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17 April 2026

Dr James Popple
Chief Executive Officer
Law Council of Australia
PO Box 5350
BRADDON ACT 2612

By email: [REDACTED]

Dear Dr Popple,

INQUIRY INTO RACISM, HATE AND VIOLENCE DIRECTED AT ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE

The Law Society of New South Wales is grateful for the opportunity to contribute to the Law Council's submission to the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs' (**Joint Standing Committee**) inquiry into racism, hate and violence directed at Aboriginal and Torres Strait Islander people (**Inquiry**). In this submission, we respond to Terms of Reference 1, 2, 4, 5 and 6.

This submission is informed by the Law Society's Indigenous Issues Committee, which includes in its membership Aboriginal lawyers and lay members. Notably, this submission draws on the experiences of Aboriginal members of the Indigenous Issues Committee, alongside data from surveys of Aboriginal and Torres Strait Islander communities, and is intended to be considered in light of evidence provided directly to the Inquiry by Aboriginal and Torres Strait Islander communities.

The Law Society notes the key importance of the Indigenous right to self-determination, including in consultation processes. We note the value of hearing directly from Aboriginal and Torres Strait Islander people and communities, and suggest that the processes themselves, including ways to make submissions and the format of public hearings, are designed to ensure that they are culturally safe, inclusive, and therefore effective. Meaningful consultation is critical to ensuring that the Joint Standing Committee develops an accurate and nuanced understanding of First Nations peoples' experiences of racism, hate and violence, and that its recommendations are appropriately grounded in, and respond to, those experiences. Further, while the Inquiry's consultation processes appropriately invite submissions from both Aboriginal and Torres Strait Islander people and non-Indigenous individuals and organisations, it is important that the Joint Standing Committee distinguish between those perspectives when considering the evidence before it and afford appropriate weight to each. It would be counterproductive if any existing systemic, conscious or unconscious biases were to be further entrenched if the views of Aboriginal and Torres Strait Islander people were not afforded appropriate weight and consideration. Against this context, this submission sets out key observations relevant to the Inquiry's consideration of the nature, prevalence and impacts of racism, hate and violence directed at Aboriginal and Torres Strait Islander people.

Term of Reference (TOR) 1: The nature, prevalence and impact of racism, hate and violence towards First Nations people, including trends over time

The Law Society understands that racism, hate and violence against Aboriginal and Torres Strait Islander people can manifest both explicitly and implicitly in social, professional and institutional contexts, in government practices and policies, and within public and private systems and structures. On a structural level, the need for systemic change is recognised in the National Agreement on Closing the Gap, in its Priority Reforms, particularly those directed at transforming government organisations and shared decision-making, and Socio-Economic Targets, which reflect an acknowledgement that systemic inequities, if left unaddressed, can entrench disadvantage and expose Aboriginal and Torres Strait Islander people to heightened risks of harm, including through contact with the criminal justice system.¹ Particularly relevant to this inquiry, Priority Reform 3 is a commitment to transform government organisations and implement transformation elements within government mainstream institutions and agencies, including to identify and eliminate racism.²

We understand that the modern experience of many Aboriginal and Torres Strait Islander people can be difficult to decouple from Australia's history of colonial violence, and of laws and policies which explicitly sought to dispossess Aboriginal and Torres Strait Islander peoples of their land,³ societies and culture. The effects of racism, hate and violence can be intergenerational,⁴ and have enduring effects on family structures and wellbeing across generations.⁵

Individual reporting of racism, hatred and violence by Aboriginal and Torres Strait Islanders

The Call It Out Register collates reports of racism and discrimination against Aboriginal and Torres Strait Islander peoples from across Australia and presents both quantitative data and firsthand accounts in its Annual Report. In the Register's 2024–2025 Annual Report prepared by the Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney (**Report**),⁶ “negative or ignorant attitudes of stereotyping” was the most prevalent form of racism reported (30 per cent), followed by verbal abuse and hate speech (17 per cent), bullying, threats or intimidation (12 per cent), discriminatory laws, policies, or practices (12 per cent), and failure to recognise cultural rights or protocols (11 per cent).⁷ Reports made were in respect of a diverse range of settings, including “workplaces, beauty salons, universities, licensed clubs, saunas, health facilities, public transport and institutions.”⁸ Social media and online platforms were the most commonly reported locations for incidents of racism (22 per cent), followed by workplaces (11 per cent) and educational settings (10 per cent).⁹ Notably, the Register's figures do not wholly reflect, and likely significantly underrepresent, the true prevalence of racism experienced by Aboriginal and Torres Strait Islander people, given that it only reflects reports made to the Register. As stated in the Report, “[r]acism targeting First Nations people is entrenched, endemic and difficult to capture statistically”.¹⁰

¹ See National Agreement on Closing the Gap (July 2020), <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap>.

² See National Agreement on Closing the Gap, ‘Priority Reform Three – Transforming Government Organisations’ [59.a]: <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap/6-priority-reform-areas/three>.

³ See the Towards Truth project: Towards Truth, ‘Towards Truth’: <https://www.towardstruth.org.au/>.

⁴ See Yin Paradies, ‘Colonisation, racism and indigenous health’ (2016) 33(1) *Journal of Population Research* 83; Mandy Truong and Edward Moore, *Racism and Indigenous wellbeing, mental health and suicide* (Research Paper, 26 May 2023): <https://www.aihw.gov.au/reports/indigenous-mental-health-suicide-prevention/racism-and-indigenous-wellbeing-mental-health-and/abstract>.

⁵ Ibid; Davi M Macedo, Lyle G Smithers, Rachael M Roberts, Yin Paradies and Lisa M Jamieson, ‘Effects of Racism on the Socio-Emotional Wellbeing of Aboriginal Australian Children’ (2019) 18(1) *International Journal for Equity in Health* 132.

⁶ Jumbunna Institute for Indigenous Education and Research, ‘Everywhere I Go No Matter Where, If It's Around Non-Indigenous People I Feel A Hate Vibe. It Feels Like I'm Being Watched: Call It Out Racism Register 2024–2025’ (Report, 2025): [Jumbunna-Call-It-Out-Annual-Report-2024-2025.pdf](https://www.jumbunna.org.au/reports/indigenous-mental-health-suicide-prevention/racism-and-indigenous-wellbeing-mental-health-and/abstract)

⁷ Ibid 109.

⁸ Ibid 110.

⁹ Ibid 110.

¹⁰ Ibid 111.

In 2024, the Australian Human Rights Commission (**AHRC**) consulted with Aboriginal and Torres Strait Islander communities in metropolitan, rural and remote Australia regarding their experiences of racism, to assist with the development of the National Anti-Racism Framework.¹¹ As part of its consultations, it surveyed over 496 Aboriginal and Torres Strait Islander persons on the racism they experienced. In response, 84.5 per cent of participants reported that they had experienced racism as “hurtful comments and actions”, 83.6 per cent reported “disrespect of their culture” and 72.7 per cent reported “unfair treatment in institutions”.¹²

Additional data indicates a clear upward trend in reported experiences of racism against Aboriginal and Torres Strait Islander people over the past decade. Reconciliation Australia’s “Reconciliation Barometer”, which tracks progress in respect of reconciliation between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians by way of survey, notes a significant increase in racism against Aboriginal and Torres Strait Islander peoples between 2014 and 2024. In 2024, Reconciliation Australia surveyed 2559 Aboriginal and Torres Strait Islander participants nationwide found the following:¹³

- 36 per cent of survey participants had experienced verbal abuse in the past six months, compared with 31 per cent in 2014.
- 26 per cent of survey participants had been refused service in a shop, and 24 per cent had been refused entry into a venue, compared with 11 per cent in 2014.
- 23 per cent had experienced physical violence in the last six months, compared with 14 per cent in 2014.¹⁴

The data demonstrates that the impact of racism, hate and violence on Aboriginal and Torres Strait Islander people is multi-layered, severe and ongoing. The Call It Out Annual Report notes that impacts can include homelessness, mental health issues such as PTSD, and suicidal ideation¹⁵ Critically, the Report notes that a lack of effective responses to racism contributes to long-term harm, with some individuals reporting suicide attempts, financial loss, and substance abuse as consequences.¹⁶

Systemic racism

We encourage the Joint Standing Committee to consider the severe inequities experienced by some Aboriginal and Torres Strait Islander people, particularly evident in the overrepresentation of Aboriginal and Torres Strait Islander adults and children in the criminal justice system,¹⁷ overrepresentation of Aboriginal and Torres Strait Islander children in the care system¹⁸ and failure to provide appropriate Cultural Support Plans for children in

¹¹ Australian Human Rights Commission, *An Anti-Racism Framework: Voices of First Nations Peoples* (Report, 2024): https://humanrights.gov.au/_data/assets/pdf_file/0026/25469/Final-Report_National-Anti-Racism-Framework,-First-Nations-Consultations,-Australian-Human-Rights-Commission.pdf.

¹² Ibid.

¹³ See Reconciliation Australia, ‘Racism and First Nations Peoples: 2024 Australian Reconciliation Barometer’ (Report, 2024): [2024-ARB-Racism-and-First-Nations-Peoples.pdf](https://reconciliation.org.au/2024-ARB-Racism-and-First-Nations-Peoples.pdf)

¹⁴ Ibid 1.

¹⁵ Jumbunna Institute for Indigenous Education and Research, ‘Everywhere I Go No Matter Where, If It’s Around Non-Indigenous People I Feel A Hate Vibe. It Feels Like I’m Being Watched: Call It Out Racism Register 2024–2025’ (Report, 2025) 112: [Jumbunna-Call-It-Out-Annual-Report-2024-2025.pdf](https://jumbunna.org.au/call-it-out-annual-report-2024-2025.pdf)

¹⁶ Ibid 112.

¹⁷ Bureau of Crime Statistics and Research, ‘Aboriginal over-representation in the NSW Criminal Justice System’ (18 September 2025) < <https://bocsar.nsw.gov.au/topic-areas/aboriginal-over-representation.html>>.

¹⁸ Australian Institute of Health and Welfare, ‘Child protection Australia 2023 – 2024’ (11 December 2025) < <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2023-24/data>>.

care, higher burden of disease and lower life expectancy,¹⁹ poorer schooling outcomes,²⁰ and less access to affordable, secure and quality housing.²¹

Such outcomes are, in part, attributable to the coalescence of a number of factors, including socioeconomic disadvantage and poverty, geographic disadvantage in the remote locations where Aboriginal and Torres Strait Islander people often live²² and lack of access to culturally safe resources and services, to name a few.

However, given the significant disparities and inequities experienced by Aboriginal and Torres Strait Islander people, we raise for the Joint Standing Committee's consideration whether there is systemic discrimination and bias, whether direct or indirect, within the design, operation and implementation of existing laws and policies, and within organisations and institutions, that might amount to systemic racism.

The AHRC has defined systemic racism as follows:²³

[T]he way a society or institution's cultural norms, laws, ideologies, policies, and practices result in inequitable treatment and outcomes. Systemic racism involves entire systems, for example, legal, health, criminal justice, and the structures that support these. Institutional and structural racism are forms of systemic racism.

While there are examples to be found across a range of sectors, for the reasons set out in this submission, we suggest that the significant overrepresentation of Aboriginal and Torres Strait Islander adults and young people in the justice system, which in turn underpin the growing number of Indigenous deaths in custody, should be a key issue for consideration by this Inquiry.

As stated in the Uluru Statement from the Heart,²⁴ Aboriginal and Torres Strait Islanders "are not an innately criminal people", and yet there is significant, longstanding overrepresentation of Aboriginal and Torres Strait Islander people, including children and young people, in contact with the criminal justice system, including in custody.

In NSW, Aboriginal and Torres Strait Islander adults make up three per cent of the population.²⁵ However, between January and December 2025, Aboriginal people made up 19 per cent of police searches, 25 per cent of taser deployments, 19 per cent of move-on directions, 40.8 per cent of bail compliance checks, and 27.6 per cent of Apprehended Domestic Violence Order compliance checks.²⁶ Disproportionate and discriminatory policing was apparent in the Suspect Target Management Plan (**STMP**), a previous proactive policing policy employed by the NSW Police, which ceased in 2023 following findings by the NSW Law Enforcement Conduct Commission that it

¹⁹ Australian Institute of Health and Welfare, 'Health and wellbeing of First Nations people' (2 July 2024) <<https://www.aihw.gov.au/reports/australias-health/indigenous-health-and-wellbeing>>. See, for example, *Inquest into the deaths of Yvette Michelle Wilma Booth, Adele Estelle Sandy, and Shakaya George* [2023] QCorC 10, in which the Coroner found that institutional racism and prejudicial clinical notes contributed to the neglect of patients.

²⁰ Australian Institute of Health and Welfare, 'Education of First Nations people' (16 October 2025) <<https://www.aihw.gov.au/reports/australias-welfare/indigenous-education-and-skills>>.

²¹ Australian Institute of Health and Welfare, 'Housing circumstances of First Nations people' (16 October 2025) <<https://www.aihw.gov.au/reports/australias-welfare/indigenous-housing>>.

²² In 2021, around 15 per cent of Aboriginal and Torres Strait Islander people in Australia lived in remote and very remote locations: Australian Institute of Health and Welfare, 'First Nations people Overview' (20 October 2025) <<https://www.aihw.gov.au/reports-data/population-groups/indigenous-australians/overview>>. The proportion of the population who were Aboriginal and Torres Strait Islander increased with remoteness, from 2.2% in major cities, to 30% in remote and very remote locations: Australian Institute of Health and Welfare, 'Profile of First Nations people' (16 October 2025) <<https://www.aihw.gov.au/reports/australias-welfare/profile-of-indigenous-australians>>.

²³ Australian Human Rights Commission, 'Racial discrimination: Key terms': <https://humanrights.gov.au/known-your-rights/rights-of-individuals/race-discrimination/guides-tools-and-resources/key-racism-terms>.

²⁴ Referendum Council, 'Uluru Statement from the Heart' (2017): <https://ulurustatement.org/the-statement/view-the-statement/>.

²⁵ Australian Bureau of Statistics, 'New South Wales: Aboriginal and Torres Strait Islander population summary' (1 July 2022): <https://www.abs.gov.au/articles/new-south-wales-aboriginal-and-torres-strait-islander-population-summary>.

²⁶ NSW Bureau of Crime Statistics, 'BOCSAR Policing Activity Tool': <https://policingactivitytool.bocsar.nsw.gov.au/>.

had a “continued discriminatory effect” on Aboriginal and Torres Strait Islander people and in particular, children and young people.²⁷ Data indicates that some 72 per cent of young people on the STMP identified as Aboriginal.²⁸

Another example for the Joint Standing Committee’s consideration is that the cultural right to fishing has still not been commenced in NSW, despite the passage of the *Fisheries Management Amendment Act 2009* (NSW), which recognised this right. Aboriginal people continue to be significantly overrepresented in fisheries prosecutions, regardless of native title rights to fishing. Attached for the Law Council’s information is a submission made by the Law Society on this issue.

Consequently, Aboriginal and Torres Strait Islander people are disproportionately represented in custodial settings. In NSW, Aboriginal people make up just three per cent of the adult population and eight per cent of the population aged 10-17 years, but comprise more than 30 per cent of the adult prison population and 50 per cent of the youth detention population.²⁹

We also note the link between experiencing out of home care, and later contact with the criminal justice system, which should not be understated. Almost half of the 99 Aboriginal and Torres Strait Islander people who died in custody reviewed by the Royal Commission into Aboriginal Deaths in Custody (**RCIADIC**) had been removed from their parents.³⁰ In the context of ongoing overrepresentation of Aboriginal and Torres Strait Islander children in out of home care – in 2024, Aboriginal and Torres Strait Islander children were 11 times more likely to be in out-of-home care nationally,³¹ and in NSW, in 2024-2025, Aboriginal children made up 50.6 per cent of children in out-of-home care—³² we suggest that the presence of systemic bias and discrimination in the care system should also be the subject of consideration by the Joint Standing Committee, both on its own and in relation to its criminogenic effect.

We note that, at present, in respect of the NSW Government’s commitments under the National Agreement on Closing the Gap, the Productivity Commission was able to measure 15 of 19 of the Socio-Economic targets aimed at reducing disadvantage for Aboriginal and Torres Strait Islander people.³³ Unfortunately, in NSW, the data indicates that outcomes “continue to worsen” in relation to Outcome 10 (reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent).³⁴

Accordingly, we encourage the Inquiry to consider these trends as part of a broader contextual and evidence-based assessment of whether, and how, systemic racism and bias may be contributing to these outcomes. We note that in its 2024 consultations, the AHRC found that “systemic racism was identified as the predominant theme, deeply embedded in legislative frameworks, government practices, and societal norms”, and that this

²⁷ Law Enforcement Conduct Commission, *Operation Tepito – Final Report* (Report, October 2023) 133: <https://www.lecc.nsw.gov.au/publications/publications/operation-tepito-final-report.pdf>.

²⁸ Ibid 36.

²⁹ Bureau of Crime Statistics and Research, ‘Aboriginal over-representation in the NSW Criminal Justice System’ (18 September 2025) < <https://bocsar.nsw.gov.au/topic-areas/aboriginal-over-representation.html>>.

³⁰ Royal Commission into Aboriginal Deaths in Custody (Final Report, 1991) vol 1, 2.2.9; Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report 133, 2018) ch 15: <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/15-child-protection-and-adult-incarceration/crossover-out-of-home-care-into-detention/>

³¹ Australian Institute of Health and Welfare, ‘Child protection Australia 2023 – 2024’ (11 December 2025) < <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2023-24/data>>.

³² See Department of Communities and Justice, ‘Annual Statistical Report 2024 – 25: Children and families are supported: Supporting children in out-of-home care’ < <https://dcj.nsw.gov.au/about-us/families-and-communities-statistics/annual-statistical-reports/asr-landing-page/asr-cft-oohc.html>

³³ Productivity Commission, ‘Closing the Gap: Annual Data Compilation Report’ (July 2025), pp. 32–34, 104– 106.

³⁴ Ibid pp.30, 108-110.

“form of racism manifests in policies and practices that perpetuate unfair treatment and disadvantage towards First Nations peoples”.³⁵

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

The evidence suggests that social media and online platforms, and the algorithms used by these platforms,³⁶ have enabled the proliferation of racism and hate directed at Aboriginal and Torres Strait Islander people. Social media and online platforms were identified as the “location” of 22 per cent of racism reports to the Call It Out Register in 2024–2025,³⁷ and in that year, “[m]ultiple reports” of racist stereotypes perpetuated in mainstream media, on social media and online platforms were made to the Register, along with reports of “harmful, violent and deeply racist content circulated online”.³⁸

An earlier 2018 study conducted by researchers at the Department of Indigenous Studies at Macquarie University, which surveyed Aboriginal and Torres Strait Islanders from 10 communities across NSW, Queensland, South Australia, Tasmania and Western Australia, found that 88 per cent of respondents had witnessed racism towards Aboriginal and Torres Strait Islander people on social media.³⁹ Of those respondents, 21 per cent also reported receiving threats from other users, with 17 per cent indicating that these threats had impacted their “offline” lives.⁴⁰ It has been suggested that there has been a noticeable uptick of racism online in the wake of the 2023 Referendum on the Indigenous Voice to Parliament.⁴¹

Given the role of social media and online platforms in providing a means to disseminate and spread racism and hate against Aboriginal and Torres Strait Islander peoples, and the broader concerns around the safety of these platforms,⁴² in our view, social media platforms should be required to improve online safety and to prevent their being used to proliferate racism and cause harm, in compliance with Australian legislation.

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

We note that in the latest Call it Our Register Annual Report, there was a particular focus on police responses to First Nations victims of crime, in particular, actions involving:

[F]ailure to investigate assaults, as well as dehumanising practices such as invasive searches, excessive force, unnecessary use of arrest, racist abuse and targeting, and institutional neglect of a duty of care. Institutional actions, such as police extinguishing fires at Camp Sovereignty, exemplified systemic racism

³⁵ Australian Human Rights Commission, *An Anti-Racism Framework: Voices of First Nations Peoples* (Report, 2024) 10: https://humanrights.gov.au/_data/assets/pdf_file/0026/25469/Final-Report_National-Anti-Racism-Framework-First-Nations-Consultations-Australian-Human-Rights-Commission.pdf.

³⁶ Marianna Spring and Mike Radford, ‘Meta and TikTok let harmful content rise after evidence outrage drove engagement, say whistleblowers’, *BBC* (online, 16 March 2026): <https://www.bbc.com/news/articles/cqj9kxqjwjo>.

³⁷ Jumbunna Institute for Indigenous Education and Research, ‘Everywhere I Go No Matter Where, If It’s Around Non-Indigenous People I Feel A Hate Vibe. It Feels Like I’m Being Watched: Call It Out Racism Register 2024–2025’ (Report, 2025) 37: [Jumbunna-Call-It-Out-Annual-Report-2024-2025.pdf](https://jumbunna-call-it-out-annual-report-2024-2025.pdf).

³⁸ *Ibid* 109.

³⁹ Bronwyn Carlson and Ryan Frazer, *Social Media Mob: Being Indigenous Online* (Report, March 2018) 12: https://research-management.mq.edu.au/ws/portalfiles/portal/85013179/MQU_SocialMediaMob_report_Carlson_Frazer.pdf.

⁴⁰ *Ibid*.

⁴¹ See Douglas Smith and Sarah Collard, ‘Indigenous Australians share the racist messages they receive online: ‘No one’s feeling safe’, *The Guardian*, (online, 7 March 2026): < <https://www.theguardian.com/australia-news/ng-interactive/2026/mar/06/indigenous-australians-racist-social-media-messages-ntwnfb>>.

⁴² ‘Meta ordered to pay \$538m in US trial over child exploitation, user safety claims’, *Australian Broadcasting Corporation* (online, 25 March 2026) <<https://www.abc.net.au/news/2026-03-25/meta-ordered-to-pay-375m-in-us-trial-child-exploitation-claims/106495616>>.

and bias in law enforcement. Historic patterns of exclusion, such as barring young people from public places like swimming pools, were also referenced.⁴³

We also note, amongst other concerns, the prevalence of misidentification of Aboriginal and Torres Strait Islander women victims as the perpetrators of domestic and family violence by police.⁴⁴

In light of this, as well as the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system and the historic mistrust of police by Aboriginal and Torres Strait Islander communities, we suggest caution be exercised when considering “the role of intelligence and law enforcement agencies in protecting the community”.

In this regard, in 2023, the Law Enforcement Conduct Commission made a recommendation to the NSW Police Force in its *NSW Police Force Aboriginal Strategic Direction 2018-2023 Monitoring Report*,⁴⁵ to develop and publish a Closing the Gap delivery plan stating how they will implement the priority reform areas and help NSW achieve targets 10 and 11 – that is, to reduce overrepresentation of Indigenous adults and young people in custody, respectively. We note that NSW Police published a new *Aboriginal Strategic Direction* in 2024, which was updated in February 2026.⁴⁶ This is a positive development, and we suggest the Joint Standing Committee consider how these strategic commitments might have been embedded in the Police Force’s practical approach and operations.

TOR 5: The effectiveness of avenues for reporting and responding to racism against Aboriginal and Torres Strait Islander people, including the consistency, timeliness and appropriateness of outcomes across jurisdiction and institutions

We suggest that existing infrastructure for reporting and responding to racism against Aboriginal and Torres Strait Islander people requires improvement. Reporting mechanisms should be easily accessible by individuals, and in appropriate contexts (such as certain aspects of public life, including in retail, educational and employment settings) should, if the complaint is substantiated, lead to meaningful remedies. We understand anecdotally from our members that Aboriginal people rarely make formal discrimination complaints, due to a range of factors, including lack of awareness about existence of complaint mechanisms and how to make a complaint, lack of culturally appropriate supports, lack of faith in the process and remedies available, and the significant time taken for a complaint to be finalised.

There is currently a review being undertaken by the NSW Law Reform Commission into the *Anti-Discrimination Act 1977* (NSW) (**ADA**), which we understand intends to address, among other issues, these questions in respect of discriminatory conduct in NSW. The Law Reform Commission has completed consultation on the first stage of the review, which focusses on the conduct prohibited by the ADA. The second stage of consultation, focussing upon enforcement and procedural aspects of the ADA, is expected to commence shortly. Without pre-empting the second stage of consultations, we suggest that there be consideration as to how to improve

⁴³ Jumbunna Institute for Indigenous Education and Research, ‘Everywhere I Go No Matter Where, If It’s Around Non-Indigenous People I Feel A Hate Vibe. It Feels Like I’m Being Watched: Call It Out Racism Register 2024–2025’ (Report, 2025): Jumbunna-Call-It-Out-Annual-Report-2024-2025.pdf, 111.

⁴⁴ ‘Aboriginal victims are being wrongly arrested and accused of family violence’, *SBS NITV* (online, 14 June 2024): <https://www.sbs.com.au/nitv/article/aboriginal-victims-of-family-violence-wrongly-arrested/dek0y8slh>. See also Emma Buxton-Namisnyk, “Domestic Violence Policing of First Nations Women in Australia: ‘Settler’ Frameworks, Consequential Harms and the Promise of Meaningful Self-Determination” (2022) 62(6) *The British Journal of Criminology* 1323; NSW Bureau of Crime Statistics, ‘Two New BOCSAR Studies Shed Light on Misidentification in the policing of Intimate Partner Violence’ (18 November 2025): <https://bocsar.nsw.gov.au/media/2025/mr-DFV-misidenificaiton--CJB269-n-BB178.html>.

⁴⁵ Law Enforcement Conduct Commission, *NSW Police Force Aboriginal Strategic Direction 2018-2023 Monitoring Report* (Report, 23 October 2023) 53–54: <https://www.lecc.nsw.gov.au/publications/publications/nsw-police-force-aboriginal-strategic-direction-2018-2023-monitoring-report.pdf/@download/file>.

⁴⁶ NSW Police, *NSW Police Force Aboriginal Strategic Direction* (February 2026): https://www.police.nsw.gov.au/__data/assets/pdf_file/0005/932117/19063_Brochure_-_Aboriginal_Strategic_Direction_2026.pdf

accessibility and cultural safety for Aboriginal and Torres Strait Islander people making a complaint under the ADA and *Racial Discrimination Act 1975* (Cth), including by introducing specialist Indigenous lists within the relevant decision-making bodies.

In addition, we note the recommendations of the AHRC in respect of the development of a robust and effective National Anti-Racism Framework,⁴⁷ which aims to address systemic racism and achieve equity for First Nations people across various sectors. These recommendations include drafting and implementing robust anti-racism legislation which explicitly prohibits racism and includes establishment of accountability mechanisms for government and non-government agencies, establishment of First Nations Advisory Bodies at local, regional and national levels, standardised cultural safety education, national cross-sector workforce strategies, and development and implementation of a standalone First Nations Anti-Racism Framework.⁴⁸

We also suggest that there be formalised, transparent reporting mechanisms for racism within, and anti-racism initiatives taken by, government agencies, to ensure accountability and active efforts by government with respect to anti-racism, which might be supported by education campaigns in respect of what kind of conduct can amount to racism and discrimination, whether direct or indirect.

Additionally, we suggest that there be consideration of how to report and respond to incidents which do not meet legal thresholds for discrimination or racism, but still significantly affect Aboriginal and Torres Strait Islander communities on a daily basis.

Finally, it is the Law Society's long standing position to support the enactment of human rights legislation at both the federal and State and Territory levels.⁴⁹ Human rights legislation would provide an important complementary framework for responding to incidents of racism, hatred and violence, including by strengthening accountability and access to remedies where existing legal or complaints mechanisms may be limited or unavailable. We also note that the Human Rights Bill 2025 (NSW) has been referred to the Legislative Assembly Committee on Community Services for inquiry.

TOR 6: Other matters related to racism, hatred and violence directed at First Nations people

Deaths in custody and overrepresentation in the criminal justice system

The Law Society suggests for the consideration of the Joint Standing Committee the issue of how deaths in custody, and the systemic conditions that contribute to them, including the disproportionate rates of incarceration of Aboriginal and Torres Strait Islander people, might fall within the scope of the Inquiry's consideration of systemic racism or discrimination. Harm in this context can arise from the cumulative impact of systemic and institutional factors within the criminal justice system, including biased processes, failures to adequately recognise and address the social and structural factors leading to contact with the justice system, and deficiencies in accountability and oversight. Together, these factors disproportionately expose Aboriginal and Torres Strait Islander people to detention and to heightened and preventable risks in custody, including loss of life.

⁴⁷ Australian Human Rights Commission, *The National Anti-Racism Framework: A roadmap to eliminating racism in Australia* (Report, November 2024):

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

⁴⁸ Australian Human Rights Commission, *An Anti-Racism Framework: Voices of First Nations Peoples* (Report, 2024) 54–55: https://humanrights.gov.au/_data/assets/pdf_file/0026/25469/Final-Report_National-Anti-Racism-Framework,-First-Nations-Consultations,-Australian-Human-Rights-Commission.pdf.

⁴⁹ See the Law Society of NSW, *Human Rights Legislation for NSW* (Position Paper, 2025): [LS3805_PAP_TL_HumanRightsNSW_2025-09-10.pdf](https://www.lawsociety.com.au/_data/assets/pdf_file/0001/25381/LS3805_PAP_TL_HumanRightsNSW_2025-09-10.pdf)

In the first three weeks of 2026 alone, two Aboriginal people died in custody in NSW.⁵⁰ In 2025, there were twelve Aboriginal people who died in custody in NSW, the highest number on record.⁵¹ The National Dashboard on Deaths in Custody indicates that the rate of Aboriginal and Torres Strait Islander deaths in custody is rising, unlike the rate of non-Indigenous deaths in custody.⁵² The NSW State Coroner, Teresa O'Sullivan made an unprecedented statement on this "profoundly distressing milestone", noting 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".⁵³

In our view, rates of Aboriginal and Torres Strait Islander deaths in custody represent cumulative failures to adequately meet the needs of Aboriginal and Torres Strait Islander people in child welfare, education, health and justice systems, which may involve elements of systemic racism or discrimination. They also represent a failure to meet justice outcomes and institutional reform commitments under the National Agreement on Closing the Gap, particularly Priority Reform 3, to transform government organisations, and Targets 10 and 11, aimed at reducing rates of incarceration of Aboriginal adults and young people, respectively.⁵⁴

We note that the recommendations, including a number of key recommendations of the RCIADIC, are yet to be fully implemented.⁵⁵ Central to the 339 recommendations were those seeking to address the overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal justice system, and to use imprisonment only as a last resort. In 2018, the Commonwealth Government commissioned a report on the implementation of the recommendations in RCIADIC (**Deloitte report**). This report has been the subject of criticism, including for its methodology.⁵⁶ However, we note its finding that:

The lowest proportion of fully implemented recommendations relates to self-determination, non-custodial approaches, and cycle of offending.⁵⁷

The RCIADIC and later reviews have found that the core issue is the significant overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system, and the systemic issues underlying incarceration.⁵⁸

Crucially, the NSW Government has recently enacted a number of punitive laws, which disproportionately affect Aboriginal and Torres Strait Islander adults and children, such as s 22C, *Bail Act 2013* (NSW), which provides that bail cannot be granted to a young person if it is alleged that they committed the relevant offence while on bail for another offence, unless the bail authority has "a high degree of confidence the young person will not

⁵⁰ Corrective Services NSW, 'Deaths in Custody Information' (21 January 2026)

<https://correctiveservices.dcj.nsw.gov.au/documents/research-and-statistics/deaths-in-custody/dic-external-21-1-26.pdf>.

⁵¹ NSW State Coroner Teresa O'Sullivan made a public statement on the number of Aboriginal deaths in custody: Australian Broadcasting Corporation, 'Coroner makes rare public statement as NSW records most Indigenous deaths in custody in a year' (15 October 2025) <<https://www.abc.net.au/news/2025-10-15/nsw-coroner-confirms-12-first-nations-deaths-in-custody-2025/105890400>>.

⁵² Australian Institute of Criminology, 'Deaths in Custody in Australia Real-Time Dashboard' <https://www.aic.gov.au/statistics/deaths-custody-australia>.

⁵³ Australian Broadcasting Corporation, 'Coroner makes rare public statement as NSW records most Indigenous deaths in custody in a year' (15 October 2025) <<https://www.abc.net.au/news/2025-10-15/nsw-coroner-confirms-12-first-nations-deaths-in-custody-2025/105890400>>.

⁵⁴ See National Agreement on Closing the Gap, 'Priority Reform Three – Transforming Government Organisations': <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap/6-priority-reform-areas/three>; National Agreement on Closing the Gap, 'Targets and Outcomes': <https://www.closingthegap.gov.au/national-agreement/targets>.

⁵⁵ See Royal Commission into Aboriginal Deaths in Custody, *National Report* (Report, 1991) ('*RCIADIC Report*').

⁵⁶ See Thalia Anthony et al, '30 Years On: Royal Commission Into Aboriginal Deaths In Custody Recommendations Remain Unimplemented' (CAEPR Working Paper No. 140/2021, 2021).

⁵⁷ Deloitte Access Economics, Review of the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in custody, Report to the Department of Prime Minister and Cabinet, 2018, xi ("Deloitte report")

⁵⁸ See RCIADIC Report (n 8), recommendations 48–62, 214–245.

commit a serious indictable offence while on bail subject to any proposed conditions".⁵⁹ As Aboriginal and Torres Strait Islander people are, as above, overrepresented at every stage of the criminal justice system, they are, in turn, disproportionately affected by these punitive approaches to criminal justice.

Failure to address the overincarceration of Aboriginal and Torres Strait Islander people will likely continue to compound the life expectancy gap between Aboriginal and Torres Strait Islander people, and other Australians. We note, for example, a relatively recent study which demonstrated substantial disparities within Aboriginal and Torres Strait Islander populations across a number of important health and socio-economic markers by incarceration status,⁶⁰ highlighting that incarceration itself is a risk factor affecting educational outcomes, labour force participation and drug and alcohol problems.

We suggest that there be consideration of how a federal oversight body for First Nations deaths in custody could consider and address the systemic issues which result in deaths in custody, including by scrutinising trends and patterns, monitoring recommendations in the coronial jurisdiction and ensuring accountability of governments and institutions in implementing those recommendations. This would also be consistent with the Recommendation 36 of the AHRC's National Anti-Racism Framework, which recommended that the Australian Government "establish an independent mechanism to monitor and report on the status of the implementation of the Royal Commission into Aboriginal Deaths in Custody".⁶¹ Strengthened national oversight and accountability mechanisms would also ensure federal and State and Territory commitments under the National Agreement are fulfilled through a consistent, nationally coordinated approach across all states and territories.

Thank you for the opportunity to comment. Questions at first instance may be directed to Ursula Paetzholdt, Policy Lawyer, at (02) 9926 0130 or Ursula.Paetzholdt@lawsociety.com.au.

Yours sincerely,



Ronan MacSweeney

President

Attachment

⁵⁹ See Law Society of NSW open letter to Members of the Legislative Council (20 March 2024), online: <<https://www.lawsociety.com.au/sites/default/files/2024-03/Letter%20to%20Members%20of%20the%20Legislative%20Council%20-%20Bail%20and%20Crimes%20Amendment%20Bill%202024%20-%202020%20March%202024.pdf>>

⁶⁰ Shepherd, S.M., Spivak, B., Ashford, L.J. et al. Closing the (incarceration) gap: assessing the socio-economic and clinical indicators of indigenous males by lifetime incarceration status. *BMC Public Health* 20, 710 (2020). <https://doi.org/10.1186/s12889-020-08794-3>.

⁶¹ Australian Human Rights Commission, *The National Anti-Racism Framework: A roadmap to eliminating racism in Australia* (Report, November 2024) 20: https://humanrights.gov.au/_data/assets/pdf_file/0019/25381/NARF_Full_Report_FINAL_DIGITAL_ACCESSIBLE.pdf.

Our ref: IIC:CBvk020823

2 August 2023

The Hon Tara Moriarty MLC
Minister for Agriculture
52 Martin Place
SYDNEY NSW 2000

By online form

Dear Minister,

Commencement of Schedule 1 of the *Fisheries Management Amendment Act 2009*

The Law Society of NSW writes to raise our ongoing concerns in respect of the non-commencement of Schedule 1 [27] of the *Fisheries Management Amendment Act 2009* (NSW) (**2009 Act**), and to urge the Government to commence Schedule 1 without further delay.

By way of background, we note that the 2009 Act created a new objective that “recognises the spiritual, social and customary significance to Aboriginal people of fisheries resources and protects and promotes the continuation of Aboriginal cultural fishing...The changes proposed in this bill mean that for the first time Aboriginal people’s customary association with the fisheries resource is formally recognised in the *Fisheries Management Act*”.¹

We also note that every clause in the 2009 Act, including those pertaining to greater enforcement and penalties, with the exception of clause 27 (containing s 21AA), commenced on 1 April 2010.²

This issue is not an insignificant one, that continues to impact on the ability of Aboriginal people to exercise cultural and native title rights, in a way that is inconsistent with Closing the Gap. We note reports that while Aboriginal people make up 4 per cent of people living on the South Coast, they account for 80 per cent of jail terms for fisheries offences since 2009.³ We also note that, as recently as May 2023, Aboriginal people continue to be subject to prosecution and conviction under the *Fisheries Management Act 1994* (NSW).⁴

¹ Fisheries Management Amendment Bill 2009; New South Wales, Parliamentary Debates, Legislative Assembly, 26 June 2009 (Lylea McMahon).

² *Fisheries Management Amendment Act 2009 (No 114)* (NSW); Professor Marie Bashir AC, *Commencement Proclamation under the Fisheries Management Amendment Act 2009 No 114* (No 2010-112, 1 April 2010).

³ NSW Council for Civil Liberties, Nature Conservancy Council and Oxfam Australia, “NSW Government must suspend prosecutions of Aboriginal cultural fishers,” joint media release, 20 October 2021, online [here](#).

⁴ H Tregenza, “Court rejects native title defence for NSW Aboriginal man over illegal abalone haul,” *ABC News*, 16 May 2023, online [here](#).

These matters have been canvassed fully in the NSW Parliamentary *Inquiry into the Commencement of the Fisheries Management Amendment Act 2009*. The ongoing unreasonable burden on Aboriginal individuals and communities caused by the non-commencement of Schedule 1 are detailed in the inquiry report, and in the submissions and other evidence presented to the Legislative Council Portfolio Committee No 4.

The inquiry report tabled in November 2022⁵ made the following four findings:

Finding 1

That the NSW Government has failed to effect the will of the Parliament by not commencing Schedule 1 of the *Fisheries Management Amendment Act 2009* to make special provision for cultural fishing.

Finding 2

That the NSW Government's implementation of a local management approach to make provision for cultural fishing has been too slow and lacks the full support of stakeholders.

Finding 3

That the regulatory and policy settings applied by the NSW Department of Primary Industries Fisheries mean it is unable to differentiate between trade and barter, as part of cultural fishing practice, and being in possession of fish for the purpose of a commercial activity without a licence.

Finding 4

That the compliance activity and prosecutions against Aboriginal people for practising cultural fishing, particularly on the South Coast of NSW, are unacceptable and creating perverse outcomes inconsistent with the NSW Government's commitments to the Closing the Gap Agreement.

The inquiry report went on to make a number of recommendations, most relevantly recommendation 4.

Recommendation 4

That the NSW Government commence Schedule 1 of the *Fisheries Management Amendment Act 2009* by 30 June 2023, and take immediate steps to develop a supporting regulation in consultation with Aboriginal communities and peak bodies, and other stakeholders.

Recommendation 4 was supported not only by all members, Government and non-Government, of Portfolio Committee No.4, which conducted the inquiry, but also by the Government in its tabled response to the inquiry report in February 2023. The Government response noted, among other things, that work was underway in an effort to have section 21AA and supporting regulations commence by 30 June 2023.⁶

Now that 30 June 2023 has passed without the commencement of Schedule 1, we would be grateful for any information on any further work undertaken to support a commencement, and whether a commencement date has been set. Notwithstanding the stated aim of the then

⁵ Report No 55 - PC 4 - Customer Service and Natural Resources - Commencement of the Fisheries Management Amendment Act 2009, 7 November 2022, online [here](#).

⁶ *Government response – Report No 55 – PC 4 – Customer Service and Natural Resources – Commencement of the Fisheries Management Amendment Act 2009*, 7 February 2023, online [here](#).

Government to support the commencement of Schedule 1 of the 2009 Act with regulations, the Law Society is of the view that there is no barrier in the legislation to its immediate commencement.

Thank you for your attention. Questions at first instance may be directed to Vicky Kuek, Head of Social Justice and Public Law Reform, on victoria.kuek@lawsociety.com.au or 9926 0354.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'CBanks', written in a cursive style.

Cassandra Banks
President