I Introduction

On 10 August 1987, then Prime Minister Bob Hawke called a Royal Commission which would ultimately investigate the deaths of 99 Aboriginal people in police custody from 1 January 1980 to 31 May 1989. The investigation that followed was extensive. In addition to their own research materials, the Royal Commission into Aboriginal Deaths in Custody (‘RCIADIC’) availed itself of the individual case files of the people who died, various exhibits and findings in relation to their deaths, coroners’ reports, welfare and social security files, public submissions, and records of assisting counsel. The RCIADIC produced an Interim Report on 21 December 1988 and a National Report three years later, which concluded that an examination of the lives of the 99 people suggested that their ‘Aboriginality played a significant and in most cases dominant role in their being in custody and dying in custody’. Most significantly, the RCIADIC produced 339 recommendations for the Commonwealth and state governments to address the ‘social, cultural and legal factors’ bearing on those deaths; 64 of those recommendations were directed at state police operations. This article focuses on one in particular: Recommendation 60, which sought to eliminate the use of racist, offensive, and degrading police behaviour towards Aboriginal people.

This article will critically evaluate the statutory and non-statutory measures taken by the New South Wales Government and the New South Wales Police Force (‘NSWPF’) to eliminate the use of racist, offensive, and degrading behaviour towards Aboriginal people. Part II will provide a brief overview of Recommendation 60. Part III will then identify how the New South Wales Government and NSWPF have sought to implement that Recommendation through statutory and non-statutory measures. Part IV will then evaluate whether these institutions have gone far enough to address police abuse and racist behaviour towards Aboriginal people. Where relevant this article will refer to measures that have been adopted by other states.

II Overview of Recommendation 60

Historically, Australian police officers have been poorly perceived by Aboriginal and Torres Strait Islander peoples. The RCIADIC itself drew attention to complaints of discriminatory police attitudes, stereotyping, constant surveillance, over-policing, physical bashing, excessive and unnecessary use of arrest powers, racist and derogatory remarks, rough or discourteous behaviour, harassment of youths, disrespect towards Aboriginal women, Aboriginal people being charged in situations where others would not be charged, and police failing to follow-up grievances against fellow officers.

State responses to this sort of police behaviour varied widely in 1991. The National Report found that the NSWPF, for instance, had paid little attention to the unique policing needs of Aboriginal people in New South Wales; even though it had adopted community-based policing as its principal operating strategy in the 1980s. The Queensland Police Service, by contrast, had already committed to reviewing all legislation that related to policing operations with the Criminal Justice Commission and the Office of the Minister of Police; re-working its recruitment, education, and training strategies; establishing an inter-disciplinary and inter-departmental body comprising Aboriginal and Torres Strait Islander representatives; and developing an Aboriginal, Torres Strait Islander and Ethnic Minority Strategy as a matter of priority with the Police Service Office of Policy and Evaluation.
By 1991, South Australian police had also implemented some measures to address friction between police officers and Aboriginal people. South Australian police had begun to select and train volunteer officers to be posted in the northern and western regions of the State, which have significant Aboriginal populations. Northern Territory police had gone so far as to employ Aboriginal community liaison officers, and to develop a community-policing model to reduce alcohol-related detentions and arrests.

On the other hand, Western Australia and Tasmania had few measures in place. In Western Australia, the Laverton Royal Commission investigated Aboriginal–police relations and described some police officers’ ‘complete lack of knowledge ... concerning the mode of life and customs of the Aborigines with whom they came in contact’ as ‘disturbing’. The Laverton Report went on to suggest ‘that suitably qualified Aborigines should play a part in any training programmes that may be introduced in the Police Department’. However, these criticisms and recommendations were met with fierce resistance by police groups; the Western Australian Police Union, for example, had submitted that ‘[t]here is no basis and no proven cases of racism by police officers within Western Australia’, and went so far as to claim that the Aboriginal Legal Service and the Aboriginal Medical Service ‘has had a detrimental effect on Police–Aboriginal relations’.

Recommendation 60 was a response to what was perceived to be an absence of adequate statutory and non-statutory measures to address racist, offensive, and degrading behaviour; in the eyes of the RCIADIC, ‘traditional policing responses [had] failed Aboriginal people’. The RCIADIC recommended that all state police services take every possible step to eliminate:

1. Violent or rough treatment or verbal abuse of Aboriginal persons including women and young people, by police officers; and
2. The use of racist or offensive language, or the use of racist or derogatory comments in log books and other documents, by police officers.

It also recommended that such conduct be treated ‘as a serious breach of discipline’.

Further, the RCIADIC suggested implementation from the top-down since much of the criticism in relation to police attitudes could also be ‘directed ... against law makers, administrators, and senior officers who set policy for departments’. The RCIADIC recognised, however, that denial and a lack of openness meant that institutional police racism would not be easily fixed. The path to implementation was made all the more difficult by Recommendation 60’s wide drafting, which asked administrators and policy-makers to ‘take all possible steps to eliminate’ racist and offensive behaviour in state police services. Arguably, what the RCIADIC envisaged was the adoption of an entirely new model of policing: one based on cultural awareness education and training, and cooperation with Aboriginal persons and communities.

This article will now consider how the New South Wales Government and NSWPF have addressed police discrimination and racism towards Aboriginal people.

III Eliminating Racist, Offensive and Degrading Behaviour

A Statutory Measures in New South Wales

There is no New South Wales legislation that refers specifically to Recommendation 60. Bearing this in mind, this article examines those statutory and non-statutory measures that directly or indirectly address, or could address, the underlying aims of that Recommendation: the elimination of racist, offensive, and degrading police behaviour against Aboriginal people.

There are two statutes that address racism and discrimination generally. The first piece of legislation is the Anti-Discrimination Act 1977 (NSW) (‘Anti-Discrimination Act’) which makes it ‘unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of a person or groups on the grounds of race’. The Anti-Discrimination Act also makes it unlawful for a person who provides goods or services to racially discriminate against another person by refusing to provide the person with those goods and services explicitly, or implicitly through the terms on which the other person is provided with those goods or services. Complaints under the Anti-Discrimination Act can be referred to the Administrative Decisions Tribunal, which may grant a wide array of orders if it finds the complaint substantiated in whole or in part.
In 1989, the Anti-Discrimination Act was amended to create a criminal offence for inciting ‘hatred towards, serious contempt for, or severe ridicule of’ a person or group on the grounds of race by ‘threatening physical harm’ or inciting others to threaten such harm.\(^3\) This offence carries serious punitive penalties for both individuals and corporations,\(^8\) though it requires the consent of the New South Wales Attorney General in order to be prosecuted.\(^9\)

The second piece of legislation is the Community Relations Commission and Principles of Multiculturalism Act 2000 (NSW) (‘Community Relations Act’). This Act outlines six ‘principles of multiculturalism’\(^40\) and establishes the New South Wales Community Relations Commission,\(^41\) which expects public sector agencies to deliver public services according to these principles.\(^42\) The Commission is responsible for, among other things, entering into agreements with public authorities to promote the Commission’s objectives, and monitoring the ‘multicultural policies and services plans’ (‘MPSPs’) that must be prepared by statutory bodies like the NSWPF.\(^43\)

B Non-statutory Measures

Unlike the statutory measures of the New South Wales Government, which have only addressed racism and discrimination generally, the NSWPF has been much more targeted in its approach to eliminating racist, offensive and degrading police behaviour towards Aboriginal people. Conceptually, these measures may be divided into: (a) statements that identify the NSWPF’s multicultural and Aboriginal strategic direction; and (b) police ethics and best practice statements that dictate how officers are to perform their duties on a day-to-day basis.

(i) Implementation in Strategic Statements

In compliance with the Community Relations Act, the NSWPF created the Priorities for Working in a Culturally, Linguistically and Religiously Diverse Society and Multicultural Policies and Services Forward Plan 2011–2014.\(^44\) Relevantly to Recommendation 60, the Forward Plan commits to requiring pre-determined ethnicity-based descriptors, such as ‘of Aboriginal/Torres Strait Islander appearance’, to prevent officers employing offensive or degrading descriptors when reporting criminal activity;\(^45\) ensuring that ‘complaints against police relating to alleged discrimination will be addressed with professionalism, and will be documented and analysed for organisational planning purposes’;\(^46\) and providing mandatory cultural awareness training to NSWPF staff employed in positions designed to promote multiculturalism.\(^47\)

Arguably, the most important non-statutory implementation of Recommendation 60 and its aims is the Aboriginal Strategic Direction 2007–2011, which strives ‘to ensure an environment free of racial discrimination and harassment’ for the Aboriginal community.\(^48\) The Direction 2007–2011 reflects the Royal Commission’s special consideration of Aboriginal cultural education and training initiatives in three aspects. First, through the Direction 2007–2011, the NSWPF has committed to hiring an Aboriginal lecturer to deliver a one-day ‘Corporate Training’ module in ‘Aboriginal Cultural Awareness’.\(^49\) This training is expected to be delivered locally or at the Police College in Goulburn, and covers ‘big picture’ issues such as Australian ‘prehistory’ before 1788, the history of white settler ‘contact’ with Aboriginal people, Aboriginal-specific policies of the NSWPF, and strategies for working with Aboriginal people.\(^50\)

Secondly, the Direction 2007–2011 commits to providing ‘Aboriginal Cultural Proficiency’ training for senior police officers. It considers ‘Aboriginal Cultural Awareness’ to be sufficient for student police and officers up to the level of senior constable. However, once an officer is promoted above senior constable level this education moves from an ‘awareness’ of Aboriginal culture, history and society to ‘practical application’ of this knowledge in the workplace.\(^51\)

This additional training, it is said, is designed to equip officers with the ‘skills to identify how they apply their knowledge of Aboriginal culture within their level of responsibility’.\(^52\)

Finally, any police officer seeking promotion or transfer to a local area command that has a significant Aboriginal population or a high incidence of legal actions against Aboriginal people must have completed the one-day ‘Aboriginal Cultural Awareness’ training prior to their transfer being approved. The Direction 2007–2011 states that this measure ‘will ensure that positive relationships and partnerships developed with the Aboriginal community are maintained regardless of any change in personnel at the Local Area Command’.\(^53\)
Generally speaking, these strategic statements exist to implement programs designed to educate officers against the use of racist, offensive, and degrading behaviour towards Aboriginal people.

(ii) Implementation in Police Ethics and Best Practice Statements

The NSWPF’s ethics and best practice statements vary in generality and specificity towards racist, offensive, and degrading behaviour. For example, the NSWPF Code of Conduct and Ethics, Customer Service Charter, and Standards of Professional Conduct require police officers to treat members of the public fairly and with respect, while the Code of Practice for Crime (Custody, Rights, Investigation, Management and Evidence) explicitly outlines how Aboriginal suspects are to be treated.

The CRIME Code builds on the use of force, arrest, and Aboriginal detention safeguards that are set out in the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW). Under the CRIME Code, officers must not behave in a manner that could be regarded as ‘violent, unfair, oppressive, inhuman, degrading or improper’ towards a suspect. It states that suspects are to be arrested with the minimum amount of force necessary, and Aboriginal people must not be detained in a cell unless there exists ‘no reasonably practical alternative’. If no reasonably practical alternative exists, police must attempt to place them in a cell with another Aboriginal or Torres Strait Islander person and must frequently inspect the cell. Aboriginal children suspected of an offence must also not be placed in a cell, except ‘in rare circumstances where it is necessary for the well being of the child’. Police must also follow strict intimate and non-intimate forensic examination procedures when inspecting and testing Aboriginal suspects. An additional Code of Behaviour is set out in the Police Regulation 2008 (NSW), however, it is framed in extraordinarily broad terms and makes no mention of Recommendation 60 or its aims.

The NSWPF Handbook, which stands separate from these other statements as a manual for daily practice, is quite possibly the most specific and direct implementation of Recommendation 60 in New South Wales. It provides that police should show the same amount of respect as they would to others when addressing or speaking to Aboriginal persons and states that police should not use terms such as part Aboriginal, half-caste, quarter-caste, or similar terms, because they are offensive to Aboriginal people. The Handbook also requires police officers to take great care when using ethnicity-based descriptors, which may only be used when their inclusion would increase the likelihood of identifying persons of interest. It provides that any established breach of the relevant legislation, policy, or code will constitute misconduct and may result in dismissal. Further, the Handbook states that the New South Wales Ombudsman must be notified of any complaint of harassment, victimisation or unlawful discrimination of a member of the public.

This article will now critically evaluate whether the New South Wales Government and NSWPF have gone far enough in their statutory and non-statutory measures to eliminate the use of racist, offensive, and degrading behaviour towards Aboriginal people.

IV Criticisms

A Critique of Statutory Measures

(i) The Anti-Discrimination Act 1977 (NSW)

It is perhaps unfair to judge the success of the Anti-Discrimination Act on whether it has eradicated ‘racism’ in Australian society. If, as Beth Gaze argues in the context of the Racial Discrimination Act 1975 (Cth), it was expected that racially discriminatory behaviour, or privilege accorded to whiteness, would magically disappear, then that expectation was clearly disappointed. A more realistic expectation might have been that the Act would mark out a step – a significant step – along the path of Australian society towards greater enlightenment in dealing with its increasing ethnic and cultural diversity.

This article is admittedly much narrower in scope. It asks whether the Anti-Discrimination Act provides Aboriginal people with adequate means of redress for racist, offensive, and degrading police behaviour.

While the Anti-Discrimination Act predates the RCIADIC National Report, its concern with racial discrimination and vilification, as well as its constant amendment, has given it continuing relevance to Recommendation 60 and the goals of eliminating police discrimination and racism.
The Anti-Discrimination Act seeks to tackle racial discrimination in three ways. First, it provides quasi-judicial and judicial remedies for persons who have suffered racial discrimination and vilification and ‘nips in the bud’ words or conduct that, ‘left unchecked’, could encourage racist behaviour among others.75 Secondly, through the criminalisation of ‘serious racial vilification’, it sends a clear message that racist behaviour will not be tolerated in Australia’s pluralist and multicultural society.76 Thirdly, remedies that require a respondent to issue a public statement,77 or to implement a program or policy aimed at eliminating unlawful discrimination,78 illustrate the Anti-Discrimination Act’s capacity to educate respondents and the public that racist behaviour is unacceptable.

The Anti-Discrimination Act is limited, however, in the manner in which it may address police discrimination, especially vilification, against Aboriginal people. First, while ‘public act’79 under sections 20C and 20D has been construed widely by tribunals,80 ‘words that merely “convey” hatred towards a person, or the expression of serious contempt or severe ridicule’ do not amount to incitement.81 Put differently, ‘[t]here must be a third person, or group of people, who are “incited”‘.82 Without a third party there can be no incitement and thus no recourse for Aboriginal complainants unable to meet this threshold – whatever the vilification alleged. This lack of a third party led the Administrative Decisions Tribunal in Rae, for instance, to dismiss the Aboriginal complainant’s allegation that a police officer called him in Brisbane and said ‘listen up you black c**t, I still have some more paperwork to give you’.83

Secondly, complaints under Commonwealth and state anti-discrimination legislation are regularly subjected to an evidentiary standard higher than that used in ordinary civil cases.84 For example, in Dutt v Central Coast Area Health Service, the Administrative Decisions Tribunal considered that ‘it is commonly accepted, across a wide range of allegations and factual circumstances, that findings [under the Anti-Discrimination Act] should be made according to the evidentiary requirements of Briginshaw’.85

The Briginshaw formulation demands additional proof of complainants in certain civil cases. In that case, Dixon J said that when a tribunal of fact is faced with determining whether some act, which involves ‘grave moral delinquency’, had occurred, then [the seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether [that] issue has been proved to the reasonable satisfaction of the tribunal].86

In short, this standard requires a complainant to adduce evidence of high probative value if an adverse finding is likely to have ‘grave’ consequences for the respondent. However, all racial discrimination and vilification complaints, at both state and federal levels, are generally considered to be sufficiently ‘grave’ to enliven Briginshaw.87

This approach is open to criticism on several levels. First, tribunals have placed more emphasis on the statutory basis of the complaint (as a matter attracting Briginshaw) than the individual circumstances of the complaint or its seriousness.88 Secondly, as Loretta de Plevizi argues, parties under a Briginshaw standard are not equal before the law if ‘the high status of the respondent’ (for example, being a police officer) is a factor that ‘influences the clarity of evidence required’.89 Finally, its use is open to practical uncertainty if neither party is sure as to the amount of evidence that is needed to sway the fact finder.90 Together, these criticisms limit the Anti-Discrimination Act as an effective means of recourse for Aboriginal complainants who generally have fewer financial and legal resources than others and are more likely to face the higher Briginshaw standard when pursuing racial vilification complaints against police officers. Indeed, recent case law suggests that recourse by Aboriginal complainants would be limited by narrow interpretations of policing as a ‘service’ under the Anti-Discrimination Act.91

Despite all of this, it must be remembered that the Anti-Discrimination Act is just one of many measures that the New South Wales Government can utilise to tackle police racism against Aboriginal people. To evaluate implementations properly, one must consider the Anti-Discrimination Act in connection with other statutory and non-statutory measures.

(ii) The Community Relations Commission and Principles of Multiculturalism Act 2000 (NSW)

The Community Relations Act is laudable for its high ambition. It establishes the Community Relations Commission to ensure that statutory bodies, like the NSWPF, draft MPSPs and observe them in practice, which has the potential
to change racist behaviours and discriminatory policing practices. However, it may be that the NSWPF needs to better articulate the relationship between the Act’s multiculturalism principles and the Anti-Discrimination Act to police administrators.\(^9^2\) For example, no NSWPF policy statement explicitly identifies that police officers possess an obligation to provide non-discriminatory policing services under section 19 of the Anti-Discrimination Act, but this is implicit in statements that are designed to meet the NSWPF’s MPSP obligations.

**B Critique of Non-statutory Measures**


The Forward Plan – which is the kind of top-down strategic focus that Recommendation 60 expected of police administrators – partially succeeds in addressing police discrimination and racism. The Forward Plan mandates specific ethnicity-based descriptors to crowd out offensive or derogatory race-related descriptions. The Forward Plan also ensures that discrimination complaints will be followed, documented, and analysed. It would be worthwhile to know, however, the impact of such data on internal performance management.\(^9^3\) Suffice it to say, both measures address the more extreme instances of police racism. This can stand in the way examining how ordinary, institutional processes look over or permit racist behaviour and attitudes. Also, while the Forward Plan promises to include anti-discrimination provisions in the NSWPF Code of Conduct and Ethics, this is yet to be implemented.\(^9^4\) Again, this is where the NSWPF could benefit from recognising the link between its obligations under section 19 of the Anti-Discrimination Act and its MPSP obligations.

(ii) *Aboriginal Strategic Direction 2007–2011*

It has been argued that cultural competence is key to addressing racism and discrimination and institutionalising national multicultural policy objectives,\(^9^5\) and the Direction 2007–2011 is the major policy document that seeks to achieve that through cultural awareness training.

The Direction 2007–2011 is not without criticism, however. First, there is evidence to suggest that cultural awareness training may not substantially alter racial attitudes; evaluations have found them to have had a limited impact in changing participant attitudes and behaviours.\(^9^6\) Rosie Downing and Emma Kowal, for example, reviewed ‘approximately 60 Australian research articles’, 10 of which evaluated cultural awareness training programs: four exhibited no attitudinal change in participants, two merely anticipated a change, while four found ‘some degree of positive change’ in knowledge and attitudes.\(^9^7\) The challenge here, postcolonial theorists argue, is to overcome simplistic conceptualisations of culture and cultural identity by exposing and understanding ‘othering’ and ‘essentialism’: avoiding ‘us’ and ‘them’ cultures as well as narrow, stereotypical understandings of what Indigenous culture is.\(^9^8\)

Secondly, there is evidence to suggest that Aboriginal awareness training is viewed as not ‘serious’ by some police recruits and merely a perfunctory or ‘non-core’ aspect of the Diploma of Policing Practice.\(^9^9\)

Thirdly, it is arguable that this training should be ongoing and not limited to one day ‘instances’.\(^1^0^0\) The same might also be said of ‘Aboriginal Cultural Proficiency’ training. For example, the Victorian Aboriginal Legal Service recommends that cultural awareness training should be: at least two days in length; delivered by authorised local Aboriginal people; universal and ongoing; and based upon models of best practice.\(^1^0^1\)

Fourthly, it may be argued that ‘Aboriginal Cultural Proficiency’, with its emphasis on training officers to apply their knowledge of Aboriginal culture to everyday work-situations, should also be available to junior police officers, especially when these officers are apparently more likely to damage community relationships than their more experienced colleagues. This was discussed in some detail by the New South Wales Ombudsman in its audit of the NSWPF’s Aboriginal Strategic Direction 2003–2006.\(^1^0^2\) In late 2002, the New South Wales Ombudsman selected 14 local area commands based on their number of Aboriginal residents and rate of police contact, and audited their implementation of the Aboriginal Strategic Direction 2003–2006 and its objectives. One of the most common complaints in the audits was that newly posted, younger, and less experienced police officers did the most damage to community relationships.\(^1^0^3\) To address this issue, the NSWPF might go so far as the Victorian Police Service, which established an ‘Introduction to Contemporary Policing’ module in its recruitment program ‘to identify individuals who may be racist or discriminatory
or who do not have appropriate ethical values required for contemporary policing so they can be excluded prior to operational training.¹⁰⁴

Fifthly, while ‘Aboriginal Cultural Awareness’ training may be delivered locally, the NSWPF does not guarantee that it will cover local issues. The New South Wales Ombudsman’s audit criticised, among other things, the way in which cultural awareness training was being implemented at a local level.¹⁰⁵ While the Ombudsman recognised the helpfulness of a general introduction to Aboriginal issues at the Police College, it argued that this approach was limited. This training failed to consider local histories and cultural issues. Similar criticisms were made in submissions to the New South Wales Legislative Council’s Inquiry into Issues Relating to Redfern and Waterloo.¹⁰⁶

A useful model may exist in the tiered approach of the Queensland Police Service to cultural awareness training, which is divided between: (i) the development of three generic Competency Acquisition Program units to provide a basic understanding of Aboriginal and Torres Strait Islander issues; (ii) the development of a CD-ROM package for officers at regional and district levels; and (iii) ‘on-the-job’, issue-specific training packages for officers entering local communities.¹⁰⁷

(iii) Police Ethics and Best Practice Statements

The major criticism of these statements is that police officers found to have failed their obligations will be subject ‘to management action proportionate with their actions and the circumstances surrounding those actions’.¹⁰⁸ ‘Management action’ is loosely defined in Standards of Professional Conduct and could include anything from a warning to outright dismissal; however, there are no sanctions linked to specific examples of behaviour (for example, offensive log-book descriptions).¹⁰⁹ Arguably, Aboriginal people and the NSWPF would benefit from ethical guidance that is linked to consequences which are more precise, which follow a formal process, and which ascend through an identifiable chain of command. Without management taking discrimination and racism seriously, police attitudes will not change.

V Conclusions

This article sought to critically evaluate the statutory and non-statutory measures taken by the New South Wales Government and NSWPF to address police discrimination and racism towards Aboriginal people. Part II discussed the context behind Recommendation 60, while Part III detailed the statutory and non-statutory responses of the New South Wales Government and NSWPF to discriminatory policing. Part IV then analysed these measures and argued that the Anti-Discrimination Act’s incitement elements and Briginshaw evidentiary standard may limit the effectiveness of that Act in pursuing Aboriginal complaints of police discrimination. Also, it identified that the NSWPF may benefit from better articulating the link between its Anti-Discrimination Act and MPSP obligations, and that the NSWPF has not yet inserted anti-discrimination provisions into its Code of Conduct and Ethics despite promising to do so. Further, this article considered, with reference to the New South Wales Ombudsman’s 2005 policing audit, the New South Wales Legislative Council’s Inquiry into Issues Relating to Redfern and Waterloo, and training models adopted in Victoria and Queensland. It concluded that the NSWPF’s provision of ‘Aboriginal Cultural Awareness’ and ‘Aboriginal Cultural Proficiency’ training should assume greater local focus and be promoted to junior officers. It is important to bear in mind, however, that state police services and state governments have reacted meaningfully to the RCIADIC and its recommendations in many areas. The New South Wales Government and NSWPF have both come a long way in 20 years to address police discrimination and racism against Aboriginal people. However, they should not lose sight of the importance of continuing to re-evaluate these measures regularly, and in light of their overall aims and objectives.

* BCom, LLB (Hons) (Macq). This article is based on an undergraduate paper written while the author was a student in law at Macquarie University. I would like to thank Deb Ronan and Raymond Brazil for their guidance and support. All errors are my own.


2 Ibid vol 1, 2 [1.1.7].

3 See ibid vol 5, 75 (Recommendation 29), 75–6 (Recommendations 31–5), 82 (Recommendations 59–61), 87 (Recommendation 81), 87–8 (Recommendations 84–6), 89 (Recommendation 88), 90 (Recommendation 91), 95–7 (Recommendations 122–8), 97

6 RCIADIC National Report, above n 1, vol 2, 228 [13.5.13].
7 Ibid vol 2, 226 [13.5.6], 229 [13.5.18].
8 Ibid vol 2, 220 [13.4.50].

10 See, eg, RCIADIC National Report, above n 1, vol 2, 226 [13.5.6], 229 [13.5.15].
11 Ibid vol 2, 222 [13.4.58], 226 [13.5.7].
12 Ibid vol 2, 219 [13.4.45], 220 [13.4.51].
13 Ibid vol 2, 222 [13.4.56].
14 Ibid vol 2, 279 [14.4.19].
15 Ibid vol 2, 221–3 [13.4.54]–[13.4.59].
16 Ibid vol 2, 228–9 [13.5.14].
17 Ibid vol 2, 229 [13.5.17].
18 Ibid vol 2, 225–8 [13.5.4]–[13.5.11].
20 See, eg, RCIADIC National Report, above n 1, vol 2, 230–1 [13.5.23].
21 Ibid vol 2, 239–40 [13.5.53].
22 Ibid vol 2, 242–6 [13.5.65]–[13.5.77].


24 Ibid 209 (Recommendation 12). See also RCIADIC National Report, above n 1, vol 2, 231–2 [13.5.26].
25 RCIADIC National Report, above n 1, vol 2, 235–6 [13.5.42], [13.5.47].
26 Ibid vol 2, 234 [13.5.37].
27 Ibid vol 2, 197 [13.2.11].
28 Ibid vol 5, 82.
29 Ibid vol 5.
30 Ibid vol 2, 195 [13.2.5].
32 RCIADIC National Report, above n 1, vol 2, 197 [13.2.11], vol 5, 89 (Recommendation 88(c)), 98 (Recommendation 133), 99 (Recommendation 137), 104–5 (Recommendations 154–5), 109 (Recommendation 177), 116 (Recommendation 210), 132 (Recommendation 288).
33 Anti-Discrimination Act ss 20A, 20B.
34 Anti-Discrimination Act s 19.
35 Anti-Discrimination Act s 95.
36 Anti-Discrimination Act s 108(2). The Administrative Decisions Tribunal may: (a) order the respondent to pay the complainant damages not exceeding $100,000; (b) make an order enjoining the respondent from continuing or repeating unlawful conduct; (c) order the respondent to perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant; (d) order the respondent to issue a public apology or retraction; or (e) order the respondent to develop and implement a program or policy aimed at eliminating unlawful discrimination.

37 Anti-Discrimination Act s 20D(1).
38 A maximum penalty of a $10,000 fine or 6 months imprisonment for an individual, or $100,000 for a corporation: Anti-Discrimination Act s 20D(1).
39 Anti-Discrimination Act ss 20D(2), 91(2).
41 Community Relations Act 2000 s 6.
43 Annual Reports (Statutory Bodies) Regulation 2010 (NSW) reg 15; Annual Reports (Statutory Bodies) Act 1984 (NSW) s 9(2). For example, the NSWPF must outline in its annual report the ‘key multicultural strategies’ it proposes for the following year and identify its current progress towards implementation: Community Relations Act ss 13(f), (g); Annual Reports (Statutory Bodies) Regulation 2010 (NSW) sch 1 (‘Multicultural policies and services program’).


See, eg, ibid 1.


*Law Enforcement (Powers and Responsibilities) Regulation 2005* (NSW) sch 2 pt 2 cls 4 (Aboriginal adults), 5 (Aboriginal children). ‘Vulnerable persons’ includes people who are Aboriginal or Torres Strait Islanders under reg 24(d).

*CRIME Code*, above n 58, 74.

Ibid 14.

Ibid 46.

Ibid.

Ibid 47.

Ibid 113–16.

*Police Regulation 2008* (NSW) pt 5 div 2.


Ibid 6.

Ibid 37.

Ibid 48–9. Complaints are made under the *Police Act 1990* (NSW) s 121. Other statutory complaint mechanisms are set out in the *Police Integrity Commission Act 1986* (NSW) and the *Ombudsman Act 1974* (NSW).


90 Ibid.

91 Budd v New South Wales [2006] NSWSC 1266; Commissioner of Police, NSW Police Service v Estate of Russell [2001] NSWSC 745. See also Tamara Walsh and Monica Taylor, ’“You’re Not Welcome Here”: Police Move-On Powers and Discrimination Law’ (2007) 30 University of New South Wales Law Journal 151, 165; cf Elia v New South Wales (NSW Police) [2005] NSWADT 145 ([i]n a substantive hearing, s 19 would require each applicant to establish that NSW Police has either refused services or provided services on unfavourable terms’: at [19] (Hennessy DP)).


93 See, eg, Direction 2007–2011, above n 48, 57 (‘Performance Indicator: Implementation of core priorities within agreed timeframes to meet corporate priorities as determined in consultation with the Commissioner of Police/Deputy Commissioner/Assistant Commissioner (relevant officer)’).

94 Forward Plan, above n 44, 50.


97 Ibid 8.

98 Ibid 8, 13.


100 Forward Plan, above n 44, 50. This point was identified by South Sydney Youth Services, Submission No 92 to Social Issues Committee, Inquiry into Issues Relating to Redfern and Waterloo, 7 October 2004, 3.

101 Victorian Aboriginal Legal Service Co-operative Ltd,