



Comment on
The National Anti-Racism Partnership and
Strategy

May 2012

About ACTCOSS

ACTCOSS acknowledges that Canberra has been built on the traditional lands of the Ngunnawal people. We pay our respects to their elders and recognise the displacement and disadvantage they have suffered as a result of European settlement. We celebrate Aboriginal and Torres Strait Islander cultures and ongoing contribution to the ACT community.

The ACT Council of Social Service Inc. (ACTCOSS) is the peak representative body for not-for-profit community organisations, people living with disadvantage and low-income citizens of the Territory.

ACTCOSS is a member of the nationwide COSS network, made up of each of the state and territory Councils and the national body, the Australian Council of Social Service (ACOSS).

ACTCOSS' objectives are a community in which all people have the opportunities and resources needed to participate in and benefit from social and economic life and the development of a dynamic, collaborative and viable community sector.

The membership of the Council includes the majority of community based service providers in the social welfare area, a range of community associations and networks, self-help and consumer groups and interested individuals.

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ACTCOSS advises that this document may be publicly distributed, including by placing a copy on our website.

Contact Details

Phone: 02 6202 7200
Fax: 02 6281 4192
Mail: PO Box 849, Mawson ACT 2607
Email: actcoss@actcoss.org.au
Web: www.actcoss.org.au
Location: Weston Community Hub, 1/6 Gritten St, Weston ACT 2611
Director: Roslyn Dundas
Deputy Director: Kiki Korpinen
Policy Officers: Adele Olmsted and Nadia Osman

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Introduction

ACTCOSS welcomes the opportunity to provide comment on the National Anti-Racism Partnership and Strategy discussion paper ('the Paper').

ACTCOSS is aware of other submissions being made to the Paper by various organisations and individuals. In this response ACTCOSS has sought to address those questions most relevant to our work as a community sector peak body, and that are of particular interest to our members.

ACTCOSS seeks to work closely with the Aboriginal and Torres Strait Islander community in the ACT and is committed to reconciliation and building strong relationships with Aboriginal and Torres Strait Islander individuals and communities. As such, this comment has a focus on issues affecting these communities.

Objective 1 – Create awareness of racism and how it affects individuals and the broader community

1. Lessons learnt

Australia is a multicultural nation with a variety of cultures that bring a richness of diversity to the community. Unfortunately these differences are not always valued or respected by other individuals, groups and sometimes even the government. Racism is something which has been a part of Australia's history for a long time, and has not always been dealt with appropriately. However, while mistakes have been made, they can be learnt from, and more recently there have been achievements in the fight against racism which should be celebrated and built upon.

Mistakes

The Northern Territory National Emergency Response ('the intervention') was a package of changes to law enforcement, welfare provision, and other measures, introduced in 2007 by the Federal Government under then-Prime Minister John Howard. Arising from the release of a report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, titled *Ampe Akelyernemane Meke Mekarle: 'Little Children are Sacred'*, the intervention was designed to ensure the protection of Aboriginal children from harm, namely child sexual abuse and neglect, in Northern Territory Aboriginal communities.¹

¹ Australian Human Rights Commission. Viewed 20 April 2012.
<http://www.hreoc.gov.au/social_justice/sj_report/sjreport07/chap3.html>.

While the intentions behind the intervention may have been just, the way in which the measures were implemented caused widespread concern.² The Government began to roll out some of the measures under the intervention within months of the legislation being passed. Given the complexity of the social issues facing some of the communities, such a quick response was inappropriate and injudicious, particularly given the intervention was started without any wide-spread or meaningful consultation with the communities involved.

The most disturbing element of the intervention, however, was the racial discrimination it enabled, most clearly seen in the way it interacted with other legislation, in particular the Racial Discrimination Act.

Section 8 of the Racial Discrimination Act 1975 (RDA) provides for exceptions to the Act, for 'special measures' which are defined as any provision of a deed which confers or enables 'charitable benefits' on persons of a 'particular race, colour or national or ethnic origin'.³

Under the *Northern Territory National Emergency Response Act 2007*, the Act which underpinned the intervention, section 132 notes the following

(1) The provisions of this Act, and any acts done under or for the purposes of those provisions, are, for the purposes of the *Racial Discrimination Act 1975*, special measures.

(2) The provisions of this Act, and any acts done under or for the purposes of those provisions, are excluded from the operation of Part II of the *Racial Discrimination Act 1975*.

(3) In this section, a reference to any acts done includes a reference to any failure to do an act.⁴

The consequence of this legislation is that any individual or group affected by the intervention measures had no right to bring a complaint under the Racial Discrimination Act. They also had no claim to challenge the legitimacy of any laws introduced under the legislation, and thus no way of challenging any exercise of discretion by officials professing to act in accordance with the legislation. At its very core this legislation was racially discriminatory. No other group in Australia is unable to challenge using the RDA any measures brought in to their communities.

The Northern Territory Intervention is coming to the end of its initial 5 year tenure, but the Australian Government is seeking to continue some its measures through the *Stronger Futures* legislation which is currently before the Senate. This is clearly a mistake, given the racially discriminatory nature of such measures, as shown before.

2 *ibid.*

3 Racial Discrimination Act 1975. Viewed 2 May 2012.
<http://www.austlii.edu.au/au/legis/cth/consol_act/rda1975202/>.

4 Northern Territory National Emergency Response Act 2007, p90.

Achievements

Although mistakes have been made, there have also been achievements in the fight against racism which should be celebrated and built upon. In the Australian Capital Territory the Government has developed the *ACT Multicultural Strategy 2010-2013* ('the Strategy') which builds on the *ACT Multicultural Strategy 2006-2009*.⁵ This strategy was developed in conjunction with the Canberra community and focuses on six strategic areas:

- Languages;
- Children and young people;
- Older people and aged care;
- Women;
- Refugees, asylum seekers and humanitarian entrants; and
- Intercultural harmony and religious acceptance.⁶

Under the Strategy, progress has been made in implementing actions which support the six focus areas above. This includes the teaching of eight priority languages in ACT public schools; and grants given to community groups to deliver innovative projects which highlight and promote cultural diversity. The Strategy is an example of progress in combating racism through local Government and community activities, and one which can be built on.

Another positive way in which racism has been addressed in Australia was the National Apology given to members of the Stolen Generations. On 13 February 2008, then-Prime Minister Kevin Rudd gave a national apology to Australia's Aboriginal and Torres Strait Islander peoples, on behalf of the Australian Government, for the tragedy which was the Stolen Generations. This was a powerful gesture - an acknowledgment of a past racist policy which tore apart Aboriginal and Torres Strait Islander communities, and an apology for the suffering it caused them. Although there is still much more to be done in order to achieve true reconciliation and to right the wrongs of the past, the National Apology was a significant step in acknowledging the racism Aboriginal and Torres Strait Islander peoples have faced from Australian Governments.

5 Community Services Directorate, *ACT Multicultural Strategy 2010-2013*, ACT, 2009, viewed on 4 May 2012, <http://www.dhcs.act.gov.au/_data/assets/pdf_file/0010/104689/Final_ACT_Multicultural_Strategy_2010_-2013_25_Nov.pdf>.

6 *ibid.*

3. Acknowledgment of Aboriginal and Torres Strait Islander peoples, and CALD contributions

Constitutional recognition

Australia's Constitution forms the basis of the country's laws and political system, and has been in operation since the federation of the Australian colonies in 1901.⁷ It includes details on how the Australian Parliament is composed, how it works and its powers; the role of the High Court; and how federal and state governments share power.

One significant way in which the contribution of Aboriginal and Torres Strait Islander peoples to Australia can be recognised is through a change to the Constitution. In 2010, Prime Minister Julia Gillard announced a panel to guide the nation on a referendum to recognise Aboriginal and Torres Strait Islander peoples in the Constitution. A report from this panel was presented in January 2012 and contained several recommendations of changes to be made to the Constitution, based on exhaustive consultations with the community and multiple submissions from stakeholders.⁸

One recommendation was adding a preamble to the Constitution which recognises Aboriginal and Torres Strait Islander people as the first Australians. While this action would perhaps not change much legally, such an acknowledgement in a document as important as the Constitution could send a powerful message about how Australia respects Aboriginal and Torres Strait Islander peoples.

Other recommendations included:

- the removal of Section 25 from the Constitution which allows for people of particular races to be disqualified from taking part in state elections;
- an amendment to Section 51 to include recognition of Aboriginal and Torres Strait Islander peoples; an acknowledgment of the relationship they have to their traditional lands; respect for their continuing cultures, languages and heritage; and acknowledgement of the need to secure their advancement;
- a new section 116A which relates to prohibition of racial discrimination; and
- a new section 127A which recognises Aboriginal and Torres Strait Islander languages as the original Australian languages, and part of Australian heritage.⁹

7 <http://australianpolitics.com/constitution-aus/text/overview>

8 *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel*, 2012.

9 *ibid.*

ACTCOSS notes whatever change is made, it is essential any recognition of Aboriginal and Torres Strait Islander peoples includes the removal of racially discriminatory elements within the Constitution that could otherwise undermine a statement of recognition.

Objective 2: Identify, promote and build on good practice initiatives to prevent and reduce racism

1. Priority Areas

Addressing racism through institutions

Institutional racism refers to racism which is ingrained in society's political and social institutions. While this form of racism may be the most difficult to identify because it is perpetuated in institutions and culture, the disadvantage it causes to marginalised groups is highly detrimental to their wellbeing and to a cohesive society in general.

A practical way to begin countering and eliminating institutional racism is in our education system. By educating children on the importance of inclusion and respect for other cultures, we can begin moulding a generation with better attitudes about race and culture. Education in schools about racism will endorse the idea that government and institutions are in favour of the elimination of racism and are serious about actively promoting its eradication.

An institution can engage in racist practices without any of its members being individually racist. The rules of an institution, the aggregation of individual behaviours and institutional culture can all achieve racist outcomes in the absence of a deliberate intention to do so by any individual. It is important to *actively* counter racism throughout all institutions, including government, non-government organisations and private businesses.

2. Measures from governments

National Human Rights Framework

ACTCOSS has long been a proponent for national human rights legislation. The development of a national bill of human rights is closely linked to constitutional amendment and would further compliment this change. National legislation, in addition to that of territory and state is required to effectively uphold the rights of

all people. Australia is the only western democracy without some form of national human rights legislation.¹⁰

Over the years there have been numerous attempts to introduce national human rights legislation into Australia. In December 2008, a national consultation was held to determine whether human rights were adequately protected in Australia. A report in response to the consultation was released in 2009 which described gaps and inconsistencies in the protection of human rights. While it was acknowledged the Constitution offers some limited protection, as do some state and commonwealth laws, they can all be overridden by federal legislation at any time.¹¹ Focus group research indicated many Australians thought their human rights were protected because they had never experienced threats to their human rights.

While it did appear Australia measures well against many other countries, the national record is far from perfect. As noted by Professor Carolyn Evans:

From the beginning of nationhood in Australia, there have been groups who have been discriminated against routinely and had their rights abused...it is of little comfort to groups whose rights have been violated over long periods of time to know their treatment is the exception rather than the norm.¹²

In April 2010, Attorney General Robert McClelland launched *Australia's Human Rights Framework*. Although the framework did not include the development of a national Human Rights Act, it did include a number of initiatives, including a commitment to enhance the role of the Australian Human Rights Commission in community education, and improving processes in the Australian Public Service to be more in line with international human rights principles.¹³ The Government also committed to reviewing the framework in 2014. While the initiatives were welcomed by the Australian Human Rights Commission, disappointment was raised regarding the decision not to progress on national human rights legislations.¹⁴ ACTCOSS supports further discussions around this issue.

United Nations Declaration on the Rights of Indigenous Peoples

After two decades of negotiations, the United Nations Declaration on the Rights of Indigenous Peoples ('the Declaration') was adopted by the UN General Assembly on 13 September 2007.¹⁵ Initially Australia voted against the Declaration but formally issued a statement of support for it in 2009.

¹⁰ H. Charlesworth, "Protecting Human Rights in Australia: A long and Winding Road" *Australian Review of Public Affairs*, 2010 <<http://www.australianreview.net/digest/2010/04/charlesworth.html>>.

¹¹ *ibid.*

¹² Attorney-General's Department *National Human Rights Consultation Report - Are Human Rights Adequately Promoted and Protected?* 2009, p.98.

¹³ *ibid.*

¹⁴ Australian Human Rights Commission, (media release) "Important steps to better protect human rights but substantial gaps remain", 21 April 2010.

¹⁵ Australian Human Rights Commission, *The Community Guide to the UN Declaration on the Rights of Indigenous Peoples*, 2010.

The Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Gooda, noted that the Declaration is the most comprehensive tool available to advance the rights of Aboriginal and Torres Strait Islander peoples.¹⁶ In formally supporting the Declaration, Australia's Government has accepted the document as a framework for recognising and protecting the rights of Aboriginal and Torres Strait Islander peoples.¹⁷

While the Declaration outlines many human rights which are already protected in Australia, it is a non-binding document and does not create legal rights or obligations in Australian law. ACTCOSS recommends the Government seriously consider protecting and promoting the rights of Aboriginal and Torres Strait Islander peoples as recognised in the Declaration on the Rights of Indigenous Peoples, by becoming a signatory to the Declaration and ensuring the rights it promises to protect are upheld.

3. The role of community groups in addressing racism

Cultural competence in the workplace

Community groups can help address racism in a number of proactive ways. Promoting cultural competence in the workplace is a useful way to combat racism and create an inclusive environment while improving knowledge. The Cultural Awareness Self-Assessment Toolkit (CASAT) developed by ACTCOSS is a readily accessible tool organisations can utilise to complete cultural audits within their organisation. CASAT is a set of good practice standards developed to assist community service organisations improve the quality of their services to Aboriginal and/or Torres Strait Islander clients and communities and to improve the organisation's knowledge and understanding of Aboriginal and Torres Strait Islander culture. The tool was created with Aboriginal and Torres Strait Islander cultures in mind but can also be used in a way that brings into consideration a variety of culturally and linguistically diverse groups.

Cultural awareness training

In addition to providing a culturally competent work environment, organisations should encourage all workers to engage in cultural awareness training, culturally appropriate service provision training and other relevant education opportunities.

Ensuring all staff members are appropriately trained can also help promote better service accessibility to people from culturally and linguistically diverse backgrounds. A culturally competent organisation will be more welcoming for a variety of service users and will improve relationships with this community,

¹⁶ Australian Human Rights Commission *The Community Guide to the UN Declaration on the Right of Indigenous Peoples*, 2010.

¹⁷ Reconciliation Australia *Q & A Factsheet on the UN Declaration on the Rights of Indigenous Peoples*, 2009. Viewed 27 April 2012. <<http://reconciliation.org.au/home/resources/factsheets/q-a-factsheets/un-declaration-on-the-rights-of-indigenous-peoples>>.

ensuring greater accessibility for peoples from Aboriginal and/or Torres Strait Islander and CALD backgrounds.

Reconciliation Action Plans

Community groups should also be strongly encouraged to engage in reconciliation practices with Aboriginal and Torres Strait Islander peoples. A notable way of doing this is by developing a Reconciliation Action Plan (RAP), supported by Reconciliation Australia. Through their RAP journey, organisations can take the time to make assessments of the ways they engage with the community and work toward reconciliation with Aboriginal and Torres Strait Islander peoples. A RAP journey can acknowledge and highlight racism in one's community and will encourage those involved to think about addressing racism broadly, as well as reconciliation generally.

Understanding White Privilege

To better help address racism in the community, organisations should promote a clear understanding of White Privilege and the ways in which it impacts on Australian society. White Privilege is the name given to the set of advantages accorded to "white" people beyond what is common to all others. White Privilege can exist without one's conscious knowledge of its presence and thus the biggest problems associated with it are the invisibility it maintains to those who benefit.¹⁸

White Privilege is unearned and very complex. In a "white" culture, all Caucasian people have privilege, whether or not they are overtly racist themselves. The privilege will play out depending on context. Anecdotal evidence suggests many Aboriginal and/or Torres Strait Islander peoples in the ACT have experienced, and continue to experience, this form of racism,¹⁹ which, no doubt can be found to occur in all regions of Australia. Education on White Privilege will further individuals' understanding of racism and how it occurs covertly in our community.

Policies and procedures

Finally, it is of utmost importance organisations have policies and procedures put in place to protect the rights of its workers and service users. Anti-racism policies clearly define workplace harassment and bullying with regard to race, religion, ethnicity and culture and ensure protection from discrimination for those in the organisation.

¹⁸ P. Mackintosh, *Unpacking the Invisible Knapsack*, 1998.

¹⁹ ACTCOSS and YWCA of Canberra Forum, *Being White: Racial Privilege in Canberra and Australia*, 9 February 2010.

4. Involvement of young people

The prevalence of racism

Through consultations with the Youth Coalition of the ACT and services which work with young people from Aboriginal, Torres Strait Islander and culturally and linguistically diverse backgrounds, it is apparent racism still exists for young people in the Australian community. In particular, young people posit discrimination is present when accessing services and employment opportunities, as well as 'on the street'. Anecdotally, it was noted a group of young people in a public setting may be targeted and asked to move on to another area, simply because of their youth.

Racism remains apparent in Australian schools. Students experience racism in the classroom and on the playground, and often teachers and staff do not have the training, skills, resources or time to address the issues present. In this instance, a young person may be inclined to use their own coping strategies, which may not be seen as appropriate or acceptable in mainstream Australian culture. Because racism is often covert and indirect, it can serve to exclude young people from activities enjoyed by the rest of the community.

Addressing racism

Consultations with services provided ideas for ways in which to address racism for young people in Australia. The provision of purposeful employment, volunteer and community service programs for young people who may not yet be qualified to join the workforce were identified as ways to promote inclusion and engage young people in meaningful activities in the community. Young people should also have better access to identified youth services whom have been educated on culturally sensitive service delivery and practice.

While whole-of-school campaigns against racism are useful, this kind of program should involve more than simply putting up posters around schools. The programs put in place should involve specific measures to actively educate students and staff on the importance of addressing and countering racism. As discussed in the section 'Addressing racism through institutions', teachers need to be adequately trained and schools resourced appropriately to address these issues. School grants which specifically target racism initiatives are welcomed.

Engaging students from CALD and Aboriginal and/or Torres Strait Islander backgrounds in the development of relevant policy is important. Using personal stories or scenarios in these processes can assist to humanise young people who identify as CALD, Aboriginal and/or Torres Strait Islander.

Embracing days such as Harmony Day in schools and celebrating cultures demonstrates to students schools will not tolerate racist or unacceptable behaviour towards persons from any background. Measures such as this ensure it is everyone's business to address and counter racism in the community.

It is important effective forms of consultation are put in place between government, community and young people from Aboriginal and/or Torres Strait Islander and culturally and linguistically diverse backgrounds. These consultations can serve to gather meaningful information and must be followed up with action. Groups consulted should be kept informed of current progress, as well as remain informed on the next steps of the process.

Further involvement

Other ways identified to involve young people in addressing racism is by using peer-to-peer based meetings and conferences for young people to connect and network with each other. Through these opportunities, young people can celebrate diversity but also identify and celebrate things they have in common.