

Vanessa Edwige and Dr Paul Gray, *Significance of Culture to Wellbeing, Healing and Rehabilitation (2021)*

Executive Summary

Note: This document provides a summary of key material from Edwige and Gray's report, *Significance of Culture to Wellbeing, Healing and Rehabilitation*. It is intended only as an aide and, as a summary, inevitably lacks the rich detail of the full work.

An electronic version of the full report may be accessed at the following link:
<http://publicdefenders.nsw.gov.au/Documents/significance-of-culture-2021.pdf>

[E]xisting data regarding the ongoing over-incarceration of Aboriginal and Torres Strait children and adults clearly demonstrates that ... current approaches are not adequate ... There are long-standing community concerns regarding ... [the] disproportionate impact on Aboriginal and Torres Strait Islander peoples and communities, including deaths in custody. The current evidence demonstrates that the 'status quo' approach is not effective or sustainable.

... this report highlights the significance of culture to Aboriginal and Torres Strait Islander peoples, and the importance of connecting to culture and culturally appropriate treatments to facilitate healing, including in a criminal justice setting. It highlights the importance of the social and emotional wellbeing framework for Aboriginal and Torres Strait Islander people, the need to understand this holistic world view and the need to take into account both individual and social factors in how healing is promoted. Finally, the report identifies culture as a strength that builds capacity in Aboriginal and Torres Strait Islander people, which is seen as a protective factor.

– Edwige and Gray, *Significance of Culture to Wellbeing, Healing and Rehabilitation*

- 1 The [Significance of Culture to Wellbeing, Healing and Rehabilitation report \(2021\)](#) ('the Report') has a key role to play in assisting sentencing courts in applying the principles derived from [Bugmy v The Queen \(2013\) 249 CLR 571](#) and other key sentencing considerations, including making assessments as to community protection and likelihood of re-offending, finding special circumstances, and the imposition of the most appropriate and effective conditions to optimise prospects of rehabilitation.
- 2 The Report contains a summary of its contents at [page 6](#) (paragraphs [11]–[21]), and the terms of reference are set out at paragraph [\[4\]](#).
- 3 The Report presents expert opinions, collates the findings of major reports, and draws from leading Indigenous scholarship to demonstrate the significance of culture for Aboriginal and Torres Strait Islander people in promoting healing and rehabilitation. With respect to sentencing proceedings in criminal matters, the Report outlines the significant benefits of

culturally appropriate treatment and care that provides for a connection to culture, family and community, in achieving those outcomes.

- 4 The authors opine that, based upon the available research, engagement in culturally appropriate programs reduces the likelihood of criminal recidivism: [\[121\]–\[131\]](#).
- 5 In the ACT Supreme Court decision of [R v BS-X \[2021\] ATSC 160](#), Justice Loukas-Karlsson summarised a number of key aspects of the Report which are relevant to sentencing determinations, and referred to the Report at [82]:

The report examines rehabilitation and wellbeing for Aboriginal and Torres Strait Islander people. Further, the report examines the relationship between Aboriginal culture, healing, rehabilitation, and the impact of imprisonment. The report highlights the importance of culture to Aboriginal and Torres Strait Islander peoples and therefore, the importance of culturally appropriate treatments to facilitate rehabilitation. The operation of culturally appropriate treatments are explored in relation to the criminal justice system. The report underlines that cultural identity is an important protective factor that promotes self-worth and therefore, rehabilitation.

- 6 Her Honour noted at [83] that individual rehabilitation is in the public interest, citing French CJ in [Hogan v Hinch \(2011\) 243 CLR 506](#): ‘Rehabilitation, if it can be achieved, is likely to be the most durable guarantor of community protection and is clearly in the public interest.’¹
- 7 The Report at [\[29\]–\[37\]](#) explains social and emotional wellbeing (SEWB) from an Aboriginal and Torres Strait Islander perspective, and the need for approaches which are holistic and trauma-informed. The Report presents an in-depth review of the fundamental role played by culture and identity in the lives of Aboriginal and Torres Strait Islander people ([\[22\]–\[28\]](#)) and explains how optimal outcomes in relation to healing and wellbeing must:
 - recognise the impact of historical, social and political factors: [\[12\]](#), [\[16\]](#);
 - ensure culture, cultural connection and self-determination within Aboriginal and Torres Strait Islander social and clinical programs: [\[15\]](#), [\[38\]–\[42\]](#);
 - ensure health care services are culturally safe: [\[43\]–\[48\]](#);
 - be trauma informed: [\[59\]–\[71\]](#); and
 - recognise that these broader factors are important for developing individually tailored supports oriented towards rehabilitation and healing: [\[16\]](#).

Recognising Impact: Historical, Social and Political Factors

The intention of this report is to focus on matters of rehabilitation and healing for Aboriginal and Torres Strait Islander peoples, with consideration given to the social and cultural marginalisation ... and the implications of psychological research linking experiences of marginalisation and trauma, early life stress/adverse life experiences, and later outcomes: [\[9\]](#)

- 8 The legacy of trauma caused by policies and interventions upon Aboriginal and Torres Strait Islander peoples has resulted in continuing individual and communal distrust of non-Indigenous institutions and services, particularly where service providers are unaware of First Nations history and culture. Healing programs, providing for the recovery from psychological and physical impacts of trauma, are likely to be more effective when they are culturally attuned

¹[Hogan v Hinch \(2011\) 243 CLR 506](#), 537 [32] (French CJ), cited in [R v BS-X \[2021\] ACTSC 160](#) (22 July 2021) [83].

to the experience of Aboriginal and Torres Strait Islander peoples: [107]. The Report draws on international First Nations scholarship, including the work of LaBoucane-Benson, Sherren and Yerichuk, who identify

three conditions for the building and maintaining of family and community resilience and for healing from the effects of historic trauma: reclaiming an interconnected relationships-based worldview and legal tradition; reconciliation of damaged relationships; and recovering the power to respectfully self-determine.²

- 9 The Report explains how traumatic experiences for individuals and communities can impact subsequent generations: [59]–[62]. The opinions expressed in the Report that trauma-informed approaches are critical to achieving healing (see [65]) build upon the findings of numerous existing reports and inquiries, including the key principles of a trauma-informed approach described in the Australian Law Reform Commission’s *Pathways to Justice* report:

- understand trauma and its impact on individuals, families and communal groups;
- promote safety;
- support client’s control
- share power and governance;
- integrate care;
- support relationship building;
- enable recovery.³

The Impact of Imprisonment and Child Removals

[T]he disruption to family, community and cultural relationships, including through the over-incarceration of Aboriginal and Torres Strait Islander children, youth and adults, is a continuation of the traumatic experiences of invasion and colonisation experienced by Aboriginal and Torres Strait Islander communities over generations. These disruptions are likely to continue to entrench the social determinants of offending (and undermine wellbeing): [178]

- 10 The Report recognises that ‘imprisonment disrupts important connections’, including care-giving relationships, and this ‘disruption of critical relationships and disconnection from Country and culture is likely to undermine wellbeing’: [176]. Approaches which address systemic issues and disadvantage have far better outcomes for Aboriginal and Torres Strait Islander people and communities ([213]) and keep communities together. This includes discussion of intersections affecting Aboriginal and Torres Strait Islander people with disability, as well as implications for children and families such as involvement with child protection systems.

² Patti LaBoucane-Benson, Nicole Sherren and Deanna Yerichuk, *Trauma, Child Development, Healing and Resilience: A Review of Literature with Focus on Indigenous Peoples and Communities* (Report, PolicyWise for Children and Families, 2017) 3, cited in the Report at [62].

³ Australian Law Reform Commission, *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples: Final Report* (ALRC Report No 133, December 2017) 79–81 (‘*Pathways to Justice*’), citing Judy Atkinson, *Trauma-Informed Services and Trauma-Specific Care for Indigenous Australian Children* (Resource Sheet No 21, Closing the Gap Clearinghouse, July 2013) 4–5.

Culture, Connection and Self-determination

[A]n Aboriginal psychological perspective which is grounded in Aboriginal and Torres Strait Islander Law and culture, and which incorporates an understanding of the processes of colonisation and oppression, and how these processes have impacted on observance of Law and culture, is critical for responding effectively to the rehabilitation needs of Aboriginal and Torres Strait Islander peoples within the criminal justice system:⁴ [126].

- 11 The Report promotes the concept that, relevant to sentencing considerations, access to and enjoyment of culture and community is a protective factor for Aboriginal and Torres Strait Islander people, maintained though ‘strong bonds to country, family, connection to Elders, kinship obligations, participating in cultural practices, self-determination principles and community governance’: [88]. Further, access to and enjoyment of culture is also linked to ‘resilience, enhanced health outcomes, improvements in education and employment, and positive coping strategies to deal with life stressors and the continued impacts of colonisation’: [89]. Cultural identity and connectedness, belonging to family, community and Country, has for Aboriginal and Torres Strait Islander people, provided strength and promoted resilience to address ‘[t]he experience of ... trauma and loss [that] has significantly impacted [Indigenous] social and emotional wellbeing [and] ... created significant disadvantage.
- 12 In practical terms, SEWB for Aboriginal and Torres Strait Islander people is enhanced by services that support individuals to build core capabilities within a culturally safe environment, including learning to recognise destructive behaviours, building coping skills, and forming supportive and pro-social relationships. These are all recognised as protective factors against re-offending: [77].
- 13 Self-determination is key to empowering both communities and individuals: [47]. The design, development, and delivery of programs by Aboriginal and Torres Strait Islander peoples is optimal for the programs, the individuals who undertake them and the community that runs them: [48].

Healing Programs and Approaches

Engagement in culturally appropriate programs reduces the likelihood of recidivism: [121].

- 14 The Report includes a [case study](#) demonstrating the effectiveness of culturally safe and culturally appropriate responses to rehabilitation,⁵ and considers a number of Aboriginal and Torres Strait Islander rehabilitation and support programs which employ the principles recognised as being central to achieving wellbeing and healing ([107]–[120], [132]–[139]), and reducing recidivism. Programs considered include the [Weave Youth and Community Services](#) Creating Futures program ([136]–[139]), various programs run by [Deadly Connections Community and Justice Services](#) ([114]–[120]), and the Maranguka Justice Reinvestment Project coordinated by [Just Reinvest NSW](#) ([170]–[173]). Various other programs and initiatives are discussed in the Report.⁶

⁴ Victoria Hovane, Tania Dalton (Jones) and Peter Smith (2014) ‘Aboriginal Offender Rehabilitation Programs’ in Pat Dudgeon, Helen Milroy and Roz Walker (eds) [Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice](#) (Commonwealth of Australia, 2nd ed, 2014) 509, 509.

⁵ See the Report at [23](#).

⁶ See Ngangkari (Cultural Healers) at [\[108\]](#); Red Dust Healing at [\[110\]](#); The Marumali Journey of Healing at [\[112\]](#); Circle Sentencing in NSW at [\[132\]](#).

- 15 The Report also considers adverse outcomes that may be associated with a lack of cultural competence in mental health assessment and treatment ([142]–[165]) and the importance of building cultural competence across all sectors.
- 16 Drawing on the available evidence, the Report urges ‘responding in ways that enhance and enable social and emotional wellbeing, rather than entrenching the social determinants of ill health and incarceration’ in order to intervene in ‘ongoing cycles of harm’: [17].
- 17 The authors conclude that healing programs and approaches should reflect the right of Aboriginal and Torres Strait Islander peoples to self-determination, with communities best placed to design and administer the systems and services they need. Effective approaches tend to be holistic in nature and grounded in the cultural perspective of the community they serve. They foster ‘a sense of mastery and re-establish important social and cultural norms that foster healing and rehabilitation’ ([19]) and strengthen supportive networks for individuals and families, while also contributing to broader systemic change to address the social determinants of ill health and incarceration.