

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

Submission to the Joint Standing Committee on
Aboriginal and Torres Strait Islander Affairs

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Who we are

The **Australian Lawyers Alliance (ALA)** is a national association of lawyers, academics and other professionals dedicated to protecting and promoting access to justice and equality before the law for all individuals.

Our members and staff advocate for reforms to legislation, regulations and statutory schemes to achieve fair outcomes for those who have been injured, abused or discriminated against, as well as for those seeking to appeal administrative decisions.

The ALA is represented in every state and territory in Australia. We estimate that our 1,500 members represent up to 200,000 people each year across Australia.

Our head office is located on the land of the Gadigal people of the Eora Nation. As a national organisation, the ALA acknowledges the Traditional Owners and Custodians of the lands on which our members and staff work as the First Peoples of this country.

More information about the ALA is available on our website.¹

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to provide this submission to the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs' inquiry into racism, hate and violence directed at Aboriginal and Torres Strait Islander people.
2. Our members act for, and advocate on behalf of, people whose rights have been infringed, including children and young people in contact with criminal justice and child protection systems, people who have experienced institutional abuse, and individuals affected by discrimination, violence, state harm and denial of access to justice.
3. This submission is structured by the Committee's terms of reference, specifically the **nature, prevalence and impact of racism, hate and violence towards First Nations People**. It focuses on the areas in which the ALA has expertise and an established advocacy position, namely:
 - a. the systemic and institutional dimensions of racism directed at Aboriginal and Torres Strait Islander people;
 - b. the over-policing, over-criminalisation and incarceration of Aboriginal and Torres Strait Islander people, particularly women and children;
 - c. punitive youth justice, bail and remand settings; and
 - d. the relationship between child protection, family separation and criminalisation.
4. The ALA does not make detailed submissions on the effects of online platforms, or intelligence or national security arrangements, as falling outside our purview to comment upon.
5. The ALA has a longstanding commitment to access to justice, equality before the law, human rights, institutional accountability and the rights of Aboriginal and Torres Strait Islander peoples. It is the ALA's well-established position that the Australian justice system has historically disempowered and marginalized Aboriginal and Torres Strait Islander peoples, and that serious disadvantage, abuse and transgenerational trauma continue to require action to secure justice and equality before the law.²

² Australian Lawyers Alliance. (2025). *Innovate Reconciliation Action Plan: October 2025 – October 2027*.

6. The ALA does not contend that all criminal justice intervention, child protection intervention, supervision or state monitoring is inherently illegitimate. Rather, the ALA's position is that state power must be exercised lawfully, proportionately, without racial discrimination, with rigorous accountability, and in ways that do not substitute punishment or coercive monitoring for housing, health care, disability support, family preservation, community safety and culturally safe community-led responses.
7. Accordingly, the ALA urges the Committee to consider the recommendations proposed directed towards reducing the racially disproportionate harms produced by current systems, while strengthening within these existing systems accountability, proportionality, cultural safety and access to justice.

Racism as a systemic and institutional issue

8. Racism directed at Aboriginal and Torres Strait Islander people must be understood not only as interpersonal conduct or online abuse, but also as a systemic and institutional issue. Legal systems, criminal justice settings, child protection systems, complaint pathways, online platforms and public institutions may all, both independently and cumulatively, reproduce or intensify racial harm where they operate in ways that are discriminatory, inaccessible, culturally unsafe, punitive or insufficiently accountable.
9. The Australian Human Rights Commission has recently stated that racism in Australia is entrenched in systems, structures and institutions and that current anti-racism responses are often ad hoc, disjointed and ineffective. It also reported that 54% of Aboriginal and Torres Strait Islander people experienced at least one form of racial discrimination within the previous six months in 2024.³ Those findings make clear that the Committee should not confine its attention to interpersonal incidents or online abuse alone.
10. The ALA emphasises that the Committee should expressly recognise that institutional racism can occur even where a law or policy is framed in ostensibly 'neutral' terms. In other terms, that to examine the prevalence of racism narrowly on individual behaviour risks leaving unexamined the institutional issues through which racism is reproduced and normalised.

³ <http://humanrights.gov.au/known-your-rights/understanding-human-rights/Australian-Human-Rights-Assessment-2026/racism-and-affected-communities>

11. This is particularly important in instances of criminal law, bail, sentencing, youth justice, policing, child protection, electronic monitoring and surveillance. Systems that exercise coercive power over individuals and families must be held to the very highest standards of legality, proportionality, cultural safety and independent accountability.
12. **The ALA recommends that governments be required to undertake racial impact assessments before introducing reforms in areas that are likely to affect Aboriginal and Torres Strait Islander people disproportionately, particularly in the areas previously listed. Those assessments should be public, evidence-based and undertaken in genuine consultation with Aboriginal and Torres Strait Islander communities, ACCOs and peak bodies.**

Over-criminalisation and incarceration

13. The over-incarceration of Aboriginal and Torres Strait Islander people remains one of the clearest institutional manifestations of racism in Australia. Data from the Australian Bureau of Statistics show that at 30 June 2025 there were 17,432 Aboriginal and Torres Strait Islander prisoners in Australia, up 10% from the previous year, with Aboriginal and Torres Strait Islander people accounting for 37% of all persons in custody. The rate for Aboriginal and Torres Strait Islander women in custody also rose during 2025.⁴
14. These figures reflect the cumulative effect of a range of factors including over-criminalisation, prejudicial policing, bail refusal, sentencing practices, poverty, trauma, disability, housing insecurity and under-investment in community-controlled supports. They also reflect the long-term failure of governments to meaningfully implement the substantive recommendations of repeated inquiries into Aboriginal deaths in custody, youth detention, child protection and Closing the Gap.
15. The ALA does not suggest that criminal law has no role in responding to serious harm. However, governments must confront the reality that punitive and reactive criminal justice policy has repeatedly failed to reduce Aboriginal and Torres Strait Islander over-incarceration. In some instances, such policy has intensified the very harms they purport to address.
16. The ALA is concerned that Aboriginal and Torres Strait Islander people are too often drawn into criminal justice systems through circumstance. Poverty, homelessness, disability, mental illness,

⁴ <http://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release>

intergenerational trauma, family violence, public intoxication, school exclusion and lack of access to services can all increase the likelihood of police contact.

17. **The ALA submits that the Committee should recommend a shift away from punitive responses that widen the net of criminalisation, and towards a more preventative approach of early intervention, diversion, therapeutic support and community-led models of accountability.**
18. **Further, Governments should reduce unnecessary police contact by investing in alternative crisis management practices including Aboriginal community-controlled services, mental health and disability support, youth outreach schemes, and family/domestic violence services.**

Youth Justice

19. The ALA is particularly concerned about the disproportionate impact of youth justice, bail and remand settings on Aboriginal and Torres Strait Islander children. The ALA notes the Australian Institute of Health and Welfare 2023–24 reporting that indicated First Nations young people aged 10–17 were 20 times as likely as non-Indigenous young people to be under youth justice supervision on an average day, and about 27 times as likely to be in detention; 57% of all young people under supervision and 65% of all young people in detention on an average day were First Nations young people.⁵
20. The remand figures are equally as stark. More than 4 in 5 First Nations young people in detention were unsentenced. The impact of remand on children is immediate and significant, regardless of final case outcome. Detention disrupts family connection, education, housing, health care, cultural connection and community support. For Aboriginal and Torres Strait Islander children, those consequences may be compounded by disconnection from kin, community, Country and culturally safe services.
21. The ALA has previously recommended the repealing of mandatory and presumptive sentencing regimes affecting children, the reforming of bail laws to reduce unnecessary detention and remand, and ensuring Aboriginal and Torres Strait Islander communities, ACCO's and peak bodies are central partners in any policy design and implementation. The ALA refers the

⁵ <http://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2023-24/contents/first-nations-young-people-under-supervision/youth-justice-supervision>

Committee to our previous submissions for the *Making Queensland Safer Bill 2024 (QLD)*⁶ and the succeeding *Making Queensland Safer (Adult Crime, Adult Time) Amendment Bill 2025 (QLD)*⁷, which argued that such legislation would disproportionality and negatively affect Aboriginal and Torres Strait Islander Children.

22. We also refer to the ALA's recent submission to the Senate Legal and Constitutional Affairs References Committee's *Inquiry into Australia's youth justice and incarceration system*, where the ALA emphasised the harmful and criminogenic impacts of youth incarceration, the systemic over-incarceration of First Nations children, and the need for enforceable national minimum standards, stronger diversionary and therapeutic alternatives, and community-led responses.⁸
23. The ALA notes with concern the recent state law reform trends indicate a shift towards more punitive youth justice and bail settings. In Queensland, youth justice amendments have expanded adult penalties for children, made electronic monitoring permanent and statewide, and earlier removed detention as a last-resort principle. Victoria's 2025 bail changes introduced new bail offences and tougher tests that the government itself said would increase the number of adult and youth offenders on remand. New South Wales extended a strict additional bail test for some youth offences. South Australia proposed a presumption against bail for recidivist young offenders. The Northern Territory tightened bail and required electronic monitoring or residence conditions for certain people granted bail despite presumptions against bail.
24. These developments are problematic because they operate against a background of existing Aboriginal and Torres Strait Islander overrepresentation in policing, youth justice supervision, remand and detention. Laws that make bail harder to obtain, expand remand, apply adult sentencing logic to children, or escalate technical non-compliance are likely to carry disproportionate consequences for Aboriginal and Torres Strait Islander children.
25. At the same time, the ALA recognises that evidence concerning specific bail decision-making practices should be expressed carefully. A NSW Bureau of Crime Statistics and Research study

⁶ Australian Lawyers Alliance, *Submission to the Justice, Integrity and Community Safety Committee, Queensland Parliament: Making Queensland Safer Bill 2024 (Qld)*, 3 December 2024.

⁷ Australian Lawyers Alliance, *Submission to the Justice, Integrity and Community Safety Committee, Queensland Parliament: Making Queensland Safer (Adult Crime, Adult Time) Amendment Bill 2025 (Qld)*, 6 May 2025.

⁸ Australian Lawyers Alliance, *Submission to the Legal and Constitutional Affairs References Committee: Inquiry into Australia's Youth Justice and Incarceration System*, 19 December 2025

found no evidence that police custody managers applied a stricter threshold of release on bail to Aboriginal defendants in police bail decisions, while also calling for further research into why remand disparities persist.⁹ The ALA's position is therefore not that every bail disparity arises from individual decision-maker bias. Rather, statutory settings, over-policing, socioeconomic disadvantage, housing instability, unmet disability and trauma needs, and limited access to culturally safe supports together produce racially disproportionate remand and detention outcomes.

- 26. The ALA accordingly recommends that governments review, repeal or amend bail, remand and youth sentencing laws that have the effect of unnecessarily increasing the detention of Aboriginal and Torres Strait Islander children, including laws that undermine the presumption in favour of bail, impose adult sentencing logic, or disproportionately escalate technical non-compliance. Bail and remand settings should instead preserve judicial discretion and require that the issuing of detention orders truly to be used only as a measure of last resort.**

Child protection and family separation

27. The ALA views that child protection, out-of-home care and youth justice contact are deeply connected issues. A credible response to racism directed at Aboriginal and Torres Strait Islander people must therefore consider the pathways through which child removal, family separation, placement instability and inadequate support contribute to later contact with police, courts and youth detention.

28. AIHW's linked-data report found that 76% of First Nations young people under youth justice supervision during 2022–23 had interacted with the child protection system in the previous decade. First Nations girls were the group most affected, with interaction rates above 80%.¹⁰ AIHW also found that in 2023 the rate of Aboriginal and Torres Strait Islander children in out-of-home care was 12.1 times the rate for non-Indigenous children, and NIAA material on Outcome 12 emphasises that culturally safe services should maintain connection to family, community, Country and culture.¹¹ On that evidence, the ALA can responsibly argue that child

⁹ [Investigating bias towards Aboriginal people in police bail decisions | BOCSAR](#)

¹⁰ Australian Institute of Health and Welfare, *Young people under youth justice supervision and their interaction with the child protection system 2022–23*, 25 October 2024.

¹¹ Australian Institute of Health and Welfare, *Child Protection Australia 2022–23: Aboriginal and Torres Strait Islander children in out-of-home care*, 26 February 2025.

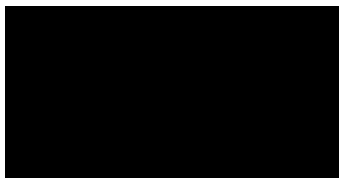
protection, poverty, care instability and criminalisation are deeply connected systems, and that family preservation and support must be part of any anti-racism response.

29. These figures demonstrate that youth justice cannot be separated from child protection, housing, family support, disability, education, health and poverty. Children who experience removal, placement instability, cultural disconnection, school exclusion, disability, trauma or inadequate therapeutic support are at increased risk of later contact with criminal justice systems.
30. The ALA does not submit that child protection intervention is never necessary. However, intervention must be proportionate, culturally safe, properly supported and directed towards family preservation and reunification wherever safe and possible. Child protection systems must not penalise First Nations parents for poverty, housing instability, family violence victimisation or lack of access to services. Instead there needs to be proper consideration of the structural causes of those circumstances.
- 31. The ALA recommends that governments strengthen early, culturally safe legal assistance and family support for Aboriginal and Torres Strait Islander families, invest in Aboriginal community-controlled family preservation and reunification services, and improve implementation of the Aboriginal and Torres Strait Islander Child Placement Principle. Reform should aim to reduce unnecessary removal, maintain children's connection to family, culture and community, and prevent child protection systems from becoming irrevocably driven into the pathways of the youth justice system.**

Conclusion

1. The effective combatting of racism, hate and violence directed at Aboriginal and Torres Strait Islander people requires practical reforms to the laws, institutions and systems that continue to produce racially unequal outcomes.
2. The ALA urges the Committee to recommend reforms that are evidence-based, legally principled and capable of implementation.
3. Community safety is not advanced by laws and practices that unnecessarily criminalise children, separate families, deepen trauma or entrench distrust in public institutions. It is advanced by prevention, support, accountability, cultural safety, access to justice and genuine partnership with Aboriginal and Torres Strait Islander communities.

4. The ALA would welcome the opportunity to provide further evidence to the Committee or participate in further consultation arising from this inquiry.



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