



## **SUBMISSION**

Prepared by Springvale Monash Legal Service Inc for the

Australian Human Rights Commission

In relation to the National Anti-Racism Framework

Date submitted: 4 February 2022

## **Our organisation**

Established in 1973, South East Monash Legal Service (**'SMLS'**) is a community legal centre that provides free legal advice, assistance, information and education to people experiencing disadvantage in our community within the City of Greater Dandenong, the City of Casey and the Shire of Cardinia.

SMLS operates a duty lawyer service at various courts in Victoria, including Dandenong Magistrates Court, the Children's Court and provides legal representation at courts and tribunals such as the Victorian Civil and Administrative Tribunal, Fair Work Commission, Federal Circuit Court, Family Court and Victims of Crime Assistance Tribunal.

For most of the 40 years in operation, SMLS has been running a clinical legal education program in conjunction with Monash University's Faculty of Law, whereby law students undertake a practical placement at the legal service as part of their undergraduate degree. SMLS has an extensive community legal education program that is developed in response to feedback from the range of community engagement and community development activities that we are and have been involved in.

SMLS also has a significant policy, advocacy, and law reform program, contributing to reforms in family violence laws and practices, access to civil procedure reforms, discrimination towards young community members in their use of public space and their interactions with the criminal justice system, as well as in highlighting the needs of refugees and people seeking asylum, particularly unaccompanied humanitarian minors and women escaping family violence.

## **Acknowledgment of Country**

SMLS wishes to acknowledge the traditional custodians of the lands upon which our offices are located, the Wurundjeri and the Boon Wurrung peoples. We pay our respects to Elders past, present and emerging.

Acronyms:

AHRC: Australian Human Rights Commission

SMLS: South East Monash Legal Service Inc

## INTRODUCTION

We thank the Australian Human Rights Commission for this opportunity to make a submission in relation to the National Anti-Racism Framework.

In these submissions, we intend to highlight some broad observations.

For over 40 years, SMLS has been providing free legal advice and assistance to clients living in some of the most culturally and linguistically diverse suburbs in Melbourne.

An overwhelming majority of SMLS' clients were born overseas. Approximately 62.3% of clients who sought SMLS' service in the 2019-2020 year were born in countries other than Australia including Afghanistan, Vietnam, Cambodia, India, Pakistan and Greece.

Many of our clients live in the City of Greater Dandenong. The Australian Bureau of Statistics 2016 ("ABS") shows that the City of Greater Dandenong had:

- a significantly large population of 64.2% who were born overseas including Vietnam, India, Cambodia, Sri Lanka and Afghanistan;
- 76.4% had both parents born overseas; and
- 29.8% of the population only spoke English at home.<sup>1</sup>

We also service the outer south-east suburbs, including the local government areas of the Shire of Cardinia and the City of Casey. We see an emerging population of new arrivals in that region.

The ABS indicated that 25.2% of the population in the Shire of Cardinia were born overseas and that 26.5% had both parents born overseas.<sup>2</sup> As for the City of Casey, 43.8% of residents were

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<sup>1</sup> [2016 Census QuickStats: Greater Dandenong \(C\) \(abs.gov.au\)](https://www.abs.gov.au/abs/2016/quickstats/greater-dandenong-c)

<sup>2</sup> [2016 Census QuickStats: Cardinia \(S\) \(abs.gov.au\)](https://www.abs.gov.au/abs/2016/quickstats/cardinia-s)

reported by the ABS to have been born overseas and that 53.2% had both parents born overseas.<sup>3</sup>

We see value in producing a National Anti-Racism Framework ('Framework'). We see this as a useful starting point to address the significant, widespread and long-lasting damage and suffering caused by racism.

SMLS agrees with the AHRC that the Framework should be designed to recognise and address intersectional experiences of racism. It is critical that the Framework include an acknowledgement that people can and are disproportionately affected and disadvantaged at the intersection of two or more attributes including disability, age, gender, sexual orientation, and gender identity. Out of our clients who reported to have been born overseas between the years 2019 to 2020, 25.39% indicated they had a disability and 10.5% reported their spoken English language proficiency as "not at all to not well" whilst 14.5% reported their written English as "not at all to not well".

We agree that racism takes various forms. It is often insidious and subtle and can affect every aspect of an individual's life. This is in line with the Concept Paper of the National Anti-Racism Framework ("Concept Paper") which talks about a need for greater community understanding of the different dimensions of racism and racial inequality in Australia and where experiences of racism, discrimination and hatred vary and are experienced differently.

During a community legal education session by SMLS to a group of recently arrived Rohingya Muslim women, various stories emerged of individual experiences of racism, open abuse, and other vilification. As one woman told her story, other participants would add their own, from

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<sup>3</sup> [2016 Census QuickStats: Casey \(abs.gov.au\)](https://www.abs.gov.au/abs/2016-census-quickstats/casey)

mildly offensive 'othering' statements to deeply painful and upsetting experiences creating real fear among the group.

Despite many in the group knowing about options for recourse under Victorian anti-vilification legislation, they expressed a sense of hopelessness regarding the complexity of the process and the belief that making a complaint would invite further harm or scrutiny. Many were of the view that proving the offence would be 'almost impossible'. Overall, it seemed that a 'head down' approach to settlement in Australia was the safest for them and their families.

We also hear reports from clients of feeling targeted by police on the basis of race.

In assisting our clients who have encountered racism, in some instances they have struggled to articulate why they felt subject to racism and the harm experienced may not necessarily result in monetary loss. To us, this highlights the inadequacies of the current mechanisms to seek redress for racism through the justice system.

What this indicates to us is that racism is serious and can have major consequences for our clients' sense of feeling safety in the community. What this also demonstrates is that the nature of racism is difficult to articulate and understand. We agree that a Framework should include an acknowledgement of the necessary work needed to define what racism is, informed by research and lived experience of those who experience the harms of racism.

We see an opportunity for the Framework to serve as a public signal and acknowledgement that racism is a national problem that requires national action. We urge the government however to ensure there is adequate investment and implementation of the Framework so that it is meaningful and not simply tokenistic. We have identified a mood amongst some community

groups of an overall sense of doubt as to whether the Framework will result in any tangible change.

We agree that investment in data collection on a national basis is critical in developing and implementing a rigorous monitoring and evaluation framework to test the effectiveness of the Framework in effecting change.

We agree that laws may be useful in complementing anti-racism work. On the other hand, laws are also capable of perpetuating and enabling racism. We recommend that the Framework also include an acknowledgement that there must be rigorous and ongoing review and reflection on the extent that racism is ingrained in our laws.

The Framework should have a focus on creating a safe space for frank and candid discussions on matters relating to racism. There must be a preparedness to speak frankly on how racism operates within our community. These conversations cannot be done without an acknowledgement of the extent that racism is fundamentally a structural problem whereby access to power is contingent on a person's relative association to 'whiteness'. One such perspective is that association with whiteness is a philosophical, material, ethical, economic, scientific, religious, and political system that works to maintain the dominant and relative superior group position of those identified as "white" (and their allies) over those marked as "non-white."<sup>4</sup> The Framework must lead on opening safe spaces to enable candid discussions on the extent the dominating position of 'whiteness' may result in inequitable distribution of wealth and opportunities in all aspects of our lives.

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<sup>4</sup> <https://www.alternet.org/2014/04/10-things-everyone-should-know-about-white-supremacy/>



Concepts of 'whiteness' and 'white supremacy' is starkly absent in the current draft Framework. We recommend that an Antiracism Framework must include this and invite and foster safe spaces to discuss these matters.

Paragraph 4.18 of the Concept Paper indicates that an acknowledgement of Australia's British Heritage should be included in the guiding principles in the National Anti-Racism Framework. We highlight that a significant proportion of our client base do not identify with having a British heritage. We are concerned that this acknowledgement is exclusionary and problematic. It does not clearly explain why there is good reason to differentiate British Heritage as a special category of migrants in the context of an anti-racism Framework. British Heritage is inextricably linked with colonisation. Further work is needed to interrogate closely and carefully what place and relevance an acknowledgement of British Heritage has in an anti-racism framework, in circumstances where the Framework should, in our minds, fundamentally be seeking to dismantle and eradicate social biases which favour associations with 'whiteness'. An anti-racism Framework must acknowledge the harms of Australia's white colonial past and its place in seeding and perpetuating racism.

In these circumstances, we strongly urge that the perspectives of Aboriginal and Torres Strait Islander peoples be prioritised in leading the development and implementation of the Framework.