duty', *Victorian Equal Opportunity & Human Rights Commission* (Web Page, undated) < <https://www.humanrights.vic.gov.au/for-organisations/positive-duty/>>.

⁴⁵ *Equal Opportunity Act 2010* (Vic) ss 15(3)-(4); *Collins v Smith* [2015] VCAT 1029 at 46 (Jenkins VP); Dominique Allen, 'Thou shalt not discriminate: moving from a negative prohibition to a positive obligation on business to tackle discrimination' (2020) 26(1) *Australian Journal of Human Rights* 110, 120.

⁴⁶ Dominique Allen, 'Thou shalt not discriminate: moving from a negative prohibition to a positive obligation on business to tackle discrimination' (2020) 26(1) *Australian Journal of Human Rights* 110, 119.

⁴⁷ Beth Gaze and Belinda Smith, *Equality and Discrimination Law in Australia: An Introduction* (2017, Cambridge University Press) 268.

Recommendation 5: The Committee recommends that the Victorian Equal Opportunity & Human Rights Commission’s minimum standards for compliance with section 15 of the *Equal Opportunity Act 2010* (Vic) inform the enforcement of outcomes under the Framework.

Institutional Self-Reporting

26. While the *Racial Discrimination Act 1975* (Cth) (**RDA**) and its state-level equivalents already prohibit racial discrimination, the ‘*individual claimant*’ approach that underpins these statutes compromises their ability to comprehensively and effectively deter organisations from discriminating on the basis of race.⁴⁸ By the same measure, an ‘*individual claimant*’ approach may, arguably, fail to satisfactorily ensure the practical enforcement of a positive obligation to be anti-racist.
27. Accordingly, the Committee recommends that any positive obligation is enforced and/or evaluated either by way of institutional self-reporting or by external monitoring by the Commission.
28. A self-reporting or ‘*reflexive law*’ approach has been found to be effective in the United Kingdom since the introduction of the *Equality Act 2010* (UK) (the **UK Act**).⁴⁹ This approach requires public sector organisations not only to self-report on their compliance with the UK Act, but to self-regulate by identifying both challenges and developing solutions in their reporting. If an organisation fails to self-regulate, judicial review is available as a means of enforcement.⁵⁰

⁴⁸ See Dominique Allen, ‘Thou shalt not discriminate: moving from a negative prohibition to a positive obligation on business to tackle discrimination’ (2020) 26(1) *Australian Journal of Human Rights* 110, 112; Neil Rees et al, *Australian Anti-Discrimination and Equal Opportunity Law* (2018, The Federation Press); Beth Gaze and Belinda Smith, *Equality and Discrimination Law in Australia: An Introduction* (2017, Cambridge University Press).

⁴⁹ Simonetta Manfredi and Lucy Vickers and Kate Clayton-Hathway, ‘The Public Sector Equality Duty: Enforcing Equality Rights Through Second –Generation Regulation’ (2018) 27(3) *Industrial Law Journal* 365, 371.

⁵⁰ Simonetta Manfredi and Lucy Vickers and Kate Clayton-Hathway, ‘The Public Sector Equality Duty: Enforcing Equality Rights Through Second –Generation Regulation’ (2018) 27(3) *Industrial Law Journal* 365, 374.

29. Consequently, organisations in the United Kingdom have more readily engaged with the principles of equality underlying the UK Act.⁵¹ Simultaneously, the positive duty and the certainty of its enforcement has resulted in increased consultation with and involvement of marginalised groups and has promoted outcomes-based equality.⁵²

Recommendation 6: The Committee recommends that the Framework include provisions requiring institutional self-reporting and self-regulation.

Part 5 – Evaluation

30. The Committee submits that the Framework must be the subject of regular and accurate evaluation by the Commission or another, independent, third party. The construction of an effective evaluation mechanism is complex, but there is some international guidance to which the Commission might wish to refer.

31. The United Kingdom’s Equality and Human Rights Commission (**EHRC**) has developed eight principles for ‘*meaningful evaluation of anti-prejudice work*’.⁵³ Principles 4-8 concern evaluation, and require:

- a. a clear understanding of the data required to make the evaluation;
- b. a clear method for collecting this data;
- c. an established means for analysing the data collected;

⁵¹ S. Fredman, ‘Positive Duties and Socio-economic Disadvantage: Bringing Disadvantage onto the Equality Agenda’ (2010) EHRLR 290; Simonetta Manfredi and Lucy Vickers and Kate Clayton-Hathway, ‘The Public Sector Equality Duty: Enforcing Equality Rights Through Second –Generation Regulation’ (2018) 27(3) *Industrial Law Journal* 365, 390.

⁵² Care Quality Commission (UK), ‘Equality Standards’, *Care Quality Commission* (Web Page, 1 October 2020) <[www.cqc.org.uk/content/equalityand-](http://www.cqc.org.uk/content/equalityand-human-rights)

[human-rights](http://www.cqc.org.uk/content/equalityand-human-rights)>; Simonetta Manfredi and Lucy Vickers and Kate Clayton-Hathway, ‘The Public Sector Equality Duty: Enforcing Equality Rights Through Second –Generation Regulation’ (2018) 27(3) *Industrial Law Journal* 365, 391.

⁵³ Equality and Human Rights Commission (UK), *What works? Eight principles for meaningful evaluation of anti-prejudice work* (Guide, November 2017) < https://www.equalityhumanrights.com/sites/default/files/prejudice-unlawful-behaviour-guide-to-evaluation_1.pdf>.

- d. an identifiable use for conclusions drawn from that data; and
- e. sufficient resourcing for the collection, analysis, and evaluation of the data.⁵⁴

32. In the United States, the Government Alliance on Race & Equity (**GARE**) has developed the '*Racial Equity: Getting to Results*' guide (**GARE guide**).⁵⁵ This guide uses a '*Results-Based Accountability*' (**RBA**) approach, which works backwards from results to means, in order to interrogate existing approaches to racial equity. Unlike the EHRC principles, the GARE guide asks the following questions:

- a. What are the desired results?
- b. What would the result look like?
- c. What are the community indicators that would measure the desired result?
- d. What does the data tell us?
- e. Who are your partners?
- f. What works to change the data trend towards racial equity?
- g. What actions should you start with?⁵⁶

33. Regardless of which approach is ultimately engaged, the Committee submits that any evaluation of the Framework ought to be conducted in consultation with individuals and leading organisations within relevant marginalised groups, to ensure both accuracy and cultural sensitivity.

⁵⁴ Equality and Human Rights Commission (UK), *What works? Eight principles for meaningful evaluation of anti-prejudice work* (Guide, November 2017) < https://www.equalityhumanrights.com/sites/default/files/prejudice-unlawful-behaviour-guide-to-evaluation_1.pdf>.

⁵⁵ Local and Regional Government Alliance on Race & Equity, *Racial Equity: Getting to Results* (Resource Guide, July 2017) < https://www.racialequityalliance.org/wp-content/uploads/2017/09/GARE_GettingtoEquity_July2017_PUBLISH.pdf>.

⁵⁶ Local and Regional Government Alliance on Race & Equity, *Racial Equity: Getting to Results* (Resource Guide, July 2017) <https://www.racialequityalliance.org/wp-content/uploads/2017/09/GARE_GettingtoEquity_July2017_PUBLISH.pdf>.

Recommendation 7: The Committee recommends that the Framework is subject to a clear, regular, effective, and accurate evaluation mechanism.

Recommendation 8: The Committee recommends that any evaluation of the Framework is conducted in consultation with individuals and leading organisations within the relevant marginalised groups.

Concluding Comments

NSW Young Lawyers, as well as the NSW Young Lawyers Human Rights Committee specifically, thank you for the opportunity to make this submission. If you have any queries or require further submissions, please contact the undersigned at your convenience.

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