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**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

TENTH ASSEMBLY

**STANDING COMMITTEE ON EDUCATION AND COMMUNITY INCLUSION –
REPORT NO 6 - INQUIRY INTO RACIAL VILIFICATION – GOVERNMENT RESPONSE**

**Presented by
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Minister for Human Rights
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INTRODUCTION

The ACT Government welcomes the Report of the Standing Committee on Education and Community Inclusion on the Inquiry into Racial Vilification (the Report), tabled in the ACT Legislative Assembly on the 24 November 2022.

Canberra is a multicultural city with the 2021 Census finding that 28.7% of ACT residents were born overseas, 39% were second generation migrants and 28.7% spoke a language other than English at home. 2% of ACT residents also identify as Aboriginal and/or Torres Strait Islander with 2.9% also using an Aboriginal or Torres Strait Islander language at home. This rich cultural diversity is one of the Territory's greatest strengths.

Racism can have profound and serious consequences for both individuals and communities. It can damage a person's wellbeing, have negative impacts on their mental health and affect their ability to work, study and engage in their community. When racism persists, it can also damage the broader community by eroding trust and respect. Since the beginning of the COVID-19 pandemic, there has been an unfortunate rise in reports of racism, including verbal and physical attacks, towards Canberrans from culturally and linguistically diverse backgrounds. Racism has absolutely no place in our community and the ACT Government remains committed to identifying opportunities to tackle racism and support our vibrant and diverse community.

The ACT is a jurisdiction with a proud history of protecting and promoting human rights. The ACT has a long-standing commitment to multiculturalism and inclusion and continually strives to foster a community where everyone feels safe, welcomed and has a sense of belonging. The ACT's robust human rights framework is contained in the *Human Rights Act 2004*, which enshrines a range of fundamental rights drawn from the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights. This includes recognition of the right to equality and non-discrimination and the recognition of the unique cultural and other rights of Aboriginal and Torres Strait Islander people and other minorities.

The *Discrimination Act 1991* (Discrimination Act) supports the Human Rights Act and protects individuals from unlawful discrimination on the basis of a range of protected attributes including race, immigration status and religious conviction. The Discrimination Act applies to areas of public life which include employment, education, accommodation, the provision of goods, services and facilities, access to premises and licensed clubs. The Discrimination Act also protects against unlawful racial vilification. This protection is supported by the ACT Criminal Code 2002 which makes serious vilification a criminal offence. The Government is strengthening the Discrimination Act through the *Discrimination Amendment Bill 2022*, including by expanding the coverage of the Act and introducing a positive duty to eliminate discrimination before it occurs.

Additionally, the *Multiculturalism Act 2023* enshrines the ACT's commitment to diversity and inclusion and will support Canberra's continuous growth and improvement as an inclusive city that celebrates multiculturalism. The Act establishes and promotes a charter for multiculturalism, enshrines in legislation the ministerial advisory council for multiculturalism and provides a framework for the review and continuous development of the government's promotion of multiculturalism. This framework complements existing accountability measures in the *Human Rights Act 2004* and Discrimination Act to protect the right to equality and non-discrimination for all Canberrans.

As part of this Inquiry, the Standing Committee received eight written submissions and heard from a range of witnesses across two days of public hearings.

The Committee made 16 recommendations. The Government agrees with five of those recommendations and advises that two recommendations represent existing government policy. Work is already underway across Government that is closely aligned to six other recommendations and, accordingly, the Government agrees in principle with those six recommendations. The Government notes the remaining three recommendations.

The ACT Government welcomes the Inquiry into Racial Vilification report and remains committed to exploring further opportunities to target and respond to racism in the Territory. The Government would like to thank the Standing Committee and everyone who took the time to participate and contribute to the Inquiry.

GOVERNMENT RESPONSES TO THE STANDING COMMITTEE'S RECOMMENDATIONS

Recommendation 1

That the ACT Government develop an anti-racism strategy for the ACT in consultation with racially-diverse members of the community.

Government response

Agreed in principle.

The ACT Government agrees in principle to the recommendation and will consider the development of a specific ACT anti-racism strategy, noting that any developments will be subject to future budget decisions, resourcing availability and the National Anti-Racism Framework.

The ACT Government notes the current initiatives underway that will strengthen the Territory's anti-racism framework and promote Canberra as a diverse, fair and inclusive community.

Notably, as part of the Parliamentary and Governing Agreement for the 10th Legislative Assembly, the Government has advocated for and welcomed the development of a National Anti-Racism Framework (the National Framework) and notes the value that a collaborative and cohesive National Framework will bring to promoting anti-racism across Australia. In leveraging this national work, the Territory will continue to collaborate with the Federal Government and the Australian Human Rights Commission throughout the development of the National Framework, including continuing to explore opportunities to tackle racism within the community.

The *Multiculturalism Act 2023* aims to acknowledge the valuable contribution cultural and linguistic diversity brings to the community. It includes the Charter of Multiculturalism that outlines the principles and responsibilities for an inclusive and welcoming Canberra, enshrines in legislation the existing Multicultural Advisory Council and provides a framework for the review and continuous development of the Government's promotion of multiculturalism. Principle 9 in the Charter for Multiculturalism reflects the ACT's commitment to actively respond to racism and discrimination.

Recommendation 2

That the ACT Government focus on promoting anti-racism in places where the ACT Government provides services.

Government response

Agreed.

The Government agrees to this recommendation, acknowledging that there are already a range of measures in place to promote anti-racism, respect, equity and diversity in the provision of Government services.

Under the Discrimination Act, it is unlawful to treat a person unfavourably because of their protected attribute which includes race, religious conviction and immigration status. ACT Government agencies must comply with discrimination law when providing services and access to premises (such as libraries and swimming pools) to the public, education, accommodation and when acting as an employer. The *Discrimination Amendment Bill 2022* (the Bill), which was introduced in the Legislative Assembly in November 2022, will further support this framework by expanding the coverage of the Act to include the administration of Territory laws and ACT Government policies and programs. The Bill will also introduce a new positive duty that will require organisations and businesses, including the ACT Government, to take reasonable and proportionate steps to eliminate discrimination, sexual harassment and unlawful vilification. The positive duty will encourage duty holders to think proactively about their compliance obligations and consider options for addressing instances of systematic discrimination within the entity and in how it interacts with the public.

The Multiculturalism Act will also promote anti-racism in the provision of Government services through the introduction of reporting requirements. As part of the reporting requirements, Directorates must provide an annual report outlining the steps they have taken to comply with their obligations to promote multiculturalism and consult with the community. It is intended that these reports will include both qualitative and quantitative information. All Government directorates will be required to promote the Charter of Multiculturalism and ensure they develop, implement and review their policies and services in way that recognises and invests in the growth of cultural and linguistic diversity. Directorates must also ensure that they provide information, services and programs which are effectively and equitably accessible to all people in the ACT. The Multiculturalism Act 2023 also applies proactive obligations to ACT Government Directorates to identify areas of potential and real discrimination and to proactively and tangibly improve systems or practices that result in persons with protected attributes such as race, religious conviction and immigration status, from experiencing exclusion or disadvantage.

Recommendation 3

That the ACT Government fund a comprehensive public anti-racism campaign.

Government response

Agreed in principle.

The Government notes that the ACT Human Rights Commission supports the Territory's legislative anti-racism framework through their ongoing public education role. The Government is also committed to identifying opportunities for strengthening the ACT's framework for tackling racism, including implementing public campaigns that may arise from the National Anti-Racism Framework, where appropriate to the ACT context.

Any funding for such campaigns will be subject to Government budget processes.

Recommendation 4

That the ACT Government adopt the #RacismNOTWelcome Campaign.

Government response

Agreed in principle.

The ACT Government strongly supports the intention of the #RacismNOTWelcome campaign to acknowledge the existence of racism, validate people's lived experiences and normalise conversations about the issue while also igniting change. While the Territory looks forward to leveraging the National Anti-Racism Framework and associated campaigns, it considers that the campaign's focus on street signs may not be appropriate to the unique Canberran context and consequently does not intend to adopt the campaign at this time. The Government will explore opportunities to adopt a positive campaign that builds on the strengths of the community, notes the ACT's proud history as a leading human rights jurisdiction and demonstrates Canberra's status as a Welcoming City.

Recommendation 5

That the ACT Government engage a local university to research children and young people's experiences of racism, in consultation with the Office of the Children and Young People Commissioner.

Government response

Agreed in principle.

The ACT Government notes the ACT Children and Young People Commissioner is already undertaking an extensive consultation with children and young people in the ACT about their views on and experiences of racism. The ACT Government anticipates the report and recommendations arising from that consultation will provide momentum for further activities aimed at reducing and responding to experiences of racism among children and young people in the ACT.

Recommendation 6

That the ACT Government provide intensive support through organisations led by Aboriginal and Torres Strait Islander peoples to ensure that removal of children from their families is an absolute last resort.

Government response

Agreed in principle.

The ACT Government recognises there continues to be an unacceptable overrepresentation of Aboriginal and Torres Strait Islander children in the Territory's statutory services and is committed to ensuring all children and young people grow up strong, safe and connected including when placed in care or at risk of being in care.

The *Our Booris, Our Way* (OBOW) review was an Aboriginal-led process to explore the overrepresentation of Aboriginal families in the child protection system, which culminated in a Final Report with 28 recommendations. The Government is committed to fully implementing the recommendations and this forms the core of the work to address overrepresentation of Aboriginal families in the child protection system. Implementation of OBOW continues under the oversight of the OBOW Implementation Oversight Committee, comprised exclusively of members of the Aboriginal and Torres Strait Islander community.

The commitment to fully implement the intent of the OBOW review is reinforced through *Next Steps for Our Kids 2022-2030*, which was launched in June 2022 and is the ACT's strategy for strengthening families and keeping children and young people safe.

Next Steps for Our Kids commits the ACT Government to supporting the development of Aboriginal Community Controlled Organisations (ACCOs) and transitioning responsibility for case management for Aboriginal and Torres Strait Islander children and young people.

Work on options to progressively transfer authority is being discussed with the community, with an initial focus on the delivery of diversionary services and capacity building. Preliminary work has included looking at models from other jurisdictions and considering applicability for the ACT context.

Recommendation 7

That the ACT Government prioritise funding to organisations controlled by Aboriginal and Torres Strait Islander peoples for the provision of relevant services.

Government response

Agreed.

The ACT Government recognises that Aboriginal and Torres Strait Islander community-controlled services are often preferred and achieve better outcomes for Aboriginal and Torres Strait Islander people. The Government is committed to progressing Priority Reform Two under the National Agreement to Closing the Gap which commits to building formal Aboriginal and Torres Strait Islander community-controlled sectors to deliver services to support Closing the Gap.

As discussed above, the ACT Government committed in *Next Steps for Our Kids 2022-2030*, as part of the implementation of the OBOW review, to a systemic response to address overrepresentation of Aboriginal and Torres Strait Islander children, young people and families in the Territory's statutory services. This includes a commitment to the phased transfer of proportionate funding for ACCO delivery of services to respond to child and family needs.

Work on supporting the development of ACCOs and transitioning responsibility for case management has also commenced. This includes:

- completion of a feasibility study;
- preliminary work undertaken to talk with the community about potential models and establishment phases, and options for service responses;
- funding for the initial suite of diversionary services secured; and
- initiation of discussions with the Aboriginal community operated service sector.

In addition, the ACT Government has provided seed funding to an emerging ACCO seeking to support Aboriginal children and families, Yerrabi Yurwang. Drawing from funding set aside to support the implementation of the National Agreement on Closing the Gap, the Government has provided \$508,487 over two years to cover the costs of establishment and early operation, including the organisation hiring an establishing CEO.

The ACT Government is also committed to responding to the *We Don't Shoot Our Wounded Report* (the Report) to address the high rates of family violence experienced by members of the Aboriginal and Torres Strait Islander community. Recommendation 4 of the Report proposed the establishment of a specific service for Aboriginal and Torres Strait Islander women where a range of legal, advocacy, practical and healing activities can be delivered. The ACT Government is committed to working in partnership with the Aboriginal and Torres Strait Islander community to implement the recommendations from the report, including for Recommendation 4. Seed funding is available to Aboriginal Community Controlled Organisations, through an open grants process, to commence delivery of a service in response to Recommendation 4.

Recommendation 8

That the ACT Government, as a matter of priority, assist in the establishment of an Aboriginal and Torres Strait Islander community-controlled housing organisation.

Government response

Agreed.

To facilitate the establishment of an Aboriginal and Torres Strait Islander Community Controlled Housing Provider, Housing ACT has procured a local ACT Aboriginal provider to undertake consultation with key members of ACT Aboriginal and Torres Strait Islander organisations, community members, tenants and relevant agencies. This will allow Housing ACT to develop a Community Participation Approach enabling culturally safe co-design service principles to be incorporated into housing policy to enhance the capacity of the community housing sector. Additionally, Housing ACT in 2022 has also established a dedicated team with identified officers to support the delivery of this commitment.

Recommendation 9

That the ACT Government develop a comprehensive training program aimed at preventing racial vilification behaviours and enhancing cultural safety, to be mandatorily undertaken by all members of ACT Policing, ACT Corrective Services, Child and Youth Protection Services, and Housing ACT.

Government response

Agreed in principle.

The ACT Government recognises the importance of training employees to understand and enhance cultural safety and identify the effects that cultural differences can have upon relationships in the community. As such, a range of cross-cultural training programs, as discussed in more detail below, are already undertaken by ACT Policing, ACT Corrective Services, Child and Youth Protections and Housing ACT. The development of any additional training programs will be subject to Government budget processes, consideration and assessment of existing training obligations and operational priorities.

ACT Policing

The ACT Government notes that ACT Policing is creating a stand-alone program that is specific and relevant to the First Nations community in the ACT region. The development, delivery and assessment of this cultural literacy training curriculum requires co-design with community. ACT Policing is in the process of seeking tenders to develop the program for delivery to commence in the second half of 2023.

In addition to this new training program, ACT Policing officers undertake a range of cross-cultural training programs including Cultural Health and Competence Program online modules and the Cultural Awareness training program. These provide guidance on culture, inclusiveness and inclusion across various cultures and diversity groups including one component, designed by the SBS Cultural Competence program, that considers First Nations culture. A face-to-face component is also delivered by AFP training staff, typically members of the AFP's Malunggang Indigenous Officers Network. ACT Policing's First Nations Liaison Officers also previously designed and delivered 'Cultural Connections' training to ACT Policing members.

Recommendation 7 of the Ombudsman’s Report into ACT Policing’s administrative framework for engagement with the ACT Aboriginal and Torres Strait Islander community¹ recommended ACT Policing develop a strategy to support the development, delivery and ongoing evaluation of cultural training. The training program is expected to commence at the beginning of the 2023-2024 financial year.

ACT Corrective Services

Within ACT Corrective Services, Aboriginal and Torres Strait Islander Cultural Awareness training is already mandatory for ACT Corrective Services staff. All new Correctional Officers are required to attend this training as part of their Induction. Training is delivered by the Yuruana Centre, Canberra Institute of Technology (CIT). Other Corrective Services staff register to attend the training as part of general training or complete Aboriginal and Torres Strait Islander Awareness (SBS) e-learning available for all ACTPS employees on HRIMS Learning (learning management system).

Further, ACT Corrective Services Organisational Capability Unit are soon to release a new Commonwealth-funded e-learning program developed by the National Indigenous Australians Agency (NIAA) in partnership with Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS). ‘AIATSIS Core Cultural Learning - Corrective Services Modules 1 and 2’ were developed in response to the *Prison to Work Report* findings. The two-module program, aimed at frontline staff working in Corrective Services Australia-wide, was developed to improve cultural competency including building officer understanding of some of the underlying socio-economic drivers and challenges faced by Aboriginal and Torres Strait Islander people who come into contact with the criminal justice system including intergenerational trauma and disadvantage experienced by Aboriginal and Torres Strait Islander people.

Child and Youth Protection Services (CYPS) and Housing ACT

CYPS and Housing ACT staff undertake a range of cross-cultural training programs to ensure all employees have a strong understanding of cultural awareness and cultural safety and are appropriately equipped to proficiently engage with the diverse Canberra community.

From 1 July 2021 to January 2023, 331 staff from across CYPS and Housing ACT completed the Aboriginal and Torres Strait Islander Awareness (SBS) e-learning and 5864 modules from the Core Cultural Learning e-learning were completed across CYPS and Housing ACT.

In addition to the core training, CYPS staff also attend:

- Aboriginal and Torres Strait Islander Child Placement Principles Training;
- face-to-face CYPS Cultural Development Program, which includes six sessions covering foundations, history and legacy, walk on country, culturally responsive practice, finding kin and principles to practice; and
- Family Group Conferencing (FGC) training, an innovative form of Alternative Dispute Resolution. It is a meeting where children, young people, their families, their

¹ [ACT Policing's administrative framework for engagement with the ACT Aboriginal and Torres Strait Islander community: volume 1](#)

community and significant others are provided the opportunity to come together in a supported environment to take part in family-led decision making. It also supports children to be a part of the decision-making process and have their voices heard.

The ACT Government also procures eLearn training packages through recognised Aboriginal and Torres Strait Islander and other cultural organisations, including the Special Broadcasting Service (SBS) and the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS). The face-to-face training is developed and delivered by the CSD cultural training officer to officers in Child and Youth Protection Services (CYPS).

Recommendation 10

That the ACT Government clarify the jurisdiction of the ACT Supreme Court in the Human Rights Act 2004 in addressing police misdemeanours, and if necessary, amend the Act to ensure the authority of the Court in this regard.

Government response

Noted.

Individual police officers, when exercising a function under a Territory law, are already described as public authorities under the *Human Rights Act 2004*.

Recommendation 11

That the ACT Human Rights Commission review the functionality of the online reporting tool to ensure that it is accessible for people who speak languages other than English, the interface is intuitive and easy to navigate, and data collection is optimised.

Government response

Agreed.

The Human Rights Commission has advised the Government that the current web reporting tool is used by diverse members of the ACT community to raise concerns about experiences of discrimination in the ACT. The Commission's website is being reviewed and the efficacy and accessibility of the reporting tool will be considered as part of that review.

Recommendation 12

That the requirement by the ACT Ombudsman for complainants, in the first instance, to use internal avenues to resolve complaints concerning racial vilification, be removed.

Government response

Noted.

The ACT Government notes the Committee's recommendation. The *Ombudsman Act 1989* provides the ACT Ombudsman with discretion and flexibility to determine the appropriate way to manage a complaint. The ACT Government considers it important that the overarching legislation continues to afford the ACT Ombudsman flexibility to manage or refer complaints as the ACT Ombudsman considers appropriate. As an independent statutory office, the ACT Ombudsman determines internal policy matters on the management of complaints.

Recommendation 13

That the ACT Government introduce a bill to amend the Discrimination Act 1991 so that it also applies to ACT Policing.

Government response

Noted.

The *Australia Capital Territory (Self-Government Act) 1988* (Cth) constrains the application of ACT laws to Commonwealth entities.

ACT Policing is a Commonwealth entity (Australian Federal Police) regulated under Commonwealth law, including the *Racial Discrimination Act 1975* (Cth).

In addition, ACT Policing is subject to extensive oversight from various governing bodies including professional standards mechanisms under the *Australian Federal Police Act 1979* (Cth), the Australian Commission for Law Enforcement Integrity, the Information Commissioner and the Commonwealth Ombudsman.

Complaints can also be raised with ACT Policing directly, either in person or online.

Recommendation 14

That the ACT Government provide information about how to lodge a racial discrimination complaint so that it:

- *is targeted at racial sub-sectors of the community, including international students,*
- *is available in a range of languages,*
- *provides facts about potential outcomes and options for redress, and*
- *is widely promoted.*

Government response

Existing Government Policy.

The ACT Government notes that the Human Rights Commission provides information about how to make a complaint to the Commission in a range of languages and formats accessible to ACT community members.

Recommendation 15

That the ACT Government further promote the Office of the Children and Young People Commissioner in racially-diverse communities.

Government response

Existing Government Policy.

The ACT Government notes the Human Rights Commission provides a range of services including consulting with children and young people, victims of crime services, complaint handling and advocacy and promotes all its services to diverse community members in Canberra.

Recommendation 16

That the ACT Government encourage ACT public schools to promote the social media accounts of the Office of the Children and Young People Commissioner to ACT public school students.

Government response

Agreed.

In consultation with the Office of the Children and Young People Commissioner, the Education Directorate will provide schools with the resources to assist them in promoting the social media accounts of the Office of the Children and Young People Commissioner to their students and school communities through the weekly Schools Bulletin. The Education Directorate will also promote these channels through its own social media accounts throughout the year.