



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

**STANDING COMMITTEE ON EDUCATION
AND COMMUNITY INCLUSION**

(Reference: [Inquiry into Racial Vilification](#))

Members:

**MR M PETERSSON (Chair)
MR J DAVIS (Deputy Chair)
MS N LAWDER**

TRANSCRIPT OF EVIDENCE

CANBERRA

MONDAY, 9 MAY 2022

**Secretary to the committee:
Mr A McIntyre (Ph: 6207 5498)**

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

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Privilege statement

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Witnesses must tell the truth: giving false or misleading evidence will be treated as a serious matter, and may be considered a contempt of the Assembly.

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Amended 20 May 2013

The committee met at 11.58 am.

GRIFFITHS-COOK, MS JODIE, ACT Children and Young People Commissioner,
ACT Human Rights Commission

THE CHAIR: Good morning. Welcome to the first public hearing of the Standing Committee on Education and Community Inclusion in its inquiry into racial vilification. This inquiry will consider the prevalence of incidents of vilification and threats of physical violence in the ACT based on racial, linguistic, ethnic or religious background and status as an Aboriginal and/or Torres Strait Islander person. We will also consider the accessibility and effectiveness of mechanisms for reporting such incidents.

Before we go further, the committee wishes to acknowledge the traditional custodians of the land we are meeting on, the Ngunnawal people. The committee wishes to acknowledge and respect their continuing culture and the contribution they make to the life of the city and this region. We would also like to acknowledge and welcome other Aboriginal and Torres Strait Islander peoples who may be attending today's event.

Today's hearing will be a valuable opportunity to hear from government, peak bodies and human rights organisations about experiences of vilification in the ACT and mechanisms for complaint and redress. The committee will hear evidence from the following people and organisations: the Children and Young People Commissioner, the ACT Council of Social Service, the Federation of the Chinese Community of Canberra, the Australian School of Contemporary Chinese, Ms Tara Cheyne MLA, and the Discrimination, Health Services and Disability and Community Services Commissioner.

Please be aware that proceedings today are being recorded and will be transcribed and published by Hansard. The proceedings are also being broadcast and webstreamed live. The committee now welcomes the ACT Children and Young People Commissioner. Please be aware that today's proceedings are covered by parliamentary privilege, which provides protection to witnesses but also obliges them to tell the truth. The provision of false and misleading evidence is a serious matter and all participants today are reminded of this. Can I confirm that you have read the pink privilege statement?

Ms Griffiths-Cook: Yes, I have.

THE CHAIR: Wonderful. I now invite you to make a short opening statement, after which the committee will ask questions. If you need to take a question on notice during the hearing, it would be useful if you used the phrase, "I will take that as a question taken on notice." Take it away.

Ms Griffiths-Cook: Yuma; hello. I too begin by acknowledging the traditional custodians of these lands, and I pay my respects to elders past, present and emerging. I also extend my respects to all Aboriginal and Torres Strait Islander persons, recognising that sovereignty has never been ceded and that this is and always will be Aboriginal land.

I appreciate the opportunity to appear before you today. I am keenly aware of the responsibility of speaking on behalf of children and young people. While obviously part of my job, it is even more acute today, when we are talking about an issue that is too often shrouded in silence.

Children and young people in the ACT do not often get the chance to speak frankly with adults about racism, yet we know that they experience it, witness it and enact it. I would therefore like to begin by reiterating the key point of my submission, which was to strongly encourage the committee itself to engage children and young people so that your inquiry takes account of the views of this important and significant cohort in the ACT.

Research has repeatedly demonstrated that there is a real danger in not speaking to children about racism. The research that I have referenced in my submission indicates that children as young as five have been shown to recognise racial prejudice and to enact it. A vivid illustration of this is a story a colleague told me of a beautiful three-year-old boy scrubbing his skin in the bath, hoping to make it whiter after being told by a peer that he could not play in a game because it was only for white children.

If there is only silence about issues of race and racism, how do either of these children understand and respond to the impact of an incident like this? When left unchallenged, racism, particularly in its more subtle form, is reinforced. It is worth highlighting that Australian research tells us that children and young people are experiencing significant levels of racism.

Evidence suggests that this is also the case for children and young people here in the ACT. As you will have noted in the submission from my colleague and fellow commissioner Karen Toohey, the HRC receives complaints about incidents of alleged racial vilification in both public and private schools, across preschool, primary and secondary levels of schooling. Further, my team's own research affirms that young people are also experiencing it at work, on public transport, in shops, via text and online.

To adequately address racism in the ACT, we must talk to children and young people. If we do not speak to children and young people then we run the risk of not achieving the desired outcomes from any anti-racism work we might do. The language usage, experiences and attitudes of children and young people often differ to those of adults. To be effective, anti-racism work in the ACT needs to reflect children's and young people's unique experiences. To this end, and as you will have noted in my submission, my team is currently investigating some of the ways young people's perspectives differ.

While only in the early stages of our consultation, we have already found that the young people we have spoken to are surprisingly gracious in the face of casual or unintended racism. Intention is seen by young people as being important, and this is reflected in how they react to the racism they experience. We have also heard very clearly that enfolded anti-racism strategies into anti-bullying frameworks in schools is seen by young people as dismissive of the real impact that racism has.

Young people have told us they do not bother reporting some instances of racism as schools do not take it seriously, so kids just deal with it themselves. However, these are the very reports and perspectives that we most need to hear so that we can ensure that the steps taken to address racism resonate with young people and are best positioned for success.

Racism is a complex and confronting issue, so in some ways it is not surprising that adults do not always have the skills to respond effectively to it. Children and young people themselves often have powerful ideas to address the issues they face. Engaging children and young people in identifying strategies and solutions not only empowers them but also supports us to build our own capability to respond to their experiences.

Children and young people have the right to have their say. However, ensuring that they have access to appropriate channels to do so is often overlooked. I would like to respectfully highlight the need for consultation and engagement methods that are culturally safe and accessible, both for children and young people but also for adult community members who may not feel comfortable with a formal process such as this. Without this inquiry going to where people are and using accessible, safe and comfortable methods, there is a very real risk that the process contributes to the dangerous silence around racism that allows it to continue unchecked.

I will finish my opening remarks by saying that I would welcome the opportunity to continue engaging with the committee, not only so that our work can inform yours but also so that we can support you to ensure that children and young people in the ACT can be part of this important conversation. I assure you that doing so will benefit all Canberrans. Thank you.

THE CHAIR: Wonderful. I was wondering if you could tell the committee about any instances in the ACT of young people being engaged and consulted with well, and if, similarly, there have also been instances where young people have not been engaged where they should have been?

Ms Griffiths-Cook: Yes. I think even in our own experience, we did a fairly substantial consultation a couple of years ago—we partnered with the ACT government to do so—speaking with children and young people about their experiences of domestic and family violence. Similar to the way we are setting up our consultation that we are undertaking currently on racism, we looked very closely at the ethical considerations that need to be taken account of.

One of the most important things, I always say, when we are seeking to consult with or engage with children and young people, is that we need to have an honest and a genuine purpose for doing so. If we are going to listen, we need to be willing to do something with what we hear. For me, I think that is at the core of any of the consultations that we undertake and should be at the core of any consultation that is appropriate, and successful, I guess, in engaging children and young people.

The methods and strategies can vary. There are so many. Particularly in the environment now, where we can run things online and we can run things face to face, we can use a variety of different methods to obtain information. I think it is always important to be absolutely clear about what it is that we want to know, why we want

to know it and, as I said, being genuine and doing something with it.

THE CHAIR: I was wondering if you had any advice for the committee? Speaking quite candidly, the number of submissions this inquiry has received has been quite limited and overwhelmingly from peak bodies. Would you have any advice for this committee as to how we would get young people to tell their experiences of racism?

Ms Griffiths-Cook: Yes. As I indicated, going to where they are is one of the most important things. We have a number of organisations that we could certainly put you in contact with, or make a connection with. You have the Multicultural Hub just over the way here. That is a nice close one. There are different ways that we are undertaking our consultation. If there were an interest from the committee, if each of you were to individually come to one of those conversations that we are having with children and young people over the course of the next couple of months, the insights you would gain from that would be immeasurably useful.

Alternatively, there is the Youth Advisory Council. I think that council reports to Minister Berry. They potentially could be a useful group. I mentored their social inclusion and diversity subgroup as part of the last Youth Assembly. These kids know what they are talking about. They themselves have a strong spread of diversity across the membership of that council, which is one of its intentions, obviously. They speak knowledgably; they understand. Certainly the group that I worked with understand discrimination and understand racism, and were able to speak and generate conversation with other people really effectively.

THE CHAIR: I think the committee might take you up on some of those offers.

Ms Griffiths-Cook: Happy to do so.

MR DAVIS: I am interested in some of the experiences you noted, both in your opening statement and in your submission, around some specific examples of young people in the ACT that have suffered from racism. I am interested in your observations on these instances of racism, albeit anecdotal. Are they instances of racism in isolation or are you finding that these are young people who are finding themselves victimised due to other characteristics, additionally? Is this a compounding effect? To put it bluntly, is this kids who are also coming from low-income families, who might identify with other minority descriptors? Are you finding that intersectionality in these experiences, where it is a compounding effect, or are you finding that, more often than not, these young people are victims of racism exclusively, if that makes sense?

Ms Griffiths-Cook: I think it is fair to say that it is probably a mix. Certainly, we are only in the early stages of our consultation, so I can't speak in a broad sense as yet. But research certainly demonstrates, as well as what we are hearing on the ground, that typically kids who have experienced racism are also disadvantaged in other aspects of life and/or impacted in other ways—for example, mental health—as a result. So I certainly feel that that will be borne out as we continue the consultation, that we will see a bit of a mix somewhere. Racism occurs in isolation perhaps, without those other dimensions, but I think we will also see quite a variety also that have other forms of disadvantage that they experience too.

MR DAVIS: All right. And to that question about how young people are experiencing racism, are you finding that it is more often peer to peer or are these young people in Canberra who are finding themselves victims of racism by adults, those in leadership positions, those in authority positions? What are some of your experiences on that?

Ms Griffiths-Cook: I think that, again, it is a mix. Certainly, it occurs within schools, as I said, in those peer interactions. But I think also that some of the experiences include, for example, going to the shops and being challenged or hassled purely because they perhaps present as someone with different coloured skin. Those experiences are perpetrated as much by adults as they are within peer settings.

MR DAVIS: Thank you.

MS LAWDER: In your submission you refer to the fact that, in preparation for this consultation, your office undertook a literature review and there was limited documentation about racism in Australia, and maybe even less in the ACT itself. Do you know, at all: is that common internationally? Is it reflective of the same level internationally or are we even worse off in terms of supporting literature?

Ms Griffiths-Cook: That is actually a very good question. I am happy to take that one on notice, in terms of whether the levels that have been demonstrated through the research here are equivalent or otherwise to research in international jurisdictions.

MS LAWDER: From your experience—your own review that you are doing into racism at the moment with children and young people—are you able to give us a little flavour of what sorts of methods you are using for young children? Is it drawing pictures? What sort of approach are you taking?

Ms Griffiths-Cook: We are primarily engaging with young people, as opposed to children, at this stage. At the moment, we are running face-to-face consultations quite deliberately. We are seeking to utilise those as part of a co-design process that will assist us in developing a survey that we will then push out more broadly. We want to make sure that we get the language right for that survey, and that is part of the conversations that we are having. But also we want to make sure that we are asking the right questions. So, to be able to find out what questions we should be asking to the broader group who might respond to the survey, we are engaging with these smaller groups of children and young people.

Our consultation has a number of methods. One is, obviously, the face-to-face forums that we are having at the moment. That will then lead on to the development of the survey. Sitting behind that is also our Young Thinker Forum, which is an open portal on our Human Rights Commission website that allows any child or young person to tell us about anything that is important to them, and in any way that they want to do so. That enables the opportunity for visual representations. Someone might want to submit a piece of art or a video representation. Some of them might like to upload a video or an audio recording. It allows for any sort of method of submission that children and young people might like to make.

MS LAWDER: Do you use schools as a channel to try to reach young people at all?

Ms Griffiths-Cook: We do, in a general sense. We have partnered with Curijo, an Aboriginal-led organisation based here in Canberra, as well as the Multicultural Hub, utilising the connections and networks that they have to identify groups of children and young people who might like to speak with us for this particular consultation. It also means that we can draw upon their expertise and understanding of those population groups to ensure that we are approaching those consultations in a culturally safe way.

MS LAWDER: Within your own staff, apart from Curijo, do you have a multicultural workforce? How do you determine what are the culturally appropriate ways of approaching these topics?

Ms Griffiths-Cook: We do, to a certain extent. I have a very small team for my Children and Young People Commissioner team, only two FTEs, so we do not have that spread to enable us to tick off all of the boxes in terms of our understanding there. That was the reason behind our partnering with those two organisations.

MS LAWDER: Thanks.

THE CHAIR: If you are a young person who experiences racism, what are the current reporting mechanisms that you would follow?

Ms Griffiths-Cook: What we are hearing from children and young people at the moment—and, again, I will preface this by saying we have only spoken to a small number—is that they would go to someone within the school. They will go to known people who they believe and trust will respond. Unfortunately, some of the experiences we are hearing are that those responses are not adequate and can be quite dismissive. To some extent, that initial response discourages them from taking that any further. Some of what we have heard is that their feeling on taking it further is, “Why would I bother when it is just going to be as dismissive as the first response that I got?”

THE CHAIR: So what about the instances where a young person goes to this authority figure, or they have a good relationship with a teacher and the teacher is supportive; what next?

Ms Griffiths-Cook: It probably depends on that teacher’s understanding of what might be available and/or their skills in responding to it directly. Certainly, children and young people are looking for those initial line of defence responses. They want to be believed, they want to be supported and they want that to occur right here, right now, and to not be something that is put off. They do not want to be told, “Just walk away. You will be fine.” They really are looking for that right here, right now: “I want your assistance. I want your support to do something with this.” Typically, they are looking for something within that informal space, as opposed to looking necessarily to take that to more formal remedies. They want it dealt with on the ground, in the here and now.

THE CHAIR: If they did want to pursue those formal remedies, are the complaint forms and pathways through the HRC designed for adults or designed for kids?

Ms Griffiths-Cook: I could not say how they are designed, but I know they are used by adults as well as children and young people. Certainly, there have been matters brought to the commission directly by young people themselves. My colleague commissioner’s team manages those appropriately in that space.

It is highly likely that not just children and young people but some adults may not know that those mechanisms exist. Given how little is known about my own role as Children and Young People Commissioner, even with groups that I thought would have a clear understanding that my role even exists, I would suggest that that is a general thing across the ACT. It was quite interesting, during COVID, when we were presenting to a couple of key groups within schools, that yes, so many did not know. It was my key question: “Had you heard about the Children and Young People Commissioner before?” “No.” I think everything that we can do to continue getting our reach and making our reach broader is going to be valuable.

MR DAVIS: I have a supplementary on that, because we seem to be concentrating on children and young people’s relationships with adults in their school communities. I am interested to know if you have any examples of where young people have sought remedies to instances of racism outside of school communities—for example, relationships with law enforcement et cetera? What is your understanding of children and young people’s understanding of and appetite to engage with, say, police on questions of racism?

Ms Griffiths-Cook: It has not come through in the consultations to date, but if the committee were interested in inquiring further into that, if we could work out a way to make this happen, we could certainly assist you to explore that with a group—or a couple of groups, perhaps—of children and young people to test that understanding.

MR DAVIS: Yes. Would it be fair to say that a majority of instances of racism in the work that you have done so far are happening in school communities?

Ms Griffiths-Cook: I am looking at my colleague over there. I think we are seeing a bit of a mix. As a reference, we are hearing reports of it occurring across multiple different locations. I do not think we have a sense, just based on the small number of children and young people we have spoken to so far. I could not confidently say that it was more so in one location versus another. I think we are seeing quite a mix. I think we are also hearing that often those who experience racism will experience it not necessarily only in one location but across multiple different locations.

MR DAVIS: That makes sense. Thank you.

MS LAWDER: Along similar lines, I think early in the pandemic there were some publicised examples of people being racially abused and vilified, for example, on public transport. In many cases, I think members of the public stepped in, which is great, but in some cases they did not necessarily step in. There has been some debate publicly about: “Is it a police matter? Where does the complaint go? Does it go to the Human Rights Commission?” There is no immediate remedy, if you like, if you call up and say, “Hey, someone is abusing someone on the bus.” Who do you call?

Ms Griffiths-Cook: I would flip the question a little. While, yes, you obviously are looking for an avenue, somewhere you can take that, I think we have got to look at the culture that exists below that. That is certainly part of what we are seeking to understand from a children and young people's perspective. What does anti-racism look like? What needs to happen so that we can move towards a culture where those kinds of incidents do not occur or, where they do, where there is that strong community support to respond and call it out and say, "No, that is not okay." That is really where we are trying to position some of the conversations we are having with children and young people. What would an affective anti-racism strategy look like? How can we put something in place that moves us towards that path where the culture is one of acceptance of diversity and not exclusion on the basis of it?

MR DAVIS: You noted in your submission that there is not a lot of research in Australia on young people and their relationship with racism. What role do you think the ACT government has to initiate, lead or support that kind of research?

Ms Griffiths-Cook: I think there is a real opportunity here, as small jurisdiction. I always think we are this kind of microcosm. Whether that sits with government or whether that is something that we could commission through a university or something like that, I think it would be useful to have a bit of an understanding about what are we really talking about here and what is the scale? That, in and of itself, might actually inform what a strategy or a framework for response needs to look like.

I am really mindful that there is a national strategy. Again, as a small jurisdiction, I would say, "Let's not reinvent the wheel." That national strategy is there, it is solid, and we have contributed strongly to the development of it. But I also think that there is always an opportunity for local nuances to be added to that, if we have got the information that will enable us to do so. For us, again, that is where we hope this consultation will contribute that local understanding that will be of value not just for us; we will also be seeking to feed that into that national strategy, to support that strategy to become even more relevant for children and young people.

MR DAVIS: Based on your experience as someone who has been in the role for a while and who has this relationship with the ACT government, do you think the ACT government would be best placed to lead a research project along those lines or do you think that there is greater speciality or capacity in outsourcing that to, say, a university research project, as you said in your example?

Ms Griffiths-Cook: I think the advantage of working through a university process, in particular, for an issue like racism, is the ethical frameworks that go behind that and the strong ethics processes that go into making sure that we do no harm through an inquiry of that nature. When we are talking about a topic such as racism, there is a very real risk that if someone has experienced that and if that has been really traumatic for them, we can re-traumatise them if our processes are not clearly framed in a way that ticks all the right boxes as far as those ethical approval processes go.

For our own consultation, we formed and continue to hold an ethical oversight committee. That enables us to have that cross-checking, to say, "Okay. We think this is a good idea, but let's have a look at this through the lens of people who have got those backgrounds and/or understand children and young people." We have, I guess,

some representation that enables us to tick all the right boxes as far as understanding what we need to do, to do this safely.

MR DAVIS: On that, the committee has discussed, on occasion, public awareness campaigns that have been run by the subnational governments in the country, like the “racism is not okay” campaign, as an example. But you touched on a point there about the risk of engaging people who have been the victims of racism in a conversation about racism and re-traumatising them. Do you have any reflections for the committee on public awareness campaigns and how children and young people interact with those?

Ms Griffiths-Cook: I think it is a good question. Part of why we are wanting to look at this more closely is to, as I said earlier, get the language right. Do those campaigns hit the mark with children and young people because are they speaking in the way that children and young people do? Are they using the right words that children and young people use. The example I provided earlier was about this being aligned in schools, in some instances, with an anti-bullying framework and children and young people clearly saying, “No, that does a disservice to the very real impact that racism has.” So they see those two as being different and distinct in their own right.

Similarly, some of the early information we have got is that terms like “CALD” or “multicultural” are not necessarily the terminology that a child or young person would use. So, again, if we are going to get through and have children and young people engage with these campaigns and understand the strategies that are needed, or the responses, or whatever, we have got to make sure we get the language right.

MR DAVIS: Thank you.

MS LAWDER: Based on your inquiries so far into racism but also all of your previous work, what is your view about social media? Can it be a tool for change, successfully, or is it mostly a tool of torture, if you like—you know, more bullying, more racism, more poor behaviour that young people cannot get away from, even when they go home? Do you have a view on the use of social media?

Ms Griffiths-Cook: It clearly is both. I certainly think it can be used to good effect, but also, unfortunately, that 24/7 access that we have to each other’s lives because of social media can absolutely create the space for the insidious and continuous abuses that happen through those processes.

I was interviewed by a group of young people when they took over one of the radio stations during Youth Week, and that was a very real issue for them. When I tapped in to hear the conversation they were having in and around my interview, which had been pre-recorded, it was really interesting to hear their views. They were very clear that social media can be extraordinarily harmful to children and young people.

It was interesting. In my interview, I had pointed to the eSafety Commissioner as being a source of potential assistance to children and young people, where they were experiencing cyberbullying or whatever it might have been. That particular young person had never heard of the eSafety Commissioner. So I think that, again, there are these great bodies and agencies that exist out there, with some fabulous tools. They

have the ability to intervene and actually pull stuff down off social medial, where it is harmful, yet, if kids do not know about that, then it is not as useful as it could be.

MS LAWDER: And does your office use social media?

Ms Griffiths-Cook: We do. We are getting better at it. It is not my natural skill base, but we have been quite deliberately using social media—in particular, Instagram and Twitter—to try and extend our reach to children and young people and also, through those vehicles, to provide an understanding of the rights that children have.

We have also developed a newsletter. We were running weekly newsletters during COVID, last year, but we have turned that into a monthly newsletter as we are sort of coming up to the tail end. I should not say that; I am not sure we are quite there yet. We have titled the new newsletter *Rights in ACTion* and are using that as a vehicle to assist children and young people to understand their rights as well. Certainly it is my expectation that we will use a future edition of that, as we come out of the tail end of this consultation, to increase understanding about their rights to not be discriminated against, for example. We are growing that. I think there is still work to go there.

I do not think we have quite got the reach that we would like to. There has been a suggestion that I might like to get onto TikTok. I am not quite sure that I am up to that yet—

MR DAVIS: I caution against it.

Ms Griffiths-Cook: We are going to keep pushing that out.

MS LAWDER: Presumably you have done your analysis about the demographics of each of those platforms, so I guess I am a little surprised by Twitter. What is the percentage of young people that you believe are using Twitter?

Ms Griffiths-Cook: Probably not a lot. Instagram is the one. Twitter I have had since early on, since I came into this role, so it was not specifically there to direct comms to children and young people, but we are going with the approach of: “Hey, given that I am on there anyway, I may as well push it out through that avenue as well.” Instagram is the primary one that we have been using to try and engage. As I said, there is that suggestion of a possible TikTok or two. I have not done that yet.

MR DAVIS: Could I just ask a supplementary on that, perhaps a cheeky one, Commissioner? Are there specific supports the ACT government could provide your office to enable better capacity for you and your team to reach out to young people on social media where they are?

Ms Griffiths-Cook: I am sure there could be. As I said, we have a small team; we do not have a great big spread. We certainly do not have a dedicated marketing and comms person or anything like that. When we were in COVID last year we were talking about the fact that no-one would ever know it was three part-timers working in their bedrooms pushing this stuff out, because we were getting some quite good feedback off it. That is literally what it was coming down to—a group of part-time staff sitting at their computers. That is still what we do.

If we had a wishing well that we could draw into and get those resources directly, that would be great. Where we can, we try to encourage government directorates to support us in that endeavour. We also have an open invitation to government to come and speak to us if they are interested in developing their own comms for children and young people.

THE CHAIR: Following on from Mr Davis's questions about anti-racism, I was wondering whether there are some examples of anti-racism campaigns or frameworks that exist in other jurisdictions that are centred on the experience of young people that we should be aware of?

Ms Griffiths-Cook: That is partly why we are doing our consultation. Not really is the short answer to that. That is really why we were wanting to engage children and young people to help us identify what is it that they think they need to best respond to racism that they either experience, witness or engage in.

MS LAWDER: Back to social media, briefly: just as an opportunity to get this on the record that we can put in our report, what is your Instagram handle for the ACT Children and Young People Commissioner?

Ms Griffiths-Cook: actkids_cypc.

MS LAWDER: Thanks.

THE CHAIR: It sounds like you are going to have one new follower by the end of the day, at a minimum.

MS LAWDER: In your submission you have made the point—and I think you touched on it earlier as well—that kids from Aboriginal and Torres Strait Islander backgrounds seem to experience racism at an even higher rate than others. It is terrible. Why is this so? Do you have any thoughts?

Ms Griffiths-Cook: I think it stems back—it has a long history to it, as we know—and, unfortunately, that history still prevails in the here and now. Certainly, their experience not just of individually directed racism but, I think, the underlying foundation of systemic racism that remains within our country, continues to impact. Interestingly, even comments like—and I referred earlier to casual racism or unintended racism—"I love the colour of your skin; that's beautiful," while seemingly complimentary, still amplify difference and may or may not be experienced by someone who, in other circumstances, has perhaps experienced negative commentary about skin colour or race, or whatever it might be.

MS LAWDER: Is that what we call positive racism?

Ms Griffiths-Cook: There are a number of different terms: microaggressions, we are finding young people use casual racism terminology. It is that kind of stuff. Another example I recall is, "Can I touch your hair?" Again, it is seemingly innocent and certainly not intended to be racist or negative, but it is still experienced through a lens where race or culture or whatever has been responded to negatively in the past. Those

things can still have an impact. Another example is a young person being asked, “Where do you come from?” “Here; born and raised here in Canberra.” “Yes, but what about your parents?” “Yes, here.” Again, we need to work on that breadth of understanding that the colour of someone’s skin does not mean that they are not local.

MS LAWDER: I know we have quite a high rate of removal of Aboriginal and Torres Strait Islander children from families here in the ACT compared to some other jurisdictions. Is that a form of systemic racism or does it contribute to racism?

Ms Griffiths-Cook: I think both. I think the disproportionate number of children and young people of Aboriginal and Torres Strait Islander descent who are removed from families, again, has its basis in history and it still continues today. Pleasingly, I have seen more recent initiatives in the care and protection space being far more supportive of better outcomes for Aboriginal children and young people than perhaps in the past. By that, I refer to things like family group conferencing where, instead of just coming in with a removal, the family are brought round the table to actually discuss the concerns that have been raised about those children and young people and to discuss in a family group setting how best to respond and how the family can ensure that safeguards exist so that those issues are appropriately dealt with and ideally negate the need for removal.

In some instances, a child may still need to be removed, if not long term then short term, just to establish the safety and then be able to return the child. I think the focus should always be on restoration, particularly for Aboriginal and Torres Strait Islander families where the cultural aspects of removal in terms of loss of self and identity can be felt so very prevalently, not just in the here and now but throughout a person’s life.

MS LAWDER: Thanks.

THE CHAIR: Ms Griffiths-Cook, thank you for appearing before the committee today. The secretary will provide you with a copy of the proof transcript of today’s hearing, when it is available, to confirm its accuracy. You have taken a question on notice today, so could you please liaise with the secretary to provide an answer?

Ms Griffiths-Cook: Yes.

THE CHAIR: Thank you.

Hearing suspended from 12.39 to 2.00 pm.

POULTER, MR ADAM, Acting Chief Executive Officer, ACT Council of Social Service

KILLEN, DR GEMMA, Head of Policy, ACT Council of Social Service

DARUWALLA, MS AVAN, Policy Officer, ACT Council of Social Service

THE CHAIR: The committee now welcomes the ACT Council of Social Service. Please be aware that the proceedings today are covered by parliamentary privilege, which provides protection to witnesses but also obliges them to tell the truth. The provision of false and misleading evidence is a serious matter and all participants today are reminded of this. Please ensure that you have read and understood the pink privilege statement in front of you. If you could just confirm that for the record?

Ms Daruwalla: Yes.

Mr Poulter: Yes.

Dr Killen: Yes.

THE CHAIR: Wonderful. Do you have an opening statement?

Dr Killen: Yes.

THE CHAIR: Take it away.

Dr Killen: We appreciate the opportunity to appear before the committee and we really welcome this inquiry into racial vilification in the ACT. We want to begin by acknowledging that we are on Ngunnawal land. It would be remiss of us to begin this conversation without acknowledging the racism that Aboriginal and Torres Strait Islander people have faced and continue to face in this country and in this city, and the role that colonisation has played in constructing our society here in Canberra and across the country.

I also want to acknowledge that racial vilification and racism have profound and lasting impacts on people's lives. We really need to take this seriously and consider both how we can prevent trauma from happening and how we should respond to it when it occurs. Racism is notoriously hard to prove. Often the person on the receiving end knows that they have just experienced racism but is unable to point to particular words or behaviours as definitive evidence of malicious intent. This is particularly true of engagement with and denial of services.

Our submission and our testimony today focus largely on systemic racism, particularly in the justice system, child and youth protection services, and housing. However, we acknowledge that racism and racial bias play a significant role across government services and throughout the community. In our submission, we focus largely on Aboriginal and Torres Strait Islander experiences of racism and racial vilification, but we also advocate for the creation of an independent advocacy body for culturally and linguistically diverse Canberrans.

We note that the Canberra Multicultural Community Forum exists as a peak body for

multicultural community organisations in Canberra but that it is unfunded. We also know that if we can seriously address the racial vilification that Indigenous people face in Canberra, we can make things better for everyone in the community. Aboriginal people experience particularly worse health outcomes in the ACT, are more likely to experience racism in workplace and education systems, are more likely to experience housing stress and are at higher risk of engagement with the justice system and child protection systems.

In order to address these issues and racial vilification broadly in the ACT, we must resource and implement adequate oversight and accountability mechanisms and cultural education programs across all government programs and services. To guide and accompany this work, the government should commit to developing an anti-racism strategy in the ACT that provides pathways towards meaningful and lasting change.

THE CHAIR: Wonderful. You finished your opening remarks with reference to an anti-racism strategy. Do you have examples from other jurisdictions—or anywhere in the world, to be honest—that the ACT should look to when it comes to inspiration for an anti-racism strategy?

Dr Killen: It is a good question. I cannot think of anything off the top of my head. Did you come across anything when you were researching?

Ms Daruwalla: I think we got the initial idea for the anti-racism strategy from a report written by Erika Smith when she was working in Andrew Braddock's office. I think she had some examples in that, but I cannot remember off the top of my head.

Dr Killen: We can share that report as well. I think we looked at some things in the UK as well around positive duty and combatting unconscious bias, which we can also share with the committee if that is helpful.

THE CHAIR: That would be wonderful.

MR DAVIS: Thank you, Dr Killen. I am interested in a comment you made in your opening statement about some of the areas where your organisation acknowledged people could experience racism. In particular, I want to fixate on housing. The Assembly has recognised on numerous occasions that we are in a housing and rental affordability crisis. Are you able to give the committee some examples of where the crisis is exacerbated for CALD people and multicultural communities, in your experience?

Dr Killen: The research that we have access to is about Aboriginal and Torres Strait Islander people. As far as I am aware, data is not collected on multicultural or CALD communities and access to housing. Aboriginal people represented 17 per cent of specialist homelessness service clients in the last year, which is significant given that they are only two per cent of the population. Indigenous people are also twice as likely to live in overcrowded accommodation and more likely to be renting from state or territory housing across the country but also in Canberra; so they are more likely to live in public housing.

When housing needs are stretched across the board, there is a particular impact on Aboriginal and Torres Strait Islander people. I would imagine, though we do not have the data at the moment, that the same would be true for multicultural communities because of unconscious racial bias in terms of accessing housing.

MR DAVIS: To that point that you acknowledge many Aboriginal and Torres Strait Islander people are tenants of state-owned housing, that would be the same here in the ACT. Are you aware of any instances where members of the Aboriginal and Torres Strait Islander community feel like they have been treated differently by the ACT government and ACT Housing because of their Aboriginality or Torres Strait Islander identity?

Dr Killen: That is certainly something that we have heard from community members—and from people representing Aboriginal community members—about their experiences in public housing. Again, it is one of those situations where there are not necessarily specific instances to point to, but there is certainly sentiment amongst Aboriginal people in public housing that there is some bias from public housing staff.

THE CHAIR: You said that you did not have the data at the moment for the CALD community in public housing. When you say “at the moment”, does that mean we are looking to get that data?

Dr Killen: I just meant that I have not looked to see if it is available. It might be available, but I do not have it. I can check whether we have access to that data as well.

THE CHAIR: That would be great.

MS LAWDER: On housing options for Aboriginal and Torres Strait Islander people, you said in your submission that the ACT government should develop and resource an Indigenous housing strategy. Are you saying that that does not currently exist anywhere, not in Our Booris, Our Way, and not in the affordable housing strategy? Are you saying that, to the best of your knowledge, there is no Indigenous housing strategy?

Dr Killen: To the best of my knowledge.

Mr Poulter: The needs for Indigenous housing are mentioned in the documents that you have referred to there. In our view, given the levels of disadvantage that we see and the poor housing outcomes for people from that community, it would be appropriate to develop a specific Indigenous housing strategy. One does not currently exist. I would just like to mention that you would have had testimony from our colleague Rachelle Kelly-Church, who is of Indigenous origin, but she is unwell today so is unable to give testimony.

MS LAWDER: Your submission also mentions a pathway to a community-controlled Aboriginal housing organisation. It is my understanding that we did have one in the ACT quite some years ago which is no longer in operation. To my recollection, in the ACT and elsewhere it is difficult to maintain a community-controlled Aboriginal housing organisation when there is quite a small number of properties to be managed, in terms of income and maintaining them. Whilst you have recommended that there

should be a pathway to do that, do you have any thoughts on how to overcome those structural issues?

Dr Killen: Do you have any thoughts, Adam?

Mr Poulter: I think the first point is the importance of an Indigenous-led solution and mechanism for addressing the issues faced by community. That is why we would advocate for the need to create one again. You refer to the fact historically there has been an Indigenous-led community housing organisation.

MS LAWDER: Was that Billabong? Is that what it was called years ago?

Mr Poulter: There was one by that name and there were several others as well. You also asked about the practical challenges. We know that, in terms of low numbers, the level of disadvantage amongst the Indigenous community means that they are disproportionately represented in terms of housing stress and affordability. You referred to the 17 per cent figure earlier, which gives a rough indication of the magnitude of the issue.

In terms of addressing the practical challenges, I think there are a number of ways that it could be created. One is to have a dialogue with Indigenous-led organisations, including perhaps those providing health, about whether they might be interested in enlarging their remit. There are also Indigenous-led housing bodies in nearby areas. There might be an opportunity for dialogue with them about potentially expanding their sphere of reference. There may be other options as well. Certainly, it is an area where there would need to be careful dialogue with the Ngunnawal elders and also the elected body around the establishment of Aboriginal-controlled housing organisations.

MR DAVIS: In the broad, are you proposing a model whereby if somebody who identifies as Aboriginal or Torres Strait Islander is renting a property from the ACT government, that property would instead go under the management of an Aboriginal-controlled housing organisation?

MS LAWDER: Like a community housing—

MR DAVIS: That is right; like a community housing provider.

Mr Poulter: I think that would be a preferred option, because it would mean that those tenants could deal with a culturally safe body that they are comfortable with. There are some practicalities that would need to be worked through with that. The current housing stock of public houses is finite. My understanding is that in the past some of that housing stock was indeed managed by Aboriginal-controlled housing organisations. There might need to be an investigation into whether there would be an opportunity, if an Aboriginal-controlled housing organisation were created, to transfer a portion of stock. We also know there is a pressure on overall numbers of public houses. But that is not to discount the fact that the need is there and that the opportunity to address that, in a considered way, needs to be explored and acted upon, in our opinion.

MR DAVIS: Would the model that you are proposing work if only some of the

homes which are currently managed by Housing ACT and occupied by Aboriginal and Torres Strait Islander people were transferred to such a community-led organisation? Or, to have the desired effect, would it require a wholesale transfer because, just doing some rough numbers, the ACT government manages about 11,000 public housing properties? By your own numbers, Dr Killen, 17 per cent of those would be people of an Aboriginal or Torres Strait Islander background.

Dr Killen: The 17 per cent refers to specialist homelessness clients rather than public housing tenants. I do not have the data on public housing tenants. It is just that they are more likely to be in public housing.

MR DAVIS: That makes more sense; thank you.

Mr Poulter: Just to emphasise, none of the three of us identify as Aboriginal or Torres Strait Islander, and you are asking us to comment on some quite important issues for which there would certainly need to be careful consultation with some of the bodies that we have mentioned. Apologies, again, that Rachelle cannot give testimony today as we had intended. We have of course consulted with her and she in turn talks with community about these issues, but there is a limit to how much we can speak on that.

MR DAVIS: That being the case, would it be all right if I just brought my question back to its original origin, mainly around the experiences of racism in housing? We have fixated a bit on the Aboriginal and Torres Strait Islander experience and public housing in the ACT. Are you aware of any examples, for the committee, of where people feel they have experienced racism in housing—more broadly, private rentals through real estate agencies et cetera?

Dr Killen: We heard similar stories, again from community and community services organisations about people experiencing racism from real estate agents, in terms of being denied rental properties based on their Aboriginality. There are not any specific stories but just a general sense that a lot of people had experienced that and that it was harder to find rental properties in the private market.

MR DAVIS: Would you say that this is an acute experience particularly for Aboriginal and Torres Strait Islander people or, across the board, is this being experienced more broadly in terms of perceived discrimination in housing?

Dr Killen: I would imagine so, but we spoke mostly to Aboriginal organisations and communities.

MS LAWDER: I wanted to ask about the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care. We had a brief discussion with one of our previous witnesses along those lines as well. As you have said, you know that there is often a poorer outcome for children in the long term who have been removed from their homes. Are you saying in your submission that currently removal of children from their families is not a last resort? You have said it should be an absolute last resort, undertaken only when all other support mechanisms have been exhausted. Given that over-representation, especially compared with other jurisdictions, is there an underlying implication that it is not used as a last resort in the

ACT?

Dr Killen: We know that the ACT, compared with all other jurisdictions in the country, spends the least amount of money on intensive supports pre-removal. I think there is a lot of scope for investment into supporting people to keep their children before removing them. We cannot say that people are not doing it only as a last resort, but I think there is a lot of scope for more support before removal. There is definitely a lot of that in the Our Booris, Our Way report—a lot of recommendations around pre-removal supports that could be implemented and have not yet been implemented.

MS LAWDER: You mentioned lower spending in the intensive family support area. I could be wrong here, but I just had a recollection that, according to RoGS data, we actually spend more per child on the out-of-home care area but for poorer outcomes. Is that not the case?

Dr Killen: I cannot remember the RoGS data spending per child in total in child protection, but certainly, in terms of intensive supports pre-removal, we spend the least per child.

Mr Poulter: That is \$880 per child compared with the national average of \$1,327, so about two-thirds of the national average.

Dr Killen: Just as an example, we had a story recently from a member organisation who was supporting a family with children with disabilities. They did not have access to any support services until the children were removed, at which point wraparound services were provided for the children while they were in out of home care. Once the children were returned to home, they lost all of the access to those support services.

MS LAWDER: It seems a bit perverse, doesn't it?

Dr Killen: Yes.

MS LAWDER: You have also mentioned that the ACT have committed to internal and external review. It seems to me that we have been talking about that for quite some time. I can ask the minister, but do you happen to know when that is expected to be in place?

Dr Killen: We have also been asking that question recently. As far as I know, they are in a pilot phase of the internal review mechanism, but we do not know the details of it. The external review mechanism, I think, has just come back from tender. That is my understanding. I think there is commitment to do it soon, but we do not have any of the details.

MS LAWDER: I will try and remember to ask the minister. Thank you.

THE CHAIR: A few of the recommendations in your report centre on cultural awareness training. For the benefit of the committee, can you explain to us the benefits of cultural awareness training?

Ms Daruwalla: I think we recommended two pathways. The first was for staff in

government services, including in Housing, children and youth protection services and the justice system, to make sure that the services they provide are more culturally sensitive and aware and that there is a strong awareness of the factors that lead to racial bias; that they should be aware of that within themselves and how they can counteract that. The second was wider cultural awareness for the community, especially through the education system.

Dr Killen: I think having some understanding of the historical basis of some of the poor outcomes that particularly Aboriginal people face can help people to make appropriate changes; that they need to address those negative outcomes.

THE CHAIR: How widespread is cultural awareness training within the ACT government currently? Do you happen to know?

Dr Killen: We do not know. We can only speak anecdotally to the Aboriginal people that we have spoken to and consulted with who have been dealing with government services that say that it is not necessarily apparent that they have been through that training.

THE CHAIR: What are some of the impediments that individuals and organisations might face when trying to make the decision as to whether or not they should have cultural awareness training?

Dr Killen: I am not sure. Cost maybe?

Mr Poulter: Maybe, and whom to contact. It is really a shame that Rachelle is not here to speak today. She heads up our Gulanga program. One of the main reasons that exists is to facilitate the provision of such cultural awareness training within the community sector and to provide advice to government on how to organise it.

Ms Daruwalla: Perhaps also an impediment is that our work required that they recognise that there is a problem.

Dr Killen: In the corrections system, for example, staffing becomes a problem because, when they are short-staffed, there is no time or resources to send people to cultural awareness training. I do not know how widespread that problem is across the government, but particularly in corrections it is a problem.

MR DAVIS: I have sat through many trainings in many workplaces over the years, and I have seen training done very well and training done very poorly. When we talk about cultural awareness training in the broad, one of the risks that could be there, I would instinctively think, is that it could be delivered in such a way where it has a negative impact on participants and on the community. Do you have some examples for the committee of what best practice cultural awareness training might look like?

Dr Killen: We run cultural awareness training through ACTCOSS—

MR DAVIS: How convenient. It sounds like I had prepared that question!

Dr Killen: through the Gulanga program with Julie Moore. I think we have all done it

at ACTCOSS. We run it for the community sector—and for government, actually; we allow government people to come along to that training. I think it is really great. It is a whole day of training and it is in person. You discuss your social location in connection to the history of the place that you are in. Julie brings in other members of the community to talk to the group so that you are not just hearing a blanket version of Aboriginal history; you are hearing from multiple people about their experiences. I think you did it most recently.

Mr Poulter: I did. I think, for me, it is a day that speaks to the heart as well as the head. There is a combination of just reflecting on your own journey to this place, to hear from those whose country it is, to hear about some of the traumatic experiences that they have lived through and some of the challenges they face today. But it also speaks to the head about some of the facts and figures. You use a variety of methods from storytelling, watching videos, discussion in groups, self-reflection, to reflection with your group in a kind, supportive but sometimes necessarily challenging dialogue through the day.

MR DAVIS: How is that cultural awareness training that ACTCOSS runs funded?

Dr Killen: We have different tiers of cost for different people that are applying to come to the training. I do not think it is something that we profit from. All the money goes to Julie Moore. A community organisation might pay less than a member of government that is coming along to training, for example.

MR DAVIS: Have you found, over recent months or years, that the demand for that program has been consistent or have you seen an increase in demand for that program?

Dr Killen: It is really hard to say, given COVID. We did not run training during COVID, because we did not offer it online. I do not think any of us were at ACTCOSS before COVID, so I do not know that we can speak to it. We always have really consistent and high numbers at training.

MR DAVIS: I am interested in the reporting of instances of racism or vilification. What are some examples you could point to in the community where reporting is best practice and what are some examples we would seek to avoid, where there are situations where reporting is more difficult or more trouble than it is worth, as you may perceive?

Dr Killen: That is an interesting question about best practice. I am not sure, in our consultations with people, whether anybody brought up an example of best practice. Can you remember?

Ms Daruwalla: No.

Dr Killen: There were a lot of concerns about reporting, the process of reporting and how difficult it can be. Even in instances where people have very clear examples of racism, or racial bias, the process can be so long, so expensive and so unsupported that it is very rare. The commission might take a large number of complaints, but the number of people who follow through or continue with those complaints is quite low,

because there is this real sense that there is no point in taking a complaint through and it is so labour and time intensive, and costly.

Mr Poulter: We did, in those consultations, sometimes hear about concerns that, in particular, the Aboriginal and Torres Strait Islander community had experienced with the police. Currently, the only way to make a complaint about racial vilification at the hands of the police is to go through the Commonwealth Ombudsman, which is a difficult and inaccessible process. Therefore, we recommend an independent complaints mechanism for the ACT police to provide transparency and accountability for police behaviour with the Aboriginal and/or Torres Strait Islander community, but also with other culturally and linguistically diverse communities.

MR DAVIS: Could I pick you up on that point? Mr Poulter, you have mentioned the police, and we have had a discussion about housing. We are doing this work because we want to try and eliminate racism everywhere. Were the committee and the government to concentrate their efforts on a particular area where you think there is a pressure point, where would you say that is? Is that in housing? Is that in people's relationship with law enforcement? Where would you say people are most likely to experience racism?

Dr Killen: It is a lot of pressure to make that call. There has been a clear call from the Aboriginal community for some sort of commission of inquiry into racism in the justice system. That would be where I would put my attention, if it was my decision.

Mr Poulter: We would also like to take the question on notice so that we can consult with Rachelle and with community and get back to you with a considered response.

MR DAVIS: Of course. That was quite a doozy. I am self-aware enough to know that was quite a doozy, so I am happy for you to consider it with time.

Mr Poulter: If that would be acceptable?

MR DAVIS: That would be great; thank you.

MS LAWDER: You talked about having an independent advocacy voice for CALD communities. Are you meaning a new peak body that focuses specifically on including Aboriginal and Torres Strait Islanders within that?

Dr Killen: I think that would have to be determined in consultation with Aboriginal communities. There could be scope for that, but only if it was wanted, depending on the design of it.

MS LAWDER: Do you know whether other states or territories have such a thing?

Dr Killen: I believe so.

MS LAWDER: Do you know what they are called?

Dr Killen: I will double-check.

Mr Poulter: We will have to take that on notice as well so that our response is accurate.

MS LAWDER: Sure. Is there an organisation like FECCA—not the Chinese one? There used to be a federation of ethnic community—

Dr Killen: FECCA still exists.

MS LAWDER: Are they still in existence?

Dr Killen: Yes.

MS LAWDER: We also had the National Ethnic Disability Alliance.

Dr Killen: I am not sure about their current status but, for sure, FECCA is still around.

MS LAWDER: Does FECCA undertake that type of role currently, do you know?

Dr Killen: Nationally, yes.

Mr Poulter: Nationally. Earlier in the testimony we mentioned the multicultural communities peak body here in the ACT. One option might be to look at providing some funding for them to play an advocacy role on behalf of multicultural communities.

Dr Killen: They are very active as an organisation, but there are real limits to what they can do and what they can be involved in, because they are not resourced.

MS LAWDER: Would that independent advocacy body—just blue-skying—have some people with a legal background who might also provide advice on whether or not what you have experienced is racial discrimination or vilification? Would it have that sort of role as well?

Dr Killen: I think we suggested something similar in our submission. One thing that we heard a few times was that this complication about not being able to determine whether something you have experienced is racism, or not being able to prove it, might be overcome if you had an independent body of people who had experienced racism in the world. They could help determine what counts as racism, rather than relying necessarily on more objective markers of racism. It is possible that that body could play that role.

MS LAWDER: Again, I am not tying you to anything, but would they assist the complainant to go to the Human Rights Commission or act as an advocate in that role?

Dr Killen: I think there could be two ways that it could go. Either they could play that advocacy and support role—or there could be, at least, a part of their organisation that plays that role—or there could be a body that, when a complaint gets made, the complaints get taken to this independent body for assessment as to whether something is racial vilification.

MS LAWDER: So it does not require that person to be aggrieved; someone could take it on their behalf. Is that what you are saying?

Dr Killen: I am not sure if that is what I am saying. I guess I am saying that if someone does take a complaint to the Human Rights Commission, for example, the Human Rights Commission could then take the complaint to the body to assess whether it counts as racial vilification.

THE CHAIR: One of your recommendations is that we should conduct a royal commission into Indigenous disadvantage in the ACT. Why?

Dr Killen: We know that the numbers around disadvantage are significant for Aboriginal people, particularly in the justice system. There have been a few reports and inquiries done on this particular issue. There is a real sense from some parts of the community that recommendations have not been implemented and things have not changed, despite those inquiries. Now there is a sense that there needs to be a high level inquiry which, at least, gives an opportunity for people to be heard. In a different way than something like the community corrections inquiry, which happened recently, this would be an opportunity for individuals to tell their stories and have their experiences recognised, and to have some highly accountable recommendations come out of that high level inquiry.

MR DAVIS: I want to pick you up on one particular recommendation, recommendation 4:

Inclusion of the ACT police as an area of discrimination under part 3 of the ACT
Discrimination Act 1991.

Would you mind explaining, in summary, for the committee, the origin of that particular recommendation?

Dr Killen: That relates to what Mr Poulter was saying earlier about needing an independent complaints mechanism for the police. I think this is something that is also being looked at in the Discrimination Act review that is currently happening. Did you want to expand?

Ms Daruwalla: Initially it came from our consultation with the Human Rights Commission in which they made it very clear that this would make sense and was something that would easily fall under that section of the Discrimination Act.

Dr Killen: The Human Rights Commission would be enabled also to take complaints about the police, avoiding this process where people have to go through the Commonwealth Ombudsman which, again, is a really lengthy and costly experience.

MR DAVIS: If I am hearing you correctly, you are of the understanding that that has already been considered by the Minister for Human Rights as part of that Discrimination Act review. Is that correct?

Dr Killen: That is certainly something that we put in as feedback in our participation

in the Discrimination Act review.

MR DAVIS: Very good. In addition to that very specific recommendation as part of that review, given the complex nature of the arrangement between the ACT government and ACT Policing, which of course, as you understand, is very different to other states and territories, what additional interventions do you think the ACT government could make in its relationship with ACT Policing to limit instances of perceived racism or racial bias?

Dr Killen: That is a good question. We might go back to that idea of cultural training around cultural safety as an initial step. There are probably recommendations that have been made in previous inquiries, particularly about Aboriginal communities, that would need to be implemented.

Mr Poulter: I think there is also the option, potentially, for the Attorney-General to issue a directive on these matters to the police.

MR DAVIS: Okay. I will have a chat with him.

Mr Poulter: I would just stress that we have consulted with community and the issue has come up often. We also know that the majority of police officers clearly do their jobs as public servants to the best of their abilities and in a fair manner. But there are reports that it is quite commonplace, unfortunately, also for those of Indigenous backgrounds to experience racism. That is what we are talking about here.

MS LAWDER: You have also in your submission made recommendations about cultural awareness training for all ACT government staff, including corrections, Policing, CYPS, staff in the housing directorate, and you mentioned the Education Directorate as well—the government departments receiving the highest numbers of complaints of racial vilification. It appears to me that we already have within the ACT government respect, equity and diversity training, which is rolled out and which we can build on. I guess you are saying that you believe we need more than that and this needs to be a specific training area for staff. Is it for all staff or for customer- or front-facing staff only? What are your views?

Dr Killen: I think front-facing staff as a priority, but probably all staff is really important, especially when we are thinking about who is making policies and who is enacting legislation and ensuring that they are doing so with as little racial bias as possible, and making sure that that training—

MS LAWDER: An often-unconscious bias?

Dr Killen: Yes.

MS LAWDER: Usually.

Dr Killen: is not something that you do once to check a box but something that you engage with regularly so that you can confront those often-unconscious biases as much as possible.

THE CHAIR: Thank you, ACTCOSS, for appearing. I think you have taken a question on notice, so the committee secretary will be in touch.

Short suspension.

GU, MR HAO, President, Federation of the Chinese Community of Canberra
LI, DR FUXIN, President, Australian School of Contemporary Chinese

THE CHAIR: Welcome back, everybody. The committee now welcomes the Federation of the Chinese Community of Canberra and the Australian School of Contemporary Chinese. Please be aware that today's proceedings are covered by parliamentary privilege, which provides protection to witnesses but also obliges them to tell the truth. The provision of false and misleading evidence is a serious matter and all participants today are reminded of this. Please ensure that you have read and understood the pink privilege statement in front of you. Could you just confirm for the record that you have read the pink sheet in front of you?

Dr Li: Yes.

Mr Gu: Yes.

THE CHAIR: Wonderful. You have an opening statement, so take it away.

Mr Gu: Thank you. Chair and panel members, first of all, thank you very much for the opportunity that we can voice our concerns and make our suggestions. Undoubtedly, Australia is one of the best, if not the best, countries in the world in terms of multiculturalism. Especially in the ACT, we have our wonderful, harmonious society where people respect each other, walking happily with each other and treating each other well.

However, that said, from time to time, in some small pockets of the population, racial hatred incidents do happen. This time last year one of our local Chinese media, *CBRLife*, registered about seven incidents from January to March. One of those incidents was very famous and became popular in social media, because the video clip was published. Dickson coffee shop owners who happen to be Chinese Australian, unprovoked, were attacked and verbally abused by several teenagers.

I believe police may have a much more detailed report, because we do not constantly look out for those incidents. It just happens that some community members inform us of what happened. Even recently we heard from community members that several of them were just walking around in the street in the Gungahlin Square area and a couple of teenagers yelled at them, saying something like: "Go back to China. Get out of here."

We understand that those types of incidents are very rare, not happening every day. However, for those affected people, the scar is huge—they could feel vulnerable; they could feel less secure and less confident. So this is the basis of why we want to make this submission. We want to raise awareness that those racial hatred related incidents do happen from time to time. We want to do something with authorities, and with the other party involved, to mitigate, to combat that bad behaviour so that we can make our society even better. Thank you.

THE CHAIR: Thank you. I and the other committee members appreciate you being here to share your experience. I will lead off with the questions and we will make our

way down the line. I was wondering if you could tell the committee what level of awareness there is within the Chinese community about how to make a complaint about racial vilification?

Mr Gu: It varies. For people who have been living here for long enough, they know the procedures—they can call police. But for those who cannot speak English well, especially for those international students with a Chinese background, they do not know what to do. One example I used in my submission was that some Chinese students, international students that come to this country, are afraid of getting involved in any of those disputes. Where they can actually effectively defend themselves, they do not want to do that because they are afraid of if they do something about this they could be deported back to China.

For those residents who have been living here for a while but cannot not speak English well, sometimes they just try to forget it. As you know, generally speaking, Chinese background Australians are very law-obeying citizens. They try to avoid those troubles, just do their best to work and to make a life. So they try to avoid those things. Sometimes they do not even report those incidents. However, sometimes even when they report it they do not see much outcome out of that reporting and don't know what happened to those people who offended them. A lot of them are teenagers. That is why, when we look into the area, we stress the education, especially for teenagers in Canberra, so that we can mitigate those types of incidents.

THE CHAIR: In regard to international students or members of the community that have not been in Canberra for very long, how do we get them to feel more comfortable about coming forward and sharing their experiences, and potentially making a complaint?

Mr Gu: One of the things that I suggested in our submission was to engage with certain authorities, like the police department, once a year or when those needs arise. We can share information so that police can better tell us the normal procedures, what we should do, and provide some guidance. For us, we can raise some concerns and share with police the issues we have. So I think communication in that regard could be useful.

THE CHAIR: For the members of the community that have potentially lived in Canberra for longer and do feel like they are able to come forward and make a complaint, and would know how to, you somewhat touched on it but I want to ask it again: what do you think members of your community expect will happen if they do make a complaint?

Mr Gu: The first thing is for those offenders to apologise to them, say that what they have done is wrong. That, by and large, could be sufficient. But, of course, for some severe incidents where people have been physically attacked, they need to see adequate penalties put in place. That is my view as well. I do not know what sort of penalties may be equivalent; that depends on the situation. But they do need to be told, they do need to be penalised and they do need to realise that what they have done does have some consequences. Because at the moment, some offenders, they just feel they can do those things to people in a so-called vulnerable position without worrying about any consequences, which is not right. So that is something, a common sense, I

believe, within our community.

THE CHAIR: Just rephrasing my question slightly: how likely do members of your community think it is that those suggested punishments or that recourse will actually come about? If they make a complaint, do they think that they are going to get an apology?

Mr Gu: At the moment, the reason some people give up reporting it is because they are thinking nothing can happen to those guys: “It is just a waste of our time.” So they just walk away, not do anything and try to forget about those things. That is, I think, partially the reason. They do not think the outcome can come through.

MR DAVIS: Thank you both. You highlighted a particular instance many in the community would be familiar with because it went viral online—the situation with the coffee shop owners in Dickson. I wonder if, in your experience, and from talking to members of your community, through your organisations—I am trying to phrase this in the right way. The point I am trying to get to is: who is more likely to be a perpetrator of racism, or racial vilification, in the form that we saw on that online video? Are people more likely to experience that kind of attack from a younger cohort or do you find, in your experience, that this is actually quite prevalent across the board, from a range of different people and a range of different places? Where does that kind of thing most often happen and by whom?

Mr Gu: Yes. Those incidents can happen in various venues. As I said, it could happen in the normal street; it is unprovoked. For some of us it could happen in a restaurant or coffee shop, as you mentioned. In terms of offenders, they also could be various. However, most people have a view, based on the statistics we have, that teenagers are most likely to make those troubles. I am not necessarily putting racist hats on them, because it could be lack of education and they just have not been taught a certain way; However, they are mostly likely among the group that are going to make those offences. That is what we have observed so far.

MR DAVIS: Yes.

Dr Li: Can I also add to that. One case recently, I think, took place on 31 March in Dickson. Drunk local people smashed the Asian shops there, attacked the shop staff. Actually, this guy, I think he had a previous record with the police and two years ago I myself was one of the victims. He is always wandering there, speaking very abusively to the Chinese people, like: “Get out of this country. We do not welcome you.” Also, I was actually the one. I cannot remember the specific date but just two years ago, around 9.30 in the evening, this gentleman was there.

This happened again on 31 March; he smashed a couple of the local groceries and attacked a guy. Some people from the neighbouring shops, the Chinese guys or the local residents, came to help, and this guy still did not want to go. I think this was reported to the police, but so far I have not got any information that there is an outcome. That is another case. I think this case is even worse than the coffee shop case last year.

MR DAVIS: Please tell me if I am getting this wrong, but my perception from the

two cases you have argued, as it would appear, is that in one instance you have got young people exhibiting problematic behaviour, who may not necessarily be racist but are acting in a racist way. And then, Dr Li, you propose—

Dr Li: This guy is about 50 to 60, yes. It is not a young guy.

MR DAVIS: That is right; yes. In your example that is very stark. I am interested, then, in what your observations are in those two instances. What do you think would be appropriate recourse in instances like the ones you describe, which, while problematic, I am sure we all agree are slightly different, it would appear—or not; please tell me if I have got that wrong.

Mr Gu: I think the nature of the problem could be different. The one in the younger group could be as a result of lacking education or misunderstanding, especially in the set-up surrounding at the time about the so-called “China virus” or other things. That maybe leads, to a certain degree, to those types of behaviour. For the other, I was not there. I have not been shared the details. It could have been related to other reasons.

MR DAVIS: Okay. Thank you. My last follow-up is for you, Dr Li, in particular. In the example that you give, how have you found your experience with ACT Policing in making a complaint, drawing to their attention that situation and the ongoing follow-up with you?

Dr Li: Yes, fairly speaking, the ACT Policing, they are doing a good job. I think maybe we are still lacking the police patrols around. Also, the Dickson area is mainly the Asian small business area and there is not a police station nearby. So when they report anything happening it takes time for the police to be there. I visited the shops that had this bad experience, the day after. I think that happened roughly about a similar time—9.30—you know, when they are almost closing the door. They reported it to the police. The police attended but I think the following day.

So I was wondering, from the community’s voice and also from the shop business owners’ request, if it is possible that we can have more police patrols in that area, because the local businesses are still struggling to recover from COVID-19 and these sorts of happenings really scare them. I was talking with a young girl in the shop—there is a noodle shop—actually, the noodle shop was the first victim. This young girl was scared and does not like to work there individually—you know, asking her husband or others to help her, to stand there. But her husband has another job, so that is the problem, yes.

MR DAVIS: Thank you; appreciate that. Thank you.

Dr Li: Yes, yes. And I did encourage them to unite all the shops, the owners or the staff there to work together to protect themselves like Neighbourhood Watch, but also we definitely rely on the police in attendance and the police assistance.

MR DAVIS: Thank you.

MS LAWDER: Your submission says that there have been some people targeted in recent years. Are you saying that perhaps with the pandemic it has been worse, or has

there always been an underlying level of racism or racial vilification?

Mr Gu: Thank you for the question. I think I have to say that those racial hatred related incidents have been happening for a long time. I will give you some more examples. I used to be an international host parent. There was an incident where several international students—I mean Chinese students—walking in the Woden bus interchange were bullied, forced to give some money to local teenagers. I reported this sort of thing to the police and, to be honest, I was not contacted afterwards. I do not know what has happened since. So other incidents happened well before COVID-19 happened. Obviously, after COVID-19 this thing is getting worse. To be frank, the current social setting, the political and social environment around the China-Australia relationship, makes things even worse.

A lot of people have this mentality: “You came from China; you must have something to do with the Chinese government.” You may have heard the not anecdotal but actually true story that there are some public servants of Chinese background who used to be able to manage projects, but because of their Chinese background, because some China related matter happened, they need to stand aside. I do not know whether it is a policy from the federal government or from the local government. I asked that once but did not get an answer. It may be beyond this particular scope, but you can understand that the current setting, the mentality, makes a lot of local Chinese feel worried because they have to become vigilant about those misunderstandings or that unfair treatment.

And, obviously, when we talk about teenagers’ behaviour in certain social settings, this type of mentality existing in a society does not help.

MR DAVIS: Dr Li and Mr Gu, you raise some interesting examples about the context in which the Australia-China relationship is being spoken about. Obviously, we are in the middle of a federal election campaign and we have seen some instances of the Chinese President depicted in Australian political advertisements. I wonder if you have any reflections on that kind of robust Australian political campaigning and any consequences that that has on the Chinese Australian community?

Mr Gu: Yes. I would like to first state that we Chinese Australians, just like our fellow Australians, pledged our loyalty to this country. We became Australian citizens by our choice, not because we were born here. It is our careful consideration, because we can identify with the democratic values, freedom and also Australia values—the social norm, helping each other, a fair go and all those things.

So, in my view, it is baseless for anyone to doubt Chinese Australians’ loyalty to this country as somehow different. It is unfortunate, in my personal view, that some political parties play some China cards in the election. I would rather not see it, because, no matter whether it is done consciously or unconsciously, it cannot help with, especially, the local Chinese situation.

And, yes, there is an impact from the two countries’ current relationship in the life of the local Chinese. In the example I have just given, some people working in certain areas got different treatment because of their background. Also, just on this, Dr Li is an independent candidate for this election, and I understand that several of his posters

have been removed in certain suburbs, where others just nearby are not touched. So I cannot help but think that this has something to do with his background. I know the situation is not that easy, but we just need to do what we can to mitigate it. I hope that, eventually, it can become much, much better for us.

Dr Li: Yes, as Mr Gu mentioned, my signs are placed in Gungahlin, Belconnen, the Woden/Mawson area, and even Adelaide Avenue, and lots of them were smashed. But for me, you know, I feel frustrated but I get used to it. Some friends from the political parties also talk with me and say that this is pretty normal in an election. Also, the police say, “Okay; this happens,” but I still feel uncomfortable. And the community, my teachers, students and parents in the school, feel a lot more annoyed. We are annoyed, yes.

As Gu said, I think the Chinese community has great feelings for Australia, this country. Like the other groups, Chinese Australians have been here for 205 years, have been contributors to this great country, and we owe loyalty to this country. As you know, there are 1.2 million Australian Chinese contributing to our economy.

Thirdly, just as Gu said, the year before last there was an incident at the Woden bus interchange, and another one about six months later in the Belconnen bus interchange. This all happened to international students—they were attacked—plus two incidents in the Dickson area, the coffee shop and the Woolley Street incident that just happened at the end of March.

For me, because I have lived in Canberra for 25 years, I still feel Canberra is a nice place to live and I always say that Canberra is the most liveable city. I work with international students. Before COVID, each year I brought about 300 overseas students to either visit Canberra or 10 per cent of them stayed and studied in Canberra, at the ANU, UC, the public schools or the independent schools like Canberra Grammar School.

But their parents are worried: “What has happened to Canberra?” They say, “Dr Li, you are lying. You are the local there; we are the parents. Our kids are scared, are being attacked.” I will just pick a random example: one student from Shanghai and one student from Nanjing, I know their parents well. I say, “You know, Canberra is safer now.” Either because of security or COVID, the boys still do not come back. The students are bored with online learning, they want to come back to the campus, but the parents still say, “No, no, no. We are watching. We are watching.”

So we are not only reporting these cases; we are also sharing our worries as members of the community in Canberra.

MR DAVIS: Thank you. Thank you both.

THE CHAIR: Do you think that politicians, government, the authorities in general, take the issue of racism seriously?

Mr Gu: My personal view is that they are not. They are not. From time to time, when issues occur, maybe they have to. One of the things I mentioned in my submission was that, by my observations, there were several cases where police spoke to a person

and jumped to a conclusion too fast. Only a few hours after the incident happened, they say: “This is not racism or a related incident. They were just opportunists that attacked just like normal.” How do they know? If they pick a victim of Asian appearance, Chinese background or other ethnic background, among others, why are you quickly jumping to the conclusion that this has nothing to do with racism? I think that, for the incidents we just mentioned, clearly there are some racial hatred oriented elements there at least. But sometimes they are ignored or it is swept under the carpet, as if it is nothing to do with racism.

People are not understanding, are sometimes ashamed to admit that certain elements are still in the community, in society. But it is for that exact purpose that we made a submission. We want to raise awareness that those elements are still there. We need to face it. Only when we acknowledge it, we face it, we can then do something about it to rectify it.

Dr Li: Yes. In the past two years, before COVID and during COVID, we observed that the ACT government worked harder to bring people together. I attend quite a few multicultural events from the other communities, and the politicians, I think, go to them. But for Chinese community events, seldom we have the politicians attending, which gives the community a signal. They think the Chinese community is ignored, and maybe we feel less protected. So I would bring these words from the Chinese community here—the really, hardworking and loyal community: we would appreciate the politicians attending the Chinese community events as much as possible. I know that we have so many community groups because the Chinese community is one of the largest communities here, yet that will help the local Chinese community feel that we are connected, we are protected and we are helped. We will feel good.

Mr Gu: And let me make one more clarification.

THE CHAIR: Of course.

Mr Gu: The view that I put forward just then is not necessarily pointed at just the ACT. Some of my observations about the way politicians handle those incidents also happen, by and large, at a federal level; they could be more than just the ACT. The ACT could be a better district in this regard, but of course the issue is still common elsewhere.

MS LAWDER: In your submission you talk about doing more to help and to protect international students. We talked a little about the incident at Woden bus interchange, where a couple of students were the victims of an attack. You said there was perhaps some misunderstanding that students were not able to defend themselves for fear of being deported. That could have been misinterpreted from international student guidelines issued by agents either in their own countries or here. How could we overcome that so that there is not a misinterpretation but also so that people know that you cannot just go around punching people willy-nilly?

Mr Gu: I understand.

MS LAWDER: Is there a possible solution, to clarify that?

Mr Gu: Yes. I would like to make a suggestion here. First of all, the problems I mentioned in the paper are real. As I mentioned, I was an international student host; I learned about this type of issue directly, personally, from them. We can address that. I think one of the things the education department can do is that, when the students come in, you have an induction session or orientation session—I do not know what we call it.

Maybe we can focus on certain hot issues for them: just tell them, when they see those problems and are being approached by those offenders, what they should do. That certainly can help. I am not saying that they should physically fight back or something but at least they need to adequately and proportionally defend themselves to avoid those situations. Sometimes they can, because maybe there are two offenders but three students or something. They should be able to try to avoid that situation but they feel so weak and that they cannot do anything, so that is the problem.

MS LAWDER: I think you also said in your evidence previously about meeting with police and getting a bit more understanding on both sides. Does that currently happen at all?

Mr Gu: No, not that I am aware of.

MS LAWDER: But you feel it could be beneficial for them, as well as for host families or agents or all of the above.

Mr Gu: When I talk about engagement between police and the Chinese community, it is more than just international students.

MS LAWDER: Right; the community as a whole.

Mr Gu: Yes, the community as a whole. We need to understand better the guidance from the police department, when issues occur, on what we need to do. To be honest, sometimes those things occur almost on a daily basis. If you check with community members—someone tells you this; someone tells you that—it is quite often. For example, many of them live in a government housing situation. A neighbour above might throw water towards their balcony or something like that and say some bad words. Those people, the victims, speak very little English and just do not know what to do. Sometimes they live with their children—that is better. Otherwise, if they live by themselves they just cannot have their voice heard. So that is the issue. Of course, we need to do a bit more as well.

MS LAWDER: And do you hear of instances—I hope that you do—where members of the broader ACT community come to the assistance of people who are maybe being racially vilified? have you heard any of those stories where a passer-by might say, “Hey! That is not on.” Have you had any of those stories?

Mr Gu: We had a situation like that with the recent incident I just mentioned there, with people walking in the Gungahlin Square area. They said that passing slowly was a tourism bus, something like that, where on the rooftop there were several youngsters yelling out rude words like “Go back to China. Go back to India.” There were people in the lower level of the bus who actually shouted back, asked them to stop saying that.

But apart from that, a lot of incidents happen one-to-one or between small groups, so I have not heard many examples.

Dr Li: I would say the Chinese community, from my observation, receives good help from the multicultural community. I did not see any incidents from the multicultural community to speak rudely to the Chinese people. I was invited to attend the Indian community event to celebrate Australia Day, combined with their day. I expressed my thanks to the local Indian community because about 18 years ago, when one of my flatmates in Melbourne was killed by locals there, the Indian community joined the Chinese community, helped the Chinese community with their experience and knowledge, to bring this guy to justice. The multicultural community, I think, has a good relationship with the Chinese community. But if the ACT government could clearly state that international students are welcome in Canberra that would be very helpful. That would be very helpful, yes.

MR DAVIS: My understanding is that, certainly from the Chief Minister speaking on behalf of the government more broadly, there has been a great deal of enthusiasm to bring international students back to the ANU, and to UC in particular, for a range of reasons—social and, yes, economic. What are some tangible things the ACT government could do, do you think, to include international students more in the broader ACT community? I say that because one of my observations, growing up in this city, is that university can sometimes be quite homogenous. People can live and do all their socialising on campus. How do we help particularly Chinese international students to be more involved in the community?

Dr Li: Of course, we always think about the Chinese international students because we are the local Chinese community, but when we are talking about international students that means we welcome all international students in the ACT. Canberra is a seat of learning and international students are definitely a part of our ACT community. If possible, the universities and the study-in-Canberra agents and the live-in-Canberra agents could initiate an international day to recognise international students for their contribution to the local community. I think it would help.

Canberra is a capital city, it is a multicultural city, and we are proud of this seat of learning. I think that at the beginning of the year we can engage the universities, the agencies and the communities, like Korea, like India. I run a business; I have been one of the two local authorised agents of the University of Canberra for 10 years, and we bring the students here. So if there is a general celebration, like an international students' day, I think it will be really good recognition for the international students.

MR DAVIS: Great. Thank you.

THE CHAIR: I have a question about systemic issues that the Chinese community might face in accessing services. I was wondering if you could speak to some experiences of members of your community in accessing education, housing, employment and health.

Mr Gu: I personally have not heard direct evidence that in those service areas they purposely discriminate against Chinese Australians. But in terms of how we can make life a bit easier for the local ethnic Chinese community, one of them is that they need

to have more information. That is why we talk about engagement with the community with certain government service areas.

We, for our part, do our best in terms of passing information around to help each other, but certain guidance is needed from certain authority groups. It is not only police; certain service groups, if they would like to organise some forums for some local Chinese to hear about how to go about things, that would be very helpful. But, generally speaking, the government service is good and I have not heard of anything discriminatory happening.

Dr Li: Even the publishing helps the community. I did not receive any complaints about that.

THE CHAIR: Great. With that, we will call it an afternoon. Thank you for appearing before the committee today, gentlemen. I do not think you have taken any questions on notice, so that is it. Thank you. The committee will now suspend.

Dr Li: Thank you.

Short suspension.

CHEYNE, MS TARA, Assistant Minister for Economic Development, Minister for the Arts, Minister for Business and Better Regulation, Minister for Human Rights, Minister for Multicultural Affairs

WOOD, MS JO, Deputy Director-General, Office of the Director-General, Community Services Directorate

McKINNON, MS GABRIELLE, Senior Director, Legislation, Policy and Programs, Justice and Community Safety Directorate

HAKELIS, MS ROBYN, Executive Branch Manager, Legislation, Policy and Programs, Justice and Community Safety Directorate

McNEILL, MS JENNIFER, Deputy Director-General, Justice, Office of the Director-General, Justice and Community Safety Directorate

THE CHAIR: Good afternoon, everybody. The committee now welcomes the Minister for Human Rights and Minister for Multicultural Affairs, and officials from the Community Services Directorate and the Justice and Community Safety Directorate. Please be aware that today's proceedings are covered by parliamentary privilege, which provides protection to witnesses but also obliges them to tell the truth. The provision of false and misleading evidence is a serious matter and all participants today are reminded of this. Please ensure that you have read and understood the pink privilege statement. Could we just go around and do that now? Ms Wood.

Ms Wood: I acknowledge the privilege statement. Thank you.

Ms Cheyne: I have read and understood the privilege statement.

Ms McKinnon: I understand the privilege statement.

Ms Hakelis: I understand the privilege statement.

Ms McNeill: I have read and understand the privilege statement.

THE CHAIR: Wonderful. I should have asked before we got started, but do you have a short opening statement?

Ms Cheyne: I do, Chair. Thank you. We are a proudly multicultural city and we are committed to fostering an inclusive community that celebrates diversity. We proudly celebrate that over 170 languages are spoken across the ACT, with one in four households speaking a language other than English at home. The ACT government and the ACT community have zero tolerance for any racist words, actions or behaviours. Race is a protected attribute and racial vilification is unlawful. Everyone deserves to feel safe, supported, equalled and valued for who they are. Preventing and responding to racism is a collective responsibility across the community and something that requires constant work.

The ACT was the first human rights jurisdiction in Australia, and we continue to lead the nation with our Human Rights Act. Canberrans are tolerant and respectful and, as a government, we are committed to those values. The ACT Human Rights Commission—and I know you have already heard from the Children and Young People Commissioner and we have Ms Toohey later on today—already provides a range of important services to our community to ensure that people's rights are

protected, including proactive community engagement and the distribution of information and resources. The commission also offers independent and impartial complaint-handling for complaints about discrimination, health services, disability services, services for children and young people, and services for older people.

The ACT government provided an additional \$1 million in the most recent budget for extra staff at the commission. This funding is enhancing the commission's capacity to undertake conciliation processes, systemic investigations, training and education so that we can prevent racism in the first place and have a responsive complaints system when it does occur.

You will also be aware that we are currently reviewing our Discrimination Act and we will be implementing reforms later this year to ensure that it protects Canberrans from discrimination in more situations. Following community consultation on those reforms, the government published a listening report last month, and I will be releasing a consultation draft of the discrimination amendment bill in the near future. Something that has been contemplated in these reforms is the concept of a positive duty to prevent discrimination. We are very happy to answer some questions about that later.

As Minister for Multicultural Affairs, a major body of work this year is developing the multicultural recognition act in consultation with the community. This act will further demonstrate the value we place on multiculturalism in the ACT by: establishing a multicultural charter which declares the values we have as a community, enshrining in legislation the existing Multicultural Advisory Council, and establishing reporting obligations for government. The multicultural recognition act will align with and complement the ACT Discrimination Act and the ACT Human Rights Act to strengthen how we prevent and respond to racism in the ACT community.

I also acknowledge that there is work underway at the national level, led by Race Discrimination Commissioner Chin Tan, for a new national anti-racism framework. A consultation paper was released on this last year and the ACT government has been participating in this consultation, as has the Human Rights Commission. That framework contemplates identifying responsibilities and responses at all levels of government. One of the key actions is that all governments in Australia commit to eradicating racism through the adoption of a national framework on addressing racism. I understand that what the commissioner has heard from the consultation will be released mid this year, before the committee completes its inquiry.

Finally, I wanted to acknowledge that the ACT government is planning to deliver anti-racism training for staff, with a focus on bystander awareness training, to give participants strategies to safely intervene and to de-escalate incidents of racism and discrimination in the workplace and community. I look forward to engaging constructively with this committee and I thank you for undertaking this inquiry so that we may continue to improve tackling racism in the ACT and to further support our culturally and linguistically diverse community. I am happy to take questions.

THE CHAIR: Wonderful. I was wondering if you could speak to the national anti-racism framework and what benefits that would have for the ACT?

Ms Cheyne: Yes. Thank you, Chair. You might be aware that there was a national anti-racism strategy some time ago, which formally concluded, I believe, around 2018. Commissioner Tan announced in March last year that he was consulting on a new national anti-racism framework. Detailed in that consultation paper—and, if it assists the committee, we are happy to give you a copy of that and the consultation guide—he has identified why he thinks that is necessary and that he intends that there be a number of national outcomes and then actions sitting underneath that. It does talk about actions that subnational governments could undertake, ensuring that legislation at all levels of government is fit for purpose, but also about how the reporting of racist incidents could be improved or enhanced.

Colleagues here have been participating in those conversations, so I might see if there is something further to add. I understand that Ms Toohey has also been participating and might be able to reflect a little bit further on some of the other things that have been raised during that.

Ms Wood: I will start from the CSD perspective of our engagement. In those conversations we have responsibility for the focus on inclusion and the focus on encouraging participation and work towards a multicultural recognition act. We can certainly see a lot of value in a national framework that sets clear principles and expectations that our work can contribute to and be guided by. I think we also see the opportunities that that national framework could provide for some really common nationwide campaigns and communication around those messages of inclusion. Obviously, we can reflect those locally, and we already work through that in a range of ways with the community. We can see, obviously as a small jurisdiction, that consistent messaging and principles nationally, through a national framework, would definitely be a great foundation for the work we do.

MR DAVIS: Minister, the ACT government's Multicultural Framework and Second Action Plan ended in 2020. Could you give the committee an update on what work is being done on the development of a new framework and a new action plan?

Ms Cheyne: Thank you, Mr Davis. The next large body of work for the ACT government is the multicultural recognition act, from which everything will flow. The action plans have been very useful in getting us to that point. Where we have been over the last 18 months or so is consulting on this act and drafting it and looking forward to releasing the exposure draft of that in the coming months. It will contain within it a multicultural charter and then reporting obligations for the government in how the charter is being realised across government agencies, recognising that some of what is contemplated within that has a bit of an intersectional focus and that we need to make sure that we have that lens right across government.

I think that the multicultural recognition act and the Discrimination Act reforms that we are contemplating both do have a focus on prevention. I know a lot of the conversation today has been about complaints—where to go and responding to complaints—but I think we also take a real focus that we want to ensure that this does not happen in the first place, and that is where that positive duty element comes in. But, essentially, to answer your question more directly, the multicultural recognition act is where the efforts have been and you will see what the steps are when that exposure draft is released.

MR DAVIS: I will not pre-empt the exposure draft too much, but you hit on the point about some of the evidence we heard this morning. At the risk of verballing those who came and spoke to us, it would appear that we are very good, as a city, at celebrating multiculturalism, but at the other end of the spectrum perhaps there is some room for improvement in stamping out racism—and those two not necessarily being the same. How do you see the multicultural recognition act targeting that problem and stamping out racism, as opposed to celebrating multiculturalism?

Ms Cheyne: I think what is so fundamental to the multicultural recognition act is this multicultural charter. That has been one of the key areas of consultation with the community, because what it will do is stipulate who we are as a city and the expectations regarding the behaviours that we wish to see and the attitudes that we expect from across the community.

I think that we recognise that legislation, and recognition legislation, does not necessarily abolish attitudes right from the outset, but, by putting into law what we expect, we can bring about change. It sets a standard for us that we can continue to point to that can guide decisions and approaches that we take within government, but it also declares for our city some of the expectations, and indeed the obligations, that we place on all citizens. I would expect that the charter would include the prevention of and the response to racism.

MR DAVIS: In our immediate last session, the people on the other side of the table were speaking in particular about the experience of international students, so I wonder how much the government has consulted with universities in the development of the multicultural recognition act thus far. If the government has not, what intended consultations are planned with universities, once the exposure draft is released?

Ms Cheyne: I just might check in with Ms Wood about that. Our focus has really been on anyone who has wanted to participate. We have done that both through a survey and through targeted community group consultation. When the exposure draft is released, my expectation is that there will be some questions within that as well, to really drill down into: does this reflect the community? I would be very happy to make sure that we have got a concerted focus in reaching out to universities, but I will just check on where we have been so far.

Ms Wood: Yes, we have had a broad focus in the community through the survey, through YourSay. We have worked through a range of parts of government to tap into their networks and a range of community advocacy groups. It is the case that we have probably heard from some international students or people who have worked with international students through that, but we have not had a direct conversation. We are really happy to do that in the consultation on the legislation.

MR DAVIS: All right; thank you.

MS LAWDER: Minister, I know that you are not the minister with responsibility for Aboriginal and Torres Strait Islander people, police or justice, but as the representative of the government here today, I want to ask you about something from the ACTCOSS submission, and their areas of concern. They said:

The proportion of prisoners who are Aboriginal and/or Torres Strait Islander in the ACT has doubled over the last ten years, from 13% in 2011 to almost 26% in 2021. The ACT also has Australia's highest rate of recidivism for Aboriginal and/or Torres Strait Islander people, with 91% of Indigenous detainees in the AMC having experienced prior imprisonment.

Ninety-one per cent: that is quite an indictment. According to the ACTCOSS submission:

... these figures demonstrate the entrenched and systemic racism at the heart of our justice system.

As the Minister for Human Rights—probably mostly in that regard—what is your view about this? Is this entrenched and systemic racism?

Ms Cheyne: I would not go that far, Ms Lawder, but I would certainly reflect that those statistics are not something that any person in the government is proud of. I know that we have a real focus on changing that. I refer in particular to work that is being led by Minister Stephen-Smith and the Attorney-General. I know that the Attorney-General has a real, personal focus on reducing recidivism.

A lot of complex factors are involved here, including what happens when someone is released and the supports that are around them, as well as the supports that are provided to people from a very young age, their engagement with the community, with law enforcement and with the justice system. This is a multipronged, complex issue that touches on a range of different areas of government. It is something that we do have a focus on.

Our Discrimination Act, our Human Rights Act and our forthcoming multicultural recognition act reinforce that lens that we need to be taking across government to change these quite awful statistics.

MS LAWDER: You mentioned the experience from a young age of Aboriginal and Torres Strait Islanders. We also have a very high rate of Aboriginal children being removed from their families into the out-of-home care system, so it is a compounding issue. You said, for example, that the Attorney-General is making it a personal focus to try and improve this, but over 10 years the rate of Aboriginal people in our justice system, in the jail, has doubled. What is this personal focus from the Attorney-General achieving, because it appears to be going in completely the wrong direction?

Ms Cheyne: Again, Ms Lawder, it is touching on a variety of different parts of government, including housing. Also, you mentioned young people. You might be aware that one of our election commitments—indeed, part of the parliamentary and governing agreement—is the establishment of an Aboriginal and Torres Strait Islander children's commissioner. That work is underway, including for an interim advocate position, which we are recruiting for right now. That is something that was identified in the Our Booris, Our Way report, which we have committed to doing. We have been engaging in a co-design process with the community to ensure that that position meets the needs of the community and is as effective as possible. When we talk about personal focuses within my jurisdiction as Minister for Human Rights, that

is certainly one of them, and I know that it has full support from the community.

MS LAWDER: You might not be able to answer this question, and that is fine. I do not know whether you can take it on notice or whether I will put it in separately as a question on notice. It is about where we are up to with the independent review of decisions and complaints about children being removed from their families. There has been a government commitment to it, and we have talked about it for some years, but I am not quite sure where it is up to.

Ms Cheyne: It is outside my jurisdiction, Ms Lawder, but we have Ms Wood here, who can talk to it.

Ms Wood: There are two parallel pieces of work underway, and a government commitment to both. One is a more formalised internal review process within child protection decision-making, and the other is an external merits review process. There has been some work with the Human Rights Commission to bring stakeholders together to look at that external review process, what the right pathways are and what the right model might be. We have also engaged an external consultancy to help us look at what is the practice for those models across jurisdictions.

The different jurisdictions include Australian jurisdictions, New Zealand and the UK. The legislation on which they are based is different. That means they have some different models, but there is work now to take all of those inputs from the community and that kind of environmental scan across jurisdictions, to look at what is the right model for the ACT for that external process.

Our internal process work has been quite disrupted by COVID. That work had started in 2020, with consultation with a range of community organisations and advocacy organisations who work with carers, birth families and young people. During the COVID period there has been a lot of internal work looking at what sorts of decisions are appropriately in scope for that kind of review process. Importantly, it has looked at how we make decisions in the first place, to make sure that the process by which decisions are made involves the people impacted, so that we do not set up an internal review process that just becomes another layer of complaints.

It may well be that people have both a legitimate complaint about how they have been treated and their experience, and a legitimate reason to ask for a decision to be reviewed. We need to be clear about both of those. We have also started to do the work looking at the foundation of how we make decisions and how we support our child protection staff. The aspiration is that it is done in a very restorative way. It is something that we are working towards.

I am conscious that those conversations with community partners happened back in 2020 and we are now in 2022. Quite soon we want to go back to that conversation with those who have contributed, to wrap up what we have heard and what we have learnt, and how we might take that forward. In particular, in doing that, for both the internal review process and external, it is about being really alive to the different experiences of people from culturally diverse communities, and particularly the very different experiences of Aboriginal and Torres Strait Islander families and young people in that regard.

MS LAWDER: Do you have any blue-sky time frame? Might it be by the end of this calendar year, in the next financial year? When will that external review and internal decision-making—

Ms Wood: The external merits process will take longer, because that will need a legislative basis. It is about designing a model; we will then need to step through a process of embedding that in a legislative framework. For the internal review, we will be able to come back to stakeholders relatively soon. Whether it will be before the end of this financial year, I am not sure, but it will certainly be in the coming months.

THE CHAIR: My question goes to the prevalence of racism in our community. What data or measures does the government rely on to determine how prevalent racism is?

Ms Cheyne: That is a great question, Chair. The Human Rights Commission has data on the number of complaints that it receives. I understand that is detailed in its submission. You will note that about 25 per cent of complaints in recent years have been regarding racial discrimination or racial vilification. Ms Toohey will correct me later, I am sure, if I am wrong, but I believe that, of the two categories, discrimination is larger than vilification. The data in some ways is difficult to extrapolate. The number of complaints being at the rate that they are occurring could be because racism is occurring, or there could be a number of other reasons, including the commission's outreach work. I understand considerable efforts have been made on multicultural community radio recently so that people are aware that this is an option for them.

What is also very difficult for us is that there is anecdotal data that we hear about, and people may not necessarily want to report, so it can be difficult to know about it. I think there are thresholds regarding what a racist incident might be. There could be commentary versus behaviour that is inciting. There is also behaviour that we see that does not necessarily have a respondent that is easy to identify. I refer, for example, to the vile slurs that we saw on candidates' corflutes last week. That perpetrator is, to us, anonymous, but we know that that occurred.

In terms of data, it is very difficult for us to collect that in a meaningful way, but we certainly engage with the community and do that outreach work. People do approach us if they are aware of something that is going on. Racism comes in all sorts of different forms, and some of it might not necessarily be recognised in the first place or perhaps some of it is more insidious or more systemic.

THE CHAIR: I noted in your opening statement all of the good work that the government is doing. How will we measure its effectiveness when we have this clear inability to measure the prevalence of racism?

Ms Cheyne: With the multicultural recognition act, as I mentioned, the charter will have the declaration for citizens of the ACT about what they can expect by living in the ACT. My expectation is that the government will be required—potentially, subject to the act being passed—to report on this. Those reporting obligations should be highlighting the work that has been occurring. It might not necessarily be that quantitative data, but it will be able to reflect the progress that we are making as a city.

MS LAWDER: Minister, do the police also collect any data on racism? I am sure some people call the police when there may be a racist attack. Are you aware of any of those statistics?

Ms Cheyne: You will have to direct it to Policing, but I note that in our criminal code serious vilification—and race is one of those attributes that can be vilified against—can carry a criminal penalty, which I believe is 50 penalty units. Policing may have that data.

MR DAVIS: Minister, we have spoken a little bit about an ACT anti-racism strategy. I want to get a couple of key measures on record, to bring myself up to speed. Does the ACT government have a commitment to working on and delivering an anti-racism strategy?

Ms Cheyne: The work underway at the moment necessarily has been focused at that national level, which I think is appropriate for a few reasons. We do not have a framework at the moment, so we are keen to see that done, and we are on the record as saying that, and we certainly publicly commended Commissioner Tan when he announced the start of this work.

The reason is that attitudes to racism do not necessarily follow boundaries or state divisions. I think there is a role nationally, under which we then sit. Very pleasingly—again, we will provide this to the committee—there are those national outcome areas that are identified within that framework from which work in the ACT necessarily flows.

We are very committed to working with the federal government on the completion of that framework. Obviously, it has been delayed because of COVID as well. What is quite clearly contemplated in there is that it would be a central reference point and that there would be specific roles and responses for all levels of government, including local and the states, and our territory government as well. That is the order in which we are looking to complete that work.

MR DAVIS: Based on being engaged in those national conversations, I would not hold you to a time frame, because it sounds like it is the federal government, but where do you think we are up to, nationally?

Ms Cheyne: I think that the priorities that have been identified from that consultation so far have been very pleasing, which is positive for us. The conversation and consultation report is intended to be released and presented to the Australian government in June 2022. It is not immediately clear to me—my colleagues might be able to let me know—with that report, whether the framework would also be presented or whether it would be the listening report and a few months later the framework would come along.

What we have been engaged in, in the priorities discussion for the framework, has been the importance of a First Nations-led approach, with First Nations voices prioritised; broad-based community education and awareness raising, including at the institutional level; the need for clarity about what racism is; to build trust and

confidence in reporting, which I know has been a theme of the conversations today, especially for those indirect, subtle or casual experiences; language of inclusion versus language of calling out racism and anti-racism; positive duties, as we have touched on a few times here; community trust; education, the importance of early education in setting attitudes and expectations, including training and responses in schools; the importance of a shared vision; and the need for interconnection between all tiers of government.

I am pleased with the direction in which the priorities and the conversations have been going, and I look forward to the release of that from the Australian government midyear.

MR DAVIS: If all indications are that the federal government should be ready to release something in around June, it sounds like a substantial amount of work has been done, and states and territories have fed in to that work. I imagine that our government has managed to conclude, through those conversations, or foreshadow, some expectations that might fall on us in order to implement our responsibilities under the strategy. How much planning has already happened within the directorate to accommodate that? Do the early indications suggest that that will require an additional financial investment, more FTE, in order to meet our obligations under a future strategy?

Ms Cheyne: We have not seen specific actions bedded down yet. The consultation paper points to some actions, but in broad terms. That more detailed consideration of what would be the requirements for us, at this level of government, would flow from seeing something a little bit more specific. I do not think that work has been undertaken, but I will check.

Ms Wood: No, that work has not been undertaken in that level of detail. Obviously, as the minister talked about, we have done quite a bit of work on developing the multicultural recognition act. We are continuing to work on Canberra as a welcoming city. There are significant pieces of work that will support us to deliver on the ultimate obligations of that national strategy. When we see the detail of the actions and commitments, we can then consider what more we might need to do beyond those major pieces of work.

MS LAWDER: I am thinking about the budget applications and when that might take place, because the timing may not suit this year's budget. It is a discussion, perhaps, for another time. We had some other discussion this morning about training of frontline staff. I think you referred to the fact that that may be part of this broader framework. How would that be different to the current respect, equity and diversity training that takes place throughout the ACTPS, which I would have hoped would already position our staff not to be racist?

Ms Cheyne: Ms Lawder, I take your point. There are a few things here. First of all, the positive duty that is contemplated with the Discrimination Act will be one of the obligations placed on government agencies in working to prevent discrimination, including racial discrimination, from occurring in the first place. How that is realised is still in the works, but I think there is always more that we can do. Of course, if this proceeds, it would extend to other attributes as well.

In addition to that, there is more training, education and awareness contemplated in the national framework. On a more local level, both CSD and JACS are intending to deliver motivating actions for empowerment anti-racism training, which has that real focus on bystander awareness and the steps that you should take. I think that has arisen because when racism occurs and a person is there, there is a bit of, “What do I do?” There is a lot of power in calling out racism, but I think people can rightfully be scared of making a situation worse. Just having those tools available and through this training, with that particular focus, it is something that is well worth pursuing.

MS LAWDER: Certainly. One of the earlier witnesses, when asked similar questions, spoke of the need for everyone to have this type of training, because it can start at a policy level and flow through to frontline staff. Does the framework that you are looking at include that level of staff—the policy development level as well as the front-facing staff?

Ms Cheyne: Both the multicultural recognition act and the Discrimination Act, the reforms that we are proposing and what we are looking at, are about those considerations from the front end of a development. I would also point you to our Human Rights Act, and the fact that all of our legislation requires a compatibility statement with it. I think that our human rights culture in the ACT government is growing. Those considerations are at the forefront of policy development. Our human rights team in JACS is always available as well, to talk people through policies that they might be contemplating and the human rights issues that they may wish to consider before they get too far down the track.

MS LAWDER: Would this type of training become something like the RED training that is reported on through annual reports processes and that type of thing?

Ms Cheyne: The training in?

MS LAWDER: The frontline staff in JACS and CSD.

Ms Cheyne: The bystander awareness training?

MS LAWDER: Yes.

Ms Cheyne: I believe the intention is that, at this stage, it is a one-off. Depending on its take-up success, it might be something that is considered further.

THE CHAIR: I was hoping you could expand on your mention of the positive duty to report. What are the benefits of shifting the onus when it comes to reporting?

Ms Cheyne: It is not so much a positive duty to report; it is a positive duty to prevent discrimination in the first place. That is probably the way that I would frame it. What are the policies or the actions that a government agency undertakes to ensure that it is prevented from happening, rather than what the Discrimination Act currently has a real focus on, which is once it has occurred? Once the incident has occurred then there are the complaints and the resolutions. It is front-ending the process to ensure that ultimately, hopefully, there will be fewer complaints. Given that my JACS colleagues

have not had an opportunity to say anything yet, I will ask Ms McKinnon to expand on the benefits of a positive duty and why this is something that we are so seriously considering.

Ms McKinnon: The positive duty has been part of the discrimination reforms that we have been consulting on. It is a really important way to complement the existing complaints framework within the Discrimination Act. At the moment, if people experience discrimination, they can make a complaint. Often that will lead to policy change, as a result of conciliation and things happening.

Certainly, in Victoria, they have gone down the path of imposing a positive duty both on the government and, more broadly, on other organisations. It is actually a duty that is scaled, depending on the resources and ability of organisations to implement that positive duty. It prompts agencies, government and otherwise, to look at areas where systemic discrimination might occur—to take a broader look at the opportunities for action to be taken in advance to eliminate discrimination as far as possible, including indirect discrimination. That might mean having a look at all of the policies of the agency to work out where that can be targeted and eliminated.

If a complaint about discrimination is made by a person, it would also be within the framework of the Human Rights Commission to look at what has actually happened in terms of whether the agency has fulfilled that positive duty, so that they can then look more broadly at what is being done to prevent this from happening.

If an agency has taken really positive and proactive steps, that is something that could also be taken into account in their favour in conciliating or, if it goes to the tribunal, in determining what would happen as a result of a complaint.

It was certainly something in the listening report; it is a clear focus that has a lot of support from community, and from Aboriginal and Torres Strait Islander people and community, that really see those systemic issues as something that we should be focusing on. We do think it could be an important complement to the existing powers. Having the commission providing capacity building for agencies as to how to go about doing that will be really important.

MS LAWDER: In the submission from the Human Rights Commissioner or the discrimination commissioner, it talks about schools, bullying and racial vilification. Would the government be considering anything specific with respect to the education department, in terms of giving teachers or other staff more or better tools to deal with when a student comes to them with a complaint—where to go and what to do about it?

Ms Cheyne: There has been quite a bit of work in our schools. I was very interested to hear about the work that Ms Griffiths-Cook is undertaking with that review for children and young people, and especially that, with the racism that they experience, they do not necessarily want it to be considered in the bullying lens but as something quite a bit more sinister in some ways.

Racism, or racial vilification, can occur in any setting. It is about ensuring that we have the right amount of training and support there. It is certainly something on which

I would welcome the committee's views, following today's inquiry.

Something that the commission has observed—again, I will try not to speak for Ms Toohey because she will tell you more—is that there is a live question of how to ensure that schools are equipped to respond. Perhaps it does relate to an extension of things like that bystander training. It is about really delving into the needs of how to ensure that schools are places that are as safe and happy as they could possibly be.

There has been a bit of a focus on the online experience and racial vilification. One of the examples in the Discrimination Act talks about posts that people can publish online. There is some consideration of where we need to perhaps better educate people that this is unlawful and that there are steps that can be taken.

MS LAWDER: Referring to online, for example, including social media, and the impact especially on children and young people, but not just children and young people, is it possible that our more recent move to remote learning—for understandable reasons, for COVID—could perhaps be putting some children and young people more at risk, because they are on their devices even more, and they are more at risk of receiving racial vilification messages online?

Ms Cheyne: Yes, I think that the potential is certainly there, Ms Lawder. As children and young people are very social media savvy, keeping up with that, right across government, presents a range of challenges as well. Ms Toohey would probably be better placed to talk about recent examples or whether there has been an uptick in those types of incidents.

Again, it does go back to two things. One is trying to change attitudes in the first place from a young age and making sure that we get in there early. That is across a range of settings, not just in the school settings, of course. The other is perhaps having a broader community focus that this sort of behaviour is unlawful.

THE CHAIR: We are out of time. Minister, thank you for your appearance today, and officials as well. A copy of the transcript will be sent to you to check for accuracy, I am not sure whether you have taken any questions on notice.

Ms Cheyne: No, but we did say we would provide the consultation—

THE CHAIR: Copies of those reports.

Ms Cheyne: report, so we will get that to the committee secretary.

THE CHAIR: Thank you.

Short suspension.

TOOHEY, MS KAREN, Discrimination, Health Services, Disability and Community Services Commissioner, ACT Human Rights Commission

THE CHAIR: The committee now welcomes the ACT discrimination commissioner. Please be aware that today's proceedings are covered by parliamentary privilege, which not only provides protection to witnesses but also obliges them to tell the truth. The provision of false or misleading evidence is a serious matter, and all participants today are reminded of this. Please ensure that you have read and understood the pink privilege statement that is in front of you. Could you confirm that for the record?

Ms Toohey: I have done.

THE CHAIR: There is no opening statement, so I will lead off with questions. We have heard extensive evidence today that Canberrans are frustrated by the pathways available to them to make complaints about racial vilification. Could you inform the committee of what those pathways are?

Ms Toohey: There are multiple pathways within the ACT. It depends on the nature of the complaint. As we have heard today, some people go directly to the police. Sometimes, if it is not a matter that the police can deal with because there is not a respondent, for example, that is quite frustrating for people; or if they cannot identify the respondent, that is very frustrating.

At the Human Rights Commission, we try and make that pathway as simple as possible for people. I would have to say that most of our complaints come in as an email or as a phone call. This year we are tracking to get about 1,100 complaints, so it is a well-used process. We are probably tracking at the moment to get about 300 discrimination complaints. That will be an increase on last year, and on the year before that.

One of the issues that we know people have, particularly in the race discrimination area, is that people do not necessarily want to bring a complaint about a respondent and then have to engage with that person. That is a really difficult situation, particularly in the vilification space. Sometimes there is the scenario of somebody calling something out of a car window, or it has been at a petrol station; we have heard that story a few times. It could involve a student who is afraid of what the outcome might be, or a person who is a visa holder who is afraid that that will affect their visa.

There are a range of reasons why people might not bring those matters to our attention. We can try and deal with some of those issues through public education. Some of those issues are barriers that people will put in place to effectively self-select out of the process.

In the ACT, as I said, we try and make it as simple as possible. So it is often a phone call or an email; sometimes it is by text or a visit to the organisation. Our job is to make sure that we minimise, as much as possible, the barriers for people to bring in a complaint. At the same time we have to be realistic about what expectations people have about what the outcomes might be. For example, getting people sacked or

getting people charged are not the sorts of outcomes that I can deliver and sometimes that is a point of frustration.

The other option in the ACT is that people can take a complaint to the Australian Human Rights Commission. Again, that is an option for people. It is not one that we think is utilised as much, particularly because we are on the ground, we are around the corner and people often know somebody at the commission. While I completely appreciate and understand people's thinking, there might be barriers to them bringing a complaint. Sometimes it is about thinking that there is, or being told by somebody that there is, as opposed to picking up the phone, making a call and talking to us.

I heard some evidence today saying that it is expensive, it is time-consuming and that you need a lawyer. None of those things are accurate. There is no cost associated with our process—not unless you end up in the tribunal, and then it is optional. As you know, our tribunal is very amenable to unrepresented litigants, so there is no cost. The time depends on the matter. Sometimes things are very quick and we can deal with them in a couple of days; sometimes they take a longer time. Again, that will depend on the nature of the matter. There is no one-size-fits-all response; I am sorry about that. Again, we try and go out of our way to make sure that the process is accessible to people, that it is respectful when they contact us and that it is a confidential discussion in the first instance. But there are a range of reasons why people might not either bring the matter to us or not progress it.

THE CHAIR: You alluded to people thinking it is hard to make complaints—the cost and the time. You may or may not be able to answer this: why do you think they think that?

Ms Toohey: In my experience—and I have been running complaint-related services for quite some time now—sometimes it is what they have heard from somebody. Sometimes there is an assumption—and certainly in the ACT we talk about this—that people think the Human Rights Commission deals with world peace, or deals with the Middle East. In fact we deal with people's day-to-day concerns. That might be the kid out of school because of a disability or it might be a racial vilification experience on the bus. I deal with health services, as you know, so that is a whole range of things from dentists to hospitals.

Sometimes there are those assumptions that, for the effort to complain, it has to be a big thing, particularly with some of the work that we have tried to do with our Aboriginal community members, across the county. Aboriginal community members report very high experiences of racism, be they comments, attitudes, actions like being followed around shops and those sorts of things. I am not trying to trivialise it; I am saying that we encourage people to bring those experiences to us. Sometimes bringing one matter means that the person might have a feeling of success, a feeling of being enabled to bring a complaint, a feeling even of being able to advocate for themselves.

We try and make sure that people understand that the complaint does not have to be three years long and you have tried every avenue you can to resolve it. Sometimes it is about bringing it to us quickly so that we can assist you in keeping your job, keeping your child in school or keeping your house.

MS LAWDER: You started by saying that some people go to the police and some people go to the Human Rights Commission. Is there a difference between the type of cases you take versus the police? Is it whether there is a respondent or not, or—

Ms Toohey: No. The police, as you know, deal with criminal matters. As the minister said, there are provisions in the ACT that provide for serious vilification to be a criminal matter. They can also be a civil matter and they can bring those matters to us. Sometimes it will depend on where the person thinks they will get the best response. Sometimes, if they want the person to be punished, they might take it to the police as opposed to bringing it to us, because they want it to be resolved.

If it is a next-door neighbour, as you know, sometimes you want to resolve it with your next-door neighbour because you live next to them. Sometimes you do want to take it to the police because it is at the serious end of things and you want it brought to a close. We and the police have some of the same issues, if we are trying to deal with matters and if we cannot identify a respondent. Unfortunately, as you know, and as we saw last week with some of the incidents in the ACT, when it comes to racist graffiti, for example, or some of the online material, people do not leave a name and number, so it is very difficult for us to address it in that reactive manner. That is when it comes to what we are doing in a proactive space to try and prevent those behaviours from occurring.

They are probably the main things, I would think, between the police and us. We certainly have matters that are referred to us by the police where the person wants to resolve the complaint—I guess that is more where our focus is—as opposed to prosecuting the matter.

We do quite a bit of work with the community liaison officers within the ACT police. They are both excellent at trying to resolve matters and very good at referring matters where they think it is better dealt with by us.

MS LAWDER: You mentioned Aboriginal community members. What percentage of your complaints would come from Aboriginal and Torres Strait Islander people?

Ms Toohey: In the discrim space, for example, to date, this year, we have had 50 race discrim and racial vilification complaints. Of those, 22 per cent are from Aboriginal community members.

MR DAVIS: Fifty per cent, you said?

Ms Toohey: Twenty-two per cent.

MS LAWDER: Of those discrimination ones?

Ms Toohey: Yes. We will track to get about 300 discrimination complaints, as I said. Of those, at the moment, about 50 are race discrimination and racial vilification and, of those, about 22 per cent come from the Aboriginal and Torres Strait Islander community. That is only in the discrim space; it is not across all of the complaints that we get.

MS LAWDER: Would you have any similar figures for multicultural discrimination complaints as opposed to Aboriginal and Torres Strait Islander?

Ms Toohey: Yes. I was not able to pull that, when I saw you ask the question today, so I apologise for that. You would expect, obviously, that the balance of those complaints will be from someone who suggests it is because of their race.

MS LAWDER: To make a complaint, do you have to be the aggrieved person?

Ms Toohey: Aggrieved.

MS LAWDER: Or can you make a complaint about something you saw, or someone else doing something to someone else?

Ms Toohey: Under the Human Rights Act, it has to be the aggrieved person or somebody on their behalf. We do have what we call a community reporting function. We encourage people, if they have witnessed something, or if they have seen something that they think constitutes racism, racial vilification or discrimination of any sort, to report that to us so that we can keep an eye on what is happening. Sometimes that is also about us referring matters elsewhere. It is not heavily utilised, I would have to say. I would also say that we get reports from Facebook, social media and those sorts of things where people will screenshot stuff and send it to us. They are not the aggrieved person, and that does become an issue. But it does mean, again, that sometimes we have an educative role in those spaces rather than necessarily dealing with it as a complaint.

MS LAWDER: Apart from yourselves and the police, is there any other body that deals with this?

Ms Toohey: People can go to the Australian Human Rights Commission. That is certainly an option under the racial discrimination provisions. There are race discrimination provisions per se in the Fair Work Act. There is a range of mechanisms that people might use to try and deal with matters that do not necessarily involve us.

MR DAVIS: Thank you. Ms Toohey, at the risk of getting you to repeat yourself, you gave some figures before; I would not mind jotting down the number of your complaints year on year. Would you mind repeating those figures. That would help with my line of questioning. How many complaints have you received, in racial discrimination in particular, over the last few years?

Ms Toohey: Yes. We included some stats in the submission. In 2019-20, we received 208 discrimination complaints. In 2021, we received 218. I only have the data, which was in the submission, which was 158 for the first half of this financial year. At the moment, we are definitely on track to get about 300 discrimination complaints for this full year.

MR DAVIS: Thank you.

Ms Toohey: Of those, for each year, the discrimination complaints in 2019-20 were about 27 per cent. And in 2020-21 were about 21 per cent. So the number drops

slightly proportionate to the overall number that we got. But it has gone up again this year to about 25 per cent so far.

MR DAVIS: Sorry, are people getting in touch with the commission, and you are giving us percentages of people who are alleging racial vilification?

Ms Toohey: Yes, sorry. In 2019-20 we had 57 race discrimination or racial vilification complaints. In 2021 it was 47. And then, as at December, it was 40.

MR DAVIS: Right. I did read those in the submission but the reason I wanted to get them out loud and have them on the record is that I am curious to get your impression. Do you feel, given that this looks like it is a rise in complaints, that the commissioner is adequately resourced to handle that level of complaints? Are you finding some operational pressures with this increased level of complaints?

Ms Toohey: We have had an increase in complaints across all our jurisdictions over the last year. I think all the human rights commissions and equal opportunity commissions across the country saw an increase during the pandemic, initially in race discrimination matters, and then in disability discrimination matters. We can always use more resources; I am not sure if this is the best place for me to make that argument, though.

MR DAVIS: Of course.

Ms Toohey: The minister did indicate that we did get some additional resource in the last budget to address the growth that we had had to that point. We are very good at triaging and trying to manage our matters in a very timely manner. But in terms of additional resources, in particular we have certainly reduced that space around explaining to people what the law is, going to talk to community groups and trying to do some of that preventative work, because of the increase in complaint numbers.

MR DAVIS: Okay. Are there any particular trends in that data that you think would be useful for the committee to consider? For example, are you seeing that these are younger people as opposed to older people? Are these more often people from certain multicultural communities? Are we finding that in Canberra, in your numbers, there are particular groups that are having a particularly challenging time, or particular age demographics, particular localities?

Ms Toohey: Yes. I would say not so much the age demographic. Certainly, in that 2021 period—again, I think it was nationally—we saw an increase in complaints from Chinese and Asian community members, unfortunately. We do have a constant number of complaints from the Aboriginal and Torres Strait Islander community here, and that is across all our jurisdictions. I am happy to put some of that data together, if that would assist the committee.

MR DAVIS: That would be great, thank you. In terms of probing into the data a little bit more, we heard some evidence earlier today about young people in schools. We had some anecdotal evidence—from your colleagues in the commission, in fact—about situations where young people did not feel that their representations to teachers or other staff members about being racially vilified were dealt with appropriately, or

that it was coupled into bullying in a more universal form. Do you find the commission regularly gets representations from young people, from school students, in instances where their racial vilification was not dealt with appropriately in a school environment?

Ms Toohey: Yes. I also raised that in my submission. Sometimes it is the young person and sometimes it is the parent on behalf of the young person, depending on the age. We certainly have had a number of complaints, and that is why I referenced it specifically. Schools are doing a lot of work in this space, but we do certainly have young people and their parents who say that the particular issue around race is not called out properly. For example, in terms of some of the complaints we have had from parents of Aboriginal children, rather than understanding the very specific harm that is caused by being vilified on the grounds of your race, in the playground in front of your peers at a young age, and the experience that that has for a young person, sometimes the response is generic, instead of dealing with the very specific issues that have been raised.

Sometimes there is a concern about, “How do I deal with a child who has called an Aboriginal child a terrible name, or made a terrible reference to their family or particular stereotypes?” There is a sense that there is a reluctance to deal with those. There have certainly been a number of those matters that we have dealt with over the last couple of years.

MR DAVIS: This is my last supplementary question. What correspondence, or relationship, has the commission had with the Education Directorate to make these concerns known to the Education Directorate about a more—

Ms Toohey: Yes. We deal with complaints both about government schools and independent schools, so it is about all schools in the ACT. So I would not single out the directorate.

MR DAVIS: Okay; good to know.

Ms Toohey: But we certainly have had exchanges with them around building that capability and not assuming that that capability is there, if I can put it that way. There have also been some matters where, for example, they will try and get the two students to sit down with someone and try to mediate it. As someone who has been mediating race discrimination complaints for a long time, I know that it is a really difficult scenario to invite someone into when they are on the pointy end of those comments. It is an area where we have suggested there be more capability-building done and some specialist expertise.

MR DAVIS: Sorry, I said that was my last supplementary question. but I promise this is my last.

THE CHAIR: I admire the enthusiasm.

MR DAVIS: What short-term practical steps do you think can be done in a school community? Is it about training for teachers and staff and, if so, do you have any

recommendations about who perhaps could best deliver that? Is that something that is in the commission's capacity.

Ms Toohey: No, I would not suggest we have that expertise.

MR DAVIS: No, okay.

Ms Toohey: I will give you the reason I say that. For example, in a number of matters, the parents of the child asked to go into the school to speak to the school group—it seemed to be not disingenuous, I would have to say—to explain at a broad level what the harm was that they felt, but also what the harm was to the community.

So I think there is a range of responses that might be possible, depending on the particular situation. And I guess, when we say “capability-building”, that is what we mean, instead of having a monolithic response like, “This is the bullying. This is how we deal with bullying,” that there might need to be more flexibility in responding to some of those issues, particularly, the matters I am referring to, around Aboriginal community members. Because there might be a number of Aboriginal students at one school that has a really profound impact on more than just that one child. It is about that whole student base. So I would not suggest that we are the experts; I would suggest that, certainly, Education would be drawing on the expertise in that space, and that is something that we would certainly encourage a bigger investment in.

MR DAVIS: Okay, that makes sense, thank you.

MS LAWDER: We have spoken a couple of times today with other witnesses about social media—and children and young people especially—but I notice in your submission you refer to the New Zealand royal commission of inquiry into the terrorist attack on some mosques in Christchurch.

Ms Toohey: Yes.

MS LAWDER: And you say that hate speech and hate crime are often a progression, escalation or process, not a discrete act. I think that is what you refer to it as.

Ms Toohey: Yes.

MS LAWDER: And you say that reducing hate speech online may reduce hate crime offline. What do you think we should be doing more of about hate speech online, and how can we reduce the harm to our community, most especially to young people, with respect to online social media?

Ms Toohey: Part of the reason for referring to the New Zealand commission was that it reflected very strongly what was found by Australia's inquiry into racial violence in 1991, which is that these small microaggressions—they used to be comments, jokes or words, and are now often social media posts and those sorts of things—do create an enabling environment for escalating levels of violence. I think the government, broadly, particularly with the enactment of the e-safety commissioner in Australia, has taken those issues really seriously. We certainly have matters that we have referred

backwards and forwards with the e-safety commissioner because she has take-down powers.

My process is very much resolution focused; it is about trying to resolve a matter. And if I cannot resolve it, it goes to the tribunal. Sometimes what you want is an immediate power to do something straight away, and the e-safety commissioner has broader powers in that space—certainly more than we do. So I think there is clearly a recognition with the establishment of those sorts of positions and that sort of legislation that there needs to be a more immediate response, which is, essentially, take-down orders, not waiting on a court order.

So there are a range of responses that have been developed. Those powers, as I understand it, are going to be broadened and, as you are aware, there has been a lot of discussion as well about better regulation of some of the social media providers. We, again, certainly have a pretty reasonable relationship with them in terms of when we contact them about specific material that affects people in Canberra.

I have a small jurisdiction, so we are able to work with them in that space. But obviously, the volume of material is much greater than, certainly, my organisation can deal with. So, it is, yes, about using people like the e-safety commissioner but it is also about what are we doing at the front end for our children and young people around what safe sites look like and how they get educated about what not to follow down the various rabbit holes that we all know exist on the internet. So I certainly do not think there is an easy answer, and I certainly do not think I am the best qualified person to make those suggestions.

MS LAWDER: Are those types of online hate speech referred to you by someone else, or you do not have some person or random algorithm going through finding them?

Ms Toohey: I do not think I could afford that sort of algorithm, frankly. No. While our legislation in the Discrimination Act says you cannot discriminate and you cannot vilify people, it relies on somebody telling us about it. As Ms McKinnon was referencing before, we think the positive duty will assist us to have those discussions at the front end of the process with providers, suppliers and organisations about what steps they are actively taking to address discrimination and prevent it, not just respond to it when it occurs or when it is brought to their attention.

MS LAWDER: How many of those instances do you think there have been, as a ballpark guess, of people bringing your attention to that hate speech online?

Ms Toohey: It is sort of hard to see. We get about 1,500 inquiries a year. Some of those are matters where people have brought something to our attention and it is not within their jurisdiction or they are not aggrieved. That is not necessarily a matter that we can take as a complaint, so we do, in some circumstances, contact providers about material that someone has brought to our attention on their platform. It is not a big number, but we are a very small jurisdiction. For example, the federal commission has, under the Racial Discrimination Act, a broader remit in that space because they have national coverage versus the ACT. I can only deal with matters in the ACT.

MS LAWDER: Does that mean that the person making the complaint would be in the ACT, or the person who might have written it online is in the ACT? How do you determine—

Ms Toohey: It is about the experience of someone in the ACT. So even if the material originates elsewhere, if it is experienced by someone—there has to be a connection to the ACT.

MS LAWDER: I must say, it sounds a more satisfying process than some others. Even if you cannot follow a complaint process yourself, you still have other alternative resolution processes rather than saying, “Sorry that is not in my jurisdiction.”

Ms Toohey: I try not to take that approach to things, but within our resource, that is not always possible. For example, one of the vilification matters brought to our attention last year was some comments that were being made to people in an apartment complex. We could not deal with it directly because we did not know who was making the comments or sticking the posters up, and those sorts of things, but we could go to the strata manager and say, “Can you put some material up about the place and do a letter box drop to everybody flagging what the law is.” So we are not resourced to deal with every issue that is not strictly within jurisdiction, but in matters like that, when we can see that it is a small piece of work for us, but it will make a difference to that person, then we are able to exercise some flexibility.

MS LAWDER: That is good. Thank you.

THE CHAIR: I was wondering if you could tell the committee if there are any legislative reforms that would make your work at the commission easier.

Ms Toohey: Yes. I am in a fortunate position of seeing Ms McKinnon’s work being undertaken at the moment. The minister has initiated that consultation process around the Discrimination Act. A number of the reforms in that legislation, certainly around the positive duty again, I guess, in my mind, clearly articulates what the obligations are anyway. But a clearer articulation of what the obligation is makes it easier to go to people and say, “Your obligation is to take steps to eliminate discrimination, not just wait until it happens and then try and do something about it.” So those reforms certainly will assist the community understand what their obligations are but will also assist us in terms of conveying that information to community.

In terms of the Discrimination Act, I think this is a process by which the community has an opportunity to provide that input. It was unfortunate, I think, that there were not more submissions made to this process, because that will also help inform that work. And I think this committee’s work may also inform the reform process for the Discrimination Act.

We are trying to bring it up to speed—it is a little bit older—but we are also thinking about how our act sits within a national framework, where we have the federal discrimination laws and then each state and territory has its own model. I would say that, from a protections perspective—apart from bringing in the positive duty, and we

are sifting through the exemption process as part of that—they would be significant reforms that would assist us greatly.

THE CHAIR: Great. In terms of the ACT Discrimination Act, your submission talks about your advocacy for coverage of ACT Policing. Could you articulate for the committee why you would like to see ACT Policing covered?

Ms Toohey: Yes. Community members do bring matters to us with respect to the police, and we have to refer them off to the federal Australian Human Rights Commission at the moment. The downside of that, obviously, is that it also means that we do not have visibility on what those complaints look like. It is very hard to try to work in a systemic way to assist the police in that space if we do not actually have visibility on those matters. We are the only community in the country where the local equal opportunity commission or human rights commission does not have jurisdiction over the local police.

So, federally, yes, you can go to the federal Human Rights Commission, but if I am in Darwin, New South Wales or Victoria, I can go to my local EO commission and know that they will be able to take a complaint about the police. I think that does make a difference in the police's accountability to the community, but also in the community's confidence. One of the things the government has done is invest in the commission by bringing together a whole range of complaint jurisdictions that we can deal with, which means people have a one-stop shop, except for police—which is disappointing.

It is one of the issues that we feel we would be better placed to deal with, because the police are a public authority for the purposes of the Human Rights Act. It would mean we would be able to have those sorts of discussions with them, not just about a discrimination issue but within the context of their public authority obligations.

MR DAVIS: Does the commission keep a record of how many representations it receives from people who want to make a complaint against ACT Policing that the commission then has to refer federally?

Ms Toohey: I do not keep that data because it is out of jurisdiction.

MR DAVIS: Of course, yes.

Ms Toohey: If I kept data on everything that was out of jurisdiction, notionally, we know some of those—

THE CHAIR: It could actually be interesting.

Ms Toohey: It would be interesting. Certainly, the police would have that data in terms of the number of matters, for example, that have gone to the federal commission. We know, notionally, what some of the matters are that have come to us, and sometimes we might try to bring a matter to the police's attention because a community member is very affected by a particular instance, but it is not something I could give you accurate data on, no.

MR DAVIS: I will not pin you down on accurate data then, but could you give the committee some sort of read? In the time that you have been in the role, would you say it is in single digits, double digits or triple digits, in terms of people calling or writing a letter to the ACT Human Rights Commission and you having to say that it is out of jurisdiction. Can you give us some rough idea?

Ms Toohey: Yes. It is not the most common call that I get. Remember the range of jurisdictions we have. We do get matters being referred to us, and I think you will have seen that in some of the other jurisdictions—both in New South Wales and in Victoria—particularly in the race space, there have been some successful claims run under discrimination acts. Those will sometimes encourage people to contact us. We certainly work closely with our colleagues at the Ombudsman and so we do refer matters there. They may also have some thoughts in that space on the sorts of matters that get referred to them.

MR DAVIS: Right.

MS LAWDER: I have a supplementary question. You talked about inclusion of ACT Policing, but you also mentioned the definition that would assist in community understanding the scope of the vilification processes and the ACT Discrimination Act using the term “acts done otherwise than in private,” versus in public—I think that was the Queensland one—for example.

Ms Toohey: Yes.

MS LAWDER: I am interested specifically because it may then reference social media and online environments, or as suggested in the report. So has there been any progress? Have you approached the government about changing that?

Ms Toohey: No, it is not a pressing—

MS LAWDER: So we can take credit for it?

Ms Toohey: You can take credit for it; I would welcome that. It is an issue from the perspective yes, for an interpretation issue. It comes up in some contexts around people understanding that distinction. For example, when the offence provisions came in under the Racial Discrimination Act years ago, there was this discussion: “Is it in public if it is in your backyard, versus your front yard?” So it is logical for many lawyers but it is not as logical for people who are trying to understand whether their particular matter is covered when we are having ask, “If it was in a phone call, was the phone call in a public place, because if it was just a point-to-point call, I cannot deal with that.” If it was a phone call where the comments were being made in a public space, then maybe we could deal with that. So I am talking about some clarification. Part of the reason I mention it is because there have been a number of other inquiries where one of the issues raised has been about that interpretation. So it may be something for consideration.

MS LAWDER: Thanks.

THE CHAIR: With that, we are going to call it a day. On behalf of the committee, I would like to thank all witnesses who appeared today at the hearing. If witnesses have taken any questions on notice—not that you have—please liaise with the secretary to provide answers. The committee’s hearing for today is now adjourned. Thank you everybody.

The committee adjourned at 4.55 pm.