

# NJP POSITION STATEMENT: Health Justice

## EXECUTIVE SUMMARY

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### National Justice Project position on Health Justice

The National Justice Project ('NJP') believes that everyone has the right to the highest attainable standard of healthcare delivered in a manner that is culturally safe, dignified and respectful, without discrimination or prejudice based on legal status, culture, ethnicity, religion, gender, disability, socio-economic status, geography, or sexuality.

Far too often in Australia, people are denied access to quality healthcare due to racial discrimination, their country of origin and visa status, or due to a physical or intellectual disability. The Australian Government has grossly failed to discharge their obligations time and again. This ongoing failure to provide adequate healthcare is a crisis that needs to be remedied with urgency.

Racism and other forms of discrimination are an endemic problem in Australia and these prejudices permeate into our health system resulting in the failure to deliver essential health services to communities which are susceptible to systemic oppression. The failure of successive Federal State and Territory governments to provide culturally safe and adequate healthcare is harmful and at times fatal. There is a growing and substantial body of evidence to establish racism, discrimination and disempowerment as determinants of poorer health outcomes.<sup>i</sup>

## PRIORITIES & RECOMMENDATIONS

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### Universal Healthcare Principles

1. The Australian Government has an obligation to ensure all people receive the highest attainable standard of healthcare, irrespective of legal status, culture, ethnicity, religion, gender, disability, socio-economic status, geography, or sexuality.
2. People in police custody, prisons, youth detention and immigration detention have the right to receive adequate healthcare at a standard equitable to that available in the community, without discrimination.
3. Standards of equitable healthcare must be proportionate to the needs of the individuals and communities it serves.

### Healthcare that is culturally safe and free of discrimination

4. Healthcare should be delivered in a culturally safe, anti-racist, non-discriminatory and trauma-informed manner.
5. Improved access to healthcare services is needed, particularly in rural, regional and remote areas.
6. Community-defined, objective and meaningful measurements of institutional racism and implicit bias is needed, with the results published and utilised to implement evidence-based reforms.

## Healthcare for First Nations people

7. First Nations people should receive the highest attainable standard of healthcare. At a minimum, the standard should be equitable to that which is enjoyed by the rest of the community.
8. First Nations people have the right to receive culturally safe, dignified, and respectful healthcare and it is incumbent on the Australian Government to ensure this right by:
  - a. Acknowledging that explicit systemic racism exists within the health system.
  - b. Acknowledging the deleterious impacts institutional and individual racism has on First Nations peoples' access to and engagement with health systems.
  - c. Applying anti-racist and race critical approaches to the health agenda, in partnership with First Nations communities, researchers, organisations and practitioners to address the disparate and harmful health outcomes for First Nations people and to achieve justice in health by enabling a health system free of racism.
9. Acknowledging that systemic racism exists within the health system, healthcare should be provided in a manner that appropriately services the cultural and social needs and expectations of the community, especially where that community is First Nations. Such an approach should include:
  - a. Enhancing the employment and retention of First Nations healthcare professionals.
  - b. Enhancing resourcing and support for Aboriginal Community Controlled Health Organisations (ACCHOs).
  - c. Strengthening the Aboriginal Health Liaison Officer programme and supporting the development of community-led culturally appropriate patient advocacy opportunities.
10. Urgently implement and provide resources for the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC)<sup>ii</sup> regarding health care, social welfare and
11. Where a First Nations death occurs in custody or in or after health care, the recommendations of the RCIADIC regarding coronial inquests should be implemented.<sup>iii</sup>

## Healthcare for asylum seekers and refugees

12. It is incumbent on Federal, State and Territory governments to ensure that safe and adequate healthcare is made available to all, without discrimination, including on the grounds of their citizenship and residency status.<sup>iv</sup>
13. Healthcare should be delivered in a manner that is culturally appropriate and trauma informed, with special consideration to physical and mental health needs proportionate to the harmful conditions created and exacerbated by detention.
14. Immigration detention should only be applied or considered as a last resort<sup>v</sup> with temporal limits in place when detention is applied.
15. All mandatory and indefinite immigration detention policies should be repealed.
16. Asylum seekers and refugees detained in immigration and third country processing facilities or remaining in third countries post processing, should receive appropriate healthcare without discrimination at a standard equivalent to that which is enjoyed by the rest of the Australian community regardless of their citizenship and residency status, including full access to the Medicare Benefits Scheme (Medicare), the Pharmaceutical Benefits Scheme (PBS) and the National Disability and Insurance Scheme (NDIS).
17. Asylum seekers and refugees should receive appropriate healthcare without discrimination at a standard equivalent to that which is enjoyed by the rest of the community regardless of their citizenship and residency status, including full access to Medicare, the PBS and the NDIS. Adjustments to living arrangements should be made for those Asylum seekers and refugees with a disability.

18. Enhanced resourcing and supports are needed to improve asylum seeker and refugee access to healthcare services, including mental health and disability services.
19. Asylum seekers and refugees with disability have the right to receive the highest attainable standard of healthcare without delay or discrimination.
20. The *Migration Act 1958* should be amended to extend the operation of s 4AA to include persons with disabilities.<sup>1</sup>

### Healthcare for people on temporary visas

21. Enhanced resourcing and supports are needed for improved access to healthcare services for adults and children on temporary visas, including mental health and disability services.
22. Efforts should be made to improve the NDIS plan to provide community-based, holistic, compassionate and responsive health and support services for individuals with disability.
23. The ten-year residency minimum for the Disability Support Pension should be abolished, or at least substantially reduced.
24. Improved access to essential support services is needed for individuals with disability on temporary visas, especially children.

### Healthcare for people with a disability

25. People with disability should receive the highest attainable standard of healthcare. At a minimum, the standard should be equitable to that which is enjoyed by the rest of the community.
26. People with disability have the right to receive culturally safe, dignified, and respectful healthcare and it is incumbent on the Australian Government to ensure this right by:
  - a. Acknowledging that explicit systemic discrimination exists within the health system.
  - b. Acknowledging the deleterious impacts institutional and individual discrimination has on people with disability's ability to access and engage with health systems.
  - c. Applying anti-ableist approaches to the health agenda, in partnership with disability groups, communities, researchers, organisations and practitioners to address the disparate and harmful health outcomes for people with disability and to achieve justice in health by enabling a health system free of discrimination.
27. Acknowledging that systemic discrimination exists within the health system, healthcare should be provided in a manner that appropriately services the cultural and social needs and expectations of the community, especially disabled individuals and groups. Such an approach should include:
  - a. Enhancing the employment and retention of healthcare professionals with disability in a manner that is sensitive to their needs.
  - b. Resourcing and support for disability advocates and groups.

### Healthcare in the justice system

28. Governments must ensure that safe and adequate healthcare is made available to all, without discrimination, including on the grounds of their legal situation.<sup>vi</sup>
29. People in custody (including people in police custody, prisons and youth detention facilities) should receive access to healthcare at a standard equivalent to that provided in the community, including full access to Medicare and PBS and NDIS services.
30. Enhanced resourcing and supports are needed to fund and provide appropriate and culturally safe healthcare to people in custody, delivered by culturally appropriate services with such care to include holistic health care, mental health care, psychosocial supports, disability care, healing and rehabilitation.

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<sup>1</sup> Section 4AA of the Migration Act provides that 'a minor shall only be detained as a measure of last resort'.

31. Governments should move to apply imprisonment as a last resort, and instead prioritise rehabilitation and healing principles for First Nations adults and children.<sup>vii</sup>
32. Children are entitled to special protection due to their age and do not belong in prisons. The minimum age of criminal responsibility should be raised to at least 14 years for all offences consistent with medical and scientific evidence pertaining to child and adolescent neurodevelopment, and in line with international standards.
33. Police-led responses to people experiencing mental health crises and exhibiting cognitive and psychosocial disability remain inadequate and ineffective and should be replaced with community-based, compassionate, holistic and responsive social and health services and supports.
34. Amend the *Coroner's Act 2009* (NSW) to expand the scope of coronial inquests to mandate that coroners examine and make recommendations relevant to systemic issues including quality of care, treatment and supervision of people in custody.
35. Urgently implement and provide resources for the implementation of the recommendations of the RCIADIC that relate to healthcare and subsequent coronial inquests into First Nations deaths in custody that relate to healthcare.

### Healthcare and intersectionality

36. Governments must ensure that safe and adequate healthcare is made available to all, without discrimination or prejudice.
37. Discrimination and prejudice in healthcare can be intersectional and care should be taken to ensure that issues with and improvements to healthcare that cross over all patients, notwithstanding their legal status, culture, ethnicity, religion, gender, disability, socio-economic status, geography, or sexuality are implemented universally.

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<sup>ii</sup> **Royal Commission into Aboriginal Deaths in Custody** (Final Report, April 1991) vol. 5 <<http://www.austlii.edu.au/au/other/IndigLRes/rciadic/>>.

<sup>iii</sup> See Inquest into the death of David Dungay, Coroner's Court of NSW, Magistrate Derek Lee, 22 November 2019 <<https://coroners.nsw.gov.au/coroners-court/download.html/documents/findings/2019/DUNGAY%20David%20-%20Findings%20-%20v2.pdf>>; Inquest into the Death of Naomi Williams, Coroner's Court of NSW, Magistrate Harriet Grahame, Deputy State Coroner, 29 July 2019 <[https://coroners.nsw.gov.au/coroners-court/download.html/documents/findings/2019/Naomi Williams findings.pdf](https://coroners.nsw.gov.au/coroners-court/download.html/documents/findings/2019/NaomiWilliams%20findings.pdf)>; Inquest into the Death of Ms Dhu, State Coroner Fogliani, Coroner's Court of WA, 16 December 2016 <[https://www.coronerscourt.wa.gov.au/Inquest into the death of ms dhu.aspx](https://www.coronerscourt.wa.gov.au/Inquest%20into%20the%20death%20of%20ms%20dhu.aspx)>; Inquest into the Death of Shona Hookey, Coroner's Court of NSW, Deputy State Coroner H.C.B. Dillon, 22 December 2016 <[https://coroners.nsw.gov.au/coroners-court/download.html/documents/findings/2016/Hookey findings FINAL 22 Dec 16.pdf](https://coroners.nsw.gov.au/coroners-court/download.html/documents/findings/2016/Hookey%20findings%20FINAL%2022%20Dec%2016.pdf)>.

<sup>iv</sup> Basic Principles for the Treatment of Prisoners, adopted by General Assembly resolution 45/111 of 14 December 1990 [9].

<sup>v</sup> Committee against Torture, Concluding observations on the combined fourth and fifth periodic reports of Australia, UN Doc CAT/C/AUS/CO/4-5 (23 December 2014) 6 [16].

<sup>vi</sup> Basic Principles for the Treatment of Prisoners, adopted by General Assembly resolution 45/111 of 14 December 1990) [9].

<sup>vii</sup> **Royal Commission into Aboriginal Deaths in Custody** (Final Report, April 1991) vol. 5 [92] <<http://www.austlii.edu.au/au/other/IndigLRes/rciadic/>>.