



Submission:

Submission to Inquiry into Racial Vilification

18 March 2022

About ACTCOSS

ACTCOSS acknowledges Canberra has been built on the land of the Ngunnawal people. We pay respects to their Elders and recognise the strength and resilience of Aboriginal and/or Torres Strait Islander peoples. We celebrate Aboriginal and/or Torres Strait Islander cultures and ongoing contributions to the ACT community.

The ACT Council of Social Service Inc. (ACTCOSS) advocates for social justice in the ACT and represents not-for-profit community organisations.

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's vision is for Canberra to be a just, safe and sustainable community in which everyone has the opportunity for self-determination and a fair share of resources and services.

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.

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

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Acronyms

ACAT	ACT Civil and Administrative Tribunal
ACTCOSS	ACT Council of Social Service Inc.
ACTHRC	ACT Human Rights Commission
AHRC	Australian Human Rights Commission
AMC	Alexander Maconochie Centre
CALD	Culturally and Linguistically Diverse
CCL	Canberra Community Law
CYPS	Children and Youth Protection Services

Introduction

The ACT Council of Social Service Inc (ACTCOSS) welcomes this opportunity to make a submission to the Inquiry into Racial Vilification in the ACT. The systemic issues raised in the inquiry span a multitude of areas of concern for ACTCOSS; particularly justice, Children and Youth Protection Services (CYPS) and housing.

Human Rights and Discrimination law in Australia defines racial vilification as behaviour that insults, humiliates, offends or intimidates another person or group in public on the basis of their race. The trauma that results from experiences of racial hatred can be debilitating and isolating and the effects can be far-reaching.

Racial vilification is notoriously hard to prove. Often, the person on the receiving end *knows* that they have just experienced racism but is unable to point to particular words or behaviours as definitive evidence of malicious intent. This is particularly true of engagement with and denial of services.

While we acknowledge the serious impact of casual racism, we believe that it is enabled and reinforced by structural racism across services and systems such as justice, child protection and housing, health, employment, and education.

If the ACT Government is serious about reducing the experience of racial vilification in everyday life in the Territory, it must commit to addressing structural racism through the resourcing and implementation of oversight mechanisms and cultural education programs across government programs and services.

This submission makes several recommendations for addressing racial vilification. Recommendations focus on the key areas of:

- Introduction of independent review and complaints mechanisms for CYPS and ACT Policing
- Creation of an ACT Anti-Racism Strategy and legislative reform to allow for legal 'positive action'
- Funding and empowerment of an independent advocacy voice for CALD Canberrans

While developing this submission, we consulted with the ACT Human Rights Commission (ACTHRC), Canberra Community Law (CCL) and Dhurrawang Aboriginal Human Rights Program. The consistent response was that an Inquiry into Racial Vilification could not be appropriately conducted without consideration of wider patterns of social disadvantage, discrimination, and injustice. Systemic injustice makes racial vilification a widespread issue in the community and addressing racial vilification will require active systemic change.

As noted during consultation with the ACTHRC, the number of discrimination complaints in the ACT is similar to that of South Australia despite being less than a quarter of the population size.

Key areas of concern:

While systemic racism plays out across all areas of the ACT community, including education, health and employment, ACTCOSS is particularly concerned about impacts in areas of justice, child protection and housing.

It is important to highlight though that Aboriginal and/or Torres Strait Islander people experience worse health outcomes in the ACT; 42% identify as having a disability, and 80% say they have one or more current long-term health conditions.¹ Across the general population in the ACT, only 19.4% identify as having a disability.² This large disparity points to systemic problems in healthcare, but it also means that experiences of racism in the healthcare system have a significant impact on Aboriginal and/or Torres Strait Islander people and families. A lack of access to culturally safe and affordable health care is devastating and can have multi-generational impacts.

Similarly, racism in workplaces and education systems can limit life opportunities for Aboriginal and/or Torres Strait Islander people and cause anxiety, distress, and mental and general ill-health. Racism in each of these areas can also increase the risk of engagement with the justice and child protection systems, as well as increasing the risk of housing stress and precarity.

Justice

Aboriginal and/or Torres Strait Islander people in the ACT are over-policed and over-incarcerated. Although Indigenous people make up less than 2% of the Territory's population, they make up a quarter of the population in the Alexander Maconochie Centre (AMC).³ Aboriginal and/or Torres Strait Islander people in the ACT are imprisoned at 19 times the rate of non-Indigenous people and are subject to community corrections orders at 12 times the rate of non-Indigenous people.⁴

The proportion of prisoners who are Aboriginal and/or Torres Strait Islander in the ACT has doubled over the last ten years, from 13% in 2011 to almost 26% in 2021.⁵ The ACT also has Australia's highest rate of recidivism for Aboriginal and/or Torres Strait Islander people, with 91% of Indigenous detainees in the AMC having experienced prior imprisonment.

¹ Australian Bureau of Statistics, 2019, [Data by region: Aboriginal and Torres Strait Islander Peoples](#), accessed 17 March 2022.

² ABS, [4430.0 - Disability, Ageing and Carers, Australia: Summary of Findings, 2018](#), ABS, 2019, accessed 22 June 2021

³ Australian Government Productivity Commission, 2022, [Report on Government Services 2022: Justice](#), accessed 28 January 2022

⁴ Ibid.

⁵ Australian Bureau of Statistics, 2021, [Prisoners in Australia](#): Prisoner characteristics, States and territories, accessed 1st March, 2022.

Rather than an indictment of Aboriginal and/or Torres Strait Islander people, these figures demonstrate the entrenched and systemic racism at the heart of our justice system. To address this problem, we need to ensure mandatory, adequate, and continuous cultural awareness and safety training for all ACT Policing and Corrective Services staff, as well as investing in a high-level inquiry into the over-representation of Aboriginal people in the justice system.

We know that detainees and their families experience [racial vilification](#) in the Alexander Maconochie Centre. The recent ACT Auditor-General's report into the *Management of detainee mental health services in the Alexander Maconochie Centre* found that delivery of mental health services for Aboriginal and/or Torres Strait Islander detainees was especially ineffective.⁶ Staff are not well equipped to provide culturally safe treatment, nor are they directing detainees toward the culturally safe services that do exist, such as Winnunga Nimmityjah Aboriginal Health and Community Services.

Cultural awareness training must be made a priority for all staff across the justice system, including ACT Policing and Corrective Services staff.

The disempowerment of people engaged in the justice system, as well as their families and communities, means that experiences of racial vilification at the hands of police and corrections staff are often ignored or very difficult to pursue. To address racism in our justice system, we need clear, accessible and independent complaint pathways – for ACT Policing and the AMC. Community legal centres should be resourced to support people through the notoriously difficult complaint mechanisms that currently exist. There must also be a process of accountability when complaints are made, otherwise change will not be lasting or sustainable.

Children and Youth Protection Services

Aboriginal and/or Torres Strait Islander children are vastly overrepresented in the child protection system in the ACT. Indigenous children are 13 times more likely to be in out-of-home care than non-Indigenous children, and a third of those children are still being placed with non-Indigenous carers who are not relatives or kin.⁷

We know that there is a strong relationship between experiences of out-of-home care and the youth justice system, with young Aboriginal and/or Torres Strait Islander people 16 times more likely than non-Indigenous children to be in detention in the ACT.⁸ This entanglement in the CYPS and justice systems produces life-long harm for young people, their families and communities.

⁶ ACT Auditor General's Report, 2022, [Management of Detainee Mental Health Services in the Alexander Maconochie Centre](#): Report No.1, accessed 15 March 2022.

⁷ Australian Government Productivity Commission, 2022, [Report on Government Services: Community Services](#), accessed 25 January 2022.

⁸ Australian Government Productivity Commission, 2022, [Report on Government Services: Community Services](#), accessed 25 January 2022.

Removal of children from their families should be an absolute last resort, undertaken only when all other support mechanisms have been exhausted. Removals must be subject to thorough oversight that takes into account the role of systemic racism in child protection assessments and decision making. Where children are removed, restoration must be the goal, and cultural safety plans must be enacted.

ACTCOSS appreciates that the ACT Government has introduced some measures to address the overrepresentation of Aboriginal and/or Torres Strait Islander children in our child protection system, including beginning the process to appoint an Aboriginal and Torres Strait Islander Children's Commissioner in the ACT.

However, the ACT continues to underperform and underspend compared with other jurisdictions, and it is Aboriginal and/or Torres Strait Islander children who suffer as a consequence. While the ACT Government has committed to implementing an internal and an external review mechanism for child protection decisions, we need to ensure that those mechanisms are both rigorous and fully resourced. We also need to ensure that Aboriginal and/or Torres Strait Island community members are involved in this process, every step of the way.

Housing

The ACT is currently experiencing a housing crisis. The 2021 Rental Affordability Index shows that Canberra is the least affordable capital city for low-income households.⁹ We currently have a shortfall of 3100 social housing dwellings in the ACT, and the average wait time for standard public housing is now over four years.

Though we do not have data on the impacts of housing scarcity and stress on culturally and linguistically diverse communities in Canberra, we know that Aboriginal and/or Torres Strait Islander people are at higher risk of experiencing homelessness, housing stress and overcrowding.

Despite making up less than 2% of the population in the ACT, Aboriginal and/or Torres Strait Islander people represented 17% of specialist homelessness service clients in 2020-21.¹⁰ Indigenous people in Canberra are more than twice as likely to live in overcrowded conditions, with 8% of Aboriginal and/or Torres Strait Islander people in overcrowded households, compared with 3% for non-Indigenous people.¹¹

Aboriginal and/or Torres Strait Islander people in the ACT are less likely to own their own homes than non-Indigenous people, more likely to be renting, and

⁹ SGS Economics & Planning, [Rental Affordability Index 2021: November 2021 Key Findings](#), accessed 12 March 2022.

¹⁰ Australian Government, Australian Institute of Health and Welfare, [Specialist Homelessness Services 2020-21: Australian Capital Territory](#), accessed 16 March 2022.

¹¹ Australian Government, Australian Institute of Health and Welfare, [Aboriginal and Torres Strait Islander Health Performance Framework: 2.01 Housing](#), accessed 17 March 2022.

more likely to be renting from a state or territory housing authority.¹² Racial discrimination in private and public housing decisions mean that Indigenous people face higher risks of homelessness, housing stress and housing precarity.

In order to ensure that we have culturally safe housing options, the ACT Government needs to invest in cultural awareness training for all government departments and public housing workers. In addition, the ACT Government must develop and resource an Indigenous Housing Strategy for the ACT, including a pathway to a community-controlled Aboriginal housing organisation.

Key recommendations:

Address impacts of Racial Vilification on Aboriginal and/or Torres Strait Islander People

The disproportionate effects of racial vilification on Aboriginal and Torres Strait Islander Peoples reinforce patterns of discrimination and injustice. These endemic issues have been iterated and reiterated by the community on numerous occasions including past inquiries and reviews such as the [Our Booris, Our Way Review](#).¹³

This community is experiencing consultation fatigue and frustration that concerns are not being heard or addressed. In order to redress the harm done and cyclical vilification of Aboriginal and/or Torres Strait Islander communities, all recommendations targeted towards racial vilification and active reconciliation must be implemented by the ACT Government.

ACTCOSS fully supports the aims of the [Uluru Statement from the Heart](#) which make clear calls for imperative change by:

- Establishing a constitutionally guaranteed First Nations Voice to Parliament. By conducting a referendum to constitutionally empower an Indigenous advisory body, First Nations peoples would have the necessary stake for active input into policies, legislation and decision-making – particularly those of relevance to Indigenous affairs.
- Establishing a Makarrata Commission, a tribunal tasked with oversight of agreements between First Nations and Federal and State Governments.

¹² Australian Bureau of Statistics, [2016 Census Community Profiles: Australian Capital Territory](#), accessed 16 March 2022.

¹³ Our Booris, Our Way Final Report, December 2019, [Our Booris, Our Way Review](#) accessed 12 March 2022

- Enacting a Declaration of Recognition that presents a message of unity and mutual understanding through legislation passed in Federal and State Parliaments.¹⁴

ACTCOSS notes that the ACT Government is committed to progressing a Treaty process for the ACT, as expressed in the *ACT Aboriginal and Torres Strait Islander Agreement 2019-2028*. We also welcome the recent appointment of Professor Kerry Arabena to facilitate conversations about what Treaty would mean for the ACT's Aboriginal and/or Torres Strait Islander communities.

Further to these recommendations, ACTCOSS encourages a meaningful engagement with the Indigenous community in addressing racial vilification and systemic injustice. This means active consultation and reserving space for Aboriginal and Torres Strait Islander peoples and advocates as representatives in all decision-making spaces – as recommended throughout this submission.

Recommendations

- Conduct a Royal Commission into Indigenous disadvantage in the ACT
- Implementation and resourcing of external and internal review mechanisms for child protection decisions
- Introduction of an independent complaint mechanism for the ACT Police
- Inclusion of the ACT Police as an area of discrimination under Part 3 of the ACT Discrimination Act 1991
- Implementation of the calls for action outlined in the Uluru Statement
- Implementation and resourcing for an Indigenous Housing Strategy in the ACT
- Investment and support for Aboriginal Community Controlled Organisations particularly including a housing provider
- Prioritise culturally safe complaint pathways for detainees in the AMC and justice system
- Ensure meaningful consultation and engagement with First Nations peoples and Indigenous advocacy bodies across all ACT Government decision making
- Acknowledge the heavy burden that racial vilification takes, specifically on Aboriginal and Torres Strait Islander peoples

¹⁴ Referendum Council, [Uluru Statement from the Heart](#) accessed 12 March 2022

Education and Accountability Mechanisms

Systemic racism manifesting in racial vilification cannot be addressed without funding for targeted education campaigns. Importantly education must centre both response services available to victims of racial vilification, and prevention campaigns deconstructing racism.

In order to provide appropriate, fit-for-purpose and culturally sensitive mechanisms for recourse, it is important that the ACT Government takes initiative to reassess the current complaint mechanisms available to complainants of discrimination and vilification.

Currently the only easily available and accessible complaint mechanism is The ACT Human Rights Commission. Further advice suggests contacting a Community Justice Centre, or where relevant the Department of Housing. If complainants have difficulty with the online form required to make a complaint through the ACTHRC or lack trust or faith in the advocacy available to them, their options are limited. This effectively discourages the making of complaints.

The availability of an accountability mechanism for service providers and government departments including the ACT Police and CYPS is integral to ensuring appropriate and respectful behaviours. Currently individual complaints must be made to the ACTHRC to prompt a process of assessment, investigation and conciliation. Without an official oversight and accountability mechanism in place, the ACT Government is currently failing to prevent or account for the likelihood of incidents of racial vilification. The onus to redress the issue instead falls to victims of racial vilification after the fact and without assurance that long term action will be taken. We cannot expect that people will continue to come forward with experiences of racial vilification if there are minimal instances of changes resulting from their complaints.

ACTCOSS firmly believes that all Canberrans should have access to accessible and efficient discrimination complaint mechanisms. In the case of the ACTHRC, accessibility is stifled by lacking awareness of available services. Education targeted at raising awareness of the available supports, processes, mechanisms and remedies needs to be produced for and distributed specifically to CALD communities.

Additionally, to address the prevalence of racial vilification resulting from ingrained systemic racism, education campaigns designed to intervene and prevent racism are needed. Targeted campaigning to obstruct a culture of racism in the ACT would demonstrate an active commitment to protecting marginalised groups from further disadvantage. Relevant education should be disseminated through the ACT Education Directorate as well as to those working in industries and government departments receiving the highest numbers of complaints of racial vilification (i.e. CYPS, Department of Housing, ACT Police and ACT Corrections staff).

ACTCOSS also supports the introduction of an ACT Anti-Racism Strategy as initially recommended in Ericha Smyth's report 'Enhancing civic participation amongst Australian multicultural communities' produced whilst working in the

Office of MLA Andrew Braddock.¹⁵ The full resourcing of an Anti-Racism Strategy would produce tangible outcomes in combatting racism in the ACT. The production of an Anti-Racism Strategy at a Federal level has been recommended by the Australia Human Rights Commission.¹⁶ The AHRC alongside Reconciliation Australia advised that funding of such a strategy would take an active role in moving Australian policy from 'safe' to 'brave' on issues affecting Aboriginal and Torres Strait Islander peoples.

Enacting a long-term strategy accompanied by appropriate funding is imperative to addressing racial injustice in the community. In preparing an Anti-Racism Strategy it is important that a consultative and cross-cultural method is taken to ensure collaboration and tailoring of the strategy to the ACT community. An Anti-Racism Strategy will allow for the necessary forward planning and investment in cultural and social change to reduce racism and empower CALD communities.

Recommendations

- Assessment of current complaint mechanisms regarding racial discrimination and vilification
- Imbuement of the ACTHRC with an oversight mechanism and accountability function to ensure best practice and respectful conduct in government service provision
- Introduction and resourcing of an ACT Anti-Racism Strategy
- Creation of an ACT Civil and Administrative Tribunal (ACAT) mechanism to enforce conciliation agreements through financial orders for breaches
- Increased funding of CCL and other relevant community legal centres to support their legal work protecting against racial vilification
- Provision and dissemination of awareness-raising education surrounding available racial discrimination complaints mechanisms and support resources
- Funding of anti-racism education programs for the ACT community
- Continuous provision of cultural safety training for all ACT Government staff, including but not limited to Corrections staff, ACT Policing, CYPS staff and staff in the Housing Directorate
- Improvement of cultural awareness training for ACT Police including practical skills necessary for interaction with CALD communities

¹⁵ Smyth E, *Enhancing civic participation amongst Australian multicultural communities*, Personal Communication, accessed March 3 2022.

¹⁶ Australian Human Rights Commission, [AHRC National Anti-Racism Framework 2021](#) accessed March 10 2022.

Independent Advocacy Voice for CALD Communities

ACTCOSS advocates for the fostering and funding of an independent advocacy voice for CALD Canberrans in the ACT. An independent CALD advocacy group should be developed with appropriate consultation on the functions of such a group to ensure it meets the needs of the community. This advocacy body could provide much needed support and expertise for legal processes for complainants of racial vilification.

The ACTHRC highlighted concerns that there is need for a space or organisation to refer complainants to for support and culturally appropriate guidance throughout legal and administrative processes. The absence of such a service or body leaves the CALD community unsupported and unreasonably disadvantaged during proceedings.

Establishment of an independent advocacy voice will also account for provision of a support person or advisor to act on a complainant's behalf or represent them in a tribunal. Access to an advocate in such spaces is necessary and the lack of available or funded supports is a major failing in the ACT.

The independent group should also be empowered to produce a definition or designation of racial vilification. This is particularly pertinent given the need to actively include lived experience into decisions regarding the scope and bounds of what is and will be designated as racial discrimination or vilification.

Further, if/when an additional legal protection for 'positive action' is introduced there will be an increased need for support to navigate the legislation and advocate for individuals. This recommendation is accompanied by a call to increase funding of community legal centres to cover legal support for complaints of racial vilification and aid victims of racism in pursuing official remedies.

The creation of the independent advocacy body must be done with meaningful engagement and consultation with Aboriginal and Torres Strait Islander communities. Representation of First Nations advocates in this group as well as availability of specialised services for Aboriginal and Torres Strait Islander peoples is paramount to ensuring service provision that is appropriate and targeted for diverse communities.

Recommendations

- Establish and fund an Independent Advocacy Voice for CALD Canberrans with a specialised service for Aboriginal and Torres Strait Islander peoples
- Empower the Independent Advocacy group to have autonomy in defining and designating the bounds of racial vilification
- Increase resourcing and funding of community legal centres to provide support to complainants of racial vilification