



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON EDUCATION AND COMMUNITY INCLUSION
Mr Michael Pettersson MLA (Chair), Mr Jonathan Davis MLA (Deputy
Chair), Ms Nicole Lawder MLA

Submission Cover Sheet

Inquiry into Racial Vilification

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Committee Secretary
Standing Committee Education and Community Inclusion
Legislative Assembly for the ACT
GPO Box 1020 Canberra ACT 2601

By email: LACommitteeECI@parliament.act.gov.au

Dear Chair,

I write to you on behalf of the Aboriginal Legal Service (NSW/ACT) Limited (**ALS**) and thank you for the opportunity to provide a submission to the Inquiry into Racial Vilification.

The ALS is a proud Aboriginal community-controlled organisation and the peak legal services provider to Aboriginal and Torres Strait Islander adults and children in NSW and the ACT. The ALS currently undertakes legal work in criminal law, children's care and protection law, and family law; as well as broader work in law reform and wrap-around programs for community wellbeing.

The ALS is not in a position to make a detailed submission in response to this inquiry but submits the following letter to the Committee to provide feedback on the effectiveness of existing reporting mechanisms within the context of the prison and policing systems in the Australian Capital Territory.

I. Background - The Alexander Maconochie Centre

The Alexander Maconochie Centre (AMC) is the only prison for adults in the Australian Capital Territory. There are three independent agencies that have oversight responsibilities for the AMC:

- 1. The Office of the Inspector of Correctional Services (OICS)*
This agency provides oversight of prisons in the ACT with a focus on larger scale improvement and prevention of ill-treatment. The OICS does not handle individual complaints.
- 2. The ACT Human Rights Commission (HRC)*
This agency handles individual complaints of discrimination (although not breaches of the Human Rights Act generally) as well as seeking to address systematic issues.
- 3. The ACT Ombudsman*
This agency investigates individual complaints in cases where individuals have been unable to resolve problems with ACT government agencies (including ACT Corrective Services). It also has an 'own motion' investigation power.

For an individual to make an official complaint or report of racial vilification to an independent organisation overseeing the AMC, it must either be made through the ACT Ombudsman or the HRC. While these oversight bodies and their respective reporting mechanisms play an important role in providing individual redress there are notable gaps in coverage and accessibility barriers for Aboriginal and Torres Strait Islander People.

a. Effectiveness of the ACT Ombudsman

To make a complaint through the ACT Ombudsman about an issue within the AMC, including the conduct of an AMC staff member, individuals are first asked to attempt to resolve the issue internally. Internal reporting mechanisms in the AMC are done by either speaking with a custodial officer or by making a formal or informal written complaint.

The requirement to explore internal avenues before reporting the issue to the ACT Ombudsman presents the following issues for Aboriginal and Torres Strait Islander detainees:

- Firstly, it fails to appreciate the longstanding mistreatment Aboriginal and Torres Strait Islander people have faced within institutions such as the AMC. To many Aboriginal and Torres Strait Islander people, the idea of making a complaint to the same group of people that are, for all intents and purposes, responsible for the issue being complained of goes against their best interests. In particular, many detainees hold a fear that making a complaint internally, especially about AMC staff behaviour, will make the situation worse rather than better.
- Secondly, for detainees to formally make a complaint internally it must be done so in writing. This presents a barrier to many Aboriginal and Torres Strait Islander detainees who disproportionately experience lower literacy rates. While they can ask for assistance from custodial officers, this solution again fails to appreciate the level of distrust Aboriginal and Torres Strait Islander people in prison hold towards people who work within institutions such as the AMC. The only other alternative that is offered by the ACT Ombudsman is to call the office. While it is a positive initiative of the Ombudsman to have a dedicated Aboriginal and Torres Strait Islander phone line, it unfortunately offers little practical assistance when it comes to helping write forms.

Ultimately, it is the fact that the ACT Ombudsman requires individuals to make complaints internally before the organisation gets involved that can act as a disincentive for Aboriginal and Torres Strait Islander detainees to report experiences of racial vilification in the first place.

Recommendation - It is the ALS' submission that the requirement to explore internal avenues first should be removed in its entirety, or at a minimum, in respect to complaints involving experiences of racial vilification.

b. Effectiveness of the ACT Human Rights Commission

The ALS shares the concerns and recommendations expressed by the Human Rights Law Centre in their recent [submission](#) to the Justice and Community Safety Committee on the accessibility of the Human Rights Act as a means of protecting individuals' human rights.

In addition to the independent agencies addressed above, individual detainees have the option of informing their lawyer of a complaint they have. The ALS have observed the following barriers come into play when this avenue is taken:

- Where an incident has occurred at the AMC (either with Corrective Services or other inmates), the AMC management team will not release incident or medical records to the inmate directly. Therefore, in order to obtain these records a subpoena must first be issued. This takes additional time and resources (particularly if access is contested), and can be a significant barrier in instances where this material is required for a time sensitive matter such as a bail application (i.e. where instructed to go for bail after the incident in question).

- Since the covid lockdown protocol was put in place in August 2021 at the AMC, many detainees have reported significant barriers in getting in contact with their lawyer. Again, in time sensitive matters, this presents as a barrier to individual recourse.

On a broader level, the ACT government has rejected a proposed investigation into racism within the AMC. While there are a number of reviews that occur in respect to the representation of Aboriginal and Torres Strait Islander people in custody, there is significantly less information available in respect to their experiences while in custody. It tends to be big stories in the media that draw attention to instances of racial vilification¹.

Recommendation - It is the ALS' submission that an investigation into instances of racism in the AMC would assist in reducing gaps in reporting coverage and provide a more comprehensive snapshot of the issue. Which in turn will more accurately inform reduction and redress strategies.

II. Background - ACT Policing

ACT Policing is an arm of the Australian Federal Police (AFP) that is responsible for providing policing services to the ACT. Unlike the AMC, the AFP does not have official independent oversight bodies that are set up to investigate individual complaints or focus on broader improvements.

a. Effectiveness of the ACT Ombudsman

The ACT Ombudsman can investigate individual complaints relating to ACT Policing. It is strongly encouraged by the ACT Ombudsman that the individual first attempt to resolve the issue internally with ACT Policing. However, unlike the Ombudsman's approach to handling complaints about ACT Corrective Services, it is at least acknowledged that the individual in question may not be comfortable, or able, to approach ACT Policing directly.

The biggest concern from the ALS' perspective is that the Ombudsman will not investigate a complaint where the matter has been before a court or tribunal. It is not clear on the information available online whether this includes criminal proceedings where there are allegations of police impropriety that are relied on to exclude evidence or call for the dismissal of the charges. While this would provide some form of redress for the individual, it is not an official reporting mechanism and therefore would have a limited impact more broadly.

b. Effectiveness of ACT Human Rights Commission

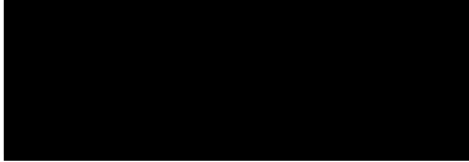
The concerns regarding the accessibility of the ACT Human Rights Commission and recourse through the *Human Rights Act 2004* referred to above are mirrored in respect to complaints regarding ACT Policing. With the additional barrier of the ACT Supreme Court indicating in *R v Austin* [2010] ACTSC 47 at [72] that they do not have jurisdiction to deal with police impropriety. This is of particular concern noting that the ACT Supreme Court is currently the only dispute resolution mechanism within the *Human Rights Act 2004*.

Recommendation: It is the ALS' submission that the jurisdiction of the ACT Supreme Court in dealing with issues of police impropriety be clarified/reinstated.

¹ <https://www.abc.net.au/news/2020-03-11/canberra-prison-hangman-game-detainee-aborrent/12044814>; <https://www.abc.net.au/news/2021-01-27/call-for-investigation-of-alleged-strip-search-at-canberra-jail/13096538>; <https://www.abc.net.au/news/2021-07-02/act-indigenous-women-strip-searched-twice-as-often-jail/100259182>.

The ALS would welcome the opportunity to discuss this submission further. If you have any questions, please contact the ALS Policy & Advocacy Manager Denise Wireko-Brobby via email on denise.wireko-brobby@alsnswact.org.au.

Yours sincerely,



Nadine Miles
Principal Legal Officer
Aboriginal Legal Service (NSW/ACT) Limited