

# **Submission to Inquiry into racism, hate and violence directed at Aboriginal and Torres Strait Islander people**

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Justice and Equity Centre  
ABN 77 002 773 524  
[www.jec.org.au](http://www.jec.org.au)

Gadigal Country  
Level 5, 175 Liverpool St  
Sydney NSW 2000  
Phone + 61 2 8898 6500  
Email [contact@jec.org.au](mailto:contact@jec.org.au)



# About the Justice and Equity Centre

The Justice and Equity Centre is a leading, independent law and policy centre. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we work with people and communities who are experiencing marginalisation or disadvantage.

The Centre tackles injustice and inequality through:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change to deliver social justice.

We actively collaborate and partner in our work and focus on finding practical solutions. We work across five focus areas:

**Disability rights:** challenging discrimination and making the NDIS fairer to ensure people with disability can participate equally in economic, social, cultural and political life.

**Justice for First Nations people:** challenging the systems that are causing ongoing harm to First Nations people, including through reforming the child protection system, tackling discriminatory policing and supporting truth-telling.

**Homelessness:** reducing homelessness and defending the rights of people experiencing homelessness through the Homeless Persons' Legal Service and StreetCare's lived experience advocacy.

**Civil rights:** defending the rights of people in prisons and detention, including asylum seekers, modernising legal protection against discrimination, raising the age of criminal responsibility to 14, advancing LGBTIQ+ equality and advocating for open and accountable government.

**Energy and water justice:** working for affordable and sustainable energy and water and promoting a just transition to a zero-carbon energy system.

## Contact

Jonathan Hall Spence  
The Justice and Equity Centre  
Level 5, 175 Liverpool St  
Sydney NSW 2000

T: +61 2 8898 6500  
E: [jhallspence@jec.org.au](mailto:jhallspence@jec.org.au)

Website: [www.jec.org.au](http://www.jec.org.au)

The Justice and Equity Centre office is located on the land of the Gadigal of the Eora Nation.

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# Recommendations

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## **Recommendation 1**

*The Commonwealth work with state and territory governments to require agencies with responsibility for government systems disproportionately impacting Aboriginal and Torres Strait Islander people to have explicit commitments to, and processes for, implementing shared decision making in line with the Priority Reforms of the National Agreement on Closing the Gap.*

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## **Recommendation 2**

*The Commonwealth work with state and territory governments to require Australian police forces acknowledge their role in the over-representation of Aboriginal and Torres Strait Islander people in the criminal legal system and embrace a 'paradigm shift' in practice, as recommended for example by the Law Enforcement Conduct Commission in NSW.*

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## **Recommendation 3**

*The Commonwealth Parliament raise the minimum age of criminal responsibility nation-wide to at least 14 years old, without exception.*

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## **Recommendation 4**

*The Commonwealth support state and territory governments to increase investment in early intervention and prevention programs and strategies and diversion programs, to keep children and adults out of the criminal legal system. Aboriginal and Torres Strait Islander-controlled organisations must be at the centre of program design and delivery for Aboriginal and Torres Strait Islander people.*

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## **Recommendation 5**

*The Commonwealth support state and territory governments to increase investment in Aboriginal and Torres Strait Islander community-led transformation of child protection systems. This requires governments to transfer funding, decision-making power and service design and delivery to communities to enable them to develop and maintain programs that are localised, culturally safe and responsive, and focus on prevention, preservation and restoration.*

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## **Recommendation 6**

*Australian governments create and invest in structures that enable independent oversight of government systems disproportionately impacting Aboriginal and Torres Strait Islander people, such as an Independent Child Safety and Wellbeing Commission and a Commissioner for Aboriginal and Torres Strait Islander Children and Young People in NSW.*

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## **Recommendation 7**

*Australian governments invest in truth telling projects, as a means of documenting and reckoning with histories of systemic racism in government systems.*

# 1. Introduction

The Justice and Equity Centre ('JEC') is pleased to provide a submission to the Inquiry of the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs into racism, hate and violence directed at Aboriginal and Torres Strait Islander people.

The JEC's work focuses on challenging systemic barriers to justice and equality. For over 40 years, we have challenged government systems which negatively impact people experiencing marginalization and disadvantage. This has included working with Aboriginal and Torres Strait Islander people and organisations, to challenge policing, prisons, youth justice and child protection systems doing disproportionate harm to First Nations children, families and communities.

Interpersonal racism is horrifying and harmful, and demands a strong government response. However, our submission does not speak to that form of racism. Our submission instead speaks to the racism that sits within government systems which continue to harm Aboriginal and Torres Strait Islander people and resist efforts at change. Systemic racism may be less visible, but is highly damaging and we urge the Committee to make it part of this Inquiry.

## 2. Systemic racism

Systemic racism refers to discrimination and inequity embedded in societal structures, entrenched in a society's institutions, laws, policies, practices and norms, and is as a result of ongoing and historic injustice.<sup>1</sup>

The Australian Human Rights Commission in its recent National Anti-Racism Scoping report, details a similar definition of systemic racism being:

...the way a society or institution's cultural norms, laws, ideologies, policies, and practices result in inequitable treatment and outcomes. Systemic racism involves entire systems, for example, legal, health, criminal justice, and the structures that support these. Institutional and structural racism are forms of systemic racism.<sup>2</sup>

Institutional and structural racism have their own definitions. However, in our submission we refer only to systemic racism, encapsulating both institutional and structural racism.

Compared to direct expressions of racism that are conscious, intentional and explicit, systemic racism is often unconscious to its actors. It appears not on the face of an institution, law or policy but rather in its disproportionate impact on a racialised marginalised group.

In our work in NSW, we see systemic racism against Aboriginal and Torres Strait Islander people manifest in many government systems, but notably in policing, detention and child protection

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<sup>1</sup> Joe Feagin, *Systemic Racism: A Theory of Oppression* (Routledge, 2006). See also Paula A. Braveman, Elaine Arkin, Dwayne Proctor, Tina Kauh, and Nicole Holm, 'Systemic And Structural Racism: Definitions, Examples, Health Damages, And Approaches To Dismantling' (2022) 41(2) *Health Affairs* 171-178.

<sup>2</sup> Australian Human Rights Commission, *National Anti-Racism Framework Scoping Report 2022*, 15 <[https://humanrights.gov.au/data/assets/file/0016/57013/Narf\\_scoping\\_report\\_2022\\_-\\_final\\_word\\_layout\\_1.pdf](https://humanrights.gov.au/data/assets/file/0016/57013/Narf_scoping_report_2022_-_final_word_layout_1.pdf)>.

systems. This is reflected in the long-standing, gross over-representation of Aboriginal and Torres Strait Islander people in these systems and the refusal of these systems to change in line with the priority reforms of the National Agreement on Closing the Gap.

The Priority Reforms of the National Agreement on Closing the Gap are designed to change the ways governments work with Aboriginal and Torres Strait Islander people and communities. Genuine implementation of the Priority Reforms is essential for addressing systemic racism in government systems.

*Priority Reform 1: Formal Partnerships and Shared Decision Making*

There will be formal partnership arrangements to support Closing the Gap in place between Aboriginal and Torres Strait Islander people and governments in place in each state and territory enshrining agreed joint decision-making roles and responsibilities and where Aboriginal and Torres Strait Islander people have chosen their own representatives.

*Priority Reform 2: Building the Community-Controlled Sector*

Increase the amount of government funding for Aboriginal and Torres Strait Islander programs and services going through Aboriginal and Torres Strait Islander community-controlled organisations.

*Priority Reform 3: Transforming Government Organisations*

Decrease in the proportion of Aboriginal and Torres Strait Islander people who have experiences of racism.

*Priority Reform 4: Shared Access to Data and Information at a Regional Level*

Increase the number of regional data projects to support Aboriginal and Torres Strait Islander communities to make decisions about Closing the Gap and their development.

It is our experience in NSW that the government is making little progress implementing these commitments.

***Recommendation 1***

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*The Commonwealth work with state and territory governments to require agencies with responsibility for government systems disproportionately impacting Aboriginal and Torres Strait Islander people to have explicit commitments to, and processes for, implementing shared decision making in line with the Priority Reforms of the National Agreement on Closing the Gap.*

## 3. Examples from NSW

### 3.1 Systemic racism in the criminal legal system

#### 3.1.1 Over-representation as an indicator of systemic racism

Aboriginal and Torres Strait Islander adults comprise approximately 3% and young people 8% of the NSW population<sup>3</sup> but are overrepresented at every stage of the criminal legal system in NSW. The NSW Bureau of Crime Statistics and Research ('BOCSAR') has published data showing:

For adults:<sup>4</sup>

- 22% of adults brought to court by police are Aboriginal, which is 8 times higher than other adults.
- 34% of adults that are refused bail at their first court bail appearance are Aboriginal, which is 15 times higher than other adults.
- 31% of adults who are found guilty are Aboriginal, which is 15 times higher than other adults.
- 53% of adults sentenced to custody are Aboriginal, which is 34 times higher than other adults.

For young people:<sup>5</sup>

- 57% of young people brought to court by police are Aboriginal, which is 16 times higher than other young people.
- 70% of young people that are refused bail at their first court bail appearance are Aboriginal, which is 29 times higher than other young people.
- 53% of young people who are found guilty are Aboriginal, which is 16 times higher than other young people.
- 80% of young people sentenced to custody are Aboriginal, which is 49% higher than other young people.

As at September 2025, **33.3%** of the adult prison population and **59.7%** of the youth detention population in NSW were Aboriginal or Torres Strait Islander.<sup>6</sup> Unlike the overall adult prison population, which remains below pre-pandemic levels, the number of Aboriginal people in prison has surpassed those levels and continues to grow.<sup>7</sup>

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<sup>3</sup> Australian Bureau of Statistics (2021) 'Aboriginal and Torres Strait Islander people' <<https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/aboriginal-and-torres-strait-islander-people-census/2021>>; see also NSW Bureau of Crime Statistics and Research ('BOCSAR'), *Aboriginal over-representation in the NSW Criminal Justice System* <<https://bocsar.nsw.gov.au/topic-areas/aboriginal-over-representation.html>>.

<sup>4</sup> BOCSAR, *Adults – Aboriginal adult over-representation in the justice system* <[https://bocsar.nsw.gov.au/documents/topic-areas/aboriginal-over-representation/Aboriginal\\_Adult\\_Infographic.pdf](https://bocsar.nsw.gov.au/documents/topic-areas/aboriginal-over-representation/Aboriginal_Adult_Infographic.pdf)>.

<sup>5</sup> BOCSAR, *Aboriginal young people – Aboriginal youth over-representation in the justice system* <[https://bocsar.nsw.gov.au/documents/topic-areas/aboriginal-over-representation/Aboriginal\\_Young\\_People\\_Infographic.pdf](https://bocsar.nsw.gov.au/documents/topic-areas/aboriginal-over-representation/Aboriginal_Young_People_Infographic.pdf)>.

<sup>6</sup> BOCSAR, *NSW Closing the Gap Target 10 Quarterly Report* (September 2025) <[https://bocsar.nsw.gov.au/research-evaluations/2026/Closing\\_the\\_Gap\\_Quarterly\\_Sept\\_2025.html](https://bocsar.nsw.gov.au/research-evaluations/2026/Closing_the_Gap_Quarterly_Sept_2025.html)>.

<sup>7</sup> Ibid.

### 3.1.2 Failures to address systemic racism within the policing system

The Law Enforcement Conduct Commission ('LECC') in NSW has emphasised that NSW Police need to do more to reduce the stark overrepresentation of Aboriginal people in contact with the criminal legal system.<sup>8</sup>

The LECC monitors the progress of NSW Police in addressing the over-representation of Aboriginal people in the criminal legal system. This involves monitoring NSW Police's progress under its *Aboriginal Strategic Direction*. NSW Police has described its *Aboriginal Strategic Direction* as 'the overarching document which guides [NSW Police] in its management of Aboriginal issues.'<sup>9</sup>

In October 2023, the LECC released its *NSW Police Force Aboriginal Strategic Direction 2018-2023 Monitoring Report*. The LECC highlighted several areas where NSW Police have failed to meet its targets or address community concerns. The LECC said:

Even with the positive engagement and commitment demonstrated by some Commands, there are certain actions of the NSW Police Force that appear to undermine the goals of the [Aboriginal Strategic Direction]. The Commission has seen examples of continuing Aboriginal over-representation in the use of certain proactive, discretionary policing methods... Some police officers we spoke to also described that they saw an inherent conflict between building community relationships and enforcing the law. This attitude needs to be addressed internally by NSW Police Force.<sup>10</sup>

The LECC made 12 recommendations for improvement, including:<sup>11</sup>

- The NSW Police Force should publish a Closing the Gap delivery plan which states how it will implement the priority reform areas and what actions and pathways it will take to help NSW achieve targets 10 and 11 to reduce over-representation.
- The NSW government should amend its Closing the Gap Implementation Plan to list the NSW Police Force as a responsible agency.

NSW Police rejected these recommendations to act on *Closing the Gap*.<sup>12</sup> NSW Police also refused to review its training and procedures relating to proactive policing and other day-to-day policing actions that involve use of police discretion.<sup>13</sup> The NSW Police Commissioner told the LECC:

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<sup>8</sup> Law Enforcement Conduct Commission ('LECC'), 'Commission urges NSW Police Force to publish a Closing the Gap delivery plan' (Media Release, 23 October 2023).

<sup>9</sup> LECC, *NSW Police Force Aboriginal Strategic Direction 2018-2023 Monitoring Report* (2023) 4.

<sup>10</sup> Ibid 4-5.

<sup>11</sup> Ibid v-vi.

<sup>12</sup> NSW Police Force, 'Response to Aboriginal Strategic Direction Recommendations' <<https://www.lecc.nsw.gov.au/publications/publications/nswpf-and-nsw-government-response-to-asd-recommendations.pdf/@@download/file>> 3-5.

<sup>13</sup> NSW Police Force, 'Response to Aboriginal Strategic Direction Recommendations' <<https://www.lecc.nsw.gov.au/publications/publications/nswpf-and-nsw-government-response-to-asd-recommendations.pdf/@@download/file>> 3-5.

the primary role of the [NSW Police] is law enforcement and suggesting [NSW Police] is responsible for achieving Closing the Gap outcomes 10 and 11 would lead to competing duties.<sup>14</sup>

The LECC said views like these ‘may explain the contrast between the intentions of the [Aboriginal Strategic Direction] and the evidence of Aboriginal over-representation in NSW Police Force policing interactions’.<sup>15</sup> Currently, NSW Police considers operational policing practices and crime prevention as separate to engaging with community and supporting community-led initiatives.<sup>16</sup> The LECC has encouraged NSW Police to ‘take a more holistic view’.<sup>17</sup>

NSW Police has not taken a more holistic view since the LECC’s report. In January 2024, NSW Police released its latest *Aboriginal Strategic Direction*.<sup>18</sup> Despite the LECC’s recommendations, the direction is again focused on partnerships with Aboriginal communities and organisations as separate from its policing practices. It briefly addresses NSW Police’s role in supporting people in custody and victims of crime who are Aboriginal,<sup>19</sup> but is silent on reducing the disproportionate impact of traditional policing, and proactive and discretionary policing on Aboriginal people.

Despite persuasive evidence of over-policing of Aboriginal communities,<sup>20</sup> NSW Police has failed to embrace the ‘paradigm shift’ the LECC has called for. This failure to consider a new way of working exemplifies the business-as-usual approach NSW Police takes to systemic racism within the force. NSW Police has evidence of the way its practices disproportionately impact Aboriginal people but have not acted on calls to change. In this way, NSW Police are perpetuating systemic racism in the criminal legal system.

## **Recommendation 2**

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*The Commonwealth work with state and territory governments to require Australian police forces acknowledge their role in the over-representation of Aboriginal and Torres Strait Islander people in the criminal legal system and embrace a ‘paradigm shift’ in practice, as recommended for example by the Law Enforcement Conduct Commission in NSW.*

### **3.1.3 Addressing systemic racism in prisons and youth justice centres**

Prison and youth justice authorities in NSW are using solitary confinement-like practices disproportionately on Aboriginal and Torres Strait Islander people. International research consistently finds that confining and isolating incarcerated people may damage their mental and physical health. It can be even more harmful to children and young people. Solitary confinement

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<sup>14</sup> LECC, *NSW Police Force Aboriginal Strategic Direction 2018-2023 Monitoring Report* (n 9) 50.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid 51.

<sup>17</sup> Ibid.

<sup>18</sup> NSW Police Force, *Aboriginal Strategic Direction* (2024)

<[https://www.police.nsw.gov.au/\\_data/assets/pdf\\_file/0003/481215/Aboriginal\\_Strategic\\_Direction.pdf](https://www.police.nsw.gov.au/_data/assets/pdf_file/0003/481215/Aboriginal_Strategic_Direction.pdf)>.

<sup>19</sup> Ibid 29.

<sup>20</sup> See, eg, Dominic Furneaux-Bate, ‘Who Is Being Diverted from Court under the NSW Early Drug Diversion Initiative (EDDI)?’ (2026) 272 *Crime and Justice Bulletin* <<https://bocsar.nsw.gov.au/research-evaluations/2026/CJB272-Report-EDDI.html>>; Don Weatherburn and Brendan Thomas, ‘The influence of Indigenous status on the issue of police cautions’ (2023) 56 *Journal of Criminology* 253; LECC, ‘Operation Tepito – Final Report’ (2023) <<https://www.lecc.nsw.gov.au/publications/publications/operation-tepito-final-report.pdf>>.

interferes with child development and can traumatise young people, potentially causing permanent psychological damage which may lead to self-harm, psychosis, and suicide.

As a result of systemic racism within prisons and youth detention centres, First Nations children are disproportionately subject to isolation, even taking into account the disproportionate representation of Aboriginal and Torres Strait Islander children in youth justice centres. In December 2023, Aboriginal children were 61.5% of the population in NSW youth detention centres<sup>21</sup> but 73.9% of the children subject to segregation in 2023/24.<sup>22</sup> In December 2025, Aboriginal children were 56% of the population, but between October 2025 and March 2026 Aboriginal children were 66% of the children subject to segregation.<sup>23</sup>

Aboriginal and Torres Strait Islander adults experience similar treatment. In March 2026, the NSW Inspector of Custodial Services ('ICS') published a report on the use of segregation and other measures which confine and separate incarcerated people. The ICS found that:

- Aboriginal people are heavily overrepresented in segregation data.<sup>24</sup> Segregation is used to protect the personal safety of the incarcerated person or another person.<sup>25</sup> Out of all periods of segregation from 1 July 2023 to 31 December 2023, 51.1% involved an Aboriginal or Torres Strait Islander person. And despite Corrective Services NSW's policy stating that segregation of an Aboriginal person is 'undesirable in the highest degree' (a description derived from a recommendation of the Royal Commission into Aboriginal Deaths in Custody), not one of the directions by prison officers demonstrated that there had been any consideration of alternatives to segregation.<sup>26</sup>
- Aboriginal people were overrepresented in separation.<sup>27</sup> Separation is used to manage groups of young people separately to the general population.<sup>28</sup> Out of all periods of separation from 1 July 2023 to 31 December 2023, 43.9% involved an Aboriginal or Torres Strait Islander person.<sup>29</sup>

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<sup>21</sup> BOSCAR, NSW Closing the Gap Target 11 Quarterly Report (December 2023)

<[https://bocsar.nsw.gov.au/documents/topic-areas/aboriginal-over-representation/target-11-young-people/Closing\\_the\\_Gap\\_Target\\_11\\_-\\_Dec\\_2023.pdf](https://bocsar.nsw.gov.au/documents/topic-areas/aboriginal-over-representation/target-11-young-people/Closing_the_Gap_Target_11_-_Dec_2023.pdf)>.

<sup>22</sup> New South Wales Department of Communities and Justice, *Youth Justice NSW Response to GIPA24/22411 - 24/3207*.

<sup>23</sup> NSW Bureau of Crime Statistics and Research, *Youth Custody Report* (December 2025); Legislative Council - Budget Estimates 2025-2026, *Portfolio Committee No. 8 - Answers to Supplementary Questions* (Dib, received 23 March 2026), 40(b).

<sup>24</sup> Inspector of Custodial Services, 'Review of segregation and other measures which confine and separate prisoners' (2026) <<https://www.parliament.nsw.gov.au/tp/files/193151/Review%20of%20Segregation%20Report%20MAR%202026.pdf>> 5, 23.

<sup>25</sup> *Crimes (Administration of Sentences) Act 1999*, s 10(1).

<sup>26</sup> Inspector of Custodial Services (n 24) 37.

<sup>27</sup> *Ibid* 8, 49.

<sup>28</sup> *Crimes (Administration of Sentences) Act 1999*, s 78A.

<sup>29</sup> *Ibid*, 49.

We have made recommendations to a number of inquiries regarding the concerning use of isolation practices in NSW.<sup>30</sup>

It needs to be emphasised that keeping Aboriginal and Torres Strait Islander people safe from these harmful practices, and addressing their systemic over-representation in places of detention, is best achieved by reducing the number of Aboriginal and Torres Strait Islander people incarcerated in the first place. There are a number of steps the Commonwealth can take to begin working towards this objective. This includes legislation to raise the minimum age of criminal responsibility nation-wide to at least 14 years old, without exception, in reliance on the external affairs power in s 51(xxix) of the Commonwealth Constitution.<sup>31</sup>

### ***Recommendation 3***

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*The Commonwealth Parliament raise the minimum age of criminal responsibility nation-wide to at least 14 years old, without exception.*

### ***Recommendation 4***

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*The Commonwealth support state and territory governments to increase investment in early intervention and prevention programs and strategies and diversion programs, to keep children and adults out of the criminal legal system. Aboriginal and Torres Strait Islander-controlled organisations must be at the centre of program design and delivery for Aboriginal and Torres Strait Islander people.*

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<sup>30</sup> See e.g. JEC, 'Submission to NSW Legislative Council Select Committee Inquiry into Youth Justice' (2026) <<https://jec.org.au/publication/submission-to-nsw-legislative-council-select-committee-inquiry-into-youth-justice/>>; JEC, 'Submission to the Legal and Constitutional Affairs References Committee's Inquiry into Australia's youth justice and incarceration system' (2025) <<https://jec.org.au/publication/submission-to-the-legal-and-constitutional-affairs-references-committees-inquiry-into-australias-youth-justice-and-incarceration-system/>>; JEC, 'Submission to the NSW Department of Communities and Justice Consultation Paper on a legislative framework to regulate restrictive practices' (2025) <<https://jec.org.au/publication/submission-to-the-nsw-department-of-communities-and-justice-consultation-paper-on-a-legislative-framework-to-regulate-restrictive-practices/>>; JEC, 'Submission to the 2024 Senate Inquiry into Australia's youth justice and incarceration system' (2024) <<https://jec.org.au/publication/submission-to-the-2024-senate-inquiry-into-australias-youth-justice-and-incarceration-system/>>; JEC, 'Submission to the Australian Human Rights Commission's investigation into Youth Justice and Child Wellbeing Reform across Australia' (2023) <<https://jec.org.au/publication/submission-to-the-ahrc-investigation-into-youth-justice-and-child-wellbeing-reform-across-australia/>>.

<sup>31</sup> Refer to the JEC's 'Submission to the Legal and Constitutional Affairs References Committee's Inquiry into Australia's youth justice and incarceration system' (2026) <<https://jec.org.au/publication/submission-to-the-legal-and-constitutional-affairs-references-committees-inquiry-into-australias-youth-justice-and-incarceration-system/>>.

## 3.2 Systemic racism in the child protection system

### 3.2.1 Over-representation as an indicator of systemic racism

Aboriginal and Torres Strait Islander children are disproportionately represented at all stages of child protection systems in all states and territories in Australia.<sup>32</sup>

Aboriginal and Torres Strait Islander children are more likely to be brought to the attention of child protection authorities, and once in contact with the system, are more likely than their non-Indigenous peers to escalate through the system to more intensive and intrusive interventions, with rates of over-representation compounding at every stage, from initial report to removal into out-of-home care.<sup>33</sup> Once in out-of-home care ('OOHC'), Aboriginal and Torres Strait Islander children are then more likely to experience negative placement outcomes, including, for example, to spend longer in OOHC, have a higher number of placements, be reported missing from placement, suffer abuse while in OOHC, and have involvement with the criminal legal system.<sup>34</sup> Aboriginal and Torres Strait Islander children in OOHC are also far less likely to be restored to their parents or original carers, with NSW having the lowest rate of reunification nationally, at just 2%.<sup>35</sup>

In 2023-24, Aboriginal children accounted for 41% of children removed into OOHC across Australia, and were almost ten times more likely to be removed into OOHC than their non-Indigenous peers.<sup>36</sup> The national peak for Aboriginal and Torres Strait Islander families, children and communities, SNAICC – National Voice for Our Children, has estimated that, based on current trends, by 2045, the population of Aboriginal and Torres Strait Islander children in OOHC and on third-party parental responsibility orders will grow by 79%, compared to 5% for non-Indigenous children.<sup>37</sup>

As noted in the *Family Matters Report 2025*:<sup>38</sup>

The continuing over-representation ... reflects deeply embedded patterns of systemic bias that are built into the structures, policies and practices of child protection systems. These biases compound across different stages of intervention, and include but are not limited to:

- oversurveillance of and intervention in the lives of Aboriginal and Torres Strait Islander families,
- racially biased reporting of children and families,
- biased decision-making tools perpetuating inequality,
- discriminatory judgments made by child protection decision-making authorities,

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<sup>32</sup> SNAICC – National Voice for our Children, *Family Matters Report 2025* (Report, 2025) 17 (citations omitted).

<sup>33</sup> Ibid (citations omitted).

<sup>34</sup> Ibid 52 (citations omitted).

<sup>35</sup> Ibid 11.

<sup>36</sup> Ibid 52 (citations omitted).

<sup>37</sup> Ibid 70.

<sup>38</sup> Ibid 20 (citations omitted).

- child protection legislation and policy that is heavily reliant on non-Indigenous concepts, including those of family, wellbeing and best interests of the child,
- the misunderstanding and undervaluing of Aboriginal and Torres Strait Islander parenting practices, and
- failure to implement the Aboriginal and Torres Strait Islander Child Placement Principle

The presence of entrenched inequalities and systemic racism of child protection systems across Australia causes immense harm and exacerbates intergenerational trauma by tearing families apart and separating children from protective factors, including culture, Country and kin.

### **3.2.2 Addressing systemic racism through Aboriginal, community-led transformation of the child protection system**

Addressing systemic racism in Australia's child protection systems requires governments to commit to, and invest in, Aboriginal, community-led transformation.

The Priority Reforms of the National Agreement on Closing the Gap, aim to change the way that governments work with Aboriginal and Torres Strait Islander people and communities in working towards the socio-economic targets of the National Agreement on Closing the Gap, including Target 12: *By 2031, reduce the rate of over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45 per cent.*<sup>39</sup>

In the child protection context, investing in Aboriginal, community-led transformation requires governments to transfer funding, decision-making power and service design and delivery to communities to enable them to develop and maintain programs that are localised, culturally safe and responsive, and focus on prevention, preservation and restoration.

Without early intervention and culturally safe supports, the underlying causes of child protection intervention will remain unaddressed. Families will continue to be dragged into the system at alarming and disproportionate rates, over-representation will remain entrenched, and systemic racism will persist.

In 2019, the landmark Family is Culture Review Report made 126 recommendations for systemic transformation of the child protection system in NSW, to address the harms being done to Aboriginal and Torres Strait Islander children, families and communities. More than five years, the failure of the NSW Government to comprehensively implement the recommendations of that report, are well documented.<sup>40</sup>

One of the recommendations of the Family is Culture Report was the creation of a new oversight body for the child protection system. The JEC, alongside AbSec, the Aboriginal Legal Service (NSW/ACT), the UTS Jumbunna Institute for Indigenous Education and Research and others have been calling for NSW to create this body, as well as a Commissioner for Aboriginal and Torres Strait Islander Children and Young People. These are the types of independent bodies

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<sup>39</sup> *National Agreement on Closing the Gap* (Agreement, July 2020) Target 12.

<sup>40</sup> See, eg, the reports and materials collected at AbSec – NSW Child, Family and Community Peak Aboriginal Corporation, 'Family is Culture' (Web Page, 2026) <<https://absec.org.au/family-is-culture/>>.

which can hold governments to account and make recommendations for systemic change, informed by First Nations expertise and leadership.

#### **Recommendation 5**

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*The Commonwealth support state and territory governments to increase investment in Aboriginal and Torres Strait Islander community-led transformation of child protection systems. This requires governments to transfer funding, decision-making power and service design and delivery to communities to enable them to develop and maintain programs that are localised, culturally safe and responsive, and focus on prevention, preservation and restoration.*

#### **Recommendation 6**

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*Australian governments create and invest in structures that enable independent oversight of government systems disproportionately impacting Aboriginal and Torres Strait Islander people, such as an Independent Child Safety and Wellbeing Commission and a Commissioner for Aboriginal and Torres Strait Islander Children and Young People in NSW.*

## **4. Systemic racism in other areas of law and policy**

The Justice and Equity Centre, in partnership with the Indigenous Law Centre, UNSW, has created Towards Truth, a truth-telling website that shows how NSW law and policy has impacted First Nations people in NSW from 1788 through to today.

Many parts of Towards Truth show the systemic racism entrenched in other parts of NSW's legal system, as well as its historical origins. This includes:

- Laws about the [right to vote](#), or to [give evidence](#) in Court.
- The exclusion of First Nations people from [water](#) rights and management.
- The prosecution of First Nations people for [cultural fishing](#), and failure to commence laws about cultural fishing.
- [Housing](#) law and policy that historically excluded First Nations people and continues to fail to meet the housing needs and priorities of Indigenous people.
- Other areas of the criminal legal system, including [consorting](#) laws, [offensive conduct and language](#) laws and [driving offences](#).

Resources like Towards Truth help the public and decision makers understand the histories of systemic racism in government systems.

#### **Recommendation 7**

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*Australian governments invest in truth telling projects, as a means of documenting and reckoning with histories of systemic racism in government systems.*