

National Justice Project: Tackling discrimination through strategic litigation



The family of Naomi Williams and the National Justice Project have fought for years to hold an inquest and convince the Coroner that racial prejudice affected the care of Naomi Williams.

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Background

Fighting for human rights and social justice is at the core of what we do at the National Justice Project. We work to allow our clients' voices to be heard and to bring justice to them and all those who suffer systemic discrimination, so that we can each look forward to a safer and fairer future. Our ultimate goal is to create a more equitable society.

Since the National Justice Project was established in 2016, we have represented many families and individuals in court cases, class actions and at coronial inquests, a number of which were on a pro bono basis. Our ground-breaking casework helped hundreds of refugees on Nauru and Manus Island get urgent medical treatment in Australia and thousands of individuals have benefited from our mobile phone class action alone.

Fighting to get kids off Nauru

After 6 years in the toxic environment of Nauru and Manus Island, many asylum seekers started presenting to the Australian Government's health service provider with complex and increasingly urgent health needs. Children were the most gravely affected, as the time they had been held offshore had a greater impact on their young, undeveloped psyches. They did not have the life experience or emotional capacity to deal with their continued indefinite detention; the assaults, the mistreatment and the multiple rejections.

Consequently, children started self-harming and even attempting suicide at alarming rates. Psychosis began to emerge in children as young as 7 years old. The Government acknowledged that there were no doctors or facilities on Nauru that could manage these horrendous paediatric conditions. It appeared to be only a matter of time before a child would die as a result of the health crisis. Despite our warnings, the Minister for Home Affairs forced us to take legal action to secure urgent lifesaving care for those offshore.

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When the National Justice Project commenced its first case for a child on Nauru in 2017, the Minister for Immigration argued vigorously against transferring suicidal and mentally ill children to Australia. He claimed, spuriously, that children, not yet teenagers, who were trying to kill themselves, could be treated in Nauru, even though there were no inpatient paediatric care facilities there. It took us at least 9 trips to the courts between December 2017 and July 2019 to force the Minister to start consenting to medical transfers. Our casework led to general outrage about the conditions in which the families were being held offshore by our government.

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Finally, after a national campaign led by World Vision Australia and the election of Dr Kerry Phelp, our Parliament passed the Medevac laws in order to take the politics out of life-and-death decisions and leave them in the hands of independent doctors, where they should be. The system worked and around 500 people were medically evacuated as a result of NJP’s seminal work. Unfortunately, the Medevac law has been revoked but the numbers left offshore are dwindling.

Tackling discrimination in the health-care system

The tragic case of Ms Dhu who died of septicaemia in Port Headland led to the establishment of our Aboriginal Health Justice Project, which runs strategic litigation to highlight the need for systemic change in our health system which has harmed and continues to harm First Nations Peoples and others through discrimination and/or medical negligence.

The families we have worked with have been successful in highlighting the systematic mistreatment of First Nations Peoples by a colonial health system. We assisted the family of 27-year-old Wiradjuri woman Naomi Williams, following her tragic death in 2016. Naomi was 22 weeks pregnant when she died, and in the months leading up to her death she had attended Tumut hospital 18 times desperately seeking medical help that was not delivered.

Together with Naomi’s mother we fought for three years, firstly to convince the NSW Coroner to hold an inquest and then to convince the Coroner that racial prejudice affected the care that Naomi received at Tumut Hospital and contributed to her death. Our work saw the Coroner hand down important findings and recommendations to improve implicit racial bias in the treatment of Aboriginal patients and to develop culturally safe healthcare for Indigenous people at Tumut hospital. The Minister for Health has advised that all the recommendations have been accepted by the NSW Department of Health and many have already been implemented.

Tackling discrimination through strategic litigation

Some of the Coroner’s recommendations included strengthening the Aboriginal liaison health worker program, encouraging greater employment of First Nations Peoples as health workers and proportional representation of First Nations Peoples on boards, advisory committee and in staffing. This was the first time a coroner in Australia explicitly acknowledged racial bias as one of the causes directly related to a death.

Recognition for the National Justice Project

Our pro bono work has been and continues to be recognised both nationally and internationally. In 2018, the Human Rights Commission announced the National Justice Project as a finalist for their Human Rights Law Awards. In 2019, the National Justice Project won the ALA Civil Justice Award for our work in giving voice to those unable to access legal representation, and in helping address systemic problems of abuse and discrimination. This year, we were nominated as a finalist in the 2020 Pro Bono ‘Program of the Year’ in the Australian Law Awards.

To help us achieve systemic law reform, we always welcome legal volunteers to the team. Their contributions are vital in the work of re-shaping the legal landscape in Australia. We also partner with the Aurora Internship Program in providing workplace training to First Nations law students, offering interns the opportunity to learn from our senior lawyers and take on the skills that will enable them to continue fighting for justice throughout their career.

The way in which the National Justice Project operates, and the culture we have created within our team, will always strive to bring justice to the most marginalised members of society and embracing pro bono work to achieve this. ■



George Newhouse,
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George Newhouse is the principal solicitor of the National Justice Project and an Adjunct Professor of Law at Macquarie University. He is well known for his extensive work in fighting for justice for the mentally ill, LGBTI Australians, immigrants, prisoners, asylum seekers, youth detainees, and First Nations Peoples.