



Anti-Discrimination
New South Wales

12 January 2024

Dr June Oscar AO
Aboriginal and Torres Strait Islander Social Justice Commissioner
Australian Human Rights Commission

BY EMAIL: wiyiyaniuthangani@humanrights.gov.au

Dear Dr Oscar,

Wiyi Yani U Thangani Framework for Action for First Nations Gender Justice and Equality and the establishment of a First Nations Gender Justice Institute

1. Introduction

Anti-Discrimination NSW (**ADNSW**) thanks the Australian Human Rights Commission (**AHRC**) for inviting submissions to contribute to the design of the Wiyi Yani U Thangani, Framework for Action for First Nations Gender Justice and Equality (the **Framework**) and the establishment of a First Nations Gender Justice Institute (the **Institute**).

2. About Anti-Discrimination New South Wales

ADNSW administers the *Anti-Discrimination Act 1977* (**ADA**) which makes it unlawful to discriminate in specified areas of public life against a person on grounds which include their sex, race, age, disability, homosexuality, marital or domestic status, transgender status and carer's responsibilities. ADNSW strives to eliminate discrimination in NSW by responding to enquiries, conducting conciliation, undertaking community engagement and raising awareness about discrimination. Vilification on the ground of race, homosexuality, transgender status, HIV/AIDS status and religion is also unlawful.

ADNSW has First Nations staff that provide culturally-specific services for Aboriginal and Torres Strait Islander communities. ADNSW First Nations staff:

- provide confidential enquiry services and assistance to Aboriginal and Torres Strait Islander persons who have experienced discrimination;
- investigate and conciliate discrimination complaints;
- engage with Aboriginal and Torres Strait Islander organisations;
- provide community information session about the ADA and ADNSW's services.

During the Wiyi Yani U Thangani National Summit held in May 2023, ADNSW's First Nations staff discussed with various stakeholders issues of concern faced by Aboriginal and Torres Strait Islander members of the community. Focus areas included measuring change outcomes and the accountability of services providers including government and non-government agencies.

ADNSW holds regular meetings with Aboriginal and Torres Strait Islander representatives from government, non-government, and community organisations to discuss discrimination issues and areas of community concern. Regular attendees at meetings include:

- City of Parramatta Council;
- Koori Interagency Meetings;
- Energy and Water Ombudsman NSW;
- Aboriginal Community Voice Network Meeting;
- Legal Aid NSW;
- Wirringa Baiya Aboriginal Women's Legal Centre;
- Western Sydney Koori Interagency (Blacktown City Council);
- Aboriginal Workers Circle Inner West meetings;
- First Nations People ACHRA Meetings;
- South West Sydney Koori Interagency Meetings.

3. Measuring change outcomes

ADNSW and other federal, state and territory anti-discrimination and human rights agencies in Australia collect and analyse data relating to complaints made under anti-discrimination legislation, which may be useful in measuring the experience of First Nations people over time.

Aboriginal and Torres Strait Islander people make up 3.4 % of the population of New South Wales.

During FY2022-2023, ADNSW received 159 complaints (out of a total of 1833) from people who identify as Aboriginal and Torres Strait Islander, comprising 8.7% of total complaints¹. The most common type of discrimination raised was race discrimination (49 complaints or 30.8%), and disability (32 complaints or 20.1%). The most frequent areas of complaint were the provision of goods and services (68 or 42.8%) and employment (65 complaints or 40.9%).

The following table details all complaints received during FY2022-2023 from people who identify as Aboriginal and Torres Strait Islander.

¹ There was a significant increase in the number of complaints received from the previous year (78 complaints or 4.8% of all complaints received in FY2021-2022).

Complaints by ground and area 2022-2023

	Employment	Goods & Services	Accommodation	Education	Clubs	Racial Vilification	Are not covered	Total	%
Disability	15	14	1	1	1	N/A	0	32	20.1%
Sex -includes pregnancy and breastfeeding	5	4	0	0	0	N/A	1	10	6.3%
Sexual Harassment	4	2	0	0	0	N/A	0	6	3.8%
Race	19	24	0	3	1	N/A	2	49	30.8%
Age	1	3	0	2	1	N/A	0	7	4.4%
Carer's responsibilities	1	N/A	N/A	N/A	N/A	N/A	0	1	0.6%
Homosexuality	0	0	0	0	1	N/A	0	1	0.6%
Transgender	0	1	0	0	0	N/A	0	1	0.6%
Victimisation	16	10	0	1	1	N/A	0	28	17.6%
Marital Status	1	6	0	0	0	N/A	1	8	5.0%
Racial Vilification	3	3	N/A	N/A	N/A	7	2	15	9.4%
Aiding an unlawful act	0	1	0	0	0	N/A	0	1	0.6%
Total	65	68	1	7	5	7	6	159	
%	40.9%	42.8%	0.6%	4.4%	3.1%	4.4%	3.8%		

ADNSW recognises that formal complaints received may not consistently reflect the levels of discrimination experienced by Aboriginal and Torres Strait Islander people in the community².

As part of ADNSW's community engagement, ADNSW has received anecdotal reports from Aboriginal and Torres Strait Islander community members that women and girls have been treated unfairly when accessing healthcare. The reports indicate issues in accessing healthcare services for transgender women, and women suffering from endometriosis and other reproductive disorders. Improving cultural safety for Aboriginal and Torres Strait Islander healthcare users can enhance their experience in accessing quality health care services³. Aboriginal and Torres Strait Islander people who make informal reports to ADNSW

² <https://www.theguardian.com/australia-news/2021/may/24/discrimination-against-indigenous-australians-has-risen-dramatically-survey-finds>

³ <https://www.aihw.gov.au/reports/indigenous-australians/cultural-safety-health-care-framework/contents/summary>

staff may not go on to make a formal complaint under the ADA, meaning this data is not captured in complaint statistics.

Therefore, ADNSW supports broader methods of data collection such as through national surveys and studies to measure change outcomes for Aboriginal and Torres Strait Islander women and believes that any process should be co-designed and community-led.

4. Ensuring strong accountability and evaluation approach

ADNSW supports a strong accountability and evaluation approach built into the Framework and Institute to ensure that community determined outcomes are met.

ADNSW has considered the Wiyi Yani U Thangani Implementation Framework (Implementation Framework) and notes that a recurring theme is the experience of First Nation's women at work, including removing structural barriers to allow full participation in the workforce and providing pathways and opportunities for meaningful work. The Implementation Framework refers to supporting First Nations women through targeted recruitment in non-traditional roles and by building flexible and culturally safe workplaces.

The ADA contains exceptions that permit employers and service providers to discriminate on the ground of race in certain circumstances, when doing so will benefit people of a particular racial group. Those relevant exceptions include:

- Welfare services – where the employment will provide a person of a particular race with services for the purpose of promoting their welfare where those services can most effectively be provided by a person of the same race (s.14(d)).
- Special needs programs and activities – to afford persons of a particular race access to facilities, services or opportunities to meet their special needs or to promote equal or improved access for them to facilities, services and opportunities (s.21).

The President of ADNSW can also grant temporary exemptions from the ADA for a period of up to 10 years. Exemptions are generally granted to allow employment opportunities for particular groups of people who have historically been disadvantaged or discriminated against. The majority of applications relate to employment opportunities for Aboriginal and Torres Strait Islander people, and for women. In FY2021-2022, most exemptions granted were in relation to recruitment and development programs for Aboriginal and Torres Strait Islander people (75%) and for women (17%).

The broader NSW public sector also supports the development of a strong Aboriginal workforce. In NSW, under section 63 of the *Government Sector Employment Act 2013*, the head of a government sector agency is responsible for workforce diversity within the agency and for ensuring that workforce diversity is integrated into workforce planning in the agency. Workforce diversity includes (but is not limited to) diversity of the workforce in respect of gender, cultural and linguistic background. Under Rule 26 of *the Government Sector Employment (General) Rules 2014*, the NSW government can modify recruitment processes to assist employing people from identified groups, and one of the groups currently identified is Aboriginal and Torres Strait Islander people.

The NSW Public Service Commission has developed the [Aboriginal Employment Strategy 2019 – 2025](#) which supports NSW public sector agencies to drive Aboriginal employment outcomes and priorities. Many NSW public sector agencies have developed their own agency specific Aboriginal Employment Strategy to support programs and initiatives that grow and support their Aboriginal workforce.

ADNSW's view is that more could be done to evaluate programs being undertaken by the NSW government and in the private and community sectors to measure their effectiveness to support First Nations women at work. ADNSW is aware of a few academic studies which have evaluated positive discrimination measures and the benefits of having a Reconciliation Action Plan in place.⁴ However, there is scope to conduct further research, such as longitudinal studies, to provide a strong evidence base around 'what works' in terms of ensuring First Nations women have access to and retention in the Australian labour market.

5. Protecting and strengthening data sovereignty and governance

ADNSW supports the establishment of a living database to assess how initiatives and programs are working, what needs to change, and how to assess the success and effectiveness of programs. First Nations staff at ADNSW have highlighted the need to have reporting processes that lead to clear data and accountability. The establishment of a First Nations controlled database would contribute towards the effective measurement of actions against established objectives.

The NSW Closing the Gap Annual Report 2022⁵ highlights how data and evidence are crucial in understanding program and initiatives holistic progress. The same report indicates that the development of specific data capabilities and analysing framework to help monitor and evaluate Aboriginal program and services will reinforce how data informs program reprioritisation.

By engaging Aboriginal and Torres Strait Islander women and girls in co-designing the Framework and Institute, the project is providing opportunities to women and girls to share their input to ensure that work is done towards community identified priorities.

ADNSW thanks the Aboriginal and Torres Strait Islander Social Justice Commissioner for the opportunity to contribute to the design of this important Framework and Institute for First Nations women and girls.

⁴ <https://caep.cass.anu.edu.au/events/case-study-affirmative-action-australian-style-indigenous-people>

⁵ <https://www.indigenousjustice.gov.au/resources/nsw-closing-the-gap-annual-report-2022/#:~:text=The%20report%20outlines%20the%20importance,begin%20the%20process%20of%20review.>

Kind regards,

A handwritten signature in blue ink that reads "H McKenzie". The signature is written in a cursive style with a small flourish at the end.

Helen McKenzie

President

Anti-Discrimination NSW