

NJP POSITION STATEMENT: Discriminatory Policing

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The National Justice Project

The National Justice Project ('NJP') is a not-for-profit human rights legal and civil rights service. Our mission is to fight for justice, fairness and inclusivity by eradicating systemic discrimination. Together with our clients and partners, we work to create systemic change and amplify the voices of communities harmed by government inaction, harm and discrimination.

The NJP creates positive change through strategic legal action, supporting grassroots advocacy, collaborative projects, research and policy work and practice-inspired and catalytic social justice education. Our focus areas include health justice, specifically for persons with disability and First Nations communities; racial justice, challenging misconduct in policing, prisons, judicial and youth services; and seeking justice for refugees and people seeking asylum. We receive no government funding and intentionally remain independent in order to do our work. We therefore rely on grassroots community, philanthropic and business support.

Acknowledgement of First Nations Peoples' Custodianship

The National Justice Project pays its respects to First Nations Elders, past and present, and extends that respect to all First Nations Peoples across the country. We acknowledge the diversity of First Nations cultures and communities and recognise First Nations Peoples as the traditional and ongoing custodians of the lands and waters on which we work and live.

We acknowledge and celebrate the unique lore, knowledges, cultures, histories, perspectives and languages that Australia's First Nations Peoples hold. The National Justice Project recognises that throughout history the Australian health and legal systems have been used as an instrument of oppression against First Nations Peoples. The National Justice Project seeks to strengthen and promote dialogue between the Australian legal system and First Nations laws, governance structures and protocols. We are committed to achieving social justice and to bring change to systemic problems of abuse and discrimination.



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EXECUTIVE SUMMARY

National Justice Project position on Discriminatory Policing¹

The National Justice Project ('NJP') believes that everyone has the right to be free from discrimination, the right to liberty and security, and the right to equal protection under the law. We believe that no one should be treated differently by law enforcement because of their race, gender, sexual orientation or gender identity, religion or belief, political or other opinion, ethnicity, national or social origin, disability, or other status.

We recognise that in Australia, certain community members are particularly vulnerable to discriminatory policing, including First Nations Peoples, people from culturally and linguistically diverse backgrounds, LGBTQIA+ people, people experiencing socioeconomic disadvantage, people living with disability and people experiencing mental ill-health. The harmful impacts of discriminatory policing are often compounded by the multiple levels of racism and discrimination that people from diverse minority communities encounter when accessing and engaging with a wide range of public services, including the courts, health care, family and children services, legal services, housing, employment and education.

Discrimination is an endemic problem in Australia and these attitudes permeate throughout police forces, with harmful and at times fatal consequences. Police have a positive obligation to combat racism and discrimination and protect and promote human rights. Despite these obligations, the culture within Australian police forces contributes to prejudicial police practices, such as biased profiling, aggressive over-policing, intimidation, harassment, abuses of power and excessive force, against people from diverse minority communities. These practices favour punitive measures over service to, and the protection of, the public.

Contact with police, particularly at a young age, perpetuates a cycle of disadvantage and ongoing contact with police and the criminal justice system. Across all Australian States and Territories, oppressive and overreaching legislation empowers police forces with unlimited authority, broad discretionary powers, secrecy and lack of accountability. As a result, police under the sanction of the state are empowered to act with impunity for the neglect, brutality and suffering they inflict.

The NJP denounces the lack of commitment by successive Federal, State and Territory governments to acknowledge, assess and address the systemic racism that pervades Australian police forces. Despite several attempts to reform police policy and practice, racist and discriminatory police practices remain unyielding. Reforms that limit police powers, promote transparency and accountability and prioritise community-based responses, with a focus on prevention, diversion and support are urgently needed.

¹ The NJP Position Statement on Discriminatory Policing is part of a series of position statements. Please also see: NJP Position Statement on Health Justice; NJP Position Statement on First Nations Overincarceration and Deaths in Custody; and NJP Position Statement on Immigration Detention.

National Justice Project approach to Discriminatory Policing

The NJP's [Health Justice](#), [Racial Justice](#) and [Just Systems](#) programmes challenge systemic discrimination by defending and extending the rights of people from diverse minority communities who have experienced racism and discrimination in healthcare systems, immigration detention, prisons and juvenile detention, and policing.

The NJP supports clients in their pursuit of justice through legal processes including litigation, conciliation and complaints. We also pursue justice through education programmes, advocacy and collaborative projects. We contribute to public debate, awareness and make powerful [submissions](#) to public inquiries to draw the attention of decision-makers to the systemic injustices affecting disadvantaged communities and to pressure governments to implement the recommendations of coronial inquests and parliamentary inquiries through petitions and open letters. We support our clients to tell their stories, helping to educate and raise awareness in the wider community and to inspire others to fight for justice.

Our [Copwatch](#) programme promotes police accountability, provides critical community rights education and exposes and challenges systemic issues in policing, in particular police violence and overreach. Our Tech4Justice programme is in development and aims to create technological solutions to enable users to make complaints, navigate the complex complaint pathways and access support, as well as gathering evidence to inform advocacy strategies driven by communities affected by discrimination to drive systemic change.

We collaborate with stakeholders to amplify our collective impact. Together with the [Jumbunna Institute for Education and Research](#), we have developed [Call it Out](#), an online register to record instances of personal or systemic racism towards First Nations people and promote anti-racist policy and practices.

We work with a range of community organisations to address individual, institutional and systemic racism in the health, justice and social service systems. We are an active member of the [Partnership for Justice in Health](#); we work closely with the [Queensland University of Technology Indigenist Health Humanities](#) project; we have developed an [Aboriginal Patient Advocacy Training](#) programme with the [Aboriginal Health Council of Western Australia](#) (ACHWA) and the [Health Consumers' Council of WA](#) (HCCWA); and we work closely with [Deadly Connections](#) to deliver the [Bugmy Justice Project](#).

In partnership with [Larissa Behrendt AO](#), we have created a number of digital roundtables with a range of expert panellists on the topic of Health Justice for First Nations people, including: [Fighting for the Rights of First Nations People with Disabilities in the Justice System](#); [Spotlight on the NSW report into First Nations deaths in custody](#); and [Exploring health justice beyond the courtroom](#).

Working with a range of stakeholders from the legal, community and advocacy sectors, and with support from our partners, donors and sponsors, we delivered our inaugural [Law Hack 2021: Disability Justice](#) in a unique event where participants worked in teams to solve some of the most challenging problems and injustices facing people living with disability, including in relation to policing. A panel of judges selected a new emergency services branch to support people with disability (and others requiring specialist support) and divert them from police and the criminal justice system as the winning pitch.

Many of our clients have been directly impacted by injustice, often as a result of discriminatory police practices. We represent individuals and families of loved ones who have been harmed or have died because of poor or discriminatory attitudes of police and corrections officers. We also facilitate legal action and complaints against government, health and custodial institutions that have failed in their duty to eradicate systemic bias and to ensure disadvantaged communities receive substantive equality before the law. We are motivated and informed by the strength and experiences of our clients and their communities, and it is from this perspective that we present the NJP's Position Statement on Discriminatory Policing.

PRIORITIES & RECOMMENDATIONS

Overarching recommendations

1. Police should not be empowered to act without restraint or accountability as this power is frequently exercised discriminatorily. Legislation must recognise and address the broader impacts of discrimination of all forms and hold governments, law enforcement and the criminal justice system to account for the systemic discrimination perpetuated by their harmful policies and practices.
2. Eradicate racist and discriminatory policing and enforce police accountability by ending the practice of police investigating police and by legislating for independent investigations of deaths in police custody. All cases of police use of lethal force should be thoroughly, independently, impartially, transparently and promptly investigated, and those found responsible should be brought to justice.
3. Regulate the weaponisation of police forces and mandate the use of force and firearms as a last resort, including strict accountability for failing to comply.
4. Alternative emergency response that prioritises de-escalation, compassion and safety must be made available for people experiencing domestic and family violence, people living with disability and people experiencing mental ill-health.
5. Children deserve special protection and do not belong in prisons. Nationally, the minimum age of criminal responsibility should be raised from 10 years (an age that disproportionately impacts First Nations children) to at least 14 years for all offences, consistent with medical and scientific evidence pertaining to child and adolescent neurodevelopment and in line with international standards.¹
6. Enhanced complaint and redress mechanisms, ensuring these are person-centred, trauma-informed and better attend to the intersectional nature of discrimination.
7. Build and maintain nationally consistent data on police practices, including measurements of discriminatory policing, with the results published annually and utilised to implement evidence-based reforms.

Discriminatory policing

8. Governments have a responsibility to assess, acknowledge and address the systemic racism within police forces across all Australian States and Territories. Significant reforms are urgently needed to

eliminate discriminatory police practices, including the over-policing, harassment and criminalisation of First Nations Peoples, people from culturally and linguistically diverse backgrounds, LGBTQIA+ people, people living with disability, people experiencing mental ill-health and people experiencing socioeconomic disadvantage.

9. Amend the statutory provisions to stop over-policing, police harassment and arrests for offensive language, public intoxication, fine defaults and restrict the over-policing of minor offences causing unnecessary criminalisation.
10. Adequate funding and supports for community legal services and community-controlled support and advocacy organisations.
11. Ongoing police training on unconscious bias and cultural competency for all groups that experience police discrimination.

Transparency accountability and oversight

12. Law and policy reform to increase scrutiny and accountability for police misconduct. For example, police should be required to activate body-worn cameras at all times; and bodycam and CCTV footage should be retained and made available to individuals who make a complaint against police and corrections officers.
13. Nationally consistent reforms are urgently needed to remove discretionary powers for police in determining which offences are suitable for diversion. For example, introducing requirements for police to complete a 'Failure to Divert Declaration', detailing the precise grounds for failing to recommend diversion for review and approval by a Magistrate, would remove police discretion as to which offences are suitable for diversion.²
14. Establish an independent statutory body to provide truly independent oversight of police conduct and custodial environments.³
15. Expand the scope of the coronial jurisdiction to require that coroners consider and comment on broad systemic factors, including discrimination and bias by police forces with a view to prioritising the protection of lives and the prevention of death and injury, and for these to be applied consistently across all Australian States and Territories. Representation from affected communities must be sought throughout this process.
16. Expand the scope of the coronial jurisdiction to require coroners to investigate the conduct of police officers, to make appropriate recommendations and to refer for prosecution or discipline where their acts or omissions may have in any way contributed to the death of a First Nations person. Representation from affected communities must be sought, respected and prioritised at all times throughout this process.

Alternatives to police as first responders

17. Police need robust training to improve their response to domestic and family violence incidents in order to avoid escalation, re-traumatisation, criminalisation and harm of survivors. Police should be

accompanied by, and be led by, professionals capable of prioritising the protection and support of violence-survivors.

18. Alternative emergency response teams must be established in all States and Territories to replace police in responding to incidents involving people living with disability and people experiencing mental ill-health to avoid unnecessary escalation, re-traumatisation, criminalisation and harm including death. Appropriately trained first responder teams will ensure that compassion, safety and referrals to relevant health and social supports are prioritised for recovery-oriented, trauma-informed support and treatment.

Discriminatory policing of First Nations Peoples and communities

19. Increased funding and supports to expand and encourage diversion and justice reinvestment programmes that promote culturally safe and trauma-informed rehabilitation and healing.
20. Structured reforms to divert First Nations women from the criminal justice system by addressing the way police and the courts identify and respond to domestic and family violence, including increased funding for Aboriginal community-controlled organisations.
21. First Nations-led anti-racism and cultural competency education and training should be resourced and embedded,⁴ updated regularly and delivered on an ongoing basis to all agents of government, including but not limited to police, the courts, investigators, State/Territory corruption and complaints bodies, coroner's courts, teachers, social workers, health care providers and lawyers.
22. More ambitious government commitments, community-defined measurable targets and accountability measures to measure and respond to institutional discrimination in policing.
23. Urgently implement the recommendations from the Royal Commission into Aboriginal Deaths in Custody ('**Royal Commission**')⁵ and all relevant subsequent reports and inquiries into policing of First Nations communities,⁶ together with corresponding law and policy reforms, to strengthen the legislative framework for the right to self-determination of First Nations Peoples.

THE JUSTIFICATION

Legislative, policy and service issues

Discriminatory policing

In Australia, police are empowered by oppressive and overreaching legislation to act without restraint or accountability. This power is frequently exercised discriminatorily on the basis of race, legal status, culture, ethnicity, religion, gender, disability, mental ill-health, socio-economic status, geography and/or sexuality. Where one or more identities intersect, people are at greater risk of criminalisation, over-policing and misconduct by police due to the multiple levels of discrimination they encounter.

In Australia, First Nations Peoples, people from culturally and linguistically diverse backgrounds, members of the LGBTQIA+ community, people experiencing economic and/or social disadvantage, people living with disability and people experiencing mental ill-health frequently face harassment, arbitrary detention and abusive treatment at the hands of police, often due to discrimination.

Discriminatory policing occurs when police forces are empowered by harsh laws, broad discretion and impunity. At the United Kingdom (UK) Parliament's Macpherson Inquiry into the death of Stephen Lawrence, Dr Robin Oakley noted that a lack of exposure to people from diverse cultural and linguistic backgrounds can lead to negative differential treatment by police, particularly where any degree of discretion is afforded to police in the execution of their duties.⁷ This treatment may be subconscious or unintentional⁸ and can come from officers whose professional track record is otherwise exemplary.⁹

Police have a positive obligation to combat racism and discrimination and protect and promote human rights. Police culture influences how individual police officers engage with the public and reinforces negative and stereotypical attitudes that contribute to prejudicial police practices.¹⁰ These prejudices engender discriminatory police practices that favour punitive measures over service to, and the safety of, the public. The European Commission on Racism and Intolerance, in its *General Policy Recommendation No. 11 on Combating Racism and Racial Discrimination in Policing*, has affirmed that racial profiling by police constitutes a specific form of racial discrimination and must be explicitly prohibited by law.¹¹ The European Court of Human Rights has found that the perceived 'criminality' by police of persons belonging to a particular community and the ensuing practice of racial profiling can result in institutional racism.¹²

Police have a duty to enforce the law and to protect the public. However, an entrenched culture of loyalty within police forces functions to further the interests of police in preserving the reputations of individual police officers and departments above the interests of the communities to which they have a duty to serve and protect.¹³

Profiling and biased policing

Profiling and biased policing occurs both at street-level decision-making and the use of predictive tools and data misuses.¹⁴ Profiling tools and biased policing perpetuates and compounds a multitude of racialised, gendered and class-based injustices. Profiling harms the individuals and communities profiled, as well as society as a whole; as trust in police declines, community safety overall suffers.

For example, during the 2021 COVID lock-down, police were found to have issued fines and court attendance notices for breaches of stay-at-home orders in a manner that disproportionately impacted First Nations¹⁵ and culturally and linguistically diverse communities,¹⁶ and often people with intersecting vulnerabilities such as disability, mental ill-health, homelessness, socioeconomic disadvantage and domestic and family violence.¹⁷

Feelings of mistrust towards law enforcement can undermine the capacity of police to support victims of crime belonging to diverse minority communities.¹⁸ Profiling can also lead to an increase in harms and preventable deaths, particularly where profiling leads to persons being detained in high-risk environments, such as in police and prison custody.

Trust in the police by all sections of society enhances safety for all. High levels of confidence and trust in law enforcement and the criminal justice system is essential for police to effectively manage crime and secure cooperation from the communities they serve.

The justified expectation of differential treatment and fear of criminalisation and violence is a determining factor for diverse minority community reluctance to interact with and report crimes to police. As a result, communities that lack confidence in law enforcement experience compounded disadvantage as they are far less likely to report crimes perpetrated against them and to participate in criminal investigations.¹⁹ This lack of engagement with and inherent mistrust in police places members of diverse minority communities in a particularly vulnerable situation as they are effectively denied access to the very services that are intended to protect their rights and personal safety.

The weaponisation of police forces

Under both Australian and international law, lethal force should only ever be used by police as a last resort – when such force is strictly necessary to protect themselves or others from the imminent threat of death or serious injury, and only when other options for de-escalation are lacking or grossly inadequate. However, this level of restraint is practiced discriminatorily and has a disproportionately negative impact on diverse minority communities, particularly First Nations people, people living with disability and people experiencing mental ill-health.¹¹

Recently, there has been a growing movement to further weaponise Australian police forces with military-style rifles and crowd control equipment munitions – despite historically low homicide rates²⁰ and declining rates of overall crime.²¹ The weaponisation of the police force, coupled with the inherent lack of accountability, transparency and oversight for police misconduct and excessive force fosters an environment where police under the sanction of the state operate with impunity for the violence and suffering they inflict.

In 2019-20, there were 24 deaths in police custody or custody-related operations. Of these, 16 were attributable to police shootings²² – the highest number of shooting deaths since record keeping began in 1989-90.^{11,23} In the ten-year period between 2010-21, 22 police officers died, with just five of these by armed offenders. By comparison, there were 69 civilian deaths from police shootings over the same period.²⁴

The increasing weaponisation of police officers in Australia is also disproportionate to the rate of individual gun ownership in the civilian population.²⁵ While policing can be a challenging occupation, weaponising police with firearms does not correlate to reduced crime and increased police and civilian safety. In the United Kingdom, a country where more than 90 per cent of police do not carry a firearm, less than one out of 120,000 police officers are killed in the line of duty each year on average.²⁶

¹¹ See case study examples: [Tamica Mullaley WA](#); [Joyce Clarke WA](#); [Kumanjayi Walker NT](#); [Tarniesha Widders and Lili Bayles NSW](#); [Ms Wynne WA](#); [Ms Rebecca Maher NSW](#).

¹¹ NSW and Queensland had the most police shootings with five each, followed by Victoria and Western Australia with two each.

Police under sanction of the state, operate with impunity for the violence and suffering they inflict. The weaponisation of police forces that are not equipped to accommodate for difference or respond appropriately to the needs and vulnerabilities of people from diverse minority communities is disproportionate and places the most vulnerable members of our society at unacceptable risk of harms and death.

The impacts of discriminatory policing

Contact with police, particularly at a young age, can perpetuate a cycle of disadvantage and life-long contact with police and the criminal justice system. Over the past twenty years, recommendations have been made time and time again for improved education and training for police from numerous inquiries across Australia. Despite these calls, there has been little to no meaningful action by governments to mandate these recommendations.²⁷

The role of police is crucial to addressing the criminalisation and over-incarceration of members of diverse minority communities. As the 1989 Fitzgerald Inquiry Report highlighted:^{iv}

*Subsequent stages in the criminal justice process, including courts and prisons, are largely dependent on the activities of the Police Force, and will inevitably be affected by its deficiencies, especially any which are cultural and therefore widespread.*²⁸

Despite this fact, across all Australian States and Territories, law and policy continue to empower police forces with unlimited authority, broad discretionary powers, secrecy and lack of accountability. Such practices destroy lives and violate the right to be free from discrimination,²⁹ the right to liberty and security³⁰ and the right to equal protection under the law.³¹ They can also result persons being deprived of the right to life³² and may amount to torture or to cruel, inhuman or degrading treatment or punishment.³³ Discriminatory policing can also lead to an infringement of the right to the highest attainable standard of health care³⁴ and the right to effective remedy.³⁵

Consequently, the rhetoric of justice, including concepts such as 'equality before the law', does not operate as an adequate safeguard for the equal treatment of minority and otherwise marginalised groups. Rather, it serves to create barriers to fair and equal access to justice and to compound a multitude of racialised, gendered and class-based injustices.

Despite individual protections, racism and other forms of discrimination are built into our law enforcement and criminal justice systems; from racial profiling and discriminatory police checks to the selective enforcement of drug policies and broad application of anti-terror laws. As a result, the relationship between police forces and diverse minority groups are often founded on distrust and an expectation of discrimination, neglect, abuse and violence.³⁶

^{iv} In May 1987 Acting Queensland Premier Bill Gunn ordered a commission of inquiry after the media reported possible police corruption involving illegal gambling and prostitution. Tony Fitzgerald QC was appointed to lead the 'Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct', known as the Fitzgerald Inquiry. The 630-page Fitzgerald report was tabled in Parliament in July 1989. It made over 100 recommendations covering the establishment of the Electoral and Administrative Review Commission and the Criminal Justice Commission and reform of the Queensland Police Force.

The discriminatory policing of First Nations people and communities

First Nations peoples' experience of policing and the criminal justice system is that it's fundamentally structured against their interests. Across all Australian States and Territories, discriminatory policing continues to disproportionately impact First Nations people and communities due to systemic racism and bias in the interpretation, application and enforcement of oppressive and overreaching legislation.³⁷ The evidence of a prejudiced system is demonstrated in the disturbing reality that Australia's First Nations Peoples are the most incarcerated people on the planet.³⁸

The criminalisation and over-policing of First Nations people occurs against a backdrop of over-incarceration, dispossession, intergenerational trauma, and continued oppressive systemic discrimination. Australia's public systems, including law enforcement, were created and operated as an instrument of colonial control against First Nations people and have resulted in extreme poverty, disadvantage and over-representation in the criminal justice system. The racism and discrimination that First Nations people endure at the hands of police today follows a colonial legacy of state sanctioned violence and brutal policies and practices enforced by police – including dispossession, the forced removal of children, forced servitude, massacres and segregation. These policies and practices formed the racial prejudices and stereotypes that currently operate across our law enforcement, justice, health, political, economic and social systems.

The relationship between police forces and First Nations communities continues to be hampered by an expectation of being simultaneously over-policed and under-protected.³⁹ This method of policing divides communities into 'those to be protected, and those seen as a threat' and is a boundary that is predominantly demarcated by race.⁴⁰

Most First Nations people have never been incarcerated; however, First Nations people have disproportionately higher rates of contact with police and the criminal justice system, as both offenders and victims, than the general population.⁴¹ As at 2020-2021, First Nations people are more than six times as likely to die in police custody and 10 times as likely to die in prison custody than the general population.⁴²

Contact with police, particularly at a young age, perpetuates a cycle of disadvantage and ongoing contact with police and the criminal justice system. The Royal Commission identified the over-policing of First Nations communities as a primary reason for the criminalisation and over-incarceration of First Nations people and the unacceptably high rates of First Nations deaths in police and prison custody.⁴³ More than 30 years later, there have been at least 495 First Nations deaths in custody⁴⁴ and the number of First Nations people in prisons has more than doubled.⁴⁵ During this period, the recommendations that were made by the Royal Commission to address over-policing,⁴⁶ increase diversion⁴⁷ and improve police-community relations⁴⁸ have largely not been implemented.

The poor relationship between First Nations communities and police continues to be exacerbated by the by the targeted (and legalised) abuse and violence by police under the guise of so-called 'tough on crime' approaches to bail and parole conditions and the broadening of discretionary powers for 'stop and search' and 'public order' policing.⁴⁹

^v See case study examples: [Donovan Family SA](#); [Smith Family NSW](#); [Mullaley Family WA](#).

Data provided by the Redfern Legal Centre ('RLC'; 2020) for the period between 2018-2020, revealed First Nations people were disproportionately targeted for strip searches by New South Wales (NSW) police, accounting for 11 per cent of all strip searches⁵⁰ while comprising just 3.4 per cent of the State's population.⁵¹ The data also showed that children aged 11-17 years are increasingly being targeted, accounting for 21 per cent of their cohort in 2019-20, compared with 13 per cent in 2018-19.^{vi,52} Of the total 9,116 strip searches reported in NSW, an 'item' was found in just 39 per cent of cases,⁵³ indicating that police are not meeting the legislative thresholds required prior to conducting a search.⁵⁴

An internal report by the Ombudsman Western Australia (2017) found that Aboriginal drivers received 3.2 times more fines from police traffic stops than non-Aboriginal drivers, but fewer penalties when tickets were issued by traffic cameras.⁵⁵ Similarly, in the five-year period between 2013-2017, NSW police were found to have pursued 83 per cent of all First Nations people found with a non-indictable quantity of cannabis through the courts, compared with just 52 per cent for the non-Indigenous population.⁵⁶

A review of the 2011 amendments to the *Summary Offences Act 1988* (NSW) has also revealed that in 2011-2012, almost a third (150/484) of all fines or charges for section 9 offences^{vii,57} were issued to First Nations people. Of the 150 fines or charges issued to First Nations people:

- 123 (or 82 per cent) were issued to males and 27 (18 per cent) were issued to females;
- 108 (or 72 per cent) were issued in regional areas and 42 (or 28 per cent) were issued in Sydney;
- 34 were issued to people recognised as living with, or previously living with, mental illness;
- 17 were issued to people who were homeless, or had experienced homelessness in the previous three years;
- nine were issued to children or young people; and
- two were issued to people whose police records indicated evidence of a cognitive disability.⁵⁸

Importantly, the report found that First Nations people were no more likely to comply or not comply with a section 198 direction than the general population but that they were significantly more likely to be issued with a section 198 direction to move on.⁵⁹

Although Queensland is the only remaining jurisdiction to repeal its public intoxication laws, police forces in all States and Territories continue to have the power to arrest and detain people who 'appear intoxicated'. For example, NSW repealed the *Intoxicated Persons Act 1979* (NSW) in 2005. However, the content within the Act was transferred to part 16 of the *Law Enforcement (Powers and Responsibilities) Act*

^{vi} The highest number of strip searches conducted were in the regional suburbs of Dubbo (66), Taree (43), Moree (32) and Wellington (26). In Sydney, Surry Hills alone recorded 37 searches.

^{vii} Section 9(1) of the Summary Offences Act 1988 makes it an offence for a person who has been given a 'move on direction' under section 198 of LEPR to be 'intoxicated and disorderly in the same or another public place' for up to six hours after being given such a direction. Section 198 gives police the power to issue 'a direction to an intoxicated person who is in a public place to leave the place and not return for a specified period'. The maximum fine for committing an offence under section 9(1) of the Summary Offences Act, at \$1650, is substantially higher than the maximum fine of \$220 for the offence under section 199 of LEPR. The advice in the NSW Police Force Handbook about dealing with intoxicated people in public places notes the provisions relating to the new section 9 offence and section 199 of LEPR but has no advice about which provision should be used in circumstances where either offence may be applicable.

2002 (NSW) ('LEPRA'), which allows police to arrest a person who appears intoxicated if their behaviour is considered disorderly, likely to cause injury to themselves or others and/or likely to cause damage to property.⁶⁰ The legislation lacks clear definitions and criteria for establishing if an arrest is lawful and affords broad discretionary powers to police who do not have the requisite skillset and training to make complex legal⁶¹ and medical⁶² determinations. As a result, First Nations people and people with disability and mental ill-health are particularly vulnerable to negative differential treatment by police under the legislation.

The criminalisation of First Nations women experiencing domestic, family and sexual violence

The criminalisation of First Nations women is deeply entwined with experiences of domestic, family, sexual and other forms of violence against women.⁶³ The intersection of race and gender is a key determinant for the distrust between the police and many First Nations women, where the under-policing of domestic, family and sexual violence ('DFS') offenses is coupled with the over-policing of public order offences.⁶⁴

All too often, the failures of police to provide assistance to First Nations women seeking assistance in relation to DFSV causes irreparable harm. First Nations women who seek assistance from police often find themselves misidentified as the perpetrator or imprisoned for unpaid fines and other minor infractions.⁶⁵ The criminalisation, arrest and imprisonment of First Nations women experiencing DFSV destroys lives and has devastating long-term impacts on entire families and communities – including children who are consequently removed and placed in out-of-home care ultimately find themselves pipelined into a cycle of poverty, homelessness and prison.⁶⁶

First Nations women comprise only 2 per cent of the adult female population nationally, while accounting for 39 per cent of the female prison population.⁶⁷ Up to 90 per cent of all women in Australian prisons have experienced DFSV.⁶⁸ An accurate figure for First Nations women is harder to determine due to high rates under-reporting resulting from the grossly inadequate police responses to First Nations victims of DFSV.⁶⁹

First Nations women face significant obstacles in accessing justice and investigations into their experiences are repeatedly overlooked, underfunded and under-reported in media. Instead, First Nations women are 'far more likely than other women to spend time in over-policed environments and to be on the wrong side of police discretion'.⁷⁰ When reporting DFSV, First Nations women are often exposed to further neglect, abuse and violence at the hands of police and risk having their children removed — a consequence that disproportionately impacts First Nations women.⁷¹

The violence First Nations women experience often results in impunity for perpetrators while failing to provide women and their families access to remedy or reparation for the harms they experience. These systemic failures deny women, and their families and communities, a sense of justice⁷² and are compounded either by the silencing of Black women's voices or through representations in the media that dehumanise them and portray them as complicit in their own deaths.⁷³ On 25 November 2021, the Australian Senate voted to hold an inquiry into police investigations of the deaths and missing person reports of First Nations women and children following calls from WA Greens Senator and Yamatji-Noongar woman Dorinda Cox and Victorian Greens Senator and Gunnai-Gunditjmara woman Lidia Thorpe.⁷⁴

The criminalisation of First Nations children and young people

Systemic racism, including racial profiling and other discriminatory police practices directly contributes to the criminalisation and over-incarceration of First Nations children and young people.⁷⁵ First Nations children and young people are imprisoned at 22 times the rate of their non-Indigenous counterparts.⁷⁶ Despite comprising 6 per cent of the total population of children aged 10-17 years, First Nations children account for 54 per cent of all children in youth prisons.⁷⁷

Compared with non-Indigenous children, First Nations children and young people also face higher rates of violence and abuse by police officers and prison staff^{viii,78} and are more likely to be targeted by police and subjected to racially biased over-surveillance, monitoring⁷⁹ and strip searches.⁸⁰ First Nations children and young people are also more likely to be charged, refused bail, convicted and sentenced⁸¹ and are 187 per cent more likely to reappear in court.⁸² Although actual criminal offending by children is predominantly non-violent,⁸³ a snapshot of children in youth prisons has revealed that, at any one time, over 50 per cent are on remand without having been convicted or sentenced.⁸⁴

For example, the Police Suspect Target Management Plan ('STMP') was introduced in NSW to gather intelligence as a pre-emptive policing measure. In 2020, a Law Enforcement Conduct Commission ('LECC') investigation found that, in practice, the STMP disproportionately targeted First Nations children and young people^{ix,85} in areas with higher socio-economic disadvantage⁸⁶ and used 'overt and intrusive policing tactics'⁸⁷ to place children as young as nine years of age on a STMP without ever being charged with an offence.⁸⁸ The investigation ultimately found that the STMP was not fit for purpose⁸⁹ stating that its risk assessment tool had not been modified to account for 'the unique circumstances and vulnerabilities of children and young people' and that it breached the diversionary requirements under the *Young Offenders Act 1997* (NSW).⁹⁰

First Nations children and young people, particularly those living with disability and/or experiencing mental ill-health have substantially higher rates of contact with police than their non-indigenous counterparts.⁹¹ The 2016-17 Royal Commission into the Protection and Detention of Children in the Northern Territory ('**NT Royal Commission**') reported that in 2015–16 just 35 per cent of the 2,082 children and young people apprehended by police were diverted from the criminal justice system, despite Northern Territory Police data showing that the vast majority of children who are diverted do not reoffend.⁹² In their report, the NT Royal Commission strongly recommended drastic improvements to diversion rates for young people to rates similar to that in New Zealand, where 80 per cent of youth are diverted.⁹³ However, between 2019-20 and 2020-21, while all other States and Territories reported a decrease in detention rates for First Nations young people, the rate in the Northern Territory increased by 21.7 per cent, from 118.7 to 144.5.⁹⁴

^{viii} In 2021, ninety kids talked to the Commission for Children and Young People about their first contact with police and the youth justice system: 72% were under 14 at the time of first contact and 42% mentioned having negative experiences in their first contact with police; 58 talked about physical and emotional mistreatment by police, including violence and sexually abusive behaviour.

^{ix} First Nations children accounted for an estimated 72 per cent of the total cohort (or 307/429), however, this figure is contested by the NSW Police Force who estimates the rate to be at 42 per cent.

This rise follows tough amendments to youth bail laws that were introduced with retrospective effect in 2019.⁹⁵

The use of bicycle helmet laws by police to stop and search cyclists has also been found to disproportionately impact First Nations children, particularly children with disability.⁹⁶ Such fines have considerable negative impacts on children and young people because they are less likely to have the financial capacity to pay the fines, and often have less capacity to understand and appreciate the consequences of not paying their fines. The targeted over-policing of First Nations children for helmet and other minor fractions has lasting and devastating consequences for children, and their families, and can lead to children having ongoing contact with police and the criminal justice system. For example, the Australian Law Reform Commission (2017) reported that after police fined an Aboriginal boy on his way to and from school every day for not wearing a bicycle helmet, the boy was left paralysed by fine debt and ended up in prison as a young adult.⁹⁷

The damaging patterns of racism and discrimination in police interactions with First Nations communities have not improved despite constant reports and promises. Instead, incarceration rates of First Nations people, particularly women and children, are escalating sharply, including for female victims of DFSV who continue to be criminalised and overpoliced rather than protected.

The discriminatory policing of culturally and linguistically diverse people and communities

People from culturally and linguistically diverse backgrounds are particularly vulnerable to over-policing due to negative stereotyping and discrimination by police. Policing practices that are, or appear to be, motivated by racial bias leads to greater community distrust of police. Low levels of trust towards police and lack confidence that police will act in a culturally safe, unbiased and impartial manner, diminishes police legitimacy and prevents police officers from effectively protecting and serving the communities they police.⁹⁸

Police have an important role to play in building community relationships and police legitimacy relies on police proactively engaging in building trust and confidence with diverse minority communities. Following the September 11, 2001 terrorist attacks in the United States, the increasingly draconian counter-terrorism laws and policing strategies deployed in culturally and linguistically diverse communities have further deteriorated police-community relations and perceptions of police legitimacy in those communities.⁹⁹ Consequently, many people from culturally and linguistically diverse backgrounds have an expectation of being 'over-policed and under-protected'¹⁰⁰ and as a result purposefully avoiding contact with police altogether, including where police services are needed.

Feelings of mistrust and apprehension towards police are often heightened for people from culturally and linguistically diverse backgrounds who have immigrated to Australia. People who have immigrated to Australia from vastly different political and legal systems can be anxious or fearful about police contact because of past encounters with law enforcement in their country of origin. These fears and anxieties are often compounded for those from a refugee background following encounters with Australian Border Force officers during the asylum-seeking process.¹⁰¹

Police disproportionately stop and search people based on their racial, ethnic, or religious appearance, and research shows that ethnic profiling has profound and long-term impacts on a person's sense of safety and belonging. Evidence points to the unequal treatment of culturally and linguistically diverse individuals by Australian law enforcement authorities. Media reporting of crime also perpetuates negative stereotypes, resulting in an overestimation of migrant and refugee criminality.¹⁰² This can be seen in the targeted and discriminatory racial profiling by police of African and Middle Eastern youth in Flemington and North Melbourne, Victoria, who were found to be 2.5 times more likely to be subject to a 'field contact' (a stop where no crime is discovered).¹⁰³

Culturally and linguistically diverse people living with disability are at greater risk of encountering police, particularly in diversely populated areas with greater socioeconomic disadvantage. Negative attitudes and a lack of disability awareness and cultural competency in police forces further compounds existing barriers to justice for culturally and linguistically diverse people with disability who experience violence and abuse, and who may already be reluctant to make reports for cultural reasons.¹⁰⁴ However, there is a distinct lack of research and literature specifically addressing the issues that culturally and linguistically diverse people with disability experience in their interactions with police. Despite evidence of police racially profiling and harassing migrant and refugee groups, the intersection of disability requires further examination in these contexts.¹⁰⁵

The failure of police to respond adequately to community concerns and investigate and apprehend offenders can further compound existing mistrust and fear of police. This fear and mistrust can result in people under-reporting crime to police as well as avoiding health services and other supports which can severely impact on quality of life, security and belonging. In culturally and linguistically diverse communities, domestic, family and other forms of violence may go unreported due to shame, stigma and fear of authority. These barriers to reporting are often compounded due to multiple forms of real or perceived discrimination by police linked to race, ethnicity, language, gender, disability, sexuality, visa status, age and geographic location.¹⁰⁶ Trauma-informed reporting practices by police and access to support workers and interpreters with experience of cultural and linguistic diversity and specialised training in sexual, domestic and family violence, trauma and disability awareness is urgently needed to offset these barriers and instil public confidence and trust in police.

The discriminatory policing of LGBTQIA+ people and communities

Discrimination and harassment by law enforcement is an ongoing and pervasive problem for LGBTQIA+ people and communities. LGBTQIA+ people have historically been, and continue to be, intentionally and systematically targeted by police based on their sexual orientation and/ or gender identity.

Tasmania was the last Australian jurisdiction to formally decriminalised homosexuality in 1997¹⁰⁷ and the *Sex Discrimination Act 1984* (Cth) makes it unlawful to discriminate against a person on the basis of sexual orientation, gender identity and intersex status under federal law. Despite these protections, LGBTQIA+ people continue to experience discrimination, neglect and abuse by police on account of their sexual orientation and/or gender identity.

For example, a community survey by the Victorian Pride Lobby (2020) has found that over 1 in 10 LGBTQIA+ people reported experiencing harassment, discrimination and violence at the hands of police.¹⁰⁸ Despite legislative frameworks protecting the rights of LGBTQIA+ people, police commonly use predictive tools and data abuses to profile and target LGBTQIA+ people.¹⁰⁹ Police practices, including intimidation and entrapment, hostile raids, arbitrary searches and tip-offs, are among the most commonly used practices by police to profile and target LGBTQIA+ people.¹¹⁰ These experiences undermine effective policing by weakening community trust, reducing reporting by victims of crime and preventing law enforcement from effectively protecting and serving the communities they police.

In 2021, three Victorian police officers were charged with offences relating to misconduct in public office, unauthorised access of police information and unauthorised disclosure of police information after taking photographs of Ms Dani Laidley, a former AFL player and coach, while she was in custody and sharing the images in a series of transphobic group chat messages with other police officers. Ms Laidley received a confidential financial settlement from Victoria Police in March 2022 and the charges against the police officers were dropped.¹¹¹ Following this incident, Victorian Pride Lobby polled 1,500 members of the state's LGBTQIA+ community and found that two out of three felt they were treated unfairly by police, four out of five did not trust police to use their powers reasonably and proportionately and half did not trust them with their personal information.¹¹²

Many in the LGBTQIA+ community experience police misconduct in their interactions with police, including arbitrary arrest, excessive use of force and entrapment, when reporting crimes to police. Despite high rates of victimisation among members of the LGBTQIA+ community, the historic and ongoing criminalisation of LGBTQIA+ groups creates a climate in which LGBTQIA+ people are unlikely to avail themselves of the protection of the law and seek redress, for fear that they will be arrested and detained themselves.¹¹³

In Australia, hesitancy to report crime is also common among LGBTQIA+ refugees who have fled their country of origin for fear of persecution on the basis of their sexual orientation and/or gender identity. This fear of persecution is often compounded for LGBTQIA+ refugees and people seeking asylum who have been detained in Australia's offshore immigration detention centres on Manus Island in Papua New Guinea (PNG) and in Nauru, where homosexuality remains a criminal offence.¹¹⁴ For example, Amnesty International has found that men who fled persecution on the basis of their sexual orientation and/or identity in their home countries were knowingly sent to immigration detention in PNG, where consensual same-sex acts between men are criminalised.¹¹⁵ As a result of their experiences of Australia's immigration detention policies, following resettlement in Australia, many in the LGBTQIA+ refugee community remain reluctant to report crimes to police for fear of criminalisation, harassment and discrimination by police.

There have been several attempts to implement changes to policies and practices aimed at improving police-community relations, such as appointing LGBTQIA+ community police-liaison officers,¹¹⁶ policing of hate crime,¹¹⁷ and good-practice guidelines for the policing of LGBTQIA+ people.¹¹⁸ However, despite several attempts to reform police policy and practice, discriminatory practices such as profiling, aggressive over-policing, harassment, intimidation, abuse of power and excessive force by police remain ongoing as members of the LGBTQIA+ community continue to purposefully avoid contact and interaction with police for fear of criminalisation and violence.¹¹⁹

The criminalisation of disability and mental ill-health

Police discretion and misconduct contributes to the criminalisation of disability, mental ill-health, addiction, poverty and homelessness and perpetuates negative and biased assumptions about certain ‘challenging’ behaviours. As a result, people with complex needs are at greater risk of early initial and ongoing contact with police and the criminal justice system.¹²⁰ The disproportionate contact people living with disability have with police results from an institutionalised process whereby certain disability, health or trauma-related behaviours are criminalised and consequently over-policed and punished.¹²¹

The prevalence of people with mental illness in prisons is almost double that of the general population.¹²² People living with disability are also disproportionately over-represented in Australia’s criminal justice system. Despite comprising 18 per cent of the total population, people with disability account for 29 per cent of the prison population.¹²³ Research has found that the majority of people living with disability and who are criminalised by police have been victims of frequent and recurring forms of violence themselves.¹²⁴ For example, women with disability are 4-10 times more likely to be victims of sexual violence and are far less likely to report crimes due to the ableism and sexism they experience from police.¹²⁵

Rather than prioritising de-escalation, safety and support, all too often police favour antagonistic and punitive measures in critical situations involving people with disability and mental ill-health. However, police are rarely held to account for the bias they perpetuate and the differential punishment they inflict. Instead, police often justify violence as necessary for their own safety – as illustrated in the disturbing bodycam footage showing the fatal shooting of Aboriginal teenager, Kumanjayi Walker by Northern Territory (NT) police officer, Zachary Rolfe in 2019.¹²⁶ Rolfe was eventually acquitted of all charges in 2022,¹²⁷ notably by a jury with no First Nations people.¹²⁸ However, the excessive force used by NT police in the fatal shooting of Mr Walker, and the complete lack of medical treatment and care he received for his injuries before he was inhumanely left to die alone on the floor of the police station, has attracted wide publicity in the press and prompted a deeper examination into the harmful and at times fatal consequences of discriminatory policing and systemic racism and discrimination that pervades Australian police forces.¹²⁹

Ambiguities in the legislation, coupled with a lack of police training on what constitutes various criminal offences, also results in inappropriate discretionary decision-making behaviours by police. For example, in NSW, breaching the peace is not of itself an offence. However, under the *Law Enforcement Powers and Responsibilities Act 2002* (NSW) (‘LEPRA’),¹³⁰ police are authorised to arrest or detain a person to prevent a breach of the peace occurring. Derived from the common law, a breach of the peace can encompass a wide range of conduct, including violent behaviour,¹³¹ loud noise,¹³² self-harm,¹³³ and other ‘actions and threatened actions that interfere with the ordinary operation of civil society’.¹³⁴ However, the term ‘breach of the peace’ is not defined in the LEPRA and this can lead to a range of different interpretations and misunderstandings by police. Further, under the *Crimes Act 1900* (NSW), police also have authority to arrest a person without a warrant if ‘the police officer is satisfied that the arrest is reasonably necessary... to protect the safety or welfare of any person (including the person arrested)’.¹³⁵ Here, the term ‘welfare’ also allows for broad interpretation by police in situations where there is no imminent breach of the peace.

Police officers lack the skillset and training required for identifying, understanding and responding to people with complex needs in a manner that is appropriate and proportional.¹³⁶ As a result, police practices

often favour methods of over-policing, punishment and coercion over a therapeutic response.^{137, X} It is therefore imperative that police (and health care workers) have strict guidelines and policies in place for responding to situations involving people with complex needs. Such responses must prioritise de-escalation, compassion and safety over violence and punishment, and facilitate access to ongoing, community-based and recovery-oriented treatment and supports.¹³⁸

Police as first responders

Encounters with police often involve elements of mental ill-health, disability, addiction, homelessness and poverty. As a result, police have effectively become default first responders to a range of social and health issues that they are not properly qualified and experienced to handle. During these encounters, police are required to use their discretion to respond to complex situations often leading to unnecessary and excessive force and the criminalisation of disability and mental ill-health. Oppressive and overreaching legislation that allows police to act without restraint or accountability when responding to complex situations has harmful, and at times fatal, consequences.

Police should not be first responders to critical situations involving people with disability, mental ill-health and/or addiction. The excessive and disproportionate use of force by police when responding to critical situations involving people with disability, mental ill-health and/or addiction disproportionately impacts diverse minority communities, often as a result of racism and discrimination.

The criminalisation, policing and punishment of certain disability, health or trauma-related behaviours must be addressed and remedied through alternative response systems that are appropriate and proportionate. Substance use, misuse, and dependence should not be considered in isolation from experiences of trauma, poverty, mental ill-health and cognitive and/or psychosocial disability. The co-existence of these factors is the norm rather than the exception for people coming into contact with police and the criminal justice system.

Community-based services that can adequately meet complex health needs are urgently needed alongside reforms to policies and laws that criminalise so-called ‘problematic’ behaviours related to trauma, mental ill-health, disability, poverty and addiction. Such reforms must prioritise de-escalation, compassion and safety and promote ongoing recovery-oriented, trauma-informed support and treatment over a police response.¹³⁹

The Disability Royal Commission (‘DRC’) has highlighted the importance of ensuring access to services that can mitigate the risk of people with disability from coming into contact with police and the criminal justice system, and to support them when they do. The good practices examples provided by the DRC can also be applied to a range of diverse minority groups. Such services may include a) programmes that allow for flexibility in courtrooms and other judicial settings; b) specialist courts and programmes established under therapeutic jurisprudence principles; c) intermediary services; and d) community-based trauma-informed and culturally appropriate supports and services.¹⁴⁰

^X See case study examples: [Tamica Mullaley WA](#); [Joyce Clarke WA](#); [Kumanjayi Walker NT](#); [Tarniesha Widders and Lili Bayles NSW](#); [Ms Wynne WA](#); [Ms Rebecca Maher NSW](#)

Alternatives to police as first responders

In the United States, the murder of George Floyd in 2020 sparked widespread demand for police reforms, with a number of cities announcing major overhauls to law enforcement by limiting the role of police in responding to situations involving people living with disability and people experiencing mental ill-health.

Case Study: The Denver STAR

The [Denver STAR \(Support Team Assisted Response\)](#)¹⁴¹ programme, in Denver, Colorado, launched mid-2020 in partnership with local health, mental health and police departments. It is closely modelled on the [CAHOOTS \(Crisis Assistance Helping out on the Streets\)](#) programme^{xi,142} and responds to calls that have a mental health or substance use component. Staff are trained to de-escalate situations and connect individuals in distress with appropriate services. In its inaugural year, the pilot STAR programme (including a single vehicle and operating between 10 a.m. and 6 p.m., five days per week) responded to 1,400 emergency calls. Of these, no calls required the assistance of the Denver Police Department, no individuals were arrested and no injuries were recorded. STAR has been welcomed by the Denver Police Department and its officers, with police accounting for 34.8 per cent of calls.¹⁴³ STAR has since been expanded with the purchase of five additional vans and 13 additional staff to respond to calls city-wide between the hours of 6 a.m. and 10 p.m., seven days per week.¹⁴⁴

In Australia, programmes such as PACER – a joint crisis response unit that operates in Victoria,¹⁴⁵ the ACT¹⁴⁶ and NSW¹⁴⁷ – fail to actively reduce the role and responsibility of police as first responders to crisis events. Alternative community-led programmes that prioritise appropriate therapeutic response over arrest and punishment, similar to STAR and CAHOOTS in the United States, are urgently needed to address the over-policing and criminalisation of disability, mental ill-health, homelessness and a range of other social and health issues.

Community diversion programmes for children and young people

In Australia, there are a number of community programmes that have been shown to have a positive impact on communities. These programmes are generally staffed and operated by the community and support children and young people through culturally appropriate community-based responses, with a focus on prevention, diversion and support rather than a police response.

Case Study: Ankinji Wirranjiki Night Patrol

The Julalikari Council Aboriginal Corporation's [Ankinji Wirranjiki Night Patrol](#)¹⁴⁸ pilot programme was developed in the 1980's in the Northern Territory and is one of the oldest community night patrol

^{xi} CAHOOTS, based in Eugene, Oregon, launched in 2014. CAHOOTS is funded through the Eugene Police Department and is staffed and operated by the White Bird Clinic. The programme has multiple vans that operate 24 hours a day, seven days a week, 365 days a year, with an equivalent of 60 service hours per day. More than 60 per cent of CAHOOTS clients are homeless, and 30 per cent live with severe and persistent mental illness. The programme is equipped to provide a range of interventions and services including de-escalation; crisis counselling; suicide prevention; conflict mediation; grief and loss support; welfare checks; substance use support; housing crisis; harm reduction; information and referral; transportation to services; first aid and non-emergency medical care. In 2019, CAHOOTS diverted 5-8 per cent of calls from police. Of the estimated 24,000 calls CAHOOTS responded to in 2019, only 250 required police backup. CAHOOTS has reported estimated annual savings of 14 million on emergency/ambulance treatment and 8 million on public safety.

programmes in Australia. A 2001 evaluation of the programme found reduced juvenile crime rates when the patrol operated; increased perceptions of safety; reductions in alcohol-related harm and crime; reduced rates of protective custody; support for partnerships and cultural understanding between First Nations and non-Indigenous communities; and increased community empowerment.¹⁴⁹ Since then, similar community night patrol programmes have expanded and operate across a number of States and Territories^{XII,150} targeting particular groups within the community, such as young people, women, sex workers or people experiencing homelessness. They provide people at risk of offending or victimisation a safe means of transport home or to refuges and safe houses with the aim of preventing or stopping harm and maintaining community peace, security and safety.¹⁵¹

The Yiriman Project¹⁵² is another successful youth programme, and is currently based in Fitzroy Crossing, Western Australia. Originally conceived and developed in 2000 by Elders from four Kimberley language groups – Nyikina, Mangala, Karajarri and Walmajarri – the project focuses on supporting and reconnecting young Aboriginal people to culture and Country to address issues affecting young people in the community, including self-harm and substance use.¹⁵³

Specialist police stations

Specialist police stations offer community-based alternatives to address the limitations of traditional policing and provide a holistic, person-centric response to vulnerable members of the community at critical moments.

Case study: Aboriginal police stations

[Warakurna](#)¹⁵⁴ is the first entirely Indigenous-run police station in Western Australia and employs strategies such as learning the local language and understanding how Commonwealth and State law intersects with Aboriginal knowledge and traditions. Connecting to community through the local culture has shifted community perception of the role of police, rebuilt trust and improved police-community relations and lowered crime rates.¹⁵⁵

Case study: Women’s police stations

The [Delegacia de Polícia de Defesa da Mulher](#)¹⁵⁶ (Police Station in Defence of Women) is the first specialist women’s police station and was established in Sao Paolo, Brazil in 1985. Since then, the number of specialist women’s police stations has grown internationally, with numerous stations operating in Brazil, Argentina and other South and Central American countries, as well as parts of Africa and Asia.¹⁵⁷ Specialist women’s police stations are designed to respond specifically to increasing incidents of violence against women, low reporting rates and to provide person-centric additional supports to women experiencing domestic and family violence. A 2019 evaluation found increased rates of reporting overall, however results in incidents of violence and conviction rates were mixed depending on country and region.¹⁵⁸

^{XII} For example: [Redwatch](#) operating in the South Sydney area; [East Arnhem Regional Council Community Patrol Service](#) in the NT; [Tangentyere Council - Night Patrol in the NT](#); [Nyoongar Patrol System in WA](#); [Geraldton Yamatji Patrol Aboriginal Corporation](#) in WA; and [Kullarri Patrol](#) in WA.

Justice reinvestment

Justice reinvestment is an emerging approach to tackle the high incarceration rates of First Nations people by diverting funds currently being spent on policing and prisons and reinvesting in community programmes. The recent international ‘Black Lives Matter’ protests following the death of George Floyd in the United States, and the similar protests here in Australia following the death of Mr David Dungay Jr and other First Nations people, have drawn increased attention to justice reinvestment as an alternative to police and court orientated ‘justice’.¹⁵⁹ Justice reinvestment is the leading recommendation in the *Pathways to Justice Report*.¹⁶⁰ The Special Rapporteur on the rights of Indigenous peoples has also highlighted the urgent need to ‘move away from detention and punishment towards rehabilitation and reintegration’ in her country report from her visit to Australia.¹⁶¹

Case study: The Maranguka Justice Reinvestment Project

The [Maranguka Justice Reinvestment Project](#) (‘MJRP’) in Bourke, NSW, exemplifies the effectiveness of justice reinvestment. The MJRP effectively reduced the overall crime rates in the Bourke area while providing substantial economic savings by diverting people away from custodial and criminal justice settings.^{XIII,162} A 2018 KPMG Impact Assessment found that the MJRP saw a 23 per cent reduction in police recorded incidence in domestic violence and comparable drops in rates of reoffending; a 31 per cent increase in year 12 retention rates; a 38 per cent reduction in charges across the top five juvenile offence categories; a 14 per cent reduction in bail breaches; and a 42 per cent reduction in days spent in custody.^{XIV,163}

As the first major justice reinvestment project in Australia, the MJRP works in coordination with government and non-government agencies to create targeted methods of crime prevention, diversion and community development.¹⁶⁴ The MJRP has also effectively implemented the Royal Commission’s recommendation to identify and address the relevant factors or causes of motor vehicle offences and to design community programmes to address those factors.¹⁶⁵

Transparency, accountability and oversight

Discrimination in policing has far-reaching consequences that extends well beyond the criminal justice system. Discriminatory policing compounds and confirms prejudicial attitudes and stereotypes about certain minority communities and legitimises racism and discrimination against them among the general population. As such, individual police officers and police forces must be held to a higher standard.

^{XIII} Key findings of the 2018 KPMG Impact Assessment the project included: 23% reduction in police recorded incidence in domestic violence and comparable drops in rates of reoffending; 31% increase in year 12 retention rates; 38% reduction in charges across the top five juvenile offence categories; 14% reduction in bail breaches; and 42% reduction in days spent in custody.

^{XIV} The project also saw a clear increase in the number of people gaining licences while the number of driving offences decreased. Its effectiveness can be attributed to its focus on targeting the underlying factors which may cause driving offences, such as lack of access to vehicles and supervisors, identification documents, and language and literacy issues which may be obstacles for written tests.

Investigating police misconduct

In Australia, police accountability is fundamental to the proper administration of the justice system. However, police are rarely prosecuted or disciplined for their actions (or inaction). However, this is not for a lack of meritorious complaints, but rather the failure of the current system of accountability to uphold the rights of those who experience neglect, harm and death at the hands of police.¹⁶⁶

For example, police retain a significant role in coronial inquests and are generally responsible for the initial fact-finding investigation.¹⁶⁷ This lack of independence not only further entrenches the existing mistrust members of diverse minority communities have in police and the legal system but also denies a sense of justice for individuals and families of loved ones who have been harmed or have died because of poor or discriminatory police attitudes and behaviours.¹⁶⁸ The critical lack of fairness and independence of investigators, the courts and integrity agencies throughout all levels of investigation and complaints processes, further reinforces existing mistrust of government systems by people seeking justice and redress for the violence they experience.^{xv}

The most accessible avenues for holding police accountable are complaint mechanisms and civil litigation. However, these mechanisms are not sufficient accountability measures, especially for deaths in custody where criminal convictions are necessary. An effective complaints process is integral to police accountability.¹⁶⁹ However, under the current system complaints against police are mostly investigated internally and inadequately.

Police misconduct complaints processes are inadequate across all Australian jurisdictions. Most have strict statutory criteria and arbitrary timeframes for lodging complaints and have low substantiation rates of complaints. As a result, these processes undermine community confidence in the complaints process leading to fewer complaints being lodged against police following incidents of misconduct and violence. This ultimately works to perpetuate a culture of denial and impunity, further exacerbating community-police tensions.¹⁷⁰

The inherent conflict of interest in police investigating police results in complaint review processes that are plagued by inadequate investigations, lengthy delays, a lack of transparency, and poor interactions and communication with complainants.¹⁷¹ Internal investigations are subject to the biases, motivations and interests of the investigator. The current process by which 'police investigate police' lacks independence and impartiality and, as such, is vulnerable to both deliberate and unintentional perversion, corruption and misrepresentation by investigators. A review by the Office of Police Integrity in Victoria identified the way that police may have a strong interest in 'protecting the reputation of... police and safeguarding legal or financial liability that may arise if a person is wronged by the actions of police'.¹⁷² The review also pointed to the 'culture of loyalty and empathy within police services' which may encourage officers to 'protect' each other and impacts their impartiality.¹⁷³ This 'culture of loyalty' places the interests of police officers in preserving their reputations over those of the civilians they are meant to serve and protect.

^{xv} For information and First Nations specific case study examples, please see [NJP's Submission to the NSW Select Committee on the High Level of First Nations People in Custody Oversight and Review of Deaths in Custody, Oversight and Review of Deaths in Custody](#) (2020), 17-18.

By contrast, New Zealand's Independent Police Conduct Authority (a statutory body) provides truly independent oversight of police conduct and custodial environments, including police cells.¹⁷⁴ The Authority is empowered to investigate complaints and has a statutory mandate to operate with complete independence from police forces and other government agencies and institutions within the criminal justice system.¹⁷⁵ In Australia, the existing investigative process is critically lacking in fairness and independence and the ongoing failure to appropriately investigate complaints against police contributes to a breakdown of community trust in, and respect for, police and the rule of law.¹⁷⁶ A truly independent investigation requires that those conducting it do not have an interest in the outcome. Without this, investigations into police misconduct can never operate impartially and in the interests of justice.

Diversification of police forces

Differential policing is a salient experience for members of many diverse minority communities. Despite several attempts to reform laws, policy and practice, discriminatory policing practices such as profiling, aggressive over-policing, harassment, intimidation, abuse of power and disproportionate use of force by police against members of diverse minority communities remains unyielding.

As a result, in Australia, diverse minority groups remain grossly underrepresented in police forces that predominantly comprise heteronormative, White Catholic males.¹⁷⁷ This is despite diversification efforts being made in some jurisdictions, such as Victoria.¹⁷⁸ Diversification of police forces is a worthwhile and well-intentioned ambition. However, it is not the panacea for systemic racism and discrimination as individual police officers from diverse backgrounds cannot, and should not, be made responsible for changing the culture and behaviours of police forces.¹⁷⁹

Nationally consistent data

Policing can only be effective in reducing crime and promoting safety when there is transparency and accountability in all interactions between the police and the public they serve. There is a critical need for robust and nationally consistent data on the nature and extent of discrimination and implicit bias across all Australian public service sectors, including law enforcement. Community-defined measures for recording and reporting on racial and other discriminatory indicators are urgently needed, along with processes for monitoring the implementation of reforms and evaluating and reporting on their impact. Recently, the Committee on the Elimination of Racial Discrimination ('**CERD Committee**') emphasised that the collection, analysis and application of disaggregated racial data is crucial to states meeting their obligations under the *Convention on the Elimination of All Forms of Racial Discrimination* ('**CERD**').¹⁸⁰ Its importance is also recognised in the *United Nations 2030 Agenda for Sustainable Development* ('**2030 Agenda**').¹⁸¹

Human Rights Framework

Australia's obligations under international law

The right to substantive equality before the law, including safe and equitable access to justice free of racism and other forms of discrimination, is enshrined in international human rights law.

The right to freedom from discrimination

The Committee on the Elimination of Racial Discrimination ('**CERD Committee**') makes it clear that de facto and de jure racial profiling is a violation of international human rights law, a position supported by other treaty monitoring bodies including the Human Rights Committee¹⁸² and the Committee against Torture.¹⁸³

Racial profiling can lead to infringements of other rights, such as the right to liberty and security of person,¹⁸⁴ the right to the highest attainable standard of health¹⁸⁵ and the right to effective remedy.¹⁸⁶ In this context, racial profiling is understood as 'the practice of police and other law enforcement relying, to any degree, on race, colour, descent or national or ethnic origin as the basis for subjecting persons to investigatory activities or for determining whether an individual is engaged in criminal activity'.¹⁸⁷ The Human Rights Committee has identified the link between racial profiling and stereotypes and biases – including conscious, unconscious, individual, institutional and systemic (or structural) – and identifies stereotyping as a violation of international human rights law when these assumptions are put into practice to undermine the enjoyment of human rights.¹⁸⁸

The United Nations Declaration on the Rights of Indigenous Peoples ('**UNDRIP**')¹⁸⁹ is the most comprehensive international instrument on the rights of First Nations Peoples. The UNDRIP establishes a universal framework of minimum standards for the survival, dignity and well-being of First Nations Peoples globally and elaborates on existing human rights standards and fundamental freedoms as they apply to the specific situations and circumstances of First Nations people.¹⁹⁰ The UNDRIP specifically provides for the right to self-determination¹⁹¹ and a life free of discrimination.¹⁹²

The United Nations Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child, the Committee against Torture, and the Committee on the Elimination of Discrimination against Women have all confirmed that sexual orientation and gender identity are included among prohibited grounds of discrimination under international human rights law. This means that it is unlawful to discriminate based on sex, sexual orientation, gender identity or other status.

The Yogyakarta Principles are a set of principles on the application of international human rights law in relation to sexual orientation and gender identity and identify specific rights and the related duties and obligations of states in order to ensure that LGBTQIA+ people are able to exercise and enjoy those rights.^{XVI,193} The Office of the High Commissioner for Human Rights provides the core legal obligations of states with respect to protecting the human rights of LGBTQIA+ people include obligations to: **Protect** individuals from homophobic and transphobic violence; **Prevent** torture and cruel, inhuman and degrading treatment; **Repeal** laws criminalizing same sex relations and transgender people; **Prohibit** discrimination based on sexual orientation and gender identity; and **Safeguard** freedoms of expression, association and peaceful assembly for LGBTQIA+ people.¹⁹⁴

While not binding, the 2030 Agenda includes 17 Sustainable Development Goals ('**SDG**') for the realisation of human rights for all, including economic, social and environmental rights.¹⁹⁵ Goal 10 of the SDG aims to 'reduce inequality within and among countries', and specifically provides for the right to equal opportunity

^{XVI} The [Yogyakarta Principles](#) is the product of an international meeting of human rights groups in Yogyakarta, Indonesia, in November 2006.

through the elimination of ‘discriminatory laws, policies and practices’ and the promotion of ‘appropriate legislation, policies and action’.¹⁹⁶ Goal 16 of the SDG specifically provides for the right to ‘equal access to justice for all’;¹⁹⁷ ‘effective, accountable and transparent institutions at all levels’;¹⁹⁸ ‘responsive, inclusive, participatory and representative decision-making at all levels’;¹⁹⁹ and ‘public access to information and [protection of] fundamental freedoms’.²⁰⁰

The right to life, liberty and security

Articles 6 and 9 of the *International Covenant on Civil and Political Rights* (‘**ICCPR**’)²⁰¹ and article 3 of the *Universal Declaration of Human Rights* (‘**UDHR**’)²⁰² recognise the universal right to life, liberty and security of person. The right to be free from arbitrary arrest or detention is also protected in article 9 of the ICCPR²⁰³ and affirmed article 9 of the UDHR.²⁰⁴

Article 1 of the UDHR affirms that ‘[a]ll human beings are born free and equal in dignity and rights’, and article 7 affirms that ‘[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law’.²⁰⁵

Article 7 of the ICCPR affirms that ‘[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment’²⁰⁶ and article 10 recognises the rights of all persons deprived of their liberty to be treated with humanity and with respect for their inherent dignity. These rights are further protected in the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (‘**OPCAT**’)²⁰⁷ whereby state parties agree to meet international standards which aim to prevent cruel, inhuman and degrading treatment or punishment within closed environments.²⁰⁸ The *UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment* (‘**CAT**’) identifies that ‘discrimination of any kind’ may constitute an element of torture²⁰⁹ and the UN Committee against Torture has emphasised that ‘the discriminatory use of mental or physical violence or abuse is an important factor in determining whether an act constitutes torture’.²¹⁰

Article 37 of the *Convention on the Rights of the Child* (‘**CRC**’)²¹¹ details the obligations of state parties to ensure that ‘[n]o child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment’²¹² and that ‘[n]o child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time’.²¹³ The Committee on the Rights of the Child has repeatedly urged Australia to urgently raise the minimum age of criminal responsibility to an ‘internationally acceptable level’ of a minimum of 14 years.²¹⁴

The United Nations *International Human Rights Standards for Law Enforcement* and the *Code of Conduct for Law Enforcement Officials* also provide a set of human rights standards and practices for police based on the responsibility to serve and protect people and communities, without discrimination.²¹⁵

Obligations under Australian law

Australia has agreed to be bound by a series of international human rights treaties, optional protocols and reporting and communications obligations,²¹⁶ which set out in clear terms Australia's international human rights obligations. Under international law, Australia is bound to comply with their provisions and to

implement them domestically.^{xvii, 217} However, they do not form part of Australia's domestic law unless the treaties have been specifically incorporated into Australian law through legislation.²¹⁸

Australia has ratified all the international human rights treaties mentioned above,^{xviii} meaning that it has agreed to be bound by their provisions. Several rights have made it into Australian law at the Federal level, including the *Racial Discrimination Act 1975* (Cth), the *Sex Discrimination Act 1984* (Cth), the *Australian Human Rights Commission Act 1986* (Cth), the *Disability Discrimination Act 1992* (Cth), and the *Age Discrimination Act 2004* (Cth), and at State and Territory levels, including the *Human Rights Act 2004* (ACT), *Charter of Human Rights and Responsibilities Act 2006* (Vic) and the *Human Rights Act 2019* (Qld). The principles can also be found in common law.

Significantly, Australia does not have a Bill of Rights in our Constitution. In the absence of Constitutional protections, the safeguards against human right violations provided in domestic legislation remain susceptible to override by the legislature and the courts continue to be denied power to deprive legal validity to legislation that contravene their terms.

CONCLUDING COMMENTS

In Australia, oppressive and overreaching legislation empowers police forces with unlimited authority, broad discretionary powers, secrecy and lack of accountability. As a result, police under the sanction of the state are empowered to act with impunity for the neglect, brutality and suffering they inflict.

Time and time again, successive Federal, State and Territory governments have failed to take immediate, specific and meaningful steps to address the pervasive and entrenched racism and discrimination that exists in Australian police forces and its disproportionate impact on diverse community groups who experience continued oppression and persecution.

Policing can only be effective in reducing crime and promoting safety when there is transparency and accountability in all interactions between police and the public. Police must be held to a higher standard and the onus cannot simply be on diverse minority communities to reduce contact with police and the criminal justice system. Consequently, what is now required is a commitment from the government to implement reforms that limit police powers, promote transparency and accountability and prioritise community-based responses, with a focus on prevention, diversion and support.

At the National Justice Project, we continue to fight for justice alongside our clients who have been discriminated against by police. We continue to work tirelessly to hold Governments to account for the harms caused by their actions (and inaction) and represent families who've experienced harm or lost loved

^{xvii} Section 51(xxix) of the Australian Constitution, the 'external affairs' power, gives the Commonwealth Parliament the power to enact legislation that implements the terms of those international agreements to which Australia is a party.

^{xviii} Australia is also a party to the [Convention on the Elimination of All Forms of Discrimination against Women](#), the [Convention on the Rights of Persons with Disabilities](#), the [1967 Convention relating to the Status of Refugees](#) and the [1967 Protocol relating to the Status of Refugees](#).

ones because of discrimination in policing. Continued advocacy is needed to ensure the priorities and recommendations made in this Position Statement are implemented in a manner that is meaningful, appropriate and proportionate.

ADDITIONAL RESOURCES

- [Igniting Change interview - George Newhouse with Dan Mori](#) (2022).*
- [Submission to the Special Rapporteur on violence against women, its causes and consequences](#) (2022).
- [Submission to the Australian Human Rights Commission National Anti-Racism Framework](#) (2022).*
- [Submission to the Queensland Parliament Community Support and Services Committee - Criminal Law \(Raising the Age of Responsibility\) Amendment Bill 2021](#) (2021).
- [Submission to NSW Select Committee's Inquiry into the Coronial Jurisdiction in New South Wales](#) (2021).
- [Submission to the Australian Law Reform Commission: Judicial Impartiality Inquiry](#) (2021).
- [Submission to the NSW Law Reform Commission - Open Justice Review](#) (2021).
- [Health Inquiry into Health Outcomes and Access to Health and Hospital Services in rural, regional, and remote New South Wales](#) (2021).
- [Law Hack 2021: Disability Justice Final Report](#) (2021).
- [Law Hack 2021: Disability Justice Kick-Off Event](#) (2021).
- [Law Hack 2021: Disability Justice Pitch Event](#) (2021).
- [Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability Submission on laws, policies and practice affecting migrants, refugees and citizens from culturally and linguistically diverse backgrounds](#) (2021).
- [Submission to the NSW Select Committee on the High Level of First Nations People in Custody Oversight and Review of Deaths in Custody, Oversight and Review of Deaths in Custody](#) (2020).
- [Submission to the NSW Civil and Administrative Tribunal Statutory Review](#) (2019).

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