

Aboriginal Legal Service of Western Australia Limited



Inquiry into Racism, Hate and Violence Directed at Aboriginal and Torres Strait Islander People

Submission
May 2026

The Aboriginal Legal Service of Western Australia Limited acknowledges the Traditional Custodians of the land on which we all live and work, and pay our respects to their Elders past, present and emerging. We acknowledge and respect the continuing culture and contributions that our First Nations Peoples make to the life of this state and country.

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1. EXECUTIVE SUMMARY

The Aboriginal Legal Service of Western Australia (‘ALSWA’) is grateful for the opportunity to provide a submission to the Inquiry into Racism, Hate and Violence Directed at Aboriginal and Torres Strait Islander People (‘the Inquiry’).

Racism, hate, and violence towards Aboriginal people are pervasive and insidious issues, rooted in colonisation and dispossession, that remain endemic in all Australian states and territories today.¹ Structural and systemic racism continues to deny Aboriginal people equal opportunities and outcomes, while interpersonal violence and hate towards Aboriginal people remains underreported and undercharged.² The profound and deleterious impacts that these issues have on the wellbeing of Aboriginal people and their communities are well known, but have long been inadequately addressed by both the Federal and State/Territory governments.³

ALSWA welcomes the Inquiry, but echoes the sentiment expressed by the Australian Human Rights Commission (‘AHRC’) that ‘decades of inquiries—including the 1991 Racist Violence Inquiry, the 2023 UNDRIP Inquiry, and the 2024 National Anti-Racism Framework—have already identified what needs to change’ and, notably, that the Inquiry ‘must drive action—not replace it’.⁴

¹ There is no shortage of recent examples which demonstrate this reality: see, eg, Tiffanie Turnbull, ‘Cassius Turvey: Aboriginal Boy’s Killing Puts Spotlight on Racism in Australia’, *BBC News* (online, 4 November 2022) <<https://www.bbc.com/news/world-australia-63467134>>; Mya Kordic, Dana Morse and Gian De Poloni, ‘Video of Police Officer Restraining 13yo Girl on Perth Train Sparks Excessive Force Probe’, *ABC News* (online, 18 April 2026) <<https://www.abc.net.au/news/2026-04-18/police-probe-after-13yo-girl-pinned-by-officer-on-perth-train/106575706>>; Victoria Kim, ‘Indigenous Speakers are Boomed During Commemorations of Australia’s War Dead’, *New York Times* (online, 25 April 2026) <<https://www.nytimes.com/2026/04/25/world/australia/anzac-day-indigenous-speakers-boomed.html>>; Thalia Anthony and Eddie Cubillo, ‘Kumanjayi Walker Inquest: Racism and Violence, But Findings Too Little and Too Late’, *The Conversation* (online, 7 July 2025) <<https://theconversation.com/kumanjayi-walker-inquest-racism-and-violence-but-findings-too-little-and-too-late-257636>>; Carly William and Dana Morse, ‘Calls for Inquiry into Camp Sovereignty Attack after Melbourne March for Australia Rally’, *ABC News* (online, 2 September 2025) <<https://www.abc.net.au/news/2025-09-02/iat-camp-sovereignty-follow/105722830>>. See also Fiona Allison et al, *If You Don’t Think Racism Exists Come Take a Walk With Us: The Call It Out Racism Register 2023-2024* (Report, 2025) <<https://apo.org.au/node/329966>>; Dana Morse, ‘Survey Finds “Significant” Rise in Racism Towards Indigenous People in Past Decade’, *ABC News* (online, 24 June 2025) <<https://www.abc.net.au/news/2025-06-24/survey-finds-significant-rise-in-racism-indigenous/105453342>>; National Justice Project, ‘Significant Increase in Reports of Racism Targeting First Nations Children’ (Media Release, 1 December 2025) <<https://www.justice.org.au/reports-racism-first-nations-children/>>; Jumbunna Institute for Indigenous Education and Research, *Closing the Gap Independent Aboriginal and Torres Strait Islander Led Review* (Report, June 2025) <<https://static1.squarespace.com/static/62ebb08a9ffa427423c18724/t/685b4f091f5af860bd9f1b48/1750814543128/Closing+The+Gap+Review.pdf>>.

² See, eg, Anne Wallace, ‘Why Do We Fail to Deliver Justice to Indigenous Populations?’ (2024) 15(3) *International Journal for Court Administration* 5:1-16 <<https://doi.org/10.36745/ijca.639>>; ‘National Hate Crimes Database’, *Australian Institute of Criminology* (Statistics) <<https://www.aic.gov.au/statistics/national-hate-crimes-database>>; Hagar Cohen and Scott Mitchell, ‘Hate Crime Laws Rarely Used by Australian Authorities, Police Figures Reveal’, *ABC News* (online, 3 May 2019) <<https://www.abc.net.au/news/2019-05-03/hate-crimes-rarely-prosecuted-in-australia/11055938>>.

³ AHRC, ‘Commissioners Welcome Senate Inquiry into Racism Against First Peoples’ (Media Release, 5 March 2026) <<https://humanrights.gov.au/about-us/media-centre/media-releases/aboriginal-and-torres-strait-islander-peoples/commissioners-welcome-senate-inquiry-into-racism-against-first-peoples>>.

⁴ *Ibid.*

2. ABOUT ALSWA

ALSWA was established in 1973 and is an Aboriginal Community Controlled Organisation. ALSWA is the lead provider of specialist legal advice, support services and advocacy for Aboriginal people in Western Australia. ALSWA works in collaboration and partnership with communities and key government and non-government partners to rectify legal policies and practices that impact adversely and disproportionately on the legal and human rights of Western Australia's First Peoples.

ALSWA uses the law and legal system to bring about social justice for Aboriginal peoples as a whole. ALSWA develops and uses strategies in the areas of legal advice, legal representation, legal education, legal research, policy development and law reform.

ALSWA is governed by a Board of Directors, who are all Aboriginal. ALSWA is a company limited by guarantee registered with the Australian Securities and Investment Commission and a public benevolent institution registered with the Australian Charities and Not-for-Profits Commission.

ALSWA provides legal advice and representation to Aboriginal peoples in a wide range of practice areas including criminal law, civil law, family law, child protection and human rights law. Its services are available throughout Western Australia via 11 regional and remote offices and one head office in Perth.

ALSWA also provides several additional wraparound services to support clients, including the Bail Support Service and Prison In-Reach Legal Service, the Custody Notification Service, the Custody Wellbeing Service, the Work and Development Permit Service and the Youth Engagement Program. ALSWA also leads the justice reinvestment program, Old Ways New Ways, along with Wadjak Northside Aboriginal Corporation, Stephen Michael Foundation and Hope Community Services. In addition, ALSWA works in partnership with Hope Community Services and other organisations for the delivery of the Waullo Dawn Healing Service and Koolark Healing Service in Armadale and the Mara Pirni Healing Service in Kalgoorlie.

3. BACKGROUND TO THE INQUIRY AND TERMS OF REFERENCE

The Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs ('the Committee') will inquire into racism, hate and violence directed at Aboriginal and Torres Strait Islander people, including:

1. The nature, prevalence and impact of racism, hate and violence towards First Nations people, including trends over time;
2. The effect of online platforms on the reach, prominence and harm caused by racism and hate directed at First Nations people;
3. Initiatives that are effective in combating racism targeted at First Nations people and reduce individual and collective harm;
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;
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 jurisdictions and institutions; and
6. Other matters related to racism, hatred and violence directed at First Nations people.

4. SCOPE OF ALSWA'S SUBMISSION

ALSWA's submission draws on the experience and expertise of its staff, both Aboriginal and non-Aboriginal, and seeks to respond to each of the Terms of Reference. Our submission is informed by ALSWA's extensive experience in both representing Aboriginal people throughout the state of Western Australia, and providing culturally secure legal support to Aboriginal children and adults in community and custody settings.

Wherever possible, ALSWA incorporates the views of Aboriginal people with lived experience into this submission, and refers to examples of our own work to provide evidence of the views expressed. ALSWA lawyers with extensive experience supporting Aboriginal people involved in the justice system have provided these examples.

While the examples discussed in this submission predominantly provide insight into the experiences of Aboriginal people in Western Australia, ALSWA notes that these experiences are not unique to Western Australia and highlights the importance of ensuring that initiatives to combat racism, hate and violence towards Aboriginal are urgently addressed by the Federal and State/Territory governments.

5. THE NATURE, PREVALENCE AND IMPACT OF RACISM, HATE & VIOLENCE TOWARDS ABORIGINAL PEOPLE

Racism, hate and violence towards Aboriginal people remains deeply embedded in laws, systems, and institutions throughout Australia and ‘is the “business as usual” in the daily lives’ of Aboriginal people.⁵

This part of ALSWA’s submission seeks to highlight Aboriginal people’s experiences of systemic and interpersonal racism, hate, and violence within the criminal justice system. ALSWA submits that these experiences emphasise the urgent need for truth-telling, self-determination, culturally safe and secure support services, and independent oversight and accountability mechanisms, both within the Western Australia criminal justice system and within Australia’s Federal and State/Territory laws, systems, and institutions more broadly.

5.1 Laws and Policies

The most recent report on Australia’s progress towards Closing the Gap indicates that imprisonment of Aboriginal adults is increasing, less Aboriginal children are thriving, more Aboriginal children are in out-of-home care, the social and emotional wellbeing of Aboriginal peoples is declining, and outcomes in youth justice remain unchanged.⁶

Despite these findings, state and territory governments continue to compete in their efforts to appear ‘tough on crime’, adopting highly politicised policies and introducing increasingly punitive legislative reforms.⁷ These policies and reforms disproportionately increase police interactions with Aboriginal people, broaden the circumstances in which harsh penalties may be imposed upon conviction for offending, and increase the likelihood that Aboriginal people who enter the justice system will reoffend or remain in the system for longer periods.⁸ They do not address the drivers of the behaviours they seek to discourage, and instead actively

⁵ Jumbunna Institute for Indigenous Education and Research (n 1) 111.

⁶ Productivity Commission, *Closing the Gap Annual Data Compilation Report* (Report, 30 July 2025) 3-4, 6 <<https://www.pc.gov.au/closing-the-gap-data/annual-data-report>>.

⁷ See, eg, Reece Hinchcliff, Luke Butcher and Andrew Day, ‘Australia Doesn’t Have a Youth Crime Problem—It Has a Youth Justice Problem’, *Pursuit* (online, 17 March 2026) <<https://pursuit.unimelb.edu.au/articles/australia-doesnt-have-a-youth-crime-problem.-it-has-a-youth-justice-problem>>; Amnesty International Australia, ‘Billions Spent, Rights Ignored: Why Australia’s “Tough On Crime” Approach is Failing Us All’ (Media Release, 3 February 2026) <<https://www.amnesty.org.au/billions-spent-rights-ignored-australias-crime-approach-is-failing/>>.

⁸ See, eg, Brenda Lin, Brendan Delahunty and Garner Clancey, “Law and order” policy’ in Diana Perche et al (eds), *Australian Politics and Policy* (Sydney University Press, 2024) 1126.

undermine the ability of evidence-based, culturally safe, and trauma-informed diversionary programs to meet their objectives.⁹

Notably, recent research into Aboriginal people's lived experiences of the criminal legal system in Western Australia has found that:

At all levels throughout the [criminal legal system], people talked about being let down, maltreated, misunderstood and disrespected. Racism emerged from a lack of understanding and cultural awareness, but also from indifference and easy targeting. Engagement with, and belief in, the imposed Western 'justice' system was thus low—it is something to endure. ... However, our participants also provided stories of strength and ongoing resilience. There was a strong and shared message that the healing of Indigenous people can only happen with and through Indigenous people, highlighting the need for self-determination.¹⁰

ALSWA continues to advocate for increased culturally safe, secure, and trauma-informed supports and diversion for Aboriginal people who come into contact with the criminal justice system, noting that Aboriginal young people remain less likely to be diverted from formal court adjudication and that Aboriginal people of all ages have limited access to therapeutic courts—and access to only one specialist, Aboriginal-led sentencing court—in Western Australia.¹¹

5.2 Police

i. Over-Policing

Excessive policing practices such as maintaining a high police presence and increasing surveillance in particular areas inevitably target Aboriginal communities, broaden the circumstances in which police powers may be exercised, and increase the likelihood of negative interactions between police and community members.¹² In Western Australia, this over-policing is evidenced by the high rate at which Aboriginal people are arrested.

⁹ See, eg, Nino Bucci, '“Post and Boast” Laws Aim to Stop Young Australians Glorifying Crimes: Will They Drive Them Deeper Into “a Failing Justice System”?', *Guardian Australia* (online, 16 August 2025) <<https://www.theguardian.com/australia-news/2025/aug/16/post-and-boast-laws-australia-youth-young-people-crime-social-media>>; Giovanni Torre, 'WA Police Target Indigenous Youth Rehabilitation Event, Arresting Three Boys in Front of Other Children', *National Indigenous Times* (online, 14 November 2024) <<https://nit.com.au/14-11-2024/14868/wa-police-target-indigenous-youth-rehabilitation-event-arresting-three-boys-in-front-of-other-children>>.

¹⁰ Hilde Tubex et al, *Stories That Matter: Aboriginal and Torres Strait Islander People's Experiences of the Western Australian Criminal Legal System* (Australian Institute of Criminology, Trends and Issues in Crime and Criminal Justice, Paper No 725, March 2026) 14.

¹¹ In Western Australia, therapeutic courts can only be accessed by people living in metropolitan Perth, and the only specialised Aboriginal-led court in the state is the Barndimalgu Court in Geraldton, which is accessible only to family and domestic violence offenders.

¹² See, eg, David Weber, 'How WA Police's New Search Powers Aim to Disrupt Organised Criminals' Ability to Distribute Drugs', *ABC News* (online, 28 March 2023) <<https://www.abc.net.au/news/2023-03-28/wa-government-border-crossings-search-powers/102154988>>; 'Melbourne's Mayor Welcomes Greater Police Search Powers but Some MPs Say It's

A 2024 study that examined contact between Aboriginal people and the criminal justice system identified a high rate of arrest as ‘the leading proximate cause’ of the overrepresentation of Aboriginal people in Australian custodial facilities. Notably, the study found that marked differences ‘consistent with the influence of criminal law and law enforcement policy’¹³ remain between Australian states and territories, and that:

Living in Western Australia is associated with a 4.7 percentage point increase in the risk of arrest, a result comparable in magnitude to having a high or very high level of psychological distress.¹⁴

The findings of this study are very concerning for ALSWA clients, for the Western Australian justice system as a whole, and for Aboriginal populations across the state. This is especially so when considered in tandem with the associated social, health, and economic determinants that are affected by involvement in the criminal justice system and time in custody.¹⁵

ALSWA submits that the increased risk of arrest and the difficulties that Aboriginal people in Western Australia face in obtaining bail are intrinsically related issues. Relevantly, Aboriginal people in Western Australia are often refused bail by police for low-level offences or, if granted bail by police, subject to unnecessary police-imposed bail conditions which significantly restrict freedom of movement.¹⁶

These practices—which are invariably more punitive than preventative—have a disproportionately negative impact on Aboriginal people. This is particularly the case for Aboriginal people who are highly vulnerable and, frequently, highly visible in public spaces, such as children and young people, people experiencing homelessness, people with disability, and people experiencing mental health crises.¹⁷ For these reasons, ALSWA continues to advocate for amendments to the current provisions of the *Bail Act 1982* (WA) so that bail

Overreach’, *ABC News* (online, 26 November 2025) <<https://www.abc.net.au/news/2025-11-26/police-extend-search-powers-melbourne/106053990>>; Keziah Sullivan, ‘Police Look to Extend Use of SA’s New ‘Stop and Search’ Knife Laws’, *9 News* (online, 30 September 2025) <<https://www.9news.com.au/national/police-look-to-extend-use-of-sas-new-stop-and-search-knife-laws/b5b0887d-1123-441d-a224-90795a6d0af2>>; Claudia Williams, ‘Queensland Makes Jack’s Law Permanent, Expanding Police Powers to Search People for Knives’, *ABC News* (online, 11 June 2025) <<https://www.abc.net.au/news/2025-06-11/queensland-jacks-law-made-permanent-passes-parliament/105402610>>.

¹³ Don Weatherburn et al, *Towards a Theory of Indigenous Contact with the Criminal Justice System* (Research Report No 32, Australian Institute of Criminology, 22 May 2024) 31.

¹⁴ *Ibid* 22.

¹⁵ See, eg, Australian Law Reform Commission, *Pathways to Justice: Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, December 2017) 61–82 [2.25]–[2.105].

¹⁶ See ALSWA, *Police Bail* (Submission, November 2025) <<https://als.org.au/publications-policy/submissions/>>.

¹⁷ See, eg, Andreea Lachs, ‘Over-policing of Aboriginal Children in Australia: A System that Criminalises Aboriginal Children’, *Penal Reform International* (online, 22 November 2021); Tamara Walsh et al, “‘Back Off! Stop Making Us Illegal!’: The Criminalisation of Homelessness in Australia’ (2025) 34(1) *Social and Legal Studies* 67; *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 8; Rory Randall et al, “‘I Was Having an Anxiety Attack and They Pepper Sprayed Me’: Police Apprehension in Mental Health Contexts in Australia’ (2024) 35(1) *Policing and Society* 85 <<https://doi.org/10.1080/10439463.2024.2372354>>.

decision-makers are required to consider the Aboriginality and vulnerabilities of accused persons.

The following are just a few examples which, among countless others, illustrate the unrelenting over-policing of Aboriginal people—particularly children—in Western Australia.

Case Examples

- A. In 2005, a 15-year-old Aboriginal boy from a very remote area was charged with attempting to steal a \$2.05 ice cream. This offence could have been the subject of a caution or a Juvenile Justice Team ('JJT') referral.¹⁸ Instead, the boy was arrested by police and refused police bail. He was then remanded in custody by a court and transported to a juvenile detention centre in Perth, where he spent 10 days in custody prior to his matter being dealt with in Perth Children's Court. The charge was dealt with by way of a dismissal pursuant to s 67 of the *Young Offenders Act 1994 (WA)* ('*Young Offenders Act*') on the basis that the boy had already been punished as a consequence of the time spent in pre-sentence detention.
- B. In 2006, an 11-year-old Aboriginal girl with no prior contact with the justice system was charged with threats to harm following an incident at her primary school where she allegedly threatened her teachers whilst holding plastic scissors. The girl was arrested by police at her school and sprayed with capsicum spray before being hosed down with cold water in the yard of her school after the capsicum spray had been administered. She was then transported in police custody, without notifying her family, to a Perth police station. The case was not dealt with by way of either a police caution or a referral by police to a JJT but instead proceeded by way of a formal prosecution. The girl was ultimately found not guilty by a Magistrate.
- C. In 2009, a 12-year-old Aboriginal boy with no prior convictions faced the Children's Court after being charged with receiving a Freddo Frog chocolate bar which had allegedly been stolen by his friend. The Freddo Frog cost 70 cents. The boy faced a further charge involving the receipt of a stolen novelty sign from another store, which read, 'Do not enter, genius at work.' The boy missed the first court appearance due to a misunderstanding about court dates and was subsequently apprehended by police at 8.00am on a school day. He was taken into police custody where he was detained for several hours. After spending most of the day in the police lock-up, the boy appeared before Justices of the Peace and

¹⁸ *Young Offenders Act 1994 (WA)* s 23, s 29.

was released to bail with conditions that he remain at his home between the hours of 7pm and 7am and not attend the central business district of his local area except in the company of his mother or older brother. The charges were eventually withdrawn and costs awarded to the boy's legal representative, despite police defending their actions as 'technically correct'. ALSWA maintained that the charges were scandalous and would not have occurred if the boy had come from a middle-class non-Aboriginal family in Perth.

- D. In 2017, a female Aboriginal Elder living in a regional town attended a government services office for a routine appointment. The woman attended the appointment and left. Later, the employee who had served the woman noticed his mobile phone had been taken. The employee reported the theft to police and positively identified the woman as the culprit. Before reviewing any CCTV footage, police attended the woman's house and arrested her in front of her entire family, including grandchildren. The officers searched the woman and found nothing, but still took her into custody. Officers then reviewed the CCTV footage, which clearly showed a man wearing dark clothing taking the phone before the woman, who was wearing a bright coloured outfit, had even attended her appointment. The woman was subsequently released from custody.
- E. In 2020, a 15-year-old Aboriginal boy from a very remote community entered a roadhouse which had a sign erected stating 'Window Service Only' and shoplifted a bag of lollies worth \$7.95. The boy was charged with trespass and stealing. The following day, the boy entered the front yard of a residential address and removed an 'ashtray' containing used cigarettes from a doorstep. He was later charged with trespass and stealing. Prior to being charged, the boy was arrested, taken into police custody, and formally interviewed.

A request made by ALSWA to have the stealing charge in relation to the ashtray discontinued was refused. In particular, ALSWA noted that the alleged victim did not initially report to police that the ashtray had been stolen and that it was only some two weeks later when a police officer inquired whether an ashtray had been stolen did the victim tell police that a 'small tin *that we use* as an ashtray had been stolen from the front door'. Police refused to discontinue the charge stating that the boy had 'trespassed on the property and stole the ashtray which demonstrates he was trespassing on the property for an unlawful purpose. He also admitted to stealing the ashtray during his suspect interview which is why police contacted the victim.'

- F. In 2024, a 10-year-old Aboriginal boy from a regional community was arrested by police at his school during morning snack break, taken to the local police station, and interviewed in relation to burglaries on shops which were alleged to have been committed by several children earlier in the week. During the interview the boy was visibly distressed, sobbing and repeatedly saying that he wanted to go back to school. The boy's mother, who had attended the police station after being advised of the boy's arrest and was present during the interview as the boy's responsible adult, also asked that the interview be stopped on multiple occasions. Despite these requests, the interviewing officers continued trying to interview the boy until an ALSWA lawyer (who the boy's mother had contacted for assistance using her own mobile) intervened.
- G. In 2024, a 34-year-old Aboriginal woman was arrested and charged with disorderly behaviour in public (an offence which carries a maximum penalty of a fine or a community-based order in Western Australia).¹⁹ Although the woman had no outstanding matters and had not appeared in court for an offence since 2019, she was refused bail by police and held in lock-up overnight. The woman appeared in court the following day, where the matter was adjourned to a later date. The woman was released without bail and was eventually sentenced to a \$400 suspended fine.
- H. In 2024, a 26-year-old Aboriginal man was charged with stealing a roast chicken valued at \$12 from a major supermarket. He had no other outstanding charges and had last been charged with a stealing offence 10 years earlier (when he was still a child). Police granted the man bail with conditions that prohibited him from entering Perth CBD. The man had been subject to these conditions for almost a month when he was arrested and detained in police custody for breaching them by entering the CBD. He was subsequently held in a lock-up overnight and appeared in court the next day, where he was sentenced to a \$50 fine.
- I. In 2024, a 52-year-old Aboriginal man was arrested for breaching a 24-hour 'move on' order 15 minutes before the order's expiry.²⁰ The man had been issued the order for drinking in a public park the previous day. He usually resided in a very remote community and did not have accommodation in the city, having travelled there to be with his wife who required surgery. The man was charged and released on police bail with conditions that prohibited him from being in the area where the hospital was located, which essentially

¹⁹ *Criminal Code 1913 (WA)* s 74A; *Sentencing Regulations 1996 (WA)* sch 2.

²⁰ *Criminal Investigation Act 2006 (WA)* s 153.

extended the duration of the order from 24 hours to his court date a month later. A few hours after his release, the man was arrested again after police saw him in the hospital's carpark. He was refused bail and spent the night in police custody before appearing in court the following day, where he received no further punishment for the offence pursuant to s 46 of the *Sentencing Act 1995* (WA).

- J. In 2024, a 13-year-old Aboriginal girl was arrested and charged with stealing a 'paddle pop' ice cream valued at \$4.50 from a convenience store. The girl was in the care of the Department of Communities – Child Protection and had diagnoses of FASD and ADHD. The girl spent over six weeks on bail with conditions that restricted her freedom of movement before the charge was discontinued by the prosecution.
- K. In 2024, a 14-year-old Aboriginal boy from a very remote community was arrested for breaching his bail conditions at 7.27am on a school day. The boy had been arrested while he was in the company of his support workers and had been dressed ready to attend school. Police indicated that the breach of curfew had occurred a few days earlier, over the weekend. The boy was brought before the Children's Court before being released again to bail with the same conditions.
- L. In February 2026, a 16-year-old Aboriginal girl in a regional community was charged with receiving stolen property for accepting a handful of 'Sour Patch' gummy bears from another young person. The girl had been with a group of young people when some members of the group were alleged to have unlawfully entered a petrol station and stolen the gummy bears. Two days later, the girl voluntarily attended her local police station with a responsible adult and participated in a police record of interview, making admissions to receiving the gummy bears. Despite her cooperation with police and limited history before the Children's Court (for which she had received a referral to a Juvenile Justice Team or no further punishment pursuant to s 67 of the *Young Offenders Act*), the girl was refused bail by police. The girl was detained in the police cells overnight and released on bail by the court the following morning, having spent almost 24 hours in police custody. The charge was ultimately discontinued by the prosecution.

ii. Treatment in Police Custody

The treatment of Aboriginal people in police custody continues to severely impact the relationship between Aboriginal people and police in Western Australia.²¹

In our recent submission on the use of police-issued restraining orders and the apparent frequency with which Aboriginal women in need of protection from family and domestic violence are misidentified as perpetrators,²² ALSWA highlighted that, despite repeated calls for increased cultural awareness training for Western Australia Police Force ('WA Police') spanning more than a decade, there remains very little clarity as to how many of these recommendations have been implemented and the means by which their efficacy is monitored.²³

Similarly, complaints related to police behaviour are frequently subject to internal investigations which lack transparency and 'do not meet international human rights standards',²⁴ and there remains a lack of adequate, independent oversight and accountability mechanisms for police in all states and territories.

ALSWA continues to advocate for greater independent oversight to ensure police accountability, and submits that this remains crucial to improving the relationship between Aboriginal people and police, reducing Aboriginal overrepresentation within the justice system, and addressing racism, hate and violence towards Aboriginal people more broadly.²⁵

²¹ See, eg, Cason Ho, 'Six WA Police Officers Sanctioned Over Treatment of Aboriginal Man Who Died in Kalgoorlie Prison', *ABC News* (online, 30 April 2026) <<https://www.abc.net.au/news/2026-04-30/wa-police-sanctioned-linton-ryan-death-in-custody-kalgoorlie/106598556>>.

²² ALSWA, *Police Orders* (Submission, November 2025) 11-8 [4] <<https://als.org.au/publications-policy/submissions/>>.

²³ *Ibid* 26-34 [6.1].

²⁴ Policy Accountability Project, 'Why We Need Independent Investigation of Complaints Regarding Police Conduct' (Web Page) <<https://policeaccountability.org.au/issues-and-cases/independent-investigations/>>. See also Policy Accountability Project, *Independent Investigation of Complaints Against the Police* (Policy Briefing Paper, 2017); Nick Boag, Jeremy King and Merys Williams, 'Police Accountability in Australia: Complaint Mechanisms and Civil Litigation' [2017] (143) *Precedent* 14.

²⁵ See, eg, Dennis Eggington and Kate Allingham, 'Police Investigating Police Complaints: An Urgent Need for Change in Western Australia' (2007) 6(28) *Indigenous Law Bulletin* 6, 6-8; ALSWA, Submission to the Community Development and Justice Standing Committee, Parliament of Western Australia, *Inquiry into Custodial Arrangements in Police Lock-Ups* (July 2013); ALSWA, Submission No 74 to the Australian Law Reform Commission, *Inquiry into the Incarceration Rates of Aboriginal and Torres Strait Islander Peoples* (11 September 2017); ALSWA, Submission No 8 to the Joint Standing Committee on the Corruption and Crime Commission, Parliament of Western Australia, *An Inquiry into the Western Australian Corruption and Crime Commission's Oversight of Police Misconduct Investigations, Particularly Allegations of Excessive Use of Force* (22 January 2020); ALSWA, Submission No 20 to the Joint Standing Committee on the Corruption and Crime Commission, Parliament of Western Australia, *What Happens Next? Beyond a Finding of Serious Misconduct* (July 2022); ALSWA, Submission No 51 to the Legal and Constitutional Affairs References Committee, Parliament of Australia, *Australia's Youth Justice and Incarceration System* (19 December 2025).

The following are just a few case examples of police interactions with Aboriginal young people which, in ALSWA's submission, are tinged with racism and discrimination.²⁶

Case Examples

- A. One evening in 2016, police in a regional town received a report that a 13-year-old Aboriginal boy and some other children were throwing rocks at a taxi. Police officers located the boy, who alleged that one of the officers hit him with her torch and said, 'listen here you little black c***' and 'what are you little black c***'s doing?'. Officers then put the boy and another child into the back of a police car unrestrained and drove recklessly on bumpy roads. The children were thrown around in the back of the car and injured in the process. The officers then dropped both children at an uninhabited site 3 kilometres out of town. It was late at night, and the children walked back into town in the dark.
- B. On 26 January 2018, during the course of an arrest of a 16-year-old Aboriginal boy, a WA police officer was recorded saying, 'we win again', 'happy invasion day mother fucker' and 'it's civilisation and conqueror's day'. The incident was recorded by the boy's mother, who was then issued with an infringement for disorderly conduct. ALSWA assisted the boy and his mother to make a complaint to WA Police. The officer was reprimanded and the infringement was withdrawn.
- C. In September 2024, police attended a residential address and arrested a 16-year-old Aboriginal boy and a young Aboriginal man on suspicion of burglary. The boy was told to sit in the back of a vehicle and was questioned about his alleged involvement in the offence. During the interaction, the boy was visibly upset and denied any involvement in the burglary, to which one of the attending officers forcefully responded 'you know, don't give me fucking bullshit right now'. The officer then switched off his police-issued body worn camera ('BWC').

The officer was captured on the BWC footage of another officer, in which he could be seen removing the young boy from the vehicle and continuing to speak to him beside a fence before motioning for the boy to sit on the ground and gesturing to a third officer to follow him behind a fence. The third officer's BWC footage subsequently captured the

²⁶ For further examples see especially ALSWA, Submission No 8 to the Joint Standing Committee on the Corruption and Crime Commission, Parliament of Western Australia, *An Inquiry into the Western Australian Corruption and Crime Commission's Oversight of Police Misconduct Investigations, Particularly Allegations of Excessive Use of Force* (22 January 2020); ALSWA, Submission No 20 to the Joint Standing Committee on the Corruption and Crime Commission, Parliament of Western Australia, *What Happens Next? Beyond a Finding of Serious Misconduct* (July 2022).

officer saying, ‘I told [the boy] if you tell us everything, we’ll get you bail. Off camera, obviously’ before murmuring ‘oh you fucking...’ and raising his hand to partially obscure the third officer’s BWC. Despite realising he was being recorded, the officer went on to say that the boy was ‘singing’ because ‘he’s shit scared’.

Notably, throughout this interaction, the officer was wearing his police issued uniform. The word ‘POLICE’ was visible on the left side of his chest, while the Western Australia Police Force logo and the officer’s PD number was visible on the right. Affixed between these two labels was a third label which prominently displayed the words ‘FOLD CUNTS’ [Appendix A].

In November 2025, ALSWA made three complaints to WA Police regarding this officer’s conduct in this matter and in another matter, which ALSWA submitted demonstrated the officer using excessive force during an arrest of a 15-year-old on 26 January 2025. ALSWA was notified that the complaint regarding the officer’s use of force was not sustained but has not been advised whether the complaints regarding the officer’s conduct detailed above (in turning off his BWC and displaying the badge) have been sustained at the time of writing.

In February 2026, ALSWA made a fourth complaint regarding this officer’s behaviour during a search for a young Aboriginal person, who police were seeking to arrest on suspicion of alleged offending, in February 2024. On that occasion, audio from another officer’s BWC captured this officer forcing entry to an Aboriginal family’s home while the home was unoccupied and using force against the family’s pet dog—which was a miniature, Chihuahua-type mixed breed—by spraying the dog with OC spray. While the BWC footage does not provide any vision of what happened to the dog, ALSWA submits that it is evident from the audio that captures the intensity of the dog’s screams—which turn to high-pitched squawks—that the dog experienced severe pain, distress and difficulty breathing. Notably, no note was left to advise the Aboriginal family who lived at the home of what had happened to their pet, nor to advise that police had entered the home as required by s 31(5) of the *Criminal Investigation Act 2006* (WA). At the time of writing, ALSWA has not been advised whether this complaint has been sustained.

Inquest into the death of Ms Dhu

In 2014, 22-year-old Ms Dhu died in WA Police custody in South Hedland after being imprisoned for fine default (a law which had a disproportionate impact on Aboriginal people and has since been abolished).

Ms Dhu was held in the lock up for three days, during which time she became gravely ill and eventually passed away from septicaemia caused by a previous rib fracture, in circumstances in which both the police and hospital staff dismissed the seriousness of her condition and made stereotypical assumptions about the cause of her distress. At the Coronial Inquest into Ms Dhu's death, the Coroner found that 'it would be naïve to deny the existence of societal patterns that lead to assumptions being formed in relation to Aboriginal persons'.²⁷

As well as highlighting a lack of cultural competency amongst police and hospital staff, the inquest highlights the systemic racism that pertained to the overrepresentation of Aboriginal people in detention for low level offences, including failure to pay fines.

Background

On 2 August 2014, Ms Dhu was arrested at South Hedland Police lock-up for failing to pay fines. It was calculated she had to spend 4 days in custody unless the outstanding fines were paid. The fines related to Ms Dhu's convictions for offences which the State Coroner described as 'low level offending', including disorderly behaviour involving swearing at police.²⁸

Ms Dhu had previously had her rib broken as a result of intimate partner violence and was in significant pain when arrested. Miss Dhu asked for assistance and complained of ill health to police officers. She was taken by police officers to the Hedland Health Campus on 2 and 3 August 2014 where medical practitioners dismissed her symptoms. On the morning of 4 August, despite numerous concerns being raised by Ms Dhu as well as by a neighbouring detainee, police continued to believe she was feigning symptoms. This assumption persisted despite Ms Dhu collapsing and hitting her head hard on the cell floor. Ms Dhu was taken, with no sense of urgency,²⁹ to the Emergency Department where, despite maximal attempts at resuscitation, she died.

Findings

²⁷ *Inquest into the Death of Ms Julieka Ivanna Dhu (Ms Dhu)*, (Coroner's Court of Western Australia, State Coroner Fogliani, 16 December 2016) CORC 47 of 2015 [860].

²⁸ *Ibid* [784]. Her Honour noted one exception, being the offence of assaulting a public officer: kicking a police officer while being handcuffed.

²⁹ *Inquest into the Death of Ms Julieka Ivanna Dhu (Ms Dhu)* (n 27) [475].

In December 2016, the State Coroner delivered a number of adverse findings and comments about individual officers. Her Honour found that, despite Ms Dhu's appearance and demeanour reflecting her catastrophic decline in health, the behaviour of the majority of police was "unprofessional and inhumane" and "affected by preconceptions they had formed about her."³⁰ To that end, Her Honour found the cultural competency training that police officers had received was inadequate.

Her Honour also concluded that Ms Dhu's treatment and care at Hedland Health Campus on 2 and 3 August 2014 fell below the standards that should ordinarily be expected of a public hospital,³¹ and that it was affected by premature diagnostic closure.³² Her Honour stated:

[...] until there is a seismic shift in the understanding that is extended towards the plight of Aboriginal persons, the risk of unfounded assumptions being made without conscious deliberation continues, with the attendant risk of errors.³³

Her Honour's findings illustrate that systemic racism played a role in the chain of events that led to Ms Dhu's tragic death. In relation to the offences for which Ms Dhu was fined and consequently detained, Her Honour, citing the *Royal Commission into Aboriginal Deaths in Custody* (1991) stated:

[...] too often the attempt to arrest or charge an Aboriginal person for offensive language sets in train a sequence of offences by that person and others – resisting arrest, assaulting police, hindering police [...]³⁴

Her Honour also noted the disproportionate impact of fines on Aboriginal women, noting that:

Fines operate in a manner which is obviously unjust towards poor people. [...] The practice of imprisoning those who do not or cannot pay fines imposed on them, without proper regard to their ability to do so, emphasises the injustice of existing sentencing policies to poor people, among whom [Aboriginal people] figure so prominently.³⁵

Recommendations

The State Coroner made a number of recommendations pertaining to police, including that cross cultural training by mandatory face-to-face and ongoing and involve local Aboriginal

³⁰ Ibid [880].

³¹ Ibid [47].

³² Ibid [863].

³³ Ibid [860].

³⁴ Ibid [785].

³⁵ Ibid [792].

persons in delivery;³⁶ and that training be tailored to reflect specific issues, challenges and health concerns relevant to the location.³⁷ Her Honour also recommended that police be required to contact the Aboriginal Visitors Scheme once the decision is made to detain an Aboriginal offender and in the event taken to receive medical treatment.³⁸ Her Honour also recommended a 24 hour Custody Notification Scheme notification scheme be considered.³⁹ Notably, Her Honour also made recommendations for legislative reform around fines and alternatives to imprisonment, addressing the overrepresentation of Aboriginal women in detention for fines.⁴⁰

Changes following the inquest

Several changes to laws and policies were introduced following the inquest. Police introduced new policies and procedures including to reduce time spent in lock up.⁴¹ In 2019, ALSWA was funded to conduct a 24/7 a custody notification service (CNS) following changes to the Police Act regulations which mandated that police call the CNS whenever an Aboriginal person was taken to a police facility (usually a police station). Aboriginal people detained in a police facility have a statutory right to speak to CNS staff who provide legal advice and conduct a health and welfare check. CNS then relay to police, instructions pertaining to legal issues, eg that the person does not wish to participate in a record of interview with police and/or health and welfare issues, eg that the person does not have with them essential medications or that young children were left at home unsupervised following a police arrest.

In 2020, reforms were made to the enforcement of unpaid fines, including that imprisonment could only be ordered by a court and was only available as a 'last resort'. As noted by Ms Dhu's grandmother, Carol Roe, these are important changes, but more change when it comes to Aboriginal deaths in custody is 'long, long overdue'.⁴²

Inquest into the death of JC

JC was a 29-year-old Aboriginal woman of Ngarlawangga Yamatiji Martu descent who was born on Yamatiji country. She tragically died on the evening of 17 September 2019 from a

³⁶ Ibid [753]-[759], Recommendations 3 and 4.

³⁷ Ibid [753]-[759], Recommendation 4.

³⁸ Ibid [834]-[840], Recommendation 9.

³⁹ Ibid [841]-[847], Recommendation 10.

⁴⁰ Ibid [783]-[815], Recommendations 6 and 7.

⁴¹ Australian Associated Press, 'Western Australian Police Change Custody Procedures After Ms Dhu Inquest Findings', *The Guardian* (online, 16 December 2016) <<https://www.theguardian.com/australia-news/2016/dec/16/western-australian-police-change-custody-procedures-after-ms-dhu-inquest-findings>>.

⁴² Human Rights Law Centre, 'Six Years after Ms Dhu's Death in Police Custody, WA Changes Discriminatory Laws' (Media Release, 17 June 2020) <<https://www.hrlc.org.au/news/2020-6-17-six-years-after-ms-dhus-death-in-custody-wa-changes-law/>>.

gunshot wound to the abdomen. JC's shooting reverberated throughout Geraldton and was keenly felt by the broader Aboriginal community. Community protests were held in the immediate aftermath of JC's death and a march was also held during the inquest hearing in Geraldton.

The inquest into JC's death highlights the continuing role systemic racism and lack of cultural competency plays in the police system.

Background

JC had recently been released from prison and had been admitted to Geraldton Regional Hospital under the *Mental Health Act 2014* (WA) on 7 September 2019. She was then transferred down to Sir Charles Gairdner Hospital and was discharged on 13 September 2019 and returned to Geraldton. On 17 September, while in mental health distress, JC was walking along a suburban street holding a bread knife and small pair of scissors. Four WA Police cars with 8 officers arrived on scene and attempted to cordon off JC. Officer Barker, who had taken JC to hospital on 7 September, approached her with 'open hand tactics' and tried to speak with her. Another officer, Officer Wyndham, arrived at the scene shortly after, jumped out of his police vehicle, ran towards JC, and shot her. JC was taken to hospital where she died a short time later. Officer Wyndham was charged with JC's murder but was acquitted following a jury trial. JC was shot by Officer Wyndham 17 seconds after he exited the police vehicle.

Findings

A coronial inquest into JC's death was held in 2024 and the State Coroner delivered her findings in June 2025. The State Coroner made a number of adverse findings and comments about individual officers, including in respect of Officer Wyndham's response in running towards JC and putting himself in a situation where he then perceived he needed to use his police issued firearm.⁴³ The State Coroner also found that there were missed opportunities around the police not communicating or coordinating their response which led to split second decisions being made,⁴⁴ that there were inadequate attempts to deescalate the situation,⁴⁵ there was insufficient recognition and understanding of JC's mental distress and cultural background,⁴⁶ and that the police in attendance had not been trained effectively.⁴⁷ Her Honour

⁴³ *Inquest into the Death of Joyce Gladis Clarke* (Coroner's Court of Western Australia, State Coroner Fogliani, 9 June 2025) CORC 44 of 2019 [243], [263].

⁴⁴ *Ibid* [319].

⁴⁵ *Ibid* [331].

⁴⁶ *Ibid* [332].

⁴⁷ *Ibid* [334].

also specifically remarked that more formal training in respect of Aboriginal Cultural Awareness may have generated a better appreciation of JC's likely vulnerabilities.⁴⁸ Notably, only one Aboriginal person was called to give evidence at the inquest – a Wajarri, Badimaya and Wilunyu leader and academic named Dr Charmaine Green, who was assisted in providing a statement and evidence to the court by ALSWA, acting for JC's sister. The State Coroner ultimately found that JC's death was preventable,⁴⁹ and importantly noted as follows:

JC's premature death, in violent circumstances, deprived her of her life at a young age. It deprived her young son of a mother, caused immeasurable grief for her family, and caused distress for the Aboriginal communities in and around Geraldton, and in the wider areas. It sadly reactivated and magnified the historical mistrust and antipathy that many Aboriginal persons feel towards police officers, for reasons that are well known and deeply embedded in the unfortunate and brutal consequences of colonisation.⁵⁰

Recommendations

Relevantly, the State Coroner made recommendations focused on improving police relations with Aboriginal communities, including through establishing a section of the WA Police dedicated to improving the relationship between WA Police and Aboriginal persons,⁵¹ and that WA Police oversee Cultural Awareness training to be co-designed with, and delivered by, Aboriginal persons, including face to face training on a regular basis, that consideration be given to tailoring it to the region in which the police officers are serving, and that consideration be given to emphasising the importance of the effect of intergenerational trauma, and foetal alcohol spectrum disorder, and the importance of cultural wellbeing.⁵²

The State Coroner also recommended that health service providers prioritise their engagement in the nationally agreed development of the Implementation Plan for the Gayaa Dhuwi (Proud Spirit) Declaration,⁵³ the continuation of the Mental Health Co-Response model,⁵⁴ and that WA Police consider a review of their training for police officers including training in effective communication skills.⁵⁵ To date, it is not clear whether any of these recommendations have yet been acted on. In this respect it is important to note that WA's coronial system does not have

⁴⁸ Ibid [4].

⁴⁹ Ibid [354].

⁵⁰ Ibid.

⁵¹ Ibid [380].

⁵² Ibid.

⁵³ Ibid [404].

⁵⁴ Ibid [442].

⁵⁵ Ibid [449].

a model of monitoring compliance with coronial recommendations, which further undermines any progress in relation to addressing issues involving racism that arise in coronial inquests.

Tellingly, Officer Wyndham was promoted by police after the death of JC.

ALSWA notes that in April 2024, less than three months before the Inquest into JC's death commenced, Officer Wyndham engaged in a heated verbal dispute with a young Aboriginal woman who was under arrest. While arresting the woman, Officer Wyndham was recorded on his own BWC saying, 'aw you wanna fuck me', 'you wanna be my woman', 'why would I want to go with you, look at you, you're hideous' and 'she wants to moin me now'. ALSWA made a complaint to WA Police about this conduct in November 2024 and were notified that the complaint was sustained in February 2025. However, by this time, Officer Wyndham had resigned and no further action was taken.⁵⁶

4.3 Over-Incarceration

Aboriginal people have long been, and continue to be, grossly over-represented within custodial facilities across Australia.⁵⁷ While this disparity has continued to grow, conditions in prisons have significantly worsened.⁵⁸

The Office of the Inspector of Custodial Services Western Australia ('OICS') has repeatedly raised concerns regarding the deleterious effects of the longstanding issues of overcrowding, limited or non-existent access to rehabilitative and reintegrative programs, and insufficient staffing in Western Australia's prisons.⁵⁹ In its most recent annual report, the OICS stated:

⁵⁶ See also the findings of an investigation into Officer Wyndham's conduct in May 2024: Crime and Corruption Commission (WA), Report on Misconduct by Geraldton Police Officers (27 June 2025) <<https://www.ccc.wa.gov.au/publications/report-misconduct-geraldton-police-officers>>.

⁵⁷ See, eg, *Royal Commission into Aboriginal Deaths in Custody* (1991); Australian Law Reform Commission, *Pathways to Justice: Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, December 2017); Thalia Anthony et al, '30 Years On: Royal Commission into Aboriginal Deaths in Custody Recommendations Remain Unimplemented' (Working Paper No 140/2021, Centre for Aboriginal Economic Policy Research, Australian National University, 2021) <<https://caepr.cass.anu.edu.au/research/publications>>.

⁵⁸ See generally, Eden Gillespie, "'Always a Bed in Prison': Australia's Housing Crisis Blamed for Rise in Unsented Prisoners", *Guardian Australia* (online, 4 February 2024) <<https://www.theguardian.com/australia-news/2024/feb/04/always-a-bed-in-prison-australias-housing-crisis-blamed-for-rise-in-unsentenced-prisoners>>; Maani Truu and Casey Briggs, 'More than a Third of Prisoners are Locked Up Without a Sentence: For Decades, that Number has Been Growing', *ABC News* (online, 25 February 2023) <<https://www.abc.net.au/news/2023-02-25/one-third-of-australian-prisoners-are-unsentenced-onremand/102015092>>; Adeshola Ore, 'Unsented Prisoners Make Up a Third of Australia's Prison Population as Bail Refusals Boom', *Guardian Australia* (online, 1 February 2023) <<https://www.theguardian.com/australia-news/2023/jan/31/unsentenced-prisoners-make-up-a-third-of-australias-prison-population-as-bail-refusals-boom>>.

⁵⁹ See, eg, Office of the Inspector of Custodial Services Western Australia ('OICS'), *Western Australia's Prison Capacity* (Report, December 2016); OICS, *Annual Report 2023-24* (Report, September 2024); OICS, *Non-Custodial Staffing Shortage* (Report, August 2025).

[O]ur ongoing monitoring of the custodial estate has found the impact of the increased population, coupled with insufficient staffing, is pervasive. It effects every aspect of a person's custodial journey.⁶⁰

The OICS further stated:

The impact becomes more insidious affecting people's rehabilitative and reintegrative opportunities, as their initial assessments and management plans are consistently delayed. *These delays prevent people in custody from accessing programs and services to help them address their offending and their addictions; and build capacity and skills to improve their chances of success upon release.* It also reduces their release options which contributes to the population pressures as they are *often ineligible for parole having not addressed the underlying reasons for their offending.*⁶¹

Sentenced Aboriginal prisoners have long been less likely to be approved for parole, and more likely to be returned to custody for breaching parole, than sentenced non-Aboriginal prisoners.⁶² Notably, Aboriginal prisoners face significant barriers to both advocating for their suitability for parole, and complying with their parole conditions in the community, including limited access to legal and community supports; living in remote areas; poor levels of literacy and education; cognitive and neurological impairments; mental ill health; housing instability; and lack of employment.⁶³

Given these barriers, the severe and longstanding issues impacting Western Australia's prison system have particularly deleterious impacts on Aboriginal prisoners eligible for parole consideration, significantly reducing their chances of success upon return to the community and increasing the likelihood that they will re-enter the prison system.⁶⁴ ALSWA notes that, while Western Australia Corrective Services' policy and procedure provides that prisoners shall be supported and assisted by custodial staff in the preparation of written parole plans,⁶⁵ this model invariably cannot provide the level of support and assistance most Aboriginal prisoners require in order to advocate for themselves in submissions to parole decision makers.

⁶⁰ OICS, *Annual Report 2024-25* (Report, September 2025) 26.

⁶¹ Ibid 26-7 (citations omitted) (emphasis added).

⁶² See, eg, Clarke R Jones, *Obstacles to Parole and Community Based Sentencing Alternatives for Aboriginal and Torres Strait Islander Offenders* (Report, 2019) 2.

⁶³ Ibid 4.

⁶⁴ Research suggests that there are 'large and statistically significant reductions in recidivism among Aboriginal and non-Aboriginal parolees' compared to people released from prison unconditionally: Evann J Ooi and Joanna Wang, 'The Effect of Parole Supervision on Recidivism' (Crime and Justice Bulletin No 245, NSW Bureau of Crime Statistics and Research, February 2022) 15.

⁶⁵ Corrective Services, Department of Justice (WA), 'COPP 14.4 Parole Applications', *Commissioner's Operating Policy and Procedure* (6 November 2024) 5 [4.1.2].

For these reasons, ALSWA continues to advocate for legislative reforms that ensure a fair and transparent process to parole decision-making,⁶⁶ and for the provision of additional, adequate funding to legal service providers for the purpose of providing culturally secure legal advice and representation to prisoners eligible for parole.

Further, ALSWA notes that recent OICS inspections and Coronial Inquest findings have raised significant concerns regarding the health and safety of prisoners held in many of Western Australia's custodial facilities,⁶⁷ and submits that addressing the systemic issues highlighted by these investigations is essential to addressing systemic racism and violence towards Aboriginal people more broadly.

Inquest into the death of Mr Ward

On 27 January 2008, Mr Ward, a highly regarded and accomplished Aboriginal man from the Ngaanyatjarra Lands, died while being transported when in custody in the rear of a prisoner transport vehicle owned and operated by a private company contracted by the WA Department of Corrective Services. Mr Ward had been charged with minor driving offences, refused bail by police and later by a Justice of the Peace, and was being taken to Eastern Goldfields Regional Prison.

Given the large numbers of Aboriginal persons transported in prisoner transport vehicles, ALSWA sought and obtained leave from the State Coroner to appear at the Inquest on behalf of the Western Australian Aboriginal community. The Inquest was conducted in 2009.

At the time of Mr Ward's death, the air conditioning in the rear of the prisoner transport vehicle was not working, the outside temperature was in the mid-30s and a subsequent investigation established the metal surfaces in the 'pod' in which Mr Ward was transported would have exceeded 50 degrees. A duress alarm in the 'pod' was also not working. The drivers of the prisoner transport vehicle knew that the air conditioning and the duress alarm were not working when transporting Mr Ward. Mr Ward was being driven from Laverton to Kalgoorlie when he perished on the outskirts of Kalgoorlie. The cause of death was heatstroke. Mr Ward also suffered third-degree burns to his stomach from contacting the hot metal floor.

⁶⁶ In line with parole models in comparable international jurisdictions, such as England and Wales, Scotland, New Zealand, and Canada, which 'include key features of procedural fairness and accountability': Bronwyn Naylor and Johannes Schmidt, 'Do Prisoners Have a Right to Fairness Before the Parole Board?' (2010) 32(437) *Sydney Law Review* 437, 438.

⁶⁷ See, eg, OICS, *2025 Follow Up Inspection of Hakea Prison* (Report No 162, June 2025); OICS, *People in Custody Requiring Crisis Care* (Report, January 2025); *Inquest into the Death of Cleveland Keith Dodd* [2025] WACOR 49; Ariel Bogle and Christopher Knaus, 'After Chelsea's Mother Died in an Unsafe Cell the Coroner Delivered a Scathing Message', *Guardian Australia* (online, 11 June 2025) <https://www.theguardian.com/australia-news/2025/jun/11/australian-coroners-hanging-points-prison-investigation-ntwnfb?CMP=share_btn_url>.

The Inquest revealed a catalogue of catastrophic failures by the drivers of the prisoner transport vehicle and the Department of Corrective Services in the discharge of their custodial care obligations to Mr Ward, prompting the State Coroner to state:

I accept that in the context of this avoidable death, as stated in the submissions on behalf of the Aboriginal Legal Service, “there is anger, disbelief, emptiness and calls for justice”. ...

In summary therefore, while the deceased suffered a terrible death which was not only preventable but easily foreseeable, issues relating to the involvement of the various individuals and organizations are complicated: ...

[T]he quality of the supervision, treatment and care of Mr Ward in the hours before his death was disgracefully bad, I am satisfied that Mr Ward was subjected to degrading treatment and he was not treated with humanity and with respect for the inherent dignity of the human person.

The Coroner also quoted from a report of the Inspector for Custodial Services in 2001 that the vehicle was, ‘not fit for humans to be transported in’.

Evidence was given at the Inquest by police involved in the arrest and detention of Mr Ward at the Laverton Police Station. The evidence highlighted the acute nature of the over-policing of Aboriginal people in regional and remote Western Australia. The evidence was to the effect that Laverton had a population of between 200-500 people, that police patrolling the Great Central Road (which leads to the Ngaanyatjarra Lands) would stop every car and breath test and conduct licence checks, regardless of the nature of the driving, that no non-Aboriginal person was refused police bail for a driving offence in Laverton, and that the only people in the police cells at Laverton Police Station were Aboriginal people from the Warburton Aboriginal community in the Ngaanyatjarra Lands. Notwithstanding the fact that Mr Ward’s vehicle travelled on a public road for no longer than 25 metres, it was inevitable, in the light of this evidence, that he would be pulled over, arrested, refused bail and remanded in custody.

The Inquest resulted in major reforms which have improved considerably the conditions under which prisoners are transported in Western Australia,⁶⁸ but it required Mr Ward’s horrific, tragic, and entirely preventable death for those improvements to occur.

⁶⁸ See, eg, OICS, *The Transport of Regional and Remote Prisoners* (Report, February 2023).

Inquest into the death of Cleveland Dodd

ALSWA obtained the leave of the State Coroner under the Coroner's Act 1996 to appear on behalf of the Aboriginal community of Western Australia at the Inquest into the Death of Cleveland Dodd in Unit 18 at Casuarina Prison.⁶⁹

Master Dodd was just 16 years old at the time of his death. He spent the last three (3) months of his life in Unit 18 in circumstances where he had limited access to running water, sunlight, and fresh air.⁷⁰ 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.

ALSWA's focus in the inquest was on the failings of Unit 18, including that it was not an appropriate facility to be a detention centre, or to be a facility for young people with disabilities; that it failed to have a model of care; that it was not a trauma informed environment; that it was not a culturally safe environment; and that compliance with the Department of Corrections own risk management manual was practically impossible.

ALSWA submitted that Master Dodd's death was predictable and preventable. Further, what transpired begged the question as to how Master Dodd could die in such awful circumstances while in State care.

The importance of ALSWA appearing on behalf of the Aboriginal community at the inquest was starkly illustrated by the evidence. Underpinning the analysis of 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

⁶⁹ *Inquest into the Death of Cleveland Keith Dodd* [2025] WACOR 49.

⁷⁰ *Ibid* [1651].

Aboriginal boys. Experts called to give evidence at the inquest observed that Unit 18 was a prison for Aboriginal children.

ALSWA highlighted through its cross examination of witnesses that, 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 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, ALSWA submitted that 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.

ALSWA submitted that the evidence supported a finding by the Coroner that in the months leading up to Master Dodd's death the Department of Corrections failed to ensure the needs of Aboriginal young people were met in the running of Unit 18 and that this failure gave rise to institutional racism.

6. EFFECT OF ONLINE PLATFORMS ON THE REACH, PROMINENCE & HARM CAUSED BY RACISM & HATE DIRECTED AT ABORIGINAL PEOPLE

ALSWA submits that online platforms have unarguably expanded the reach, prominence and harm caused by racism and hate directed Aboriginal people of all ages. In 2020, a report published by the eSafety Commissioner for Australia ('eSafety Commissioner') suggested that Aboriginal adults experienced online hate at more than double the national average.⁷¹ A further report, published in 2023, suggested that Aboriginal children experienced online hate at almost three times the national average.⁷²

Online hate has profound effects that disproportionately impact the wellbeing of Aboriginal people. While Aboriginal children are notably 'proactive and knowledgeable in responding to

⁷¹ eSafety Commissioner, *Online Hate Speech* (Report, 2020) 6.

⁷² eSafety Commissioner, *Cool, Beautiful, Strange and Scary: The Online Experiences of Aboriginal and Torres Strait Islander Children and Their Parents and Caregivers* (Research Report, March 2023) 10.

negative experiences online’,⁷³ these experiences are nevertheless associated with ‘impaired mental health, perceived reputation damage, and lower grades at school’.⁷⁴ Aboriginal adults report that online hate has similarly negative impacts on their beliefs, values and identity; work; financial situations; and cultural communities, but that they are unlikely to take action against the hate they personally experience online, often due to fear of what may happen as a result.⁷⁵ Concerningly, the eSafety Commissioner has recently observed that online hate appears to be on the rise in Australia⁷⁶ and has warned that:

Repeated exposure to online hate can lead to desensitisation to such content and has the potential to create a normative shift in society. In online environments with a high presence of online hate, people may be more likely to spread hate because of its perceived social acceptability. However, research indicates that far from being harmless, online hate can have a profound impact on victims, bystanders and the wider community.⁷⁷

ALSWA is deeply concerned by the high prevalence of online hate towards Aboriginal people and the frequency with which it is encountered in online environments that are public, wide-reaching, and attract large followings. Notably, in Western Australia, these environments include social media pages affiliated with public figures and prominent organisations, such as the official pages of serving council members and WA Police districts.

Disparaging, dehumanising remarks about Aboriginal people posted by social media users are frequently encountered in these environments, often accompanied by allusions to violence. Notably, these comments are usually directed at Aboriginal individuals—many of whom are young people—whose images have been published by those responsible for managing the page. Despite the profoundly harmful nature of these comments, they are either inadequately monitored or, seemingly, entirely ignored. A recent ABC news investigation noted that WA Police have stood by their decision to keep comments sections open on social media posts, saying social media remained an effective tool for sourcing information and communicating directly with the public.⁷⁸

⁷³ Ibid 11.

⁷⁴ Ibid 10.

⁷⁵ eSafety Commissioner, *Fighting the Tide: Encounters with Online Hate Among Targeted Groups* (Research Report, 2025) 23-29.

⁷⁶ eSafety Commissioner, *Hate in the Digital Age: Adults’ Encounters with Online Hate* (Research Report, 2025) 15.

⁷⁷ Ibid 6 (citations omitted).

⁷⁸ Mietta Adams, ‘WA Police Stands by Moderation Strategy Despite Racist Comments on Social Media Posts’, *ABC News* (online, 16 April 2026) <<https://www.abc.net.au/news/2026-04-16/western-australia-police-facebook-comments-moderation-racism/105049288>>.

To adequately convey the severity of the hate, racism and violence directed towards Aboriginal people in these online environments—as well as the length of time for which it may be left unaddressed—examples of the content referred to in this section are attached to this submission [Appendix B].⁷⁹ ALSWA notes that the extreme nature of this hate is far from an anomaly and submits that, without appropriate oversight, these comments are not only permitted to fester but also spread.⁸⁰

7. INITIATIVES EFFECTIVE IN COMBATTING RACISM

The following cases are examples of racist conduct and behaviours which have been the subject of complaints to the Equal Opportunity Commission in Western Australia ('EOC'). In some instances, complaints resolved prior to proceeding to a conciliation hearing conducted pursuant to the *Equal Opportunity Act 1984* (WA) ('EO Act').

While lodging a complaint with the EOC can be a draining and stressful exercise for Aboriginal complainants, appropriate resolutions can vindicate and empower Aboriginal complainants.

However, successful resolution largely depends on the willingness of respondents to acknowledge the wrongfulness of their conduct or behaviour.

Ultimately, ALSWA submits that while the EOC can sometimes provide meaningful redress for Aboriginal complainants, Western Australia's racial discrimination laws are nevertheless outdated (as discussed in Part 9.2 of this submission) and urgently require reform.

Case Examples

- A. An Aboriginal woman attended a store with her partner and other family members. While browsing, a plain-clothed security guard took a photo of the woman. The woman went to the front of the store to ask why a picture was taken of her and a security guard told her to lift up her shirt. A few days later, the woman called the store, wanting to make a complaint about the incident. The store manager later called the woman back and told her that he had spoken to the security guard and reviewed the security camera footage. The store manager said that the security guard thought that the woman was

⁷⁹ ALSWA notes that these examples were captured in early March 2026. As virtually all of these comments remain publicly visible at the time of writing, we have chosen not to include links to the posts on which they have been made in an attempt to reduce the reach of this hate: see, eg, discussion of the means by which content may spread in Joint Select Committee on Social Media and Society, Parliament of Australia, *Social Media: The Good, the Bad, and the Ugly* (Final Report, November 2024).

⁸⁰ See, eg, AHRC, Submission No 79 to the Joint Select Committee on Social Media and Australian Society (28 June 2024) 9 [27].

stealing and that she had put something down her pants. ALSWA assisted the woman to lodge a complaint to the EOC. ALSWA received a response from the security company contracted by the store. The response did not respond to the complaint substantively. The security company advised the EOC that the matter was unlikely to resolve by conciliation and the EOC referred the matter to the SAT. Before the SAT hearing, ALSWA negotiated with the security company to settle the matter. The company agreed to pay the woman compensation and to provide her with a letter of regret.

- B. An Aboriginal man won a gift voucher to a store. However, when he went into the store to spend it, he was followed around by security and made to pay for the items in his trolley at the checkout before he had finished shopping. Non-Aboriginal people in the store were not treated the same way. ALSWA assisted the man to make a complaint of racial discrimination to the EOC and the matter proceeded to conciliation. The matter was ultimately settled and the store agreed to pay the man compensation, provide cultural awareness training for the store, and provide the man with a letter of regret. The man found reliving the incident upsetting and the EOC process hard to deal with emotionally. However, he spoke at the conciliation about the incident and the impact it had on him. The man ultimately found the process empowering and was satisfied with the outcome.
- C. A 16-year-old Aboriginal girl attended a store with some friends. While making purchases, a staff member commented that the money they were using to buy their food must have come from selling drugs. The employee called a security officer over and stopped scanning the girl's items, demonstrating the seriousness with which he held the belief that she possessed drug money. The comments were clearly made on the basis of negative racial stereotypes, especially given that the girl had never attended this particular store before and had no history of involvement with police. The incident had a significant effect on the girl, causing her to feel anxious and upset, and she continued to worry that something like that would happen again. ALSWA assisted the girl to write to the store requesting a written apology, a commitment to cultural awareness training for their employees, and compensation. Eventually, all three outcomes were agreed between the parties. The girl felt empowered by the process and was very satisfied with the outcome.

- D. An Aboriginal woman attended a petrol station with her daughter and grandchildren to purchase petrol. The woman remained in the driver's seat while her daughter got out to fill the car. When the woman's daughter tried to fill up the car, the attendant announced over the loudspeaker that they could not purchase petrol if the woman remained sitting in the car. Other non-Aboriginal customers were not required to follow the same procedure. Further, two ALSWA employees of Caucasian appearance later attended the same petrol station and one remained in the driver's seat while the other filled the car with petrol. They were also not required to follow the same procedure. ALSWA assisted the woman to make a complaint of racial discrimination to the EOC. After considerable negotiation, including an unsuccessful conciliation, the matter settled. The company which owned the petrol station agreed to pay compensation to the woman, provide cultural awareness training to staff either in person or by video link, and give a written apology to the woman.
- E. An Aboriginal woman waited to enter a regional hospital behind a non-Aboriginal man. Upon entry, the man entered freely whereas the woman was made to take a Covid-19 test. While awaiting her test results, the woman saw three more non-Aboriginal people line up and enter the hospital without taking a Covid-19 test. Once the woman entered the hospital, a staff member confirmed to her that she had been required to do a Covid-19 test because she is Aboriginal, and it was believed the policy was necessary due to a recent outbreak in the local Aboriginal community. ALSWA assisted the woman to make a complaint to the EOC. The hospital agreed to almost all of the woman's terms without the matter proceeding to negotiation. The hospital provided a face-to-face apology and compensation to the woman. The hospital also committed to provide region-specific cultural awareness training for employees, to consider employing more Aboriginal staff, and to provide the woman with compensation. The woman was satisfied with the outcome, particularly in relation to receiving the in-person apology.
- F. An Aboriginal woman with several mental health diagnoses visited Perth in 2019. During her stay, the woman went to a shop where she picked up an item, carried it to another aisle, and left it there. Upon taking other items to the checkout, she was approached by two security guards who asked to search her bags. The woman told them that she had put the item back and let them search all of her bags except for her handbag, which had personal items in it. The security guards stood next to the woman while she paid for her items and then filmed her, following as she exited through the shopping

centre and into the carpark. The guards then threatened to call police and pushed the woman twice. The woman retaliated by slapping and pulling the hair of one security guard before leaving the area. The woman did not hear anything further; police did not attend and she was not charged with stealing or any like allegations. However, in 2021, when the woman returned to Perth to attend the funerals of two close relatives, she was arrested and charged with assault occasioning bodily harm arising from the 2019 incident. Following negotiations with police, the charge of assault occasioning bodily harm was discontinued and the woman pleaded guilty to a charge of disorderly behaviour. The woman later discovered that she had been charged with another criminal offence which resulted in a delay in the lodgement of a complaint to the EOC in relation to the behaviour of the security guards. ALSWA assisted the woman with her EOC complaint including an explanation as to why the complaint was out of time, that the criminal charges need to be concluded before a complaint could be lodged and the fact that the woman was living outside of Western Australia following the closure of its borders during the COVID pandemic. ALSWA also noted that the woman did not own a computer, was a full-time carer to a son with complex needs and had her own mental health struggles. However, the Commissioner decided good cause had not been accepting the complaint outside the limitation period and would not entertain it.

8. THREAT OF IDEOLOGICALLY MOTIVATED EXTREMISM & THE ROLE OF LAW ENFORCEMENT IN PREVENTING

ALSWA has observed a rise in ideologically motivated extremism towards Aboriginal people. We have felt the community's growing concerns about racism in the community and from law enforcement. This was felt by many after the 2023 Voice referendum and further heightened by the alleged terrorist attack at an Invasion Day protest on 26 January 2026 in Perth.

In 2024, the Australian Government conducted an Inquiry into Right Wing Extremist Movements in Australia ('RWE Inquiry').⁸¹ The RWE Inquiry found that 'much of the evidence received by the committee related to individuals and groups who fall within the category of nationalist and racist violent extremism, including neo-Nazis and white supremacist groups'.⁸² This is an agenda which increases the risk of Aboriginal people being

⁸¹ Senate Standing Committees on Legal and Constitutional Affairs, Parliament of Australia, *Right Wing Extremist Movements in Australia* (Report, December 2024) <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/RWExtremists23/Report>.

⁸² Ibid 183 [7.7].

victims to racism, hate and violence. Notably, the RWE Inquiry found evidence which supports that Aboriginal people have been identified as ‘at particular risk from extremist actors’.⁸³

Reconciliation Australia conducts a biyearly survey, the Australian Reconciliation Barometer (‘ARB’), which is the only survey in Australia that measures the progress of reconciliation between Aboriginal and non-Indigenous Australians.⁸⁴ The 2024 ARB report found that racism against Aboriginal people has significantly increased over the last decade, with incidents of racism rising from 39% in 2014 to 54% in 2024.⁸⁵ Among survey participants, 55% answered that they feared discrimination within the general community, and 50% feared discrimination in interactions with government departments, police and courts.⁸⁶

Following the RWE Inquiry, the Government acknowledged that:

More Australians are being radicalised, and radicalised quickly, embracing an increasingly diverse range of extreme ideologies and willing to use violence to advance their cause ... The alleged attempted bombing of a First Nations rally in Perth on 26 January further highlights the threats facing Australians.⁸⁷

Several of ALSWA’s staff and clients were present at the alleged terrorist attack on 26 January 2026.⁸⁸ The attack has left the WA Aboriginal community feeling profoundly scared and fearful, with many members expressing their concerns about how the police handled the situation.

Community Feedback in Relation to Alleged Terrorist Attack at Invasion Day Protest on 26 January 2026 in Perth

ALSWA conducted a community call-out to receive feedback from those that attended the protest. The feedback focused on public safety and the conduct of the police on the day.

Feedback from a Noongar man who attended with his partner and grandchildren:

*‘During the incident, **police directed us to move toward the area where the bomb had been thrown**, which **made me feel extremely frightened and unsafe**. Since that day, the incident has had a **serious impact on my health and mental well-being**.*

⁸³ Ibid 185 [7.23].

⁸⁴ See ‘Australian Reconciliation Barometer’, *Reconciliation Australia* (Web Page) <<https://www.reconciliation.org.au/reconciliation/australian-reconciliation-barometer/>>.

⁸⁵ Reconciliation Australia, *2024 Australian Reconciliation Barometer: Racism and First Nations Peoples* (Report, 18 June 2024) 1 <<https://www.reconciliation.org.au/publications/reports/>>.

⁸⁶ Ibid 2.

⁸⁷ Australian Government, *Australian Government Response to the Senate Legal and Constitutional Affairs References Committee Report: Right Wing Extremist Movements in Australia* (March 2026) [2].

⁸⁸ Australian Federal Police, ‘Man Charged with Terrorism Offence Under Operation Dumfries’ (Media Release, 5 February 2026) <<https://afp.gov.au/news-centre/media-release/man-charged-terrorism-offence-under-operation-dumfries>>.

I have been experiencing ongoing anxiety, fear, and distress. I have nightmares and disturbed sleep because of what happened. I often relive the event in my mind, and I feel on edge and unsafe. I am unable to cope in large crowds or busy public places because they trigger panic, fear, and memories of the incident. The trauma from the incident has left me feeling unsafe and distressed long after the event itself.'

Feedback from a Noongar woman who attended the event with her sister and daughter:

'Why didn't we get told? Why did we get treated like we were rioting? We got pushed out without a reason, they didn't say your lives are in danger, just move along. It was scary it was very confronting.'

The police never approached the organisers properly, they never instructed the attendees, there wasn't just Aboriginal people there, there were people from all sorts of backgrounds, there were people pushing prams, babies and kids. I don't think a mother in her right mind would stand around if she knew a bomb was located. The fault lies with the WA police. I came away from that day feeling – it was an Indigenous event – because of that, the police didn't take it seriously enough because blackfellas lives don't matter.'

9. EFFECTIVENESS OF AVENUES FOR REPORTING & RESPONDING TO RACISM AGAINST ABORIGINAL PEOPLE

ALSWA considers that the lack of adequate and consistent legal frameworks for the protection of human rights and non-discrimination significantly undermines the effectiveness of avenues for reporting and responding to racism.

9.1 Gaps and deficiencies in Federal laws and frameworks

Australia is party to most core international human rights treaties and has expressed its public support for the United Nations Declaration on the Rights of Indigenous Peoples ('UNDRIP'). These instruments enumerate critical human rights which protect Aboriginal people from racism, including rights to equality before the law and freedom from discrimination,⁸⁹ and cultural rights.⁹⁰ However, Australia has not implemented most of its treaty obligations into domestic laws, meaning they have no practical force.

Relevantly, Australia remains the only Western democracy without a legislated Federal Human Rights Act, despite multiple government inquiries recommending the introduction of such

⁸⁹ See, eg, *International Covenant on Civil and Political Rights*, Articles 2 and 26; *International Covenant on Economic, Social and Cultural Rights*, Article 2.

⁹⁰ See, eg, *International Covenant on Civil and Political Rights*, Article 27; *International Covenant on Economic, Social and Cultural Rights*, Article 15.

legislation.⁹¹ Australia also maintains reservations to several key treaty obligations,⁹² and has not ratified the Optional Protocol to the *International Covenant on Economic, Social and Cultural Rights*, or the Third Optional Protocol to the *Convention on the Rights of the Child*, which establish important individual complaints mechanisms, including in relation to discrimination. Australia has been repeatedly criticised for these failures to meet its fundamental international human rights obligations.⁹³

Australia's federal discrimination law framework is also outdated and fragmented and requires significant reform,⁹⁴ and discrimination laws across the states and territories have been criticised for being inconsistent and inadequate.⁹⁵

In a 2021 project led by the AHRC about the need to modernise federal discrimination laws, including the *Racial Discrimination Act* (Cth) ('RDA'), the AHRC noted that the limitations in the current legislative scheme as it stands mean that:⁹⁶

- a) protections are less accessible than they should be, meaning that people who experience discrimination are not being fully protected;
- b) the business sector is not being supported as well as it should be to take steps to prevent discrimination, or to have confidence that they will be supported when they confront discrimination head on; and
- c) addressing discrimination is heavily reliant on individuals bringing complaints, rather than more systemic approaches to building a culture of prevention.

⁹¹ It has been recommended that the government introduce a Federal Human Rights Act following two separate and comprehensive inquiries, but no Act has yet been legislated: see the reports of the 2009 inquiry here: [National-Human-Rights-Consultation-Report-2009-copy.pdf](#) and the 2024 Parliamentary Joint Committee on Human Rights inquiry here: [Inquiry into Australia's Human Rights Framework](#). This has been the subject of repeated criticism by United Nations human rights bodies, including the former Special Rapporteur on the Rights of Indigenous Peoples following their 2017 visit to Australia: see *Report of the Special Rapporteur on the Rights of Indigenous Peoples on her visit to Australia* [32] here: <https://digitallibrary.un.org/record/1303201?ln=en&v=pdf#files>.

⁹² For example, Australia has a reservation to Article 37(3) of the *Convention on the Rights of the Child*, which mandates the separation of detained children from adults in custody.

⁹³ See, eg, *Joint NGO Report on Behalf of the Australian NGO Coalition*, Report to Australia's 4th Universal Periodic Review (Report, 17 July 2025) <<https://www.hrlc.org.au/app/uploads/2025/10/1-Joint-NGO-Submission-on-behalf-of-the-Australian-NGO-Coalition-Domestic-Publication.pdf>>, supported by over 100 NGOs. See also a summary of the subsequent recommendations made by UN Member States during Australia's Review: Human Rights Law Centre, '120+ Countries Call on Australia to Act on Youth incarceration Crisis, Human Rights Act and Gender-based Violence at United Nations' (Media Release, 27 January 2026) <<https://www.hrlc.org.au/news/120-countries-call-on-australia-to-act-on-human-rights/>>.

⁹⁴ See, eg, AHRC, *Free and Equal: A Reform Agenda for Federal Discrimination Laws* (Report, December 2021) <https://humanrights.gov.au/_data/assets/file/0027/46647/Ahrc_free_equal_dec_2021.pdf>.

⁹⁵ For example, the *Equal Opportunity Act 1984* (WA) has been criticised for being outdated and in need of extensive reform: see Law Reform Commission of Western Australia ('LRCWA') *Review of the Equal Opportunity Act 1984 (WA)* (Report, May 2022) <https://www.wa.gov.au/system/files/2022-08/LRC-Project-111-Final-Report_0.pdf>.

⁹⁶ AHRC (n 94) 21.

The RDA has also been specifically criticised for its shortcomings, including that the evidentiary burden placed on complainants to prove racial discrimination is too high and that the operation of the Act overall is too weak to effectively combat systemic racism.⁹⁷ As noted in a recent address by the AHRC's Racial Discrimination Commissioner:

As to the RDA itself, first and foremost, we need a positive duty to eliminate racial discrimination. The Act suffers from the same problem that much of our anti-discrimination law suffers from. It requires the victims of racism, who are often traumatised, under resourced and overwhelmed and with limited power to bring a complaint. It requires harm to be suffered before action can be taken. In workplaces in particular, we need a national inquiry to ascertain the full extent of racism and how it would be remedied by a positive duty to eliminate it.⁹⁸

As far as ALSWA is aware, most of the extensive recommendations outlined in the AHRC's paper to harmonise and strengthen Australia's federal discrimination laws have yet to be acted on by the Federal Government.

Despite multiple previous attempts,⁹⁹ Australia has also not made any significant progress towards implementing UNDRIP into our domestic laws and policies.¹⁰⁰ Since the failed referendum on the establishment of a Voice to Parliament there has been no progress in relation to treaty, truth telling or other initiatives at a Federal level to ensure the self-determination of Aboriginal and Torres Strait Islander people and provide additional forums for addressing racism at the federal level.

9.2 Gaps and deficiencies in Western Australia's laws and frameworks

Western Australia in particular is lagging behind other state and territory jurisdictions in relation to the protection of human rights for Aboriginal people. Several other jurisdictions have enacted their own comprehensive human rights legislation, providing important protections against racism for Aboriginal residents in those jurisdictions.¹⁰¹

⁹⁷ See, eg. Giridharan Sivaraman, '50th Anniversary of the Racial Discrimination Act 1975' (Speech, Whitlam Institute's Community Forum, 17 June 2025) <<https://humanrights.gov.au/about-us/media-centre/speeches/race/50th-anniversary-racial-discrimination-act-1975#:~:text=As%20to%20the%20RDA%20itself,for%20a%20valid%20special%20measure>>.

⁹⁸ Ibid.

⁹⁹ See, eg. Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Inquiry into the Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia* (Report, November 2023).

¹⁰⁰ For example, the Queensland *Human Rights Act 2019* implements Articles 8, 25, 29 and 31 of UNDRIP and Article 27 of the ICCPR in section 28 which is a standalone provision on cultural rights for Aboriginal peoples and Torres Strait Islander peoples, recognising the right to connection to kin, culture and country and the right not to be subjected to forced assimilation. In addition, section 15 implements Articles 2 and 26 of the ICCPR.

¹⁰¹ The Australian Capital Territory, Victoria and Queensland all have human rights acts.

In 2007, the Western Australian Government conducted a consultation into a proposed Human Rights Act for Western Australia, with the intention of following in the footsteps of the Australian Capital Territory and Victoria, who by then had their own Acts. The consultation was led by an independent committee which conducted numerous public forums and meetings and received 377 written submissions. The Committee's final report found that there was strong majority support in the community for a Human Rights Act, and the Committee recommended the enactment of a Western Australian Human Rights Act with strong protections for a broad range of civil and political and economic, social and cultural rights.¹⁰² Unfortunately, the recommendations in the report were not acted on and no state government since that time has reconsidered the matter, leaving significant gaps in protection for the rights of Aboriginal people in Western Australia.

Western Australia's racial discrimination laws are also outdated and urgently require reform, as illustrated by some of the case examples outlined in Part 7 above. A 2022 review conducted by the Law Reform Commission of Western Australia ('LRCWA') found that significant amendments were required to bring the *EO Act* up to date and reflect contemporary community expectations.

The LRCWA made wide reaching recommendations for reform to the *EO Act* including, relevantly:¹⁰³

- (a) a new protected attribute of irrelevant criminal record should be included in the Act;
- (b) all the attributes protected by the Act should be protected in relation to all the areas of public life covered by the Act;
- (c) an additional area of "State laws and State programs" should be added to the protected areas of public life to which the Act applies;
- (d) the definition of direct discrimination should be amended to include a "less favourable treatment test" rather than the stricter and more burdensome direct comparator test;
- (e) the definition of "racial harassment" should be amended to remove the requirement that the conduct results, or the harassed person reasonably believes that it will result in disadvantage;

¹⁰² Human Rights Consultation Committee (WA), *A WA Human Rights Act: Report of the Consultation Committee for a Proposed WA Human Rights Act* (Report, November 2007) <<https://alhr.org.au/wp/wp-content/uploads/2017/03/Annexure-1-WA-Government-Consultation-Committee-for-a-Proposed-WA-Human-Rights-Act-Final-Report-November-2007.pdf>>.

¹⁰³ See LRCWA (n 95).

- (f) the prohibition against racial harassment should apply to all areas of public life to which the Act applies;
- (g) the Act should be amended to include anti-vilification provisions which apply to all areas of public life covered by the Act;
- (h) the burden and standards of proof tests should be amended, to impose less of an evidentiary burden on complainants;
- (i) the Act should include a positive duty to eliminate discrimination;
- (j) amendments should be made to improve the accessibility of the Act and remedies for complainants, including extending the time limit for making complainants and removing the \$40,000 compensation cap.

ALSWA also made a comprehensive submission to this Review outlining the gaps in protection for racial discrimination matters and issues with the accessibility and effectiveness of complaints mechanisms in the *EO Act*.¹⁰⁴

It has now been five years since the conclusion of the LRCWA's Review and the Western Australian Government is still working on reforming the *EO Act*. At this stage, the extent to which the recommendations made by the LRCWA will be included in the new legislation is unclear.

Finally, it is important to highlight that Western Australia has also made no progress towards establishing a treaty or truth telling with Aboriginal people, which would also provide significant avenues for Aboriginal people to have their voices heard and to reduce the prevalence of racism.¹⁰⁵

10. CONCLUSION

ALSWA's submission has sought to provide the Committee with evidence of the racism, hate and violence that Aboriginal people in Western Australia—and across Australia more broadly—endure on a day-to-day basis. Notably, ALSWA has sought to emphasise that addressing racism, hate, and violence towards Aboriginal people requires structural and systemic reforms by Federal and State/Territory governments which prioritise Australia's

¹⁰⁴ ALSWA, Submission to the Law Reform Commission of Western Australia, *Review of the Equal Opportunity Act 1984* (25 November 2021).

¹⁰⁵ See, eg, Glenn Auld et al, 'Truth-Telling in the Australian Curriculum' (2026) 37(2) *The Curriculum Journal* 176, 176-92 <<https://doi.org/10.1002/curj.337>>.

commitments to Closing the Gaps and align with the recommendations of previous inquiries that have already identified what needs to change.