STRATEGIC LITIGATION AND RACISM IN HEALTHCARE

GEORGE NEWHOUSE[*] ARIANE DOZER[+] ISABEL JANSSEN[++] AND NATHALIE MACGREGOR[+++]

** Please note this article includes the name of a First Nations woman who has died and may include names of other First Nations peoples who have died.**

In Australia, until recently, the use of strategic litigation to achieve broad societal change has not been widely employed, due to historical, constitutional, social, and cultural factors; however, the landscape is changing. This article traces a ground-breaking Australian case, the Inquest into the death of Wiradjuri woman, Naomi Williams, which was run as part of a broader campaign to seek justice for First Nations people affected by racial bias in the healthcare system. The tragic circumstances of the case reignited a national conversation on health inequality through the judicial finding of 'implicit racial bias' and served as a platform for Aboriginal communities, organisations, and academics to demand new ways forward, notably by mandating culturally safe care — demands which are being slowly implemented. The authors demonstrate, through a detailed breakdown, how strategic litigation theory functions in practice, showing that litigation is most effective when conducted in conjunction with public advocacy within a multi-faceted campaign for change.

---

[*] George Newhouse, an Australian human rights lawyer and former local councillor, serves as the principal solicitor of the National Justice Project. He lives and works on Gadigal Lands. Additionally, he holds positions as an Adjunct Professor of Law at both Macquarie University and the University of Technology Sydney.

[+] Ariane Dozer is an advocate inspired by the strength and survival of her Gayiri, Badtjala and Hungarian Jewish ancestors. Ariane works as a solicitor and Head of Projects at the National Justice Project. She has proudly worked alongside Aboriginal and Torres Strait Islander Social Justice Commissioner, June Oscar AO on the Wiyi Yani U Thangani (Women's Voices) project.

[++] Isabel Janssen is a qualified solicitor of England and Wales and is admitted to the New York Bar. She currently lives and works on Ngambri and Ngunnawal Country.

[+++] Nathalie MacGregor is a paralegal at the National Justice Project. She works and lives on stolen Gadigal Lands. Nathalie graduated from the University of Sydney with a Bachelor of Arts (Honours Advanced Studies) in Gender and Cultural Studies and Anthropology. The authors wish to honour the memory of Naomi Williams and to pay our respects to Aunty Sharon Williams and her family without whom none of this work would have been possible.

CONTENTS

I INTRODUCTION

Naomi Williams was a proud Wiradjuri woman who was well-loved and respected in her local community. Naomi died within hours of leaving the emergency ward of Tumut Hospital, a small country hospital in the Snowy Mountains of New South Wales ('NSW') located within the Murrumbidgee Local Health District ('MLHD'). At the time of her death, Naomi was 27 years old and six months pregnant. In the 8 months before her death, Naomi had presented to the hospital 18 times without receiving a referral to a specialist.[1]

[1] See *Inquest into the Death of Naomi Williams* (State Coroners Court of New South Wales, Deputy State Coroner Magistrate Harriet Grahame, 29 July 2019) 25 [114] ('*Inquest into the Death of Naomi Williams*').

Just after midnight on New Year's Eve 2016, Naomi drove herself to the hospital in extreme pain. She was sent home with two Panadol after being monitored for only 34 minutes. She subsequently deteriorated and died from septicaemia. Naomi was repeatedly failed by her local healthcare system and the wider NSW Health system. She was denied access to adequate healthcare and her serious symptoms and concerns were not taken seriously.

Naomi's story is a familiar one for First Nations people in Australia, who have been living with institutional racism for over 230 years. However, non-Indigenous Australians are often unaware of the institutional and interpersonal racism that First Nations people experience in the healthcare system.[2] The death of Naomi and her unborn child was a wake-up call and prompted broader public outrage.

For three years, Naomi's mother and her family worked with a team from the National Justice Project ('NJP') and the Jumbunna Institute for Indigenous Education and Research ('Jumbunna Institute') to expose the causes of Naomi's death and shed light on the role racial prejudice played in it. Through thorough forensic work, community outreach and the assistance of strategic partners, a number of notable outcomes have been achieved and are ongoing.

After reviewing the compelling evidence, Deputy State Coroner Grahame made the historic finding that 'implicit racial bias' in the healthcare system contributed to Naomi's death. In response to Naomi's family's strong submissions, the Deputy State Coroner in her findings stressed the importance of providing culturally safe care to First Nations patients. The Coroner also made recommendations that have been accepted by the NSW Department of Health and, if implemented in full, will radically change the way health services are administered to First Nations people.

The outcomes of the Naomi Williams Inquest ('Inquest') have laid the foundations for an overarching strategic litigation and advocacy campaign, which is part of a broader partnership with First Nations health bodies and academics who work together to promote health justice. The purpose of this ongoing campaign is to highlight the extent of

[2] Alison Markwick et al, 'Experiences of Racism Among Aboriginal and Torres Strait Islander Adults Living in the Australian State of Victoria: A Cross-Sectional Population-Bases Study' (2019) 19(1) *BMC Public Health* 1, 2.

institutional racism in the Australian health system and to give a voice to those harmed by it. Though NJP's Health Justice Campaign aims to address all forms of discrimination in the healthcare system, this article will focus on discrimination and racism experienced by First Nations people. Because racism is insidious and difficult to prove, it was essential to take a strategic approach to expose it and to seek reform. This article explores how a multi-faceted strategy of litigation and advocacy enabled the Naomi Williams Inquest to be a catalyst for change in Australian healthcare.

II BACKGROUND TO THE NAOMI WILLIAMS INQUEST

NJP's legal strategy to improve health outcomes for marginalised peoples was grounded in the many cases that its lawyers had undertaken over the years before Naomi's case on behalf of refugees, asylum seekers, and First Nations people who had experienced discrimination in the Australian healthcare system. These cases included a range of instances of medical negligence, demonstrating a pattern of consistent institutional and interpersonal racial bias in Australian healthcare.[3] The sheer volume of cases involving harm to First Nations patients and the lack of public awareness about racism in healthcare compelled the NJP and the Jumbunna Institute to consider how a combination of civil litigation, advocacy, and accountability could drive systemic change. In Australia, where there is a lack of legislated and enshrined human rights and civil protections, and limited options for litigation funding, developing a non-governmental strategic focus and framework is a novel mechanism to circumvent such limitations.

NJP's Health Justice Campaign aims to address discrimination in the health system experienced primarily by three groups of people: refugees and asylum seekers; First

[3] In one such case, a woman with an ectopic pregnancy was misdiagnosed by a Western Australian hospital with gastric reflux and nearly died as a result. At the same hospital, an Aboriginal man had his facial palsy misdiagnosed by staff who assumed he was intoxicated; he had in fact experienced a stroke. NJP also represented an Aboriginal singer who bled internally for 8 hours in the emergency ward of Darwin Hospital without treatment because hospital staff assumed his illness was related to alcohol abuse. See, e.g., *Inquest into the Death of Fenika Junior Tautuliu Fenika (Junior Fenika)* (Coroner's Court of New South Wales, Deputy State Coroner Teresa O'Sullivan, 13 July 2018); *Inquest into the Death of Fazel Chegeni Nejad* (Coroner's Court of Western Australia, Coroner Sarah Helen Linton, 2 May 2019); *Inquest into the Death of David Dungay* (Coroner's Court of New South Wales, Deputy State Coroner, Magistrate Derek Lee, 22 November 2019). See also Melissa Davey, '"How Could This Happen?": Indigenous Health Tragedies Spark Search for Answers', *The Guardian* (online, 12 August 2016) <https://www.theguardian.com/australia-news/2016/aug/12/how-could-this-happen-indigenous-health-tragedies-spark-search-for-answers>.

Nations people; and people with disabilities. The first area of focus for the Health Justice Campaign was the use of tort law as a tool to assist asylum seekers and refugees in Nauru struggling with mental health crises. Learnings from representing refugee and asylum seeker clients in a cross-cultural context led to NJP increasingly interacting with First Nations clients who had experienced discrimination in the health system. This led the NJP and Jumbunna Institute team to develop a second strand of the Health Justice Campaign to expose discrimination against First Nations people in health care and press for reform. Integral to this campaign was selecting and conducting effective test-case litigation and coronial inquests and conducting research on the criteria for the same. Additionally, the Jumbunna Institute is a research institute and, as such, serves as a valuable partner by offering an academic and research-based perspective on each issue and case.

Prior to the Naomi Williams Inquest, and a key milestone in the development of the Health Justice Campaign, was the *Inquest into the Death of Ms. Dhu.*[4] Ms. Dhu, a 22-year-old Yamatji Nanda-Bunjima woman, was being held in police custody for unpaid fines totalling only $3,622.34. This inquest was the first to acknowledge and examine the role of racial prejudice in relation to a death. Before being arrested, Ms. Dhu had sustained a rib injury, as a result of domestic violence, which she complained of when she was arrested and throughout her time in detention.[5] Two days after being arrested, Ms. Dhu died of cardiac arrest at Headland Health Campus ('HHC'). This was the third time she had been taken by officers to the hospital in two days. The Western Australia ('WA') State Coroner found that the two doctors that treated Ms. Dhu attributed her symptoms to 'behavioural issues', influenced by her occasional drug use.[6] Their diagnosis may have been influenced by comments made by Police Officers to hospital staff and/or the fact that Ms. Dhu had been accompanied to the hospital by WA Police. Their 'premature diagnostic closure' regarding the alternatives had disastrous results: their actions cleared

[4] *Inquest into the death of Ms Dhu* (Coroner's Court of Western Australia, State Coroner Fogliani, 16 December 2016). For further discussion on the role race played in the Ms Dhu inquest see, e.g., Ethan Blue, 'Seeing Ms Dhu: Inquest, Conquest, and (in)visibility in Black Women's Deaths in Custody' (2017) 7(3) *Settler Colonial Studies* 229, Amanda Porter, 'Reflections on the Coronial Inquest of Ms Dhu' (2016) 25(3) *Human Rights Defender* 8.
[5] *Inquest into the death of Ms Dhu* (n 4) 45 [251], [256].
[6] Ibid 81, 114 [445], [624].

the visibly ill Ms Dhu for ongoing incarceration and delayed the detection of Ms. Dhu's sepsis (developed from her rib injury) until it was too late.[7]

The Coroner found that both doctors did not believe Ms. Dhu was unwell, interpreting her complaints as 'exaggerated or not entirely genuine'.[8] Despite the evidence, the Coroner stopped short of finding racial bias, instead stating that 'all of the persons involved were affected, to differing degrees, by underlying preconceptions about Ms. Dhu that were ultimately reflected… in how they treated her'.[9] The Coroner found that HHC staff and the police were not motivated by conscious racism, but noted 'it would be naïve to deny the existence of societal patterns that lead to assumptions being formed in relation to Aboriginal persons'.[10] Unexamined stereotypes are themselves an example of racial bias and Australian courts have displayed a long-standing reluctance to make any findings of racism.[11]

The Ms. Dhu inquest was one of a series of cases that contributed to the stark narrative of deeply embedded systemic discrimination and inequity in the health system and the emerging legal and advocacy campaign for health justice needed to address it. The findings highlighted to NJP lawyers that healthcare services were rarely held accountable for the role institutional racism and bias plays in the preventable deaths of First Nations people.[12]

---

[7] Ibid [269]–[453].
[8] Ibid [444].
[9] Ibid [264].
[10] Ibid [858]–[860].
[11] David Thorpe, 'Structures of Judicial Racism in Australia' (1987) 26(4) *The Howard Journal of Crime and Justice* 259; Chris Cunneen, 'Judicial Racism' (1992) 1(58) *Aboriginal Law Bulletin* 9; George Newhouse, Daniel Ghezelbash and Alison Whittaker 'The experience of Aboriginal and Torres Strait Islander participants in Australia's coronial inquest system: Reflections from the front line' (2020) 9(4) *International Journal for Crime, Justice and Social Democracy* 76.
[12] The *Ms Dhu Inquest* did lead to other significant outcomes. Since the inquest, the number of people imprisoned for defaulting on fines in WA has decreased, see, Rhiannon Shine, 'Indigenous woman jailed over unpaid fines after violent robbery as WA considers changing law', *ABC News* (online, 25 September 2019) <https://www.abc.net.au/news/2019-09-25/woman-jailed-unpaid-fines-after-violent-robbery-wa-law-changes/11543234>. The Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2019 (WA) passed through the WA Legislative Assembly in 2019 and was passed by the Legislative Council in June 2020. In his statement before the assembly, WA Attorney General John Quigley referenced Ms Dhu's death and the Coroner's inquest recommendations as the catalyst for the introduction of this bill, see, Western Australia, *Parliamentary Debates*, Legislative Assembly, 26 September 2019, 7490a–92a (John Quigley, Attorney-General).

The team put out feelers to First Nations health academics, the Jumbunna Institute, journalists, and First Nations community organisations for suitable test cases. The original coronial 'desktop' investigation in Naomi's death found nothing of note and left her family frustrated and without answers. In 2016, Aunty Sharon Williams, Naomi Williams' mother, sought legal advice from NJP to find out what else could be done. After the team had obtained the coronial brief and Naomi's medical records, they were able to uncover crucial evidence of racial prejudice, and realised the case had the potential to change attitudes, policies, and practices in the healthcare sector. Once they had reviewed the medical evidence, the NJP and Jumbunna Institute team recognised that the circumstances of Naomi's ultimate death could expose the seriousness of institutional racial prejudice in the Australian health system and thus strengthen public demand for real accountability from the healthcare sector.

III NJP'S APPROACH TO STRATEGIC LITIGATION

Strategic litigation — using the legal system to drive societal change — is gaining popularity in Australia. NJP and the Jumbunna Institute are amongst a group of social and climate justice organisations that employ a strategic approach to litigation and public advocacy/campaigning. A wide range of definitions and uses of the term "strategic litigation" has led to some confusion about its meaning and how organisations employ it as a tool to create change. It is commonly used alongside or interchangeably with the terms "cause-lawyering" and "public interest litigation". We dispute the siloing of definitions as there is clear overlap between them. In practice, the team's work often encompasses all three terms, using a legal strategy with the object of advancing public interest cases or a cause.

Through a comprehensive review of strategic litigation references, Ramsden and Gledhill have identified four main indicia of strategic litigation:

1. An extrinsic legacy concept—it seeks outcomes with a long-term impact, going beyond the origins of the claimant's complaint;
2. It is a method of advocacy adaptable to a range of purposes;
3. Its objectives are multi-faceted and go beyond creating effects within the court system; and

4. It views 'litigation' broadly, to include tribunals and international mechanisms of redress. [13]

Strategic litigation should align with an organisation's objectives. NJP and its partners have a strategic focus on eliminating racism in health care, which is consistent with their mission to eradicate all forms of discrimination.[14]

Strategic litigation is often used by organisations as one form of advocacy, as a tool within a broader strategy, and alongside other advocacy activities such as the use of media to advocate for clients and campaigns, or political lobbying.[15] Durbach et al note that litigation is 'frequently an important strategy, as either a trigger or catalyst to launch a campaign, or a "back-end" mechanism to secure the gains of a multi-strategy campaign'.[16] It is commonly associated with human rights issues and violations, but not always. In recent times, conservative groups have used the strategy to fight for a form of religious expression, including making homophobic comments about LGBTIQ+SB people.[17]

The Australian legal community has been uneasy in locating strategic litigation alongside other traditional methods of advocacy.[18] NJP and the Jumbunna Institutes' approach to situating strategic litigation within well-defined campaigns is unusual. O'Brien notes that campaigns usually have a 'cause' as opposed to a 'case' as their focus: the 'campaign will often involve a number of activities, which could include litigation, but may not… [s]ome of the other possible campaigning techniques pose a challenge as to what is understood as the job of a lawyer'.[19]

---

[13] Michael Ramsden and Kris Gledhill, 'Defining Strategic Litigation' (2019) 38(4) *Civil Justice Quarterly* 407.
[14] Scott Calnan, 'Planned Litigation: Should it Play a Greater Role in Human Rights Litigation in Australia?' (2019) 42(2) *UNSW Law Journal* 7.
[15] Ramsden and Gledhill (n 13) 28.
[16] Andrea Durbach et al, 'Public Interest Litigation, Making the Case in Australia' (2013) 38(4) *Alternative Law Journal* 219.
[17] See, e.g., Aaron Patrick, 'Inside Story: How Israel Folau's Legal Team Played Rugby Australia' *The Australian Financial Review* (online, 21 December 2019) <https://www.afr.com/companies/sport/inside-story-how-israel-folau-s-legal-team-played-rugby-australia-20191216-p53kcr>.
[18] Nicole Rich, 'Reclaiming Community Legal Centres: Maximising our Potential so we can Help Clients Realise Theirs' (Final Report, Victoria Law Foundation Community Legal Centre Fellowship, April 2009) 53.
[19] Paula O'Brien 'Changing Public Interest Law, Overcoming the Law's Barriers to Social Change Lawyering' (2011) 36(2) *Alternative Law Journal* 82, 83–5.

In practice, NJP runs multiple campaigns in line with its mission to create a fairer society and create change by tackling systemic injustice and prejudice within government institutions. After the Naomi Williams case, NJP worked with peak First Nations health and research bodies to establish the Partnership for Justice in Health ('P4JH'). The P4JH is a component of the Health Justice Campaign dedicated to addressing racism in health care for First Nations people to prevent what happened to Naomi and her family happening to others. In cooperation with stakeholders and partners such as the Jumbunna Institute and the P4JH, NJP uses a variety of legal processes strategically, such as administrative law, tort, discrimination litigation, coronial inquests, strategic advocacy, complaints to authorities, and other mechanisms, such as education, to achieve systemic reforms in Australia.

Through the open exchange of information acquired through different methodologies, focuses, and skillsets, the P4JH partnership became a useful forum and sounding board for NJP's strategic litigation. NJP uses the research and data from trusted partners as evidence for strategic litigation and campaigns. The Aboriginal Steering Committee — which was later incorporated into NJP's First Nations Advisory Committee — reviewed its campaign (for uniformity, hereafter the 'First Nations Advisory Committee'). In turn, the findings and decisions from NJP's cases contribute to political advocacy, academic research, education, and policy work of stakeholders and partners. Strategic litigation is commonly used as a form of advocacy, alongside other techniques such as activism. In NJP's experience, successful campaigns for change often come from years of grassroots engagement, tracking cases and complaints, tracing patterns and themes to their source, and identifying gaps in policy or legislation. Importantly, they also emerge directly from impacted communities that that intimately understand the challenges and barriers.[20] Because NJP is a frontline responder and works nationally and non-governmentally, it is in a position to assess complaint data and observe patterns. The Health Justice campaign sprang from years of consistent complaints to NJP from First Nations clients and communities about racism and negligence in the provision of health care. The fact that

[20] See, e.g., Anna Talbot and George Newhouse, 'Strategic Litigation, Offshore Detention and the Medevac Bill' (2019) 13 *UNSW Law Society Court of Conscience* 85; Redfern Legal Centre, 'Redfern Legal Centre launches campaign to stop strip searches' (Media Release, 19 December 2018) < https://rlc.org.au/publication/media-release-redfern-legal-centre-launches-campaign-stop-strip-searches>.

the campaign grew from concerns raised at the grassroots level by numerous communities, rather than by being selected by lawyers, ensured it was authentically grounded in client and community concerns from day one.

In accordance with the strategic litigation framework process set out below, the team consulted with Sharon Williams' and Naomi's family, the Brungle and Tumut Aboriginal community, NJP's First Nations Advisory Committee, and the Jumbunna Institute to seek alignment on the shared priorities and intentions of both the legal team and community. Not only were NJP and Jumbunna Institute running this inquest to seek accountability on behalf of Naomi's family and community, but they had a desire and commitment to ensure that this inquest was an appropriate strategic focus within the broader Health Justice Campaign. Strategic litigation and social justice lawyering raise issues of morality that have existed since the establishment of the field of modern theoretical legal ethics.[21] David Luban, a prominent first wave legal philosopher, famously posed the central ethical conflict of a lawyer and his morality as a question. He asked, '[d]oes the professional role of lawyers impose duties that are different from, or even in conflict with common morality?'[22] Modern legal ethics has answered this question in many different ways, with some theorists also considering the particular ethics of social justice lawyering.[23] Cantrell notes that 'unlike cause-lawyers, traditional lawyers remain neutral regarding the "rightness" of the client's "cause" while remaining wholly partisan in service of the client's efforts to fulfil a cause'.[24] She says that by contrast, 'at its core, cause-lawyering is not about neutrality but about choosing sides'.[25] She further notes that a second distinguishing feature of the cause-lawyer is that they 'actively embrace the political and policy dimensions of their work'.[26] Crucially, Cantrell observes that 'it is not always clear when an attorney is acting as a cause-lawyer or as a traditional lawyer. At times, a lawyer may be doing both'.[27] Ramsden and Gledhill have stated that cases are often selected for

[21] See David Luban and W. Bradley Wendel, 'Philosophical Legal Ethics: An Affectionate History' (2017) 30 *Georgetown Journal of Legal Ethics* 337; Leslie Griffin 'The Lawyer's Dirty Hands' (1995) 8(2) *Georgetown Journal of Legal Ethics* 219.
[22] David Luban, *The Good Lawyer: Lawyers' Roles And Lawyers' Ethics* (Rowman & Allanheld, 1983) 123, cited in Leslie C Griffin, 'The Lawyer's Dirty Hands' (1995) 8(2) *Georgetown Journal of Legal Ethics* 225.
[23] See, e.g., Christine Parker, 'A Critical Morality for Lawyers: Four Approaches to Lawyers' Ethics' (2004) 30(1) *Monash University Law Review* 48.
[24] Deborah Cantrell, 'Sensational Reports: The Ethical Duty of Cause Lawyers to be Competent in Public Advocacy' 30(3) *Hamline Law Review* 568.
[25] Ibid.
[26] Ibid.
[27] Ibid.

strategic litigation by organisations because they 'epitomis[e] the interests of a particular community'.[28] The ethical selection of cases, discussed further below, is a delicate and crucial aspect of strategic litigation. NJP is fortunate to have formed trusted relationships with the Jumbunna Institute and peak First Nations health organisations, clinicians, health workers, journalists, researchers, and advocates in communities who are able to refer clients when they most need help. NJP only acts where there is an alignment of interests between its clients, community needs, and when there is a genuine potential for strategic impact in priority campaign areas.

Strategic litigation emphasises 'proactive agenda setting and control'.[29] Preliminary research suggests that such proactive and systemic elements of a planned approach to strategic litigation has led to more success in Australian courts.[30] The development of NJP's strategic litigation framework and strategy was encouraged by one of its US-trained directors, retired Lieutenant Colonel Dan Mori, who brought his experience in US-style litigation to Australia. With the establishment of the Health Justice Campaign, the collective experience and preparation of NJP, and the Jumbunna Institute lawyers, ensured they were prepared to engage when passionate clients presented with suitable cases of institutional racism and harm in the healthcare system with the potential to drive systemic change. Naomi's experience in the healthcare system was an important case that had strong prospects of achieving the strategic campaign objectives. The following framework was followed when considering Naomi's case and how best to commit limited resources for maximum impact:

A *Identify the issue;*

B *Consider stakeholders and partners;*

C *Find a way forward;*

D *Identify legal and other mechanisms to achieve outcomes and maintain them;*

E *Consider the limitations of chosen mechanisms;*

F *Consider the resources involved and identify risks; and*

[28] Ramsden and Gledhill (n 13) 7.
[29] Ibid.
[30] Calnan (n 14) 10, 63.

G *Develop a narrative.*

These factors are generally considered at the outset of any strategic litigation run by NJP and are periodically reviewed as appropriate.

A *Identify the Issue*

Identifying a social or human rights-based problem that can be framed as a legal issue is the natural first step in strategic litigation. Once identified, a client's case must be grounded in the context of this issue. In his article emphasising the importance of context in cause-lawyering, Calmore states, 'seldom will a client's legal problem be just a legal problem'.[31] It is well established that First Nations people experience vastly poorer health outcomes, educational outcomes, and levels of poverty when compared with the non-Indigenous population.[32] First Nations people experience higher levels of morbidity and mortality, poorer management of chronic diseases, and are less likely to receive a medical or surgical procedure.[33] NJP and the Jumbunna Institute team had reviewed published research demonstrating racism as a key determinant of this discrepancy.[34] First Nations people may find health services unwelcoming and even traumatic to the point where they will discharge themselves against medical advice.[35] It should also be noted that concepts

[31] John Calmore, 'A Call to Context: The Professional Challenges of Cause Lawyering at the Intersection of Race, Space and Poverty' [1998-1999] 67(5) *Fordham Law Review* 1927.
[32] See, e.g., Commonwealth of Australia, Department of the Prime Minister and Cabinet, *Closing the Gap Report 2020* (Report, 12 February 2020) (the 'Closing the Gap Report'); NSW Health, Workforce Planning and Development, *Respecting the Difference: An Aboriginal Cultural Training Framework for NSW Health* (Policy Directive, 1 November 2011) (the 'Respecting the Difference Framework'); Australian Health Ministers' Advisory Council, *Aboriginal and Torres Strait Islander Health Performance Framework* (Report, 30 May 2017) ('The HFP Report').
[33] Australian Institute of Health and Welfare, 'Cultural Safety in Health Care for Indigenous Australians: Monitoring Framework' (Web Page, 28 October 2019) <https://www.aihw.gov.au/reports/indigenous-australians/cultural-safety-health-care-framework/contents/summary>; The HPF Report 157 [3.03].
[34] Yin Paradies et al, 'Racism as a Determinant of Health: A Protocol for Conducting a Systematic Review and Meta-analysis' (2013) 2(1) *Systematic Reviews* 85 ('Racism as a Determinant of Health'); Alison Markwick et al, 'Experiences of Racism Among Aboriginal and Torres Strait Islander Adults Living in the Australian State of Victoria: A Cross-sectional Population-based Study' (2019) 19(1) *BMC Public Health* 2; Ann Larson et al., 'It's Enough to Make you Sick: The Impact of Racism on the Health of Aboriginal Australians' (2007) 31(4) *Australian and New Zealand Journal of Public Health* 322, 322–9; Alison Markwick et al, 'Perceived Racism may Partially Explain the Gap in Health between Aboriginal and Non-Aboriginal Victorians: A Cross-sectional Population Based Study' (2019) 7 *SSM Population Health* 1; Naomi Priest et al, 'Racism and Health Among Urban Aboriginal Young People' (2011) 11(568) *BMC Public Health* 1; Christopher Bourke et al, 'Transforming Institutional Racism at an Australian Hospital' (2019) 43(6) *Australian Health Review* 611.
[35]Australian Healthcare and Hospitals Association et al 'Cultural Safety Crucial in Aboriginal and Torres Strait Islander Healthcare' (Joint Statement, 26 March 2018) <https://ahha.asn.au/news/cultural-safety-crucial-aboriginal-and-torres-strait-islander-healthcare> ('AHHA').

of health can be fundamentally different for many First Nations communities, where their holistic understanding of health — encompassing social, emotional and spiritual wellbeing — can conflict with western concepts of health, where the mind and body are deemed separate. These differing worldviews, combined with racism, have a direct impact on all facets of a person's wellbeing and engagement with health services. Racism in the provision of healthcare can lead to 'poorer self-reported health status, lower perceived quality of care, underutilisation of health services, delays in seeking care, failure to follow recommendations, societal distrust, interruptions in care, mistrust of providers, and avoidance of health care systems'.[36]

However, despite prejudice playing a key role in health outcomes, relevant comprehensive data on racism in health care is hard to find.[37] One well-known report, conducted by the Anti-Discrimination Commission in Queensland, found that of sixteen Health and Hospital Services in Queensland, ten had 'very high' levels of institutional racism and the remaining six had 'high' levels.[38] The Aboriginal and Torres Strait Islander Health Performance Framework Report 2017 provides the following statistics:[39]

- 35% of Indigenous Australians aged 15 years and over reported that they had been treated unfairly in the previous 12 months because they are Aboriginal and/or Torres Strait Islander;
- Around 14% of Indigenous Australians reported that they avoided situations due to past unfair treatment. Of those persons, 13% had avoided seeking health care because of previous unfair treatment;

[36] Yin Paradies et al, 'Racism as a Determinant of Indigenous Health and Wellbeing' (2011) 194(10) *Medical Journal of Australia* 546, 576; Vickie Shavers et al, 'The State of Research on Racial/ethnic discrimination in the Receipt of Health Care' (2012) 102(5) *American Journal of Public Health* 953, 953–66; Australian Indigenous Doctors' Association, 'Racism in Australia's Health System' (Policy Statement, 2016) ('AIDA').
[37] The HPF Report (n 32) 161–2 [6.6].
[38] Queensland Aboriginal and Islander Health Council 'Audit Finds High Levels of Institutional Racism in Queensland's Health System, but Experts Hopeful of Brighter Future' (Media Release, 4 December 2018) <https://www.qaihc.com.au/media/audit-finds-high-levels-of-institutional-racism-in-queensland-s-health-system-but-experts-hopeful-of-brighter-future>.
[39] Statistics in The HPF Report (n 32) are from the 2014–15 National Aboriginal and Torres Strait Islander Social Survey and General Social Survey unless otherwise specified.

- In a study[40] of 755 Aboriginal Victorian adults, 30% had experienced racism in health settings in a 12- month period;
- 6% of Indigenous Australians aged 15 years and over disagreed or strongly disagreed with the statement '[y]our doctor can be trusted'; and
- Indigenous Australians in non-remote areas reported that their General Practitioner, rarely or never showed respect for what was said (15%), listened to them (20%), or spent enough time with them (21%).

The issue of racism in healthcare is extremely complex and not one that can be easily addressed. However, it cannot be addressed meaningfully until it is acknowledged. The Australian healthcare system is steeped in colonial history and misconduct, which continues to shape many First Nations people's perceptions of healthcare.[41] For example, Tumut Hospital, where Naomi was treated, was segregated until the 1960's.[42] The legacy of this oppression and discriminatory practice continues to impact the Tumut community and surrounding areas. Despite the health discrepancy being identified as an area of focus at the highest levels of government,[43] and despite the hard work of many nurses, doctors, and public health officials, the problem of institutional racism persists.[44] Meanwhile, the lack of progress continues to cost First Nations people, like Naomi Williams, their lives.

[40] Margaret Kelaher, Angeline Ferdinand and Yin Paradies, 'Experiencing Racism in Health Care: The Mental Health Impacts for Victorian Aboriginal Communities' (2014) 201(1) *The Medical Journal of Australia* 44, 44–7.

[41] Australian Institute of Health and Welfare, *Cultural Safety in Health Care for Indigenous Australians: Monitoring Framework* (Report, 28 October 2019) <https://www.aihw.gov.au/reports/indigenous-australians/cultural-safety-health-care-framework/contents/summary> ('AIHW'); Royal Australian College of General Practitioners, 'Racism in the Healthcare System', (Position statement, September 2018) <https://www.racgp.org.au/advocacy/position-statements/view-all-position-statements/health-systems-and-environmental/racism-in-the-healthcare-sector>; Australian Health Practitioner Regulation Agency, *The National Scheme's Aboriginal and Torres Strait Islander Health and Cultural Safety Strategy 2020-2025* (Report, 12 January 2018) ('AHPRA').

[42] George Newhouse, 'Ron Castan Humanitarian Award 2017' (Speech, Ron Castan Humanitarian Award 2017, 22 October 2017).

[43] Council of Australian Governments, 'COAG Statement on the Closing the Gap Refresh', (Communique, 12 December 2018).

[44] Australian Indigenous Doctors' Association, 'Australians Must Not Accept the Widening Life Expectancy Gap as the Norm' (Media release, 22 November 2018) <https://www.aida.org.au/wp-content/uploads/2018/11/AIDA-MEDIA-RELEASE-Australians-must-not-accept-the-widening-life-expectancy-as-the-norm.pdf>; Australian Human Rights Commission, 'Close the Gap: Indigenous Health Campaign' (Web Page, 19 March 2020) <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/projects/close-gap-indigenous-health>.

Another complicating factor in addressing prejudice in healthcare is that First Nations people face barriers to accessing the legal system. Research from the Law and Justice Foundation in NSW has found that around 8 per cent of Aboriginal people needed health justice legal services, which is more than double the rate of non-Indigenous people.[45] However, there are limited legal services available to address this need.

B *Consider Stakeholders and Partners*

Stakeholders and partners are at the heart of all NJP's campaigns. The stakeholders in the Naomi Williams Inquest could be divided along four lines:

- Naomi's immediate family and friends;
- The local Aboriginal community in Tumut;
- NJP's First Nations Advisory Committee; and
- The Jumbunna Institute and peak Aboriginal and Torres Strait Islander health organisations and academics.

NJP, as a non-Indigenous-run organisation, relies on its First Nations Advisory Committee, staff, board members and partners to provide culturally appropriate oversight, accurate information on grass roots concerns and to ensure that legal and advocacy strategies are trauma-informed, culturally respectful and conducted in a culturally safe manner.[46] Numerous legal scholars have addressed the delicacies of ethical strategic litigation/public interest litigation, encouraging weighty consideration of stakeholders and partners. Calmore, in analysing the role of public interest litigation specifically to serve America's poor, inner-city minority communities, states that 'practicing law in the community is not a tourist adventure' and that practitioners 'must search for an invitation, opportunity, and connection that legitimate our presence and committed practice'.[47] Calmore emphasises the role of the lawyer in collaborating with

[45] Christine Coumeralos et al, 'Collaborative Planning Resource – Service Planning' (Research Report, Law and Justice Foundation of New South Wales, November 2015) 34.
[46] A significant portion of NJP's work is for Aboriginal clients and centred around issues of Aboriginal health justice. However, the majority of NJP lawyers are not Aboriginal. The ultimate aim of NJP is for Aboriginal lawyers to take over its work and take control of their own advocacy. NJP is currently training Aboriginal lawyers for this purpose.
[47] John Calmore, 'A Call to Context: The Professional Challenges of Cause Lawyering at the Intersection of Race, Space and Poverty' (1999) 67(5) *Fordham Law Review* 1927.

communities and empowering them to transform their struggles from within the community.

NJP represents clients who themselves have a desire for both legal accountability and wider societal change. In this way, advocating for the client's best interests aligns with its strategic objectives. Quigley has called this approach 'empowerment lawyering', and like Calmore, emphasises the lawyer 'joining' a community as opposed to 'leading' it.[48] Quigley states that 'unless the lawyer recognises that advocacy with groups cannot proceed without community organising, there can be no effective empowering advocacy'.[49] He states, 'in fact, if an organisation could only have one advocate and he had to choose between the most accomplished traditional lawyer and a good community organiser, it had better, for its own survival, choose the organiser'.[50] Tyner refers to this as 'collaborative lawyering' and describes it as a type of lawyering which 'extends beyond the traditional notion of lawyering, which explores how to solve a legal dilemma and begins to examine participatory and democratic questions: "what shall we do together?"'.[51] Collaborative lawyering is a 'joint partnership with clients that can effect social change… [it] promotes client autonomy, upholds respect, and fosters a sense of equality whilst furthering collaborative efforts'.[52]

The central aim of strategic litigation is to have an effect beyond that of the individual litigant and this concept has been well explored by commentators.[53] Calnan has stated that strategic litigation 'involves a balancing of the individual interest of the client with the wider structural goals it tries to obtain while acting ethically and on the client's instruction. As long as it involves acting on such instructions and the client is fully informed about the litigation and consents to it, a planned litigation approach is generally seen as having a human rights framework in dealing with its clients'.[54] Coroner Grahame

[48] William Quigley, 'Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations' (1994) 21(2) *Ohio Northern University Law Review* 455.
[49] Ibid.
[50] Ibid.
[51] Arika Tyner, 'Planting People, Growing Justice: The Three Pillars of New Social Justice Lawyering' (Summer 2013) 10 *Hastings Race and Poverty Law Journal* 219, 226.
[52] Ibid.
[53] See, e.g., Ramsden and Gledhill (n 13) 8-10; Melissa Coade, 'Strategic Justice' (2019) 56 *Law Society Journal* 34, 36–7; Calnan (n 14) 9.
[54] Ibid.

best described the successful intersection of these interests in the Naomi Williams Inquest as follows:

> It is clear to the court that [Naomi's family and friends'] motivation has been twofold. They have been dedicated to trying to find out exactly why Naomi died, but they have also been looking for ways to improve health outcomes for other Indigenous patients in their local community. In this way they are honouring Naomi's life and acknowledging her status as an emerging leader of her community.[55]

The Williams family, who, in seeking to honour Naomi's memory, are continuing to empower local and national communities to achieve changes to healthcare for First Nations people.

NJP undertook two community outreach trips to Tumut in order to hear directly from local Aboriginal community members about their experiences of racism and healthcare. As Naomi was loved and active in her local community, people were willing to collaborate and talk openly about their concerns. The Inquest became an opportunity for truth-telling, not only around Naomi's death, but also the state of the local health system. The concerns and experiences that Tumut residents shared directly influenced the Inquest submissions and recommendations.

The Jumbunna Institute and NJP both run strategic litigation and advocate for social justice for First Nations people. In order to achieve significant change in a culturally appropriate fashion, they formed a cohesive partnership. The Jumbunna Institute has vital relationships with academics, legal experts and grassroots organisations that it could draw on during preparations for the Inquest. Lawyers from the Jumbunna Institute and NJP worked together to prepare submissions and attend hearings. They were aided by the tireless legal work of members of the Bar who offered their expertise pro bono as well as the contributions of a number of experts. NJP and the Jumbunna Institute continue to work together in order to analyse the findings, opportunities and recommendations handed down by the Coroner and to advocate for health justice together.

[55] *Inquest into the Death of Naomi Williams* (n 1) [5].

C *Find a Way Forward*

The way forward to health justice was mapped out by the Royal Commission into Aboriginal Deaths in Custody ('RCIADIC') in 1991.[56] Recommendations 246–271 address the health of Aboriginal people. The RCIADIC report represented a shift in focus to the importance of culturally safe care and also recognised the need for a 'multi-sectoral approach to improve the quality of life in general for Indigenous people, rather than simply provision of more and improved health and sickness care services'.[57] The relevant RCIDIAC health recommendations were:

246. Improving collection and access to accurate and comprehensive data

247. Increasing and improving training

248. Learning from the Aboriginal Primary Health Care Unit

249. Improving access to skilled interpreters

250. Sharing information about patients

251. Improving access to health care facilities

252. Reviewing hospital procedures

253. Improving design of facilities

254. Involving Indigenous people in decision making roles

255. Addressing stereotypes

256. Employing more Indigenous people

257. Expanding training initiatives

258. Increasing participation of Aboriginal Health Services

259. Better resourcing of Aboriginal Health Services

260. Evaluation of programs

261. Use of Indigenous hospital liaison officers

[56] Elliott Johnston, *Royal Commission into Aboriginal Deaths in Custody* (Report, 9 May 1991) vol 5 <https://www.naa.gov.au/explore-collection/first-australians/royal-commission-aboriginal-deaths-custody> ('*Aboriginal Deaths In Custody Report*').
[57] Amnesty International, *Review of the Implementation of RCIADIC – Chapter 21 Towards Better Health (Recommendations 246-271)* (Report, 2015) 1, 93-6, [6] <https://changetherecord.org.au/resources/files/Chapter%2021_Towards%20Better%20Health.pdf>.

262. Recognition and development of Indigenous Health Workers

263. Review of style of operation of health professionals

264. Expansion of Aboriginal mental health services

265. Development of Indigenous health workers with appropriate mental health training

266. Linking Indigenous mental health services with other services

267. Reviewing of aerial medical services and diagnostic protocols

268. Research into Indigenous health issues

269. Indigenous health research compliance with National Health and Medical Research Council's Advisory Notes on Aboriginal heath research ethics

270. Involvement of Indigenous people in development of health statistics

271. Funds to be urgently made available to implement the National Aboriginal Health Strategy.

It is disappointing that most recommendations have not been effectively implemented or implemented at all. The RCIADIC recommendations offered an opportunity for desperately needed reform in the Australian health system and continue to operate as a roadmap for campaigners for First Nations health justice.

Since RCIADIC, a new philosophy of patient-focused care has developed a framework to provide culturally safe services. Cultural safety 'identifies that health consumers are safest when health professionals have considered power relations, cultural differences, and patients' rights'.[58] Part of this process requires health professionals to examine their own unconscious biases, beliefs, and attitudes. Cultural safety is not defined by the health professional, but is defined by the health consumer's experience — the individual's experience of care they are given, the ability to access services, and to raise concerns.[59] Aspects of cultural safety include good communication, respectful treatment, empowerment in decision-making, and the inclusion of family members.[60] Cultural safety

[58] Australian Health Ministers' Advisory Council's National Aboriginal and Torres Strait Islander Health Standing Committee, *Cultural Respect Framework 2016-2026 for Aboriginal and Torres Strait Islander Health* (Communique, 2016) 18 [4] ('Cultural Respect Framework') <https://nacchocommunique.files.wordpress.com/2016/12/cultural_respect_framework_1december2016_1.pdf>.
[59] Ibid 18.
[60] AIHW (n 41).

is a proven solution to achieve systemic change in order to address racism in healthcare,[61] and is widely supported by medical professionals for being instrumental to the improvement of First Nations people's health outcomes.[62] Cultural safety was developed in New Zealand by Maori nurses in order to address the poorer health outcomes of Maori peoples in New Zealand. Like Australia, New Zealand's health system is grounded in the colonial context. Australian First nations health organisations, such as The Congress of Aboriginal and Torres Strait Islander Nurses and Midwives ('CATSINaM'), Australian Indigenous Doctors' Association ('AIDA'), National Aboriginal Community Controlled Health Organisation ('NACCHO'), National Association of Aboriginal and Torres Strait Islander Health Workers and Practitioners ('NAATSIHWP') and Indigenous Allied Health Australia ('IAHA') led the way in introducing cultural safety to Australia — and it was soon widely adopted as the benchmark standard. Durbach et al have outlined that 'existing and widespread public support for social change on a specific issue' is one of the defining features of successful strategic litigation.[63]

State and Federal governments are working to ensure that culturally safe care is the experience of all First Nations people.[64] In a major step forward, in 2023, State, Territory and Federal governments agreed to slowly mandate culturally safe care across 16 different areas of practice.[65] However, as the Inquest demonstrated, existing care frameworks are often not implemented fully or with the appropriate consideration of local communities. These efforts have revealed a divide between what some health services thought to be effective community engagement and the view of the community itself. Health administrators appeared genuinely surprised when they learned that Aboriginal people did not feel safe at Tumut Hospital.[66] The Health Justice Campaign

[61] Royal Australian College of General Practitioners, 'Position Statement - Aboriginal and Torres Strait Islander Health' (Position Statement, 2015) <https://changetherecord.org.au/review-of-the-implementation-of-rciadic-may-2015> ('RACGP').
[62]AIDA (n 36); AHHA (n 35).
[63] Durbach (n 16) 220.
[64] For example Cultural Respect Framework (n 58), Closing the Gap Report (n 32), Department of Health, *National Aboriginal and Torres Strait Islander Health Workforce Strategic Framework and Implementation Plan 2021-2031* (National Workplace Plan, 7 March 2022) <https://www.health.gov.au/sites/default/files/documents/2022/03/national-aboriginal-and-torres-strait-islander-health-workforce-strategic-framework-and-implementation-plan-2021-2031.pdf>; NSW Ministry of Health, *Integrated Trauma-Informed Care Framework: My Story, My Health, My Future* (Integrated Trauma-Informed Care Framework, 22 February 2023).
[65] Aboriginal and Torres Strait Islander Health and Cultural Safety at Heart of National Law Changes (Web Page, 13 October 2022) <https://www.ahpra.gov.au/About-Ahpra/Ministerial-Directives-and-Communiques/National-Law-amendments/Joint-statement.aspx>.
[66] *Inquest into the Death of Naomi Williams* (n 1) 53–4 [269]–[275].

offered a unique opportunity to raise the profile of culturally safe care, and to utilise legal and political mechanisms to demand best practice standards. Naomi's family had the opportunity to offer recommendations, through their lawyers, about how to improve that community engagement. At the Inquest, the Coroner took these recommendations seriously. She focused on important elements of culturally safe care by including a section of her findings titled 'Measures to embed values to promote culturally safe healthcare for Aboriginal people'[67] and referenced cultural safety in her Recommendations 8 and 9.[68] The Coroner recommended improved education, training focusing on culturally safe care within a local context, changes to professional standards and increased and proportional employment of Aboriginal health workers.

Cultural safety offers an agile way forward as it draws on research and expertise from governmental, academic, medical, and social sciences sectors in relation to institutional racism and healthcare. This multi-sectoral and multi-disciplinary breadth is advantageous in that diverse stakeholders can implement pathways across their relevant fields in order to achieve the overarching goal: a high standard of culturally safe care across Australia.

D *Identify Legal and Other Mechanisms to Achieve Outcomes and Maintain them*

NJP and the Jumbunna Institute use civil litigation, discrimination and health complaints processes, and other legal/quasi-legal mechanisms in order to further their campaigns. Legal aims of strategic litigation include setting new precedents and advancing legal standards, influencing the quality of law and its implementation, and establishing specific legal points or definitions.[69] However, broader aims may include functioning as a dialogic tool to prompt public discussion, highlighting potential injustices in the legal status quo in order to build momentum for reform, or create broad social change.[70] In Naomi Williams' case, NJP and the Jumbunna Institute successfully used the coronial process, not only to bring some level of closure to her family, but as a vehicle to answer questions about Naomi's death, to hold individuals accountable, and to achieve significant findings

[67] Ibid 52.
[68] Ibid 57.
[69] Ramsden and Gledhill (n 13) 12.
[70] Ibid 13–4.

and recommendations that have the potential to create real change in the way health services are delivered.

However, NJP and the Jumbunna Institute are conscious that the use of legal mechanisms is less effective if they are siloed from other important advocacy tools. Their approach aligns with that of some academics, including Calnan, who have suggested that strategic litigation is most effective as part of a coordinated plan (for example, involving political and social campaigning) which will lead to better healthcare outcomes for First Nations people. O'Brien has stated that although Australian public interest lawyers are often critical of the law and of the legal system's treatment of disadvantaged people, the liberal model of the law remains a 'forceful influence' and makes it difficult for lawyers to see their role other than in a conventional way.[71] This has resulted in public interest lawyers looking to the courts for justice, knowing it does not always provide it. O'Brien suggests that 'social change lawyering [should] not [be] so concerned with the liberal commitment to the promotion of formal equality in the legal system, but with what needs to be done to realise a more substantively equal society'.[72] Traditionalists find it difficult to accept social justice lawyers operating campaigns or being activists. In response, Isabelle Reinecke of the Grata Fund notes that activism and strategic litigation complement each other: 'activism pushes for social change by targeting decision-makers through campaign strategies like non-violent direct protest, petition and mass mobilisation…[in court] you're not winning the hearts and minds of judges - you're winning with detailed facts, precise reasoning, and the applicable legal principle'.[73] Ramsden and Gledhill put it simply: 'strategic litigation is often best used together with other techniques'.[74] NJP's community partners use the political and social mechanisms and processes at their disposal to build their own pathways. These pathways complement NJP's legal work to form an overarching strategy addressing institutional racial prejudice. Partners develop pathways to culturally safe care and health justice reform through academic research, data collection, policy lobbying, grassroots advocacy, calling for further funding, for educational reform, for professional standards reform, and for increased transparency by health institutions.

[71] O'Brien (n 19).
[72] Ibid.
[73] Coade (n 53) 36.
[74] Ramsden and Gledhill (n 13) 28.

A NSW Coroner has judicial powers to call witnesses and experts in order to make a finding as to the identity of the deceased and the date, place, manner, and cause of death. In some states, Coroners must also comment on 'the quality of the supervision, treatment, and care of the person while in that care' where there is a death in custody.[75] A well-run coronial process can offer clients some therapeutic benefits, lead to closure, and provide healing.[76] Such responses are often driven by inquest participants feeling 'heard' and understood through the coronial process.[77] Unfortunately, a poorly run or unsympathetic coronial process can re-traumatise grieving families and communities. Lawyers and advocates need to be aware of this risk. They should make every effort before commencing proceedings and in court to ensure that their clients are prepared for the potential downside of a culturally unsafe or disappointing court process.

The RCIADIC emphasised the role of post death inquiries, such as coronial inquests, as an important mechanism for truth-telling and systemic change in relation to deaths of First Nations people. The commission highlighted how coroners are uniquely placed to make policy recommendations in order to influence policy and prevent future deaths. The Attorney General of the Northern Territory explained as much in his second reading speech for the *Coroners Bill 1993* (NT) which was quoted in the case of *Bauwens & Anor v The Territory Coroner*:

> The purposes of the [proposed NT Coroners] Act were, *firstly, to implement various recommendations of the Royal Commission into Aboriginal Deaths in Custody ("Royal Commission"); and, secondly, to generally improve and modernise the coronial process*. The expressed purpose of the *Coroner's Act* (NT) was to increase the breadth and intensity of coronial inquiries for all reportable deaths, but *particularly deaths in custody*, and in that way *to identify systemic failures* by police, corrections and other public institutions *which may, if acted on, prevent future deaths in similar circumstances*. Its purpose was to *save lives*.[78]

[75] See *Coroners Act 1996* (WA) s 25(3).
[76] Coronial Assistance Legal Service Caxton Legal Centre, *Coronial Investigations in Queensland: (Counter) – Therapeutic Effect* (Report, 26 November 2019) <https://caxton.org.au/wp-content/uploads/2019/11/Coronial-Assistance-Legal-Service-report-2019.pdf>.
[77] Stephanie Dartnall, Jane Goodman-Delahunty and Judith Gullifer, 'An Opportunity to Be Heard: Family Experiences of Coronial Investigations Into Missing People and Views on Best Practice' (2019) 10(2322) *Frontiers in Psychology* 1.
[78] *Bauwens & Anor v The Territory Coroner* [2022] NTSC 92, [59]–[60].

NJP's first step as Sharon Williams' representatives was to lobby for a new coronial inquest to be held. Successfully lobbying for an inquest is known to be difficult as it is resource intensive and is often a matter of coronial discretion. It is not immediately clear to many that this step is even available. In Naomi's case, NJP lawyers undertook a detailed forensic investigation and submitted comprehensive records and medico-legal reports about Naomi's health care in the years leading up to her death. NJP compiled detailed records of Naomi's complex health history and obtained medico-legal opinions from pathologists, expert nurses, and emergency specialists. The Inquest offered Naomi's family and the Aboriginal community in Tumut an opportunity to stand up for their community and tell the truth about the care they were receiving, to hold those responsible accountable, and to demand change on a far-reaching public platform.[79] Together, these voices ensured transparency in relation to the circumstances of Naomi's death and healthcare in Tumut, accountability for those involved in it, and a call for reform.

Consistent with the recommendations of RCIADIC, under section 82 of *The Coroners Act 2009* (NSW), the coroner has the power to make recommendations they consider 'necessary or desirable' in relation to public health and safety.[80] Such recommendations aim to improve processes, policies, and legislation to prevent similar deaths in the future and are a powerful mechanism to achieve social change.[81] NJP's main aim in the Inquest was to vindicate Sharon Williams' concerns, uncover the truth about Naomi's death, and secure findings and recommendations that would define pathways to quality and non-discriminatory culturally safe care, among other measures. The lack of transparency of health institutions is a common challenge for medico-legal practitioners and increases the importance of forensic research based on evidence. Inquests can uncover documents and evidence that might otherwise remain hidden.

As a result of NJP's comprehensive forensic work in conjunction with the Williams family and the Jumbunna Institute, substantial evidence of prejudice was discovered in Naomi's

[79] The Feed, 'Turned Away: The Death of Naomi Williams, *SBS* (online, 10 October 2018) <https://www.sbs.com.au/ondemand/video/1340515395915/turned-away-the-death-of-naomi-williams>.
[80] *Coroners Act 2009* (NSW) s 82.
[81] Commonwealth Ombudsmen, 'Principles for Good Practice in Responding to Coronial Recommendations' Principles for Good Practice (Fact Sheet, 1 January 2024) <https://www.ombudsman.gov.au/__data/assets/pdf_file/0015/36213/Principles-of-Good-Practice.pdf>.

case. Five key pieces of evidence made the difference in selecting Naomi's case as a driver of the NJP and Health Justice Campaign:

1. The complaint letter sent by Sharon Williams outlining Naomi's experience of being racially stereotyped and the hospital's response;
2. The medical records from Calvary Hospital in Canberra which proved that Naomi wanted to have her baby in Canberra because she didn't feel safe at Tumut Hospital because of the inadequate care she was receiving there;
3. The Facebook messages sent by Naomi the night before she died that directly contradicted nurses' characterisations of Naomi's symptoms and her level of pain;
4. The Panadol found in Naomi's bathroom by the investigating police which also contradicted the nurses' claim that Naomi had come to the hospital for Panadol; and
5. Substantial evidence from community in the geographic area that suggested Naomi's experience was representative of a widespread perception of racism in relation to the Tumut Hospital.

At the Inquest, the Coroner's expert witness Professor Paradies outlined the importance of the NSW Respecting the Difference training framework in relation to improving culturally safe care standards. Professor Paradies gave evidence on the importance of Aboriginal Liaison Officers, data collection, and support from all levels of a hospital hierarchy for organisational change. After NJP's presentation of strong evidence, Coroner Grahame focused on the importance of culturally safe care in her findings and recommendations.

Coroners' findings are important in the context of strategic litigation as they determine the perception of the deceased in the media and establish a public narrative of the facts. They also can provide a roadmap for reform. By uncovering the 'truth', inquest findings are often a foundation on which to launch later lawsuits and claims in order to hold the system accountable for its failures. It is noteworthy that the Williams family campaign did not end with the Inquest but continued through lobbying the government to implement the recommendations, through the establishment of the P4JH, civil law claims, and health care complaints.

E *Consider the Limitations of Chosen Mechanisms*

Coronial recommendations have limitations, particularly in relation to providing outcomes for First Nations people. The RCIADIC provides a sober reality check. 339 recommendations were made at the conclusion of the commission, and the majority of these have not been implemented 33 years later.[82] The lack of implementation displays a lack of genuine commitment by the Government to take the recommendations seriously and address a history of systematic disempowerment of First Nations people.[83]

Recommendation 36 states that 'investigations into deaths in custody should be structured to provide a thorough evidentiary base for consideration by the Coroner on [an] inquest into the cause and circumstances of the death and the quality of the care, treatment, and supervision of the deceased prior to death'.[84] The decision in *Bell v Deputy Coroner of SA*[85] demonstrates the cost of failure by South Australia to implement recommendation 36.[86] The impact of that decision is that if "penalty privilege" is established, a witness to coronial proceedings may have a basis to decline to answer a question or produce a document at the inquest. This creates an unnecessary hurdle to determining the cause and the circumstances of death and runs against the spirit of the RCIADIC recommendations, although the impact of that case has led to legislative reform of the South Australian Coroner's Act.[87]

Under the *Coroners Act 2009* (NSW) after recommendations are made by a coroner, a copy of the findings is required to be given to the coroner, the relevant government authority/department, and the Minister in charge.[88] However, there is no statutory obligation on the agency or organisation to consider or respond to them. Because recommendations are not required to be mandatorily implemented, they are essentially

---

[82] RACGP (n 61).
[83] Royal Australian College of General Practitioners, 'Position Statement - Aboriginal and Torres Strait Islander Health' (Position Statement, May 2010) <https://www.racgp.org.au/FSDEDEV/media/documents/RACGP/Position%20statements/RACGP-Aboriginal-and-Torres-Strait-Islander-Health-Position-Statement.PDF>.
[84] *Aboriginal Deaths In Custody Report* (n 56) vol 5, Recommendations [36].
[85] *Bell v Deputy Coroner of SA* (No 2) [2020] SASC 77.
[86] Amnesty International, *Review of the Implementation of RCIADIC - Chapter 3 The Adequacy of Post Death Investigations (Recommendations 6-40)* (Report, 2015) 93–6 <https://changetherecord.org.au/resources/files/Chapter%2003_%20Post-Death%20Investigations.pdf>.
[87] See also *Bauwens & Anor v The Territory Coroner* [2022] NTSC 92 where the plaintiffs' application not to give evidence on the basis of a claim of penalty privilege was refused.
[88] *Coroners Act 2009 (NSW)* s 82.

only as effective as stakeholders can ensure. Through its Health Justice Campaign, NJP employs multiple mechanisms to ensure recommendations are not made in vain.

Following the Naomi Williams inquest findings, NJP:

- Helped to establish the P4JH;
- Continued civil litigation against the health system;
- Continued making complaints to the Health Care Complaints Commission;
- Lobbied Federal and State Parliamentarians to ensure ongoing change is delivered and recommendations are implemented, facilitating face-to-face meetings between the NSW Minister for health and Naomi Williams' family to advocate for change; and
- Continued to follow up the NSW Department of Health with regular face to face meetings.

Resistance to organisational change is another challenge that NJP considered in the context of the Inquest. Institutional racism will only be eliminated in Australia by widespread systemic change. As Professor Paradies' evidence highlighted, cultural safety training programs are difficult to implement effectively and require periodic review as well as tailoring to the local area.[89] Organisational change is difficult to effect, and hospitals are especially resistant to change. One widely-quoted figure puts the failure rate for organisational change at 70 per cent.[90] The National Health Service in the United Kingdom found that 33 per cent of quality improvement projects are not sustained when evaluating one year after completion.[91] A systemic response is required by creating an organisational culture with a zero tolerance towards racism from the top down and by incorporating anti-discrimination and anti-racism practices and guidelines into the educational curriculum and professional standards of clinicians and other healthcare

[89] *Inquest into the Death of Naomi Williams* (n 1), 45 [228]–[230], 53.
[90] Michael Beer and Nitin Nohria, 'Cracking the Code of Change' (2000) *Harvard Business Review* 78; Samuel Silver et al, 'How to Sustain Change and Support Continuous Quality Improvement' (2016) 11(5) *Clinical Journal of the American Society of Nephrology* 916; Matthew Xerri et al, 'NPM and Change Management in Asset Management Organisations' (2015) 28(4) *Journal of Organizational Change Management* 641.
[91] Maher, Lynne, David Gustafson and Alyson Evans, 'Sustainability Model and Guide', *National Health Service - Institute for Innovation and Improvement* (Guide, 1 February 2010) <https://webarchive.nationalarchives.gov.uk/20160805122935/http://www.nhsiq.nhs.uk/media/2757778/nhs_sustainability_model_-_february_2010_1_.pdf.>

workers. If this does not happen, then any legal result achieved by strategic litigation cannot have a lasting effect.

F *Consider the Resources Involved and Identify the Risks*

Strategic litigation involves constant and continuous examination of risks and resources. It can be slow, expensive, and does not always achieve its goals.[92] Risk considerations include financial, emotional, legal, and strategic risk. NJP runs complex strategic litigation matters that require significant resources over long periods of time. The Inquest took three years of preparation, relying on the strength and commitment of Naomi's mother, her family, and a team of dedicated lawyers, and the follow-up work is ongoing.

NJP relies on key partners, generous organisations, and donations, and crowdfunding of individuals to give clients the attention their cases deserve. The lack of funding available to Australian NGO's and civil justice organisations is a known barrier preventing more strategic litigation from occurring.[93] Most organisations in Australia that do receive funding rely, at least in part, on the Government. However, Government grants are often not large enough and are not permanent. They can limit the ability of the grantee to speak out publicly against the Government that funds them. In order to retain independence, NJP receives no Government funding. This creates uncertainty, risks, and challenges, but it allows NJP the flexibility and confidence to speak out and advocate publicly without fear or hesitation. Because of the risks involved and limited resources, strategic cases must be carefully selected.

All inquests are emotionally traumatic for the client, but how they are conducted by some judicial officers can make them more so. This emotional risk is something that lawyers must take seriously and be mindful of throughout the legal process. Studies have shown that 'poor communication about the coronial process, a lack of preparation as to what to expect, preclusion of family voice, poor access to legal or counselling support, and insensitive treatment, are key contributors to family distress'.[94] Lawyers have a duty to explain the failings and limitations of the process and manage their clients' expectations from the outset. It is particularly important to maintain communication after legal

[92] Durbach (n 15) 219.
[93] Coade (n 53) 36; Calnan (n 14) 12; O'Brien (n 19) 82.
[94] Stephanie Dartnall et al, 'An Opportunity to Be Heard: Family Experiences of Coronial Investigations Into Missing People and Views on Best Practice' (2019) 10(2322) *Frontiers in Psychology* 1 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6861418/>.

proceedings have concluded or during lull periods, as these are often the times when a grieving client can feel most distressed or alone.[95]

The use of the law as a mechanism to create social change can be effective, but it can also be unpredictable. Calnan has emphasised that seeking to control as much of the strategic litigation process as possible (e.g. building relationships with courts, employing strategies such as using test cases or bringing multiple cases together, and controlling the field of litigants) can be an important element of strategic litigation.[96] However, he also acknowledges that strategic litigation is by its nature unpredictable.[97] In litigation, a palpable risk in cutting-edge cases is that of a judge setting a bad legal precedent. In all legal proceedings, there is a risk that the desired legal judgement, findings, or orders will not be granted, or the facts do not fall in a way that is expected. Such a risk is further amplified by the relatively undeveloped nature of human rights laws and norms in Australia. Australia is 'uniquely defined by the absence of a national human rights law, and reliance on a patchy network of common law and statutory provisions', making the legal results even more difficult to assess.[98] Legal and strategic discussions need to be had in order to determine if a case will achieve the desired objective, what the legal weaknesses are, and what evidence is available. One way in which such an effect can be avoided may be by putting less emphasis on the outcome of the litigation. As O'Brien states, 'too often in public interest lawyering, the running of the litigation becomes the focus and the end of the litigation…however, the litigation may only be a step along the way, and there may be considerable work which remains to be done, leveraging the outcome of the litigation to achieve the ultimate goal'.[99]

All these risks must be considered on a fact-specific basis in relation to all potential strategic litigation cases. When NJP, the Jumbunna Institute, and their partners considered the facts and evidence of Naomi's case, they weighed up the strengths and weaknesses. Ultimately, with strong evidence, committed stakeholders and partners, and a commanding narrative, the NJP, together with Naomi's mother, determined the risk was

[95] Ibid.
[96] Calnan (n 14) 10–1.
[97] Ibid 13.
[98] Durbach (n 16) 221.
[99] O'Brien (n 19) 85.

outweighed by the potential outcomes and progress towards health justice more broadly, as well as the client.

G *Develop a Narrative*

The real success of Naomi's case came from the strength and commitment of Naomi's mother, her partner, and the extended Aboriginal community from Brungle (a former Aboriginal mission located 20 minutes from Tumut) who allowed her story to be told so powerfully from the depths of their pain. They made the advocacy campaign a success.[100]

An individual's story gives a campaign a human face, allowing the audience to look beyond statistics to see the human impact of an issue. Strategic litigation provides an opportunity to raise public awareness on an issue, to reinvigorate public debate, educate and change public attitudes.[101] As audiences are exposed to large amounts of information every day, effective storytelling was a key mechanism to ensure that Naomi's story was able to gain national media traction. Under the guidance of Naomi's family and with their consent, a narrative was carefully developed to reflect Naomi's story and complement the case and campaign. The importance of consent cannot be underestimated. Quigley highlights the importance of this message stating that, in his view, there are only two instances when it is appropriate for a lawyer to speak to the media about someone: 'first, if the [individual] asks the lawyer and gives specific instructions on how to proceed, and second, in an emergency'.[102]

Sharon Williams' legal team considered its media strategy carefully and agreed on the narrative with her, creating ways for the voices of her family and those who loved her to be heard. To prepare for the Inquest, NJP gathered all of the witness statements from the Brungle Aboriginal community and successfully argued for them to form part of the Coronial brief so that they would form a part of the public record. Aboriginal voices led the media effort publicising an authentic narrative. The legal team put the Williams family's recommendations, in their words, directly to witnesses. In a promising development, Naomi's family sought and were granted the opportunity to perform a traditional Aboriginal dance and smoking ceremony at the Coroner's Court.

---

[100] See especially, Rachel Ball, *When I tell my story, I'm in Charge. Ethical and Effective Storytelling in Advocacy* (CLC Fellowship Report, 2013).
[101] Ramsden and Gledhill (n 13) 13 [4].
[102] Quigley (n 48).

The story of Naomi's experience was powerful because she was a loved and extremely compassionate individual. Personal accounts of family and friends built up a sympathetic picture of Naomi in the media. In order to seek justice for Naomi, her family and friends were prepared to overcome their emotional distress to make statements publicly and be interviewed by the media. Naomi was passionate about social justice and was a disability support worker. She died young and pregnant in tragic circumstances. Her story was memorable to many who heard it.

From 2016–19, NJP kept the media informed about developments in the case and worked closely with local media and journalists who were horrified by the circumstances of the case or shared a common interest in social justice. The case received a positive response from the media. The media were hungry for statistics and information on institutional racism in healthcare and were eager to follow the events of the Inquest. Local First Nations and national television networks and newspapers were interested in communicating Naomi's story, producing a number of in-depth investigative style pieces exploring the issues.[103] The role of media for an Australian strategic litigation practitioner can be particularly tenuous.[104] An advocate conducting strategic litigation for social justice purposes is required to have sound public relations skills, as they are often required to coordinate media conferences for family members and speak out on high profile cases. In fact, Cantrell argues that 'cause-lawyers are often called upon to be a voice for the cause,' which means that public advocacy skills are not optional or exceptional behaviour, but are 'baseline, ordinary' skills that all cause-lawyers should be well practiced in order to achieve social change.[105] However, in Australia, lawyers' use of the media is 'limited by the ethical and professional codes of conduct governing lawyer-client confidentiality and lawyers' non-disclosure obligations'[106] as well as various statutory prohibitions on publication and defamation laws. A culturally safe and

[103] See, e.g., The Feed, 'Turned Away: The Death of Naomi Williams, *SBS* (online, 10 October 2018); Gina Rushton, 'If An Aboriginal Woman Had Been From Sydney's Eastern Suburbs, She Might Have Been Treated Better, Coroner Says', *Buzzfeed* (online, 14 March 2019) < https://www.buzzfeed.com/ginarushton/naomi-williams-inquest-coroner-hospital>.
[104] See, e.g., Alysia Debowski, 'Old Dog, New Tricks: Public Interest Lawyering in an 'Age of Terror'' (2009) 34(1) *Alternative Law Journal* 15; Francesca Bartlett 'The Ethics of 'Transgressive Lawyering: Considering the Defence of Dr Haneef' (2009) 28(3) *University of Queensland Law Journal* 309.
[105] Cantrell (n 24) 584–5.
[106] Durbach (n 16) 221.

respectful approach to 'cause-lawyering' would ensure that the voices of those impacted by the discrimination are at the forefront of any public campaign.

When the Inquest findings and recommendations were handed down in July 2019, the tone of the media coverage evolved to focus on the potential for systemic change.[107] Importantly, the coroner made a finding of 'implicit racial bias', which appeared in many news publications' headlines.[108] The team, led by Naomi's family members and members of the Tumut/Brungle Aboriginal community, were invited to speak on a number of television programs to discuss Naomi's life, the Inquest, institutional racism and culturally safe care.[109]

IV INQUEST FINDINGS

A *Naomi Received Inadequate Care*

The findings of the Inquest demonstrate how the health system failed Naomi on multiple counts. The Inquest's findings led to recommendations that address health injustice in the local and state healthcare system, demonstrating how through tragic circumstances, strategic litigation can be a catalyst for change.

After considering the evidence, Coroner Grahame found that there were 'clear and ongoing inadequacies in the care [Naomi] received'.[110] In the 8 months leading up to Naomi's death, she had presented at Tumut Hospital more than 18 times. The sheer number of presentations by Naomi to Tumut Hospital without a specialist review was, in the words of Coroner Grahame, 'deeply troubling'.[111] Hospital staff treated Naomi's acute symptoms reactively when she sought their help, but there was no overarching assessment of her health and she often left the hospital feeling worse than she went in, as

[107] The Feed, ''We are Amazed': Friend Relieved Race Acknowledged as Factor in Pregnant Woman's Death', *SBS* (online, 29 July 2019) <https://www.sbs.com.au/news/the-feed/we-are-amazed-friend-relieved-race-acknowledged-as-factor-in-pregnant-woman-s-death>.
[108] See, e.g., Gabrielle Jackson, 'Naomi Williams Inquest: Coroner Finds Bias in Way Hospital Treated Aboriginal Woman', *The Guardian* (online, 29 July 2019) <https://www.theguardian.com/australia-news/2019/jul/29/naomi-williams-inquest-coroner-finds-bias-in-way-hospital-treated-aboriginal-woman>; Emma Brancatisano, ''The System Let Naomi Down': Coroner Finds 'Implicit Bias' in Death of Indigenous Woman', *10 Daily* (Web Page, 29 July 2019) <https://10daily.com.au/lifestyle/health/a190729ixspd/the-system-let-naomi-down-coroner-finds-implicit-bias-in-death-of-indigenous-woman-20190729>.
[109] See, e.g., 'The Point – Racism in Healthcare', *The Point NITV* (YouTube, 18 September 2019) <https://www.youtube.com/watch?v=fqAFeG41RWI>.
[110] *Inquest into the Death of Naomi Williams* (n 1) 24 [107].
[111] Ibid 20 [91].

she had been stereotyped as a drug user without a meaningful diagnosis. Naomi's story is particularly tragic, when considering the small community that Naomi lived in and the network of ties between the individuals involved. Indeed, Naomi's grandmother had previously worked as a domestic worker at the hospital — one of the first Aboriginal employees — and was known to some of the nurses who had interacted with Naomi.

The lack of referral to a specialist was singled out by Coroner Grahame as a particular area of inadequacy in Naomi's care.[112] Two expert emergency physicians agreed that, given Naomi's recurring symptoms and presentations, and her admissions for nausea, vomiting, and pain, Naomi should have been referred to a specialist.[113] Serious inadequacies were found in relation to Naomi's antenatal care.[114] Dr Golez, Naomi's physician at Tumut, stated that Naomi was not referred to an obstetrician because it was not known whether Naomi's pregnancy was viable at that time. Coroner Grahame found that Dr Golez's antenatal care did not rise to the standard of a Fellow of the College of Obstetricians and Gynaecologists.[115]

The inadequate care Naomi received from Tumut Hospital extended to the day she died. Naomi presented to the Emergency Department at about 12:15 am on New Year's Day 2016, aching all over. A number of red flags were not identified by nurses that night, including but not limited to: Naomi driving herself to hospital on New Year's Eve; three presentations in 24 hours; observations on the border of the "yellow [sepsis] zone", low blood pressure and a high heart rate (especially when compared to her records); and the failure of hospital staff to access and consult Naomi's paper records when she attended the Emergency Department.[116] While initially a nurse made a record that Naomi had presented with 'generalised aches and pains', a retrospective note made after Naomi's death added significant material, including a previously unmentioned hip pain.[117] Naomi's serious symptoms were documented by her texts and statements to her partner that she felt extremely unwell.[118] Coroner Grahame found that Naomi would only have attempted to find someone else to drive her, and would only have taken herself to a

[112] Ibid 24 [107].
[113] Ibid 20-1 [93]–[95]
[114] Ibid [91]–[107].
[115] Ibid 24 [106].
[116] Ibid 36-7, 48 [179], [183], [186], [240].
[117] Ibid 28 [131].
[118] Ibid 32 [157]–[158].

hospital if her symptoms had been distressing. In the face of this evidence, the nurses' benign characterisation of events that Naomi had come to Tumut Hospital late at night to 'request' some Panadol was not accepted by the Coroner.[119]

Naomi did not receive a sufficient pain assessment and should have remained at the hospital longer so her symptoms could have been monitored.[120] Coroner Grahame found that had Naomi remained in the Emergency Department, her chances of having the presence of bacterial infection suspected or diagnosed and treated would have been 'greatly increased' (though her survival would not have been certain).[121] Naomi was only monitored for 34 minutes; a longer period of observation should have been implemented, especially as Naomi was pregnant.[122]

B *Racial Bias*

Naomi felt uncomfortable with her care and believed that she was 'not being heard'.[123] Naomi felt stereotyped as she was referred to Drug and Alcohol Services twice by staff at Tumut Hospital, when other possible causes for her acute symptoms were not investigated.

Coroner Grahame's consideration of events from May 2015 until Naomi's death allowed NJP to demonstrate the pattern of racial bias. When interpreting the meaning of 'manner of death', courts look to *Josephine Conway v Mary Jerram* where 'manner of death' was described as requiring 'broad construction to enable to the coroner to consider by what means and in what circumstances death occurred'.[124] NSW courts have also cautioned against a 'wide ranging inquiry…exploring any suggestion of causal link'.[125] Coroner Grahame noted that having considered the authorities, she was satisfied that a proper investigation of events occurring in the lead-up to Naomi's death would be appropriate. Such a finding is significant as it shows the direct link between implicit racial bias and how it contributed to Naomi's death. The finding also allowed NJP to present expert evidence on culturally safe care and how it can lead to systemic change.

---

[119] Ibid 32 [157]–[159].
[120] Ibid [192], [194], [197], [202], [223].
[121] Ibid 44 [223].
[122] Ibid [192], [194], [197].
[123] Ibid 24 [109].
[124] *Josephine Conway v Mary Jerram, Magistrate and NSW State Coroner & Anor* [2010] NSWSC 371, [52] (Barr AJ) ('*Josephine Conway v Mary Jerram*').
[125] *R v Doogan; Ex p Lucas-Smith* (2005) 158 ACTR 1, [28]; *Harmsworth v State Coroner* [1989] VR 989.

It was Sharon Williams' concerns about racism and stereotyping that prompted her to make a formal complaint on behalf of her daughter. Sharon's letter clearly outlines Naomi's experiences of being stereotyped as a drug user and Naomi's wish to see a specialist. was being overlooked and "she was being stereotyped as some sort of drug addict".[126] This evidence was crucial to the case as Sharon clearly places Naomi's experiences within the context of perceptions in the Tumut community.[127] Expert evidence was given in the Inquest that although Naomi's cannabis use would be a factor that doctors should have considered, other diagnoses should have been actively investigated and considered.[128] Implicit bias is difficult to prove in a healthcare context. This letter and the hospital's dismissive response was crucial to NJP's ability to build a strong case for Naomi. It shows a clear link between racial stereotyping and Naomi's standard of care. The letter also demonstrates that Sharon's distress at her daughter's quality of care rose to a level where she acted to email the hospital.

After months of discrimination, Naomi decided that she would have her baby in Canberra because she felt she would receive a better quality of care there. Evidence presented at the Inquest in relation to Naomi's intention to move residence and travel to another place to have her baby at a different hospital clearly demonstrated her strong perception of discrimination experienced in Tumut Hospital. In Canberra, Naomi would have access to a local Aboriginal Medical Service, where she felt more comfortable and believed they would 'hear what she was saying'.[129]

C *Lowered Expectation of Care*

The clear inadequacies Naomi experienced affected her decisions in relation to medical care by the end of December 2015. Naomi felt she was not being taken seriously, felt unheard and was planning to have her baby outside of Tumut Hospital for this reason. The Coroner found that at the time of Naomi's death she had already lost confidence in Tumut Hospital, which affected her decisions in the hours before her death. Coroner Grahame found Naomi's concerns to be 'legitimate', and that the treatment she had received informed the low expectations of care she developed.[130]

[126] *Inquest into the Death of Naomi Williams* (n 1) 15 [61].
[127] Ibid 44 [224].
[128] *Inquest into the Death of Naomi Williams* (n 1) 22 [100].
[129] Ibid.
[130] Ibid 22 [111].

D *Recommendations*

After considering the evidence before her, the Coroner made the following powerful recommendations to the Murrumbidgee Local Health District (MLHD):[131]

1. Additional training on safety alerts such as re-presentation calls for medical review and high-risk pregnancy;
2. Introduction of a policy on Nurse Directed Emergency Care urgently;
3. Strengthening the Aboriginal Health Liaison Worker programme and making it available 24 hours a day;
4. Adopting targets for the employment of Aboriginal healthcare professionals;
5. Auditing implicit bias/racism and recording statistics;
6. Identifying and using assessment tools to measure implicit bias;
7. Establishing targets for proportional representation of Aboriginal people on local health boards and advisory committees;
8. Ongoing and meaningful consultation with HEAL (Healthy Enriched Aboriginal Living) Mawang (Together) Group with a view to developing a strong local model for providing culturally safe care; and
9. Investigating the strategies used in the Hunter New England area to develop culturally appropriate care.

Many of these recommendations have already been implemented and the MLHD:[132]

- Has adopted targets for the employment of First Nations healthcare professionals;
- Is auditing implicit bias/racism and recording statistics;
- Is exploring tools to measure implicit bias;

[131] Ibid 56–7. Note Recommendations have been paraphrased.
[132] See Melinda Hayter, 'New Bias Concerns Emerge at Hospital Two Years after Inquest', *ABC News* (online, 30 August 2021) <https://www.abc.net.au/news/2021-08-31/naomi-williams-mother-calls-out-ongoing-indigenous-bias-health/100417522>.

- Has appointed two First Nations representatives on the MLHD health board and on advisory committees; and
- Commenced ongoing and meaningful consultation with HEAL (Healthy Enriched Aboriginal Living) Mawang (Together) Group with a view to developing a strong local model for providing culturally safe care.

The Centre for Aboriginal Health within the NSW Ministry of Health ('the Centre') was established in 2007.[133] It was created to focus specifically on improving the health and wellbeing of Aboriginal and Torres Strait Islander peoples in NSW. Following the Naomi Williams Case it has responsibility for the following strategic deliverables:

- Influence improved Aboriginal health and wellbeing outcomes through effective partnerships and responding to emerging health priorities, crises, or emergency public health issues.
- Enable NSW Health to provide culturally safe, considered and competent care, experiences, policy and workplaces.
- Drive system-wide accountability for Aboriginal health outcomes throughout NSW Health.
- Facilitate a greater focus on Aboriginal concepts of health and wellbeing across NSW Health and to other state or national agencies.
- Strengthen and communicate the evidence base on what works to improve Aboriginal health and wellbeing outcomes.
- If implemented in full, the Coroner's recommendations will establish the Naomi Williams Inquest as a strategic contributor to the changes in health care demanded by First Nations organisations and communities.

Although progress is being made, the death of Dougie Hampson[134] and others makes it clear that there is much more that needs to be done.

[133] Carmen Parter and Kim Browne, 'How Can We Do Things Differently in Aboriginal Health? The Same Challenges Seen through New Eyes' (2012) 23(4) *New South Wales Public Health Bulletin* 45, 56 [1].
[134] See Chelsea Watego et al, '"I Catch the Pattern Of Your Silence"', *Meanjin* (Web Page, 14 September 2022) <https://meanjin.com.au/essays/i-catch-the-pattern-of-your-silence/>; Zaarkacha Marlan, 'Ricky Hampson Died Just Hours after Leaving Dubbo Hospital. His Family Believe Racial Prejudice Was a Factor', *ABC News* (online, 3 July 2023) <https://www.abc.net.au/news/2023-07-03/inquest-indigenous-man-ricky-dougie-hampson-junior-death-dubbo/102555672>.

V END GOAL, OUTCOMES AND EVALUATION OF SUCCESS

The Inquest and the Health Justice Campaign, in conjunction with First Nations activists and community organisations, have contributed to and achieved various significant outcomes. This collective effort has led to:

- Ground-breaking findings by the Coroner, including the determination that 'implicit racial bias' contributed to Naomi Williams' death;
- Powerful recommendations by the Coroner regarding culturally safe care and institutional change as set out above;
- Establishing and working with the P4JH to advocate and address racism in healthcare, including publishing of ground-breaking research on racism in health;[135]
- The implementation of recommendations by MLHD (as outlined above); Commitments from the NSW Minister for Health and the Secretary of NSW Health to fulfill the Coroner's recommendations, including through the strategic objects of the Centre;
- Public statements by Ms Maria Roche, cluster manager for MLHD, promising change and improvement at Tumut Hospital. Ms Roche acknowledged the local community's perception of the hospital as unsafe for Aboriginal people, noting that some drive to other hospitals to avoid it;[136]
- Amendments to the Nurses and Midwives' Professional Standards to mandate culturally safe care;
- The development of a new strategy by First Nations partners prioritising cultural safety presented by the Australian Health Practitioner Regulation Agency and endorsed by 43 organisations, academics and individuals;[137]

[135] See Chelsea Watego, David Singh and Alissa Macoun, *Partnership for Justice in Health Scoping Paper on Race, Racism and the Australian Health System* (Discussion Paper, 8 June 2021).
[136] Ibid 58 [281].
[137] Rachael Knowles, 'First Nations-led Health Strategy Makes Cultural Safety Priority one for Indigenous Patients' *National Indigenous Times* (online, 27 February 2020) <https://nit.com.au/first-nations-led-health-strategy-makes-cultural-safety-priority-one-for-indigenous-patients/>.

- Ongoing changes in the education of health workers, medical practitioners, and other clinicians to end racism and discrimination in healthcare;
- Sanctions against the health staff involved in Naomi's mistreatment; and
- Ongoing work with peak Aboriginal health bodies to advocate for change; and the development and implementation of an Aboriginal Patient Advocacy Training Programme.

VI SUMMARY

The long-term end goal of the Health Justice Campaign, and the work that NJP, the Jumbunna Institute, P4JH and other community activists and organisations are doing is to end discrimination in healthcare. In the short to medium term, these organisations work to achieve outcomes that lead to significant improvement and systemic change.

Through the Inquest, NJP, the Jumbunna Institute, and the Williams family ensured that the Coroner made significant findings and recommendations that recognised the role that prejudice and bias played in Naomi's death. NJP and the Jumbunna Institute were successful in emphasising the importance of culturally safe care to the Coroner. The Inquest enabled NJP and its partner organisations to expose the truth and leverage the findings and the recommendations to generate media attention in order to pursue multiple pathways to achieve culturally safe care. The Inquest recommendations offer a useful benchmark by which to judge campaign outcomes. NJP will continue to monitor the success of the strategic litigation against these recommendations and strive to ensure they are implemented broadly to protect future generations from the fatal consequences of racism, prejudice and discrimination in healthcare.

A *The Fight Continues*

Whilst the NJP, its stakeholders, and its partners achieved important outcomes through the Naomi Williams Inquest, their work to eradicate all forms of discrimination in healthcare is far from over. The campaign for justice continues.

As the NSW system lacks mandatory implementation of coronial recommendations, the outcomes of the Inquest must be continuously and proactively followed up.

The commitments made by the NSW Minister for Health and the Secretary of NSW Health are promising. However, these commitments were received in 2019, before the uncertainty brought by the COVID-19 pandemic. Ideally, health services and governments should self-monitor recommendations with vigilance and implement them effectively to ensure the required systemic change occurs. Until then, Naomi's mother, her family, the NJP, and its partners will continue to work together to ensure relevant institutions are held accountable and that the recommendations and proposed reforms are implemented.

REFERENCE LIST

A *Articles/Books/Reports*

Amnesty International, *Review of the Implementation of RCIADIC - Chapter 3 The Adequacy of Post Death Investigations (Recommendations 6-40)* (Report, 2015) <https://changetherecord.org.au/resources/files/Chapter%2003_%20Post-Death%20Investigations.pdf>

Amnesty International, *Review of the Implementation of RCIADIC – Chapter 21 Towards Better Health (Recommendations 246-271)* (Report, 2015) <https://changetherecord.org.au/resources/files/Chapter%2021_Towards%20Better%20Health.pdf>

Australian Health Ministers' Advisory Council*, Aboriginal and Torres Strait Islander Health Performance Framework* (Report, 30 May 2017)

Australian Health Practitioner Regulation Agency, *The National Scheme's Aboriginal and Torres Strait Islander Health and Cultural Safety Strategy 2020-2025* (Report, 12 January 2018)

Australian Institute of Health and Welfare, *Cultural Safety in Health Care for Indigenous Australians: Monitoring Framework* (Report, 28 October 2019) <https://www.aihw.gov.au/reports/indigenous-australians/cultural-safety-health-care-framework/contents/summary>

Ball, Rachel, *When I tell my story, I'm in charge. Ethical and Effective Storytelling in Advocacy* (CLC Fellowship Report, 2013) <https://victorialawfoundation.org.au/sites/default/files/attachments/VLF%20-%20CLC%20final%20report%2012-13%20_Final_web.pdf>

Bartlett, Francesca, 'The Ethics of 'Transgressive Lawyering: Considering the Defence of Dr Haneef' (2009) 28(3) *University of Queensland Law Journa*l 309

Beer, Michael and Nitin Nohria, 'Cracking the Code of Change' (2000) 78(3) *Harvard Business Review* 78

Bourke, Christopher, Henrietta Marrie and Adrian Marrie, 'Transforming Institutional Racism at an Australian Hospital' (2019) 43(6) *Australian Health Review* 611

Calmore, John, 'A Call to Context: The Professional Challenges of Cause Lawyering at the Intersection of Race, Space and Poverty' (1999) 67(5) *Fordham Law Review* 1927

Calnan, Scott, 'Planned Litigation: Should it Play a Greater Role in Human Rights Litigation in Australia?' (2019) 42(2) *UNSW Law Journal* 7

Cantrell, Deborah, 'Sensational Reports: The Ethical Duty of Cause Lawyers to be Competent in Public Advocacy' 30(3) *Hamline Law Review* 568

Coade, Melissa, 'Strategic Justice' (2019) 56 *Law Society Journal* 34

Commonwealth of Australia, Department of the Prime Minister and Cabinet, *Closing the Gap Report 2020* (Report, 12 February 2020)

Coronial Assistance Legal Service Caxton Legal Centre, *Coronial Investigations in Queensland: (Counter) – Therapeutic Effect* (Report, 26 November 2019) <https://caxton.org.au/wp-content/uploads/2019/11/Coronial-Assistance-Legal-Service-report-2019.pdf>

Cunneen, Chris, 'Judicial Racism' (1992) 1(58) *Aboriginal Law Bulletin* 9

Dartnall, Stephanie, Jane Goodman-Delahunty and Judith Gullifer, 'An Opportunity to Be Heard: Family Experiences of Coronial Investigations Into Missing People and Views on Best Practice' (2019) 10(2322) *Frontiers in Psychology* 1

Debowski, Alysia, 'Old Dog, New Tricks: Public Interest Lawyering in an 'Age of Terror'' (2009) 34(1) *Alternative Law Journal* 15

Durbach, Andrea et al, 'Public Interest Litigation, Making the case in Australia' (2013) 38(4) *Alternative Law Journal* 219

Griffin, Leslie, 'The Lawyer's Dirty Hands' (1995) 8(2) *Georgetown Journal of Legal Ethics* 219

Joint Statement: Aboriginal and Torres Strait Islander Health and Cultural Safety at Heart of National Law Changes (AHPRA, 13 October 2022) <https://www.ahpra.gov.au/About-Ahpra/Ministerial-Directives-and-Communiques/National-Law-amendments/Joint-statement.aspx>

Kelaher, Margaret, Angeline Ferdinand and Yin Paradies, 'Experiencing Racism in Health Care: The Mental Health Impacts for Victorian Aboriginal communities' (2014) 201(1) *The Medical Journal of Australia* 44

Larson, Ann et al., 'It's Enough to Make you Sick: The Impact of Racism on the Health of Aboriginal Australians' (2007) 31(4) *Australian and New Zealand Journal of Public Health* 322

Luban, David and W. Bradley Wendel, 'Philosophical Legal Ethics: An Affectionate History' (2017) 30 *Georgetown Journal of Legal Ethics* 337

Markwick, Alison et al, 'Experiences of Racism Among Aboriginal and Torres Strait Islander Adults Living in the Australian State of Victoria: A Cross-sectional Population-bases Study' (2019) 19(1) *BMC Public Health* 1

Markwick, Alison et al, 'Perceived Racism May Partially Explain the Gap in Health Between Aboriginal and Non-Aboriginal Victorians: A Cross-sectional Population Based Study' (2019) 7 *SSM Population Health* 1

Newhouse, George, Daniel Ghezelbash and Alison Whittaker 'The experience of Aboriginal and Torres Strait Islander participants in Australia's coronial inquest system: Reflections from the front line' (2020) 9(4) *International Journal for Crime, Justice and Social Democracy* 76.

O'Brien, Paula 'Changing Public Interest Law, Overcoming the Law's Barriers to Social Change Lawyering' (2011) 36(2) *Alternative Law Journal* 82

Paradies, Yin et al, 'Racism as a Determinant of Health: A Protocol for Conducting a Systematic Review and Meta-analysis' (2013) 2(1) *Systematic Reviews* 85

Paradies, Yin et al, 'Racism as a Determinant of Indigenous Health and Wellbeing' (2011) 194(10) *Medical Journal of Australia* 546

Parker, Christine, 'A Critical Morality for Lawyers: Four Approaches to Lawyers' Ethics' (2004) 30(1) *Monash University Law Review* 48

Parter, Carmen and Kim Browne, 'How Can We Do Things Differently in Aboriginal Health? The Same Challenges Seen through New Eyes' (2012) 23(4) *New South Wales Public Health Bulletin* 45

Priest, Naomi et al, 'Racism and Health Among Urban Aboriginal Young people' (2011) 11(568) *BMC Public Health* 1

Quigley, William 'Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations' (1994) 21(2) *Ohio Northern University Law Review* 455

Ramsden, Michael and Kris Gledhill, 'Defining Strategic Litigation' (2019) 38(4) *Civil Justice Quarterly* 407

Rich, Nicole, 'Reclaiming Community Legal Centres: Maximising our Potential so we can Help Clients Realise Theirs' (Final Report, Victoria Law Foundation Community Legal Centre Fellowship, April 2009)

Elliott Johnston*, Royal Commission into Aboriginal Deaths in Custody* (Report, 9 May 1991) <https://www.naa.gov.au/explore-collection/first-australians/royal-commission-aboriginal-deaths-custody>

Shavers, Vickie et al, 'The state of research on racial/ethnic discrimination in the receipt of health care' (2012) 102(5) *American Journal of Public Health* 953

Silver, Samuel et al, (2016) 'How to Sustain Change and Support Continuous Quality Improvement' 11(5) *Clinical Journal of the American Society of Nephrology* 916

Talbot, Anna and George Newhouse, 'Strategic Litigation, Offshore Detention and the Medevac Bill' (2019) 13 *UNSW Law Society Court of Conscience* 85

Tyner, Arika, 'Planting People, Growing Justice: The Three Pillars of New Social Justice Lawyering' (2013) 10 *Hastings Race and Poverty Law Journal* 219

Xerri, Matthew et al, 'NPM and Change Management in Asset Management Organisations' (2015) 28(4) *Journal of Organizational Change Management* 641

B *Cases*

Bell v Deputy Coroner of SA (No 2) [2020] SASC 77

Harmsworth v State Coroner [1989] VR 989

Josephine Conway v Mary Jerram, Magistrate and NSW State Coroner & Anor [2010] NSWSC 371

R v Doogan; Ex p Lucas-Smith (2005) 158 ACTR 1

C *Legislation*

Coroners Act 2009 (NSW)

Coroners Act 1996 (WA)

D *Other*

Australian Health Ministers' Advisory Council's National Aboriginal and Torres Strait Islander Health Standing Committee, *Cultural Respect Framework 2016-2026 for Aboriginal and Torres Strait Islander Health* (Communique, 2016) <https://nacchocommunique.files.wordpress.com/2016/12/cultural_respect_framework_1december2016_1.pdf>

Australian Healthcare and Hospitals Association, Public Health Association of Australia, Consumers Health Forum of Australia and National Rural Health Alliance, 'Cultural safety crucial in Aboriginal and Torres Strait Islander healthcare' (Joint Statement, 26 March 2018) <https://ahha.asn.au/news/cultural-safety-crucial-aboriginal-and-torres-strait-islander-healthcare>

Australian Human Rights Commission, 'Close the Gap: Indigenous Health Campaign' (Web Page, 19 March 2020) <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/projects/close-gap-indigenous-health>

Australian Indigenous Doctors' Association (AIDA), 'Australians Must Not Accept the Widening Life Expectancy Gap as the Norm', (Media release, 22 November 2018) <https://www.aida.org.au/wp-content/uploads/2018/11/AIDA-MEDIA-RELEASE-Australians-must-not-accept-the-widening-life-expectancy-as-the-norm.pdf>

Australian Indigenous Doctors' Association, 'Racism in Australia's health System' (Policy Statement, 2016)

Australian Institute of Health and Welfare, 'Cultural Safety in Health Care for Indigenous Australians: Monitoring Framework' (Web Page, 28 October 2019) <https://www.aihw.gov.au/reports/indigenous-australians/cultural-safety-health-care-framework/contents/summary>

Brancatisano, Emma, '"The System Let Naomi Down': Coroner Finds 'Implicit Bias' in Death of Indigenous Woman', *10 Daily* (online, 29 July 2019) <https://10daily.com.au/lifestyle/health/a190729ixspd/the-system-let-naomi-down-coroner-finds-implicit-bias-in-death-of-indigenous-woman-20190729>

Commonwealth Ombudsmen, 'Principles for Good Practice in Responding to Coronial Recommendations' Principles for Good Practice (Fact Sheet, 1 January 2024) <https://www.ombudsman.gov.au/__data/assets/pdf_file/0015/36213/Principles-of-Good-Practice.pdf>.

Coumeralos, Christine et al, 'Collaborative Planning Resource – Service Planning' (Research Report, Law and Justice Foundation of New South Wales, November 2015)

Council of Australian Governments, 'COAG Statement on the Closing the Gap Refresh', (Communique, 12 December 2018)

Davey, Melissa, '"How Could This Happen?": Indigenous Health Tragedies Spark Search for Answers', *The Guardian* (online, 12 August 2016) <https://www.theguardian.com/australia-news/2016/aug/12/how-could-this-happen-indigenous-health-tragedies-spark-search-for-answers>

Department of Health, *National Aboriginal and Torres Strait Islander Health Workforce Strategic Framework and Implementation Plan 2021-2031* (National Workplace Plan, 7 March 2022) <https://www.health.gov.au/sites/default/files/documents/2022/03/national-aboriginal-and-torres-strait-islander-health-workforce-strategic-framework-and-implementation-plan-2021-2031.pdf>

Hayter, Melinda, 'New Bias Concerns Emerge at Hospital Two Years after Inquest', *ABC News* (online, 30 August 2021) <https://www.abc.net.au/news/2021-08-31/naomi-williams-mother-calls-out-ongoing-indigenous-bias-health/100417522>

Inquest into the death of Ms Dhu (Coroner's Court of Western Australia, State Coroner Fogliani, 16 December 2016)

Inquest into the death of Naomi Williams (State Coroner's Court of New South Wales, Deputy State Coroner Grahame, 29 July 2019)

Inquest into the Death of David Dungay (Coroner's Court of New South Wales, Deputy State Coroner, Magistrate Derek Lee, 22 November 2019).

Inquest into the Death of Fazel Chegeni Nejad (Coroner's Court of Western Australia, Coroner Sarah Helen Linton, 2 May 2019)

Inquest into the Death of Fenika Junior Tautuliu Fenika (Junior Fenika) (Coroner's Court of New South Wales, Deputy State Coroner Teresa O'Sullivan, 13 July 2018)

Inquest into the death of Ms Dhu (Coroner's Court of Western Australia, State Coroner Fogliani, 16 December 2016)

Inquest into the death of Naomi Williams (State Coroner's Court of New South Wales, Deputy State Coroner Grahame, 29 July 2019)

Jackson, Gabrielle, 'Naomi Williams Inquest: Coroner Finds Bias in Way Hospital Treated Aboriginal Woman', *The Guardian* (online, 29 July 2019) <https://www.theguardian.com/australia-news/2019/jul/29/naomi-williams-inquest-coroner-finds-bias-in-way-hospital-treated-aboriginal-woman>

Knowles, Rachael, 'First Nations-led Health Strategy Makes Cultural Safety Priority One for Indigenous Patients' National Indigenous Times (online, 27 February 2020) <https://nit.com.au/first-nations-led-health-strategy-makes-cultural-safety-priority-one-for-indigenous-patients/>

Maher, Lynne, David Gustafson and Alyson Evans, 'Sustainability Model and Guide', *National Health Service - Institute for Innovation and Improvement* (Guide, 1 February 2010) <https://webarchive.nationalarchives.gov.uk/20160805122935/http://www.nhsiq.nhs.uk/media/2757778/nhs_sustainability_model_-_february_2010_1_.pdf.>

Marlan, Zaarkacha, 'Ricky Hampson Died Just Hours after Leaving Dubbo Hospital. His Family Believe Racial Prejudice Was a Factor', *ABC News* (online, 3 July 2023) <https://www.abc.net.au/news/2023-07-03/inquest-indigenous-man-ricky-dougie-hampson-junior-death-dubbo/102555672>

Newhouse, George 'Ron Castan Humanitarian Award 2017' (Speech, Ron Castan Humanitarian Award 2017, 22 October 2017)

NSW Health, Workforce Planning and Development, *Respecting the Difference: An Aboriginal Cultural Training Framework for NSW Health* (Policy Directive, 1 November 2011)

NSW Ministry of Health, *Integrated Trauma-Informed Care Framework: My Story, My Health, My Future* (Integrated Trauma-Informed Care Framework, 22 February 2023).

Queensland Aboriginal and Islander Health Council 'Audit Finds High Levels of Institutional Racism in Queensland's Health System, but Experts Hopeful of Brighter Future' (Media Release, 4 December 2018) <https://www.qaihc.com.au/media/audit-finds-high-levels-of-institutional-racism-in-queensland-s-health-system-but-experts-hopeful-of-brighter-future>

Patrick, Aaron 'Inside Story: How Israel Folau's Legal Team Played Rugby Australia' The *Australian Financial Review* (online, 21 December 2019) <https://www.afr.com/companies/sport/inside-story-how-israel-folau-s-legal-team-played-rugby-australia-20191216-p53kcr>

Redfern Legal Centre, 'Media Release: Redfern Legal Centre Launches Campaign to Stop Strip Searches' (Web Page, 19 December 2018) <https://rlc.org.au/publication/media-release-redfern-legal-centre-launches-campaign-stop-strip-searches>

Royal Australian College of General Practitioners, 'Position Statement - Aboriginal and Torres Strait Islander Health' (Position Statement, May 2010) <https://www.racgp.org.au/FSDEDEV/media/documents/RACGP/Position%20statements/RACGP-Aboriginal-and-Torres-Strait-Islander-Health-Position-Statement.PDF>

Royal Australian College of General Practitioners, 'Position Statement - Aboriginal and Torres Strait Islander Health' (Position Statement, 2015) <https://changetherecord.org.au/review-of-the-implementation-of-rciadic-may-2015>

Royal Australian College of General Practitioners, 'Racism in the Healthcare System', (Position statement, September 2018) <https://www.racgp.org.au/advocacy/position-statements/view-all-position-statements/health-systems-and-environmental/racism-in-the-healthcare-sector>

Rushton, Gina, 'If An Aboriginal Woman Had Been From Sydney's Eastern Suburbs, She Might Have Been Treated Better, Coroner Says', *Buzzfeed* (online, 14 March 2019) <https://www.buzzfeed.com/ginarushton/naomi-williams-inquest-coroner-hospital>

Shine, Rhiannon, 'Indigenous Woman Jailed Over Unpaid Fines after Violent Robbery as WA Considers Changing Law', *ABC News* (online, 25 September 2019)

<https://www.abc.net.au/news/2019-09-25/woman-jailed-unpaid-fines-after-violent-robbery-wa-law-changes/11543234>

Redfern Legal Centre, 'Redfern Legal Centre launches campaign to stop strip searches' (Media Release, 19 December 2018) <https://rlc.org.au/publication/media-release-redfern-legal-centre-launches-campaign-stop-strip-searches>

The Feed, 'Turned Away: The Death of Naomi Williams, *SBS* (online, 10 October 2018) <https://www.sbs.com.au/ondemand/video/1340515395915/turned-away-the-death-of-naomi-williams>

The Feed, ''We are Amazed': Friend Relieved Race Acknowledged as Factor in Pregnant Woman's Death', *SBS* (online, 29 July 2019) <https://www.sbs.com.au/news/the-feed/we-are-amazed-friend-relieved-race-acknowledged-as-factor-in-pregnant-woman-s-death>

'The Point – Racism in Healthcare', *The Point NITV* (Youtube, 18 September 2019) <https://www.youtube.com/watch?v=fqAFeG41RWI>

Watego, Chelsea et al, '"I Catch the Pattern Of Your Silence"', *Meanjin* (Webpage, 14 September 2022) <https://meanjin.com.au/essays/i-catch-the-pattern-of-your-silence/>

Watego, Chelsea, David Singh and Alissa Macoun, *Partnership for Justice in Health Scoping Paper on Race, Racism and the Australian Health System* (Discussion Paper, 8 June 2021).

Western Australia, *Parliamentary Debates*, Legislative Assembly, 26 September 2019