

Mitigating the impacts of racism on Indigenous wellbeing through human rights, legislative and health policy reform

System-wide racial discrimination and inequitable access to justice impedes Indigenous rights to health and wellbeing

Indigenous people's health and health rights have been harmed and undermined by racism globally. There is substantial evidence that interpersonal and structural racism contributes to Indigenous people's physical and mental ill health¹ and reduces access to health services. In Australia, the racist violation of Indigenous human rights since colonisation has a profound impact on the social and emotional wellbeing of individuals, families and communities across generations.² This has resulted in an unacceptable health equity gap, which the 2007 Closing the Gap strategy sought to address.³ Recognition of the urgent need to address the health and wellbeing impacts of racism guided *The Boatshed Racism Roundtable Declaration*⁴ in 2009, which called on the Prime Minister and First Ministers of Australia to initiate constitutional, policy and practice reforms underpinned by the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) — particularly Article 3 (the right to self-determination) and Article 42 (calling on United Nations signatories to implement the Declaration)⁵ — to ensure protection against racial discrimination.

The right to health is the right to access the necessary services and facilities to prevent and manage ill health.⁶ It encompasses a human rights-based approach to the social determinants of health: access to nutritious food, safe and secure housing, sanitation, secure employment, education, health care, and freedom from violence and discrimination are fundamental inter-related human rights. In this Perspective, we argue that a human rights-based approach underpinned by UNDRIP is central to the guiding vision of the *National Aboriginal and Torres Strait Islander Health Plan 2021–2031*,⁵ which states that “Aboriginal and Torres Strait Islander people enjoy long, healthy lives that are centred in culture, with access to services that are prevention-focused, culturally safe and responsive, equitable and free of racism”.⁷

International laws and racial discrimination against Indigenous Australians

The right to health is a cornerstone of inter-related international human rights instruments that seek to uphold concepts of human freedom, equality and dignity. In theory, Indigenous Australians are protected from racial discrimination by seven international human rights treaties and covenants to counter racism and eliminate racial discrimination, including the *International Convention of the Elimination of All Forms of Racial Discrimination*,⁸ to which Australia is a signatory. The states that ratify the Convention

undertake to eliminate racial discrimination by passing legislation, devising policies, implementing educational initiatives, or carrying out prosecutions.⁹ However, none of these conventions are legally binding and all fail to recognise and address racism, tolerating racist acts and oppressive ideologies.¹⁰ Although most signatory governments, including Australia, denounce racism, most allow racism in its different forms due to inadequate legal mechanisms, poor definitions of racism, a lack of moral and political will, and a lack of accurate data revealing the inequalities in accessing services experienced by Indigenous people.^{9–11}

Moreover, although Article 40 in UNDRIP enshrines a right to access justice for Indigenous peoples as both a fair procedure to resolve conflicts and disputes and an effective remedy for the contravention of their rights, and Article 15 (2) requires that states take effective measures to combat prejudice and eliminate discrimination, Australia's failure to establish strategies for this to occur, as Allison¹² argues, “makes access to justice institutionally racist or discriminatory as it applies to Indigenous people”. Furthermore, Australia's *Racial Discrimination Act 1975* (Cth) fails to include, or make reference to, the UNDRIP principles.¹³

The health impacts of unlawful racial discrimination on Indigenous Australians

Racism is an affront to human dignity and rights when embedded in institutions, and a significant driver of health disparities globally^{6,8} and in Australia. Being subjected to racism generates physiological changes that result in irreparable damage and long term adverse effects on mental health, including high levels of psychological distress,¹ depression, and suicidal ideation.^{13,14} Indigenous social and emotional wellbeing, and mental and physical health have been adversely affected by over 200 years of institutional, cultural and interpersonal racism. The Queensland Mental Health Commission report *Don't judge, and listen* found that Indigenous people were subjected to a general and pervasive racism throughout their lifetime, recommending a multifaceted, whole-of-system approach to address racism and improve Indigenous social and emotional wellbeing.¹⁵

National laws and racial discrimination against Indigenous Australians

Racial discrimination is prohibited by law in Australia through the *Racial Discrimination Act*,¹³ and a total of 13 Acts and a Charter of Human Rights developed by states and territories across Australia identify

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indirect and direct discrimination against Indigenous Australians in health services as unlawful (Box). However, racial discrimination in the justice system impedes access to health justice.

There is extensive concern in Australia that recourse to laws and statutory mechanisms against racial discrimination towards Indigenous Australians are seldom accessed, and when they are, justice is rarely enacted.^{11,12} Despite extensive ongoing experiences of racism in health services, few Indigenous people have sought legislative recourse to justice through the Racial Discrimination Act for fear of being revictimised.¹² Interpersonal and structural racism within the legal system remains a chronic and formidable barrier to access to justice and health rights for Indigenous people. Given racism has adverse long term effects on Indigenous people across generations¹³ and is an important determinant of social and emotional wellbeing, there is an urgent need to address the legal determinants of health.

The crucial role of law to ensure equitable access to health is emerging as a global human rights issue; According to Gostin and colleagues,¹⁶ “law can be a powerful tool for securing and advancing health and equity. It can be used to set and defend the norms and standards of good health, to establish and strengthen resilient health systems, and to hold actors and institutions accountable”. This is especially true of interpersonal and institutionalised racism within the health system.¹²

Operationalising the National Aboriginal and Torres Strait Islander Health Plan 2021–2031

The Health Plan directly addresses racism to improve Indigenous access to the health system under Priority 8 (Identify and eliminate racism) and Objective 8.3 (Ensure racism complaints procedures are available and accessible):

Aboriginal and Torres Strait Islander people’s experiences of racism and discrimination must be fed back into system improvement processes to ensure whole-of-health system accountability and change. This includes building in protocols for cultural safety, respect and confidentiality.

Complaints driven processes require monitoring and reporting mechanisms that demonstrate their effectiveness for Aboriginal and Torres Strait Islander people and compliance with racial discrimination law.⁷

However, despite existing policies⁷ and relevant frameworks,¹⁷ there is limited evidence of cultural safety practices and protocols being widely implemented and monitored to improve Indigenous health outcomes.^{18,19} There is also a lack of clarity around the concept and implementation of cultural safety. Clarifying the concept in policy frameworks and embedding cultural safety training and practice within racial discrimination laws extends cultural safety beyond a mere instrument of compliance,²⁰ protecting Indigenous people from racism and strengthening their social and emotional wellbeing. It is also crucial to consciously inform Indigenous people of their legal rights to access culturally safe health care. This is a central issue: without awareness of human rights and racial discrimination laws, Indigenous peoples’ involvement in the health system risks a continuation of racist oppression, exploitation and silencing which have so strongly contributed to the entrenched health inequity and lack of health rights endured today.²¹

Conclusion

Many Indigenous people experience a historically and structurally entrenched lack of access to health and justice services. Access to justice is a recognised determinant of mental health and wellbeing.¹⁶ Both the legal and health systems have a crucial role in protecting Indigenous people from the complex biopsychosocial harms of racism.²² Objective 8.3 of the Health Plan is crucial in this respect.⁷ A whole-of-system approach to eliminating racism requires culturally safe legal mechanisms within the justice system for reporting interpersonal and structural racism and racial discrimination experienced in the health system. Institutional and systemic racism within the legal system currently prevents access to justice to seek redress for adverse Indigenous encounters with racism and racial discrimination in health.¹²

Australian legislation developed by states and territories identifying indirect and direct discrimination against Indigenous Australians in health services as unlawful

- *Racial Discrimination Act 1975*
- *Discrimination Act 1991* (ACT)
- *Human Rights Act 2004* (ACT)
- *Criminal Code 1913* (WA)
- *Equal Opportunity Act 1984* (WA)
- *Anti-Discrimination Act 1998* (Tas)
- *Anti-Discrimination Act 1992* (NT)
- *Anti-Discrimination Act 1991* (Qld)
- *Human Rights Act 2019* (Qld)
- *Anti-Discrimination Act 1977* (NSW)
- *Racial Vilification Act 1996* (SA)
- *Equal Opportunity Act 1984* (SA)
- *Racial and Religious Tolerance Act 2001* (Vic)
- *Equal Opportunity Act 2010* (Vic)
- *Charter of Human Rights and Responsibilities 2006* (Vic)

ACT = Australian Capital Territory; NSW = New South Wales; NT = Northern Territory; Qld = Queensland; SA = South Australia; Tas = Tasmania; Vic = Victoria; WA = Western Australia. ◆

Even though few human rights, including UNDRIP, are implemented and protected by legislation in Australia, there is evolving legislation around protection against racial discrimination²³ globally as well as calls for greater focus on racism.^{10,11} The new public awareness campaign “Racism. It stops with me” urges Australians to reflect on the impact of racism and do more to confront it.²⁴ The multiplatform campaign aims to build awareness of how racism operates at both a structural and interpersonal level by providing tools to recognise it and address it. The cultural safety frameworks established to support mainstream services to create culturally safe environments, services and practices need recourse to a legislative framework as well.¹⁷ Cultural safety can be strengthened by integrating legislation that protects Indigenous people from racial discrimination, ensuring their dignity and fundamental human right to health are protected. Indigenous service users require access to their rights under the law and to culturally safe legal pathways for reporting racial discrimination experienced in the health system. Recent work through the Partnership for Justice in Health and the Lowitja Institute has potential to inform the evidence base, health policy, legislation and rights to strengthen Indigenous access to justice and health,¹¹ particularly through the Aboriginal Community Controlled Health Services sector under the auspice of the Closing the Gap Partnership and Coalition of Peaks.

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