

# Cultural Dispossession Experienced by Aboriginal and Torres Strait Islander Peoples

The purpose of this document is to collate published research, government reports and inquiries, and academic commentary in relation to Cultural Dispossession, and the effects this may have on a person's behaviour; development; physical, mental and social well-being; and links to contact with the criminal justice system.

**Note:** The researchers and experts involved in the development of this chapter wish to acknowledge that Aboriginal and Torres Strait Islander people maintain strong connections to their culture despite the detrimental impact of colonisation. It is also acknowledged that this chapter does not go into detail in relation to all elements of Aboriginal Culture and there are other aspects of culture which are very significant, including but not limited to Aboriginal Lore and Protocols for Legal Business, Sorry Business, the Marker of Maturity and Celebrations, Stories, Songlines and Knowledge in relation to caring for Country, Food, Medicine and Cultural Ceremonies.

It is important to note that, while Aboriginal communities share many cultural beliefs, they remain individual and diverse. This Chapter is to be read in the context of this diversity.

## Introduction

- 1 Cultural Dispossession should be understood within the context of white colonial-settler history.<sup>1</sup> Dudgeon et al (2010) summarise key aspects of colonisation, observing that

[s]ince the arrival of white people in Australia in 1788, Aboriginal and Torres Strait Islander peoples have experienced displacement, been the targets of genocidal policies and practices, had families destroyed through the forcible removal of children, and continue to face the stresses of living in a world that systematically devalues their culture and people. Such experiences have profound effects on health, mental health and social and emotional wellbeing, for individuals, families and communities.<sup>2</sup>

- 2 The colonial experience in Australia has led to an erosion of some aspects of culture, in particular 'culture, language, land, resources, political autonomy, religious freedom

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<sup>1</sup> Pat Dudgeon et al, 'Aboriginal Social, Cultural and Historical Contexts' (2010) in Pad Dudgeon, Helen Milroy and Roz Walker (eds), [\*Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice\*](#) (Telethon Institute for Child Health Research/Kulunga Research Network, 2<sup>nd</sup> ed, 2010) 3.

<sup>2</sup> Ibid 18.

and, often, personal autonomy<sup>3</sup> that may have a direct and adverse impact on Aboriginal people's health, as well as social and economic wellbeing.<sup>4</sup> Further, 'Aboriginal people in Australia have persistently said that they do not feel like they belong, that they do not feel welcome, and that they "carry their skin heavy" in this country'.<sup>5</sup>

- 3 The *National Report* of the [Royal Commission into Aboriginal Deaths in Custody](#) ('RCIADIC') expresses the importance of acknowledging the impact of our history:

It is important that we understand the legacy of Australia's history, as it helps to explain the deep sense of injustice felt by Aboriginal people, their disadvantaged status today, and their current attitudes towards non-Aboriginal people and society.<sup>6</sup>

## Elements of Culture

### *Connection to Country*

- 4 Aboriginal understanding of 'Country' differs from the European use of the same term. As anthropologist Deborah Bird Rose observed, '[c]ountry is not a generalised or undifferentiated type of place such as one might indicate with terms like "spending a day in the country" or "going up to the country"'.<sup>7</sup> In 1991, the RCIADIC recognised that Aboriginal people accorded 'great significance, spiritual as well as economic, which land has for Indigenous people'.<sup>8</sup> The taking of the land

during the white invasion of Australia not only set the stage for social disintegration, it deprived Aboriginal people of their land and material livelihood, setting the stage for their economic deprivation and continuing poverty in a community where many of their values were rejected and their skills in limited demand.<sup>9</sup>

- 5 The RCIADIC explained the stark contrast between European attitudes to land and the integral role of country in Aboriginal peoples' lives:

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<sup>3</sup> Linda Archibald, *Decolonization and Healing: Indigenous Experiences in the United States, New Zealand, Australia and Greenland* (Aboriginal Healing Foundation, 2006), quoted in Chris Cunneen '[Sentencing, Punishment and Indigenous People in Australia](#)' (2018) 3 *Journal of Global Indigeneity* 15.

<sup>4</sup> Ibid.

<sup>5</sup> Amy Quayle, Christopher C Sonn and Julie van den Eynde, '[Narrating the Accumulation of Dispossession: Stories of Aboriginal Elders](#)' (2016) 2 *Community Psychology in Global Perspective* 79, 79–80, citing 'Episode 40: First Contact', *Insight* (SBS, 20 November 2014); A Moreton-Robinson, 'I Still Call Australia Home: Indigenous Belonging in a White Society' in Sara Ahmed (ed), *Uprootings/Regroundings: Questions of Home and Migration* (Berg Publishers, 2003) 23; Maggie Walter, 'Market Forces and Indigenous Resistance Paradigms' (2010) 9 *Social Movement Studies: Journal of Social, Cultural and Political Protest* 121.

<sup>6</sup> Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) [vol 2](#), 3.

<sup>7</sup> Deborah Bird Rose, *Nourishing Terrains: Australian Aboriginal Views of Landscape and Wilderness* (Australian Heritage Commission, 1996) 7.

<sup>8</sup> Royal Commission into Aboriginal Deaths in Custody, [Regional Report of Inquiry in New South Wales, Victoria and Tasmania](#) (1991) 26.

<sup>9</sup> Ibid.

For most white people of industrialised western civilisation, deep relationships with land lie in the distant past and the pangs of separation from land which are keen and recent to Aboriginals are cast out of collective memory. For many Aboriginals their traditional land retains a deep significance. While in southeastern Australia specific ceremonial and ritual ties have been lost in the aftermath of dispossession, compulsory movement, concentration and dispersal of local groups, most Aboriginals still strongly identify with a traditional area. It remains an important part of their identity.<sup>10</sup>

6 Deborah Bird Rose said this about country:

[It] ... is a place that gives and receives life. Not just imagined or represented, it is lived in and lived with. Country in Aboriginal English is not only a common noun, but also a proper noun. People talk about country in the same way that they would talk about a person; they speak to country, sing to country, visit country, worry about country, feel sorry for country and long for country. People say that country knows, hears, smells, takes notice, takes care, is sorry or happy ... country is a living entity with a yesterday, today and tomorrow with a consciousness, and a will toward life. Because of this richness, country is home and peace: nourishment for body, mind and spirit.<sup>11</sup>

### *Language*

7 The erosion of language is a particularly notorious impact of centuries of colonisation. The [Aboriginal Languages Act 2017](#) (NSW) is a tangible indicator which officially recognises the importance of preserving and extending Indigenous languages. Chris Angus, reporting on the findings of the 2016 Census, observed that:

While NSW has the largest Indigenous population of all Australian States and Territories, it has one of the lowest proportions of Indigenous language speakers. ... Nevertheless, the number of Indigenous persons who report speaking an Indigenous language at home has increased since the 2006 Census. Over the decade to 2016 this cohort of Indigenous language speakers has increased by 123%, from 803 speakers in 2006 to more than double that figure in 2017 (1,791 persons). In comparison, the total NSW Indigenous population increased by a comparatively smaller 56.1% over the course of the decade.<sup>12</sup>

8 Jeanie Bell recounts her experience as a child growing up in the 1950s and 1960s:

As a child growing up in south-east Queensland in the 1950s and 1960s, we often heard bits and pieces of traditional language mixed in with English. While some old Goorie people still spoke language we did not often hear it spoken in a full way, particularly in the city, because of the government policies enforced in the era leading up to this time...<sup>13</sup>

9 Jeanie Bell expresses the devastating effects of colonisation and the determination of Aboriginal people to revitalise language and culture:

Because of the devastating effects of colonisation on blackfellas in this country – through disease, murder and other forms of attempted genocide over the past 200 years – our

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<sup>10</sup> Royal Commission into Aboriginal Deaths in Custody, *National Report* (n 6) vol 2, 26.

<sup>11</sup> Rose (n 7) 7.

<sup>12</sup> Chris Angus, [Indigenous NSW: Findings from the 2016 Census](#) (Research Paper, NSW Parliamentary Research Service, March 2018) 20.

<sup>13</sup> Jeanie Bell, 'Linguistic Continuity in Colonised Country' in John Henderson and David Nash (eds) *Language in Native Title* (Aboriginal Studies Press, 2002) 43, 45.

language and culture has taken on a different shape and form... This undoubtedly affects the transmission and retention of our language and culture. While it has not survived intact, but in varying states and degrees of healthiness, it has survived. Many of us are working with what remains in determined efforts to rebuild ourselves and our families and our communities back to a point where we are no longer just victims of a system that set out to destroy us as a race.<sup>14</sup>

### *Kinship and family structures*

- 10 The Law Reform Commission of Western Australia identified the importance of kinship to Aboriginal people in the 2006 [Aboriginal Customary Laws](#) report, describing it as ‘at the heart of Aboriginal society’ and underpinning customary law rules and norms.<sup>15</sup> The Commission noted that it is not only an undeniable part of traditional Aboriginal society,

it is also strongly instilled in contemporary Aboriginal society, including urban Aboriginals ... certain kinship obligations, such as the duty to accommodate kin, are taken very seriously regardless of urban or remote location.<sup>16</sup>

- 11 The [Bringing Them Home](#) report (1997) discussed contemporary Aboriginal familial obligations:

In Aboriginal communities responsibility for children generally resides with an extended kinship network and the community as a whole. Children are important for the future of the culture and their community has a right to their contribution. Raising children in Aboriginal communities commonly involves children living with kin and the extended family taking responsibility for them.<sup>17</sup>

## **Destruction of Culture**

### *Violence and dispossession*

- 12 The [Royal Commission into Aboriginal Deaths in Custody](#) (1991) acknowledged the traumatic impact of dispossession, motivated in particular by the clamour for agricultural land:

The invasion of Aboriginal land began in New South Wales in 1788... The first impact was felt by the immediate Aboriginal land owners, the Dharuk, including the Sydney clan of the Eora, and the Gandangara, who suffered devastating losses from the introduced disease smallpox within a year of the invasion beginning. Yet they retained the determination to

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<sup>14</sup> Ibid, 46–7.

<sup>15</sup> Law Reform Commission of Western Australia, [Aboriginal Customary Laws](#) (Final Report, September 2006) 66, quoted in Lynette Riley and Deirdre Howard-Wagner, [Kinship Module Teaching and Learning Framework](#) (2014) *University of Sydney*. For more information about Aboriginal kinship, see, eg, Lynette Riley, ‘[Kinship Module](#)’, *University of Sydney* (Web Page).

<sup>16</sup> Ibid.

<sup>17</sup> Human Rights and Equal Opportunity Commission, [Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families](#) (April 1997) 393 (‘*Bringing Them Home*’).

contest the loss of their lands, expressed in a series of armed conflicts in the 1800s and 1810s, along the Hawkesbury and Nepean rivers. They retained too the resourcefulness and flexibility to regroup after the punitive massacres, and to regain some of their own country ...

The invasion took many forms over time and distance. The demand on world markets for Australian wool in the 1820s and 1830s meant that the invasion of the central grasslands was the most rapid and brutal, with thousands of sheep pouring across the Great Dividing Range within a few years, devastating Aboriginal game and harvesting resources. Some of the most fierce fighting and most ruthless massacres took place on the grassland countries of the Gamalarai and Ngiyamba in the north west (where Myall Creek and Hospital Creek are the best known but not the only slaughter grounds), the Wiradjuri in the south west, and the Paakantji on the western Darling.<sup>18</sup>

- 13 This process, including its hallmarks of violence and dispossession, continued as colonisation expanded. The colonial government's authorisation of settlement allowed Aboriginal deaths at the hands of Europeans to take place with impunity.<sup>19</sup> The dire and tragic impact of this early frontier expansion was acknowledged in the RCIADIC's *Regional Report of Inquiry in New South Wales, Victoria and Tasmania*, which noted that 'there was clear evidence of Aboriginal poverty and distress by the 1870s, as was seen in the south western wheat belt and on the south coast'.<sup>20</sup> It noted that Aboriginal people from these areas moved to towns seeking compensation for their lost livelihood where settlers' land use had rapidly taken over their homes and 'Aboriginals were pushed entirely out of employment and away from any access to their country for traditional social activity or subsistence harvesting'.<sup>21</sup>

### *Displacement to missions, stations and reserves*

- 14 The expansion of British settlements in New South Wales during the late 1700s led to increasing dispossession of Aboriginal land.<sup>22</sup> According to the former NSW Office of Environment and Heritage, 'Aboriginal reserves were created as a political response to the dispossession of Aboriginal people from their land', and were small parcels of government-owned land separate to white settlements.<sup>23</sup> These first reserves were followed by 'Aboriginal missions ... created by churches or religious individuals to house Aboriginal people and train them in Christian ideals and to also prepare them for work'.<sup>24</sup>

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<sup>18</sup> Royal Commission into Aboriginal Deaths in Custody, *Regional Report of Inquiry in New South Wales, Victoria and Tasmania* (n 8) 26.15.

<sup>19</sup> Australian Law Reform Commission, *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, December 2017) 57 [2.7].

<sup>20</sup> Royal Commission into Aboriginal Deaths in Custody, *Regional Report of Inquiry in New South Wales, Victoria and Tasmania* (n 8) ch 15.

<sup>21</sup> Ibid.

<sup>22</sup> New South Wales Department of Planning, Industry and Environment, 'Living on Aboriginal Reserves and Stations', *Environment, Energy and Science* (Web Page, 9 November 2012).

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

- 15 From 1883 onwards, the Aborigines Protection Board established Aboriginal stations, or ‘managed reserves’:<sup>25</sup>

[The Aborigines Protection Board] represented a new phase of control over Aboriginal people’s lives in NSW, which historian Anna Doukakis has termed ‘intervention’. These reserves were created not so much as an acknowledgement of Aboriginal property rights, but to remove Aboriginal people from society and public view. Partly, the appointment of the Protector and his recommendations for reserves were influenced by the high visibility of Aboriginal people living and camping at Circular Quay and La Perouse, close to Sydney.

The creation of reserves and stations from the 1880s onwards reflected government policies of protection and segregation. They were underpinned by a belief that the best way to protect Aboriginal people was by separating them from white society. Station managers were appointed to help control who lived on the stations, and to manage their behaviour and movements. However, the official identification of Aboriginal people was strictly defined by the colour of their skin – many people were deemed ‘too Aboriginal’ to live in towns, but not Aboriginal enough to live on reserves.<sup>26</sup>

### *Systemic child removals\**

- 16 The 1997 [Bringing Them Home](#) report also reported on the contemporary significance of the beginnings of the long history of forced removal of Aboriginal children from their families and communities from the earliest days of European occupation, noting the links between violence over land disputes and child removals:

Violent battles over rights to land, food and water sources characterised race relations in the nineteenth century. Throughout this conflict Indigenous children were kidnapped and exploited for their labour. Indigenous children were still being ‘run down’ by Europeans in the northern areas of Australia in the early twentieth century.<sup>27</sup>

- 17 These early removals did not end with the colonial era. The same report explained that ‘by about 1890 the Aborigines’ Protection Board had developed a policy to remove children of mixed descent from their families to be ‘merged’ into the non-Indigenous population’.<sup>28</sup> The report details the history of legislation and policy which sanctioned mass removals of Aboriginal children.<sup>29</sup>
- 18 The RCIADIC reported extensively on the history of Indigenous child removal practices in Australia. The Commission’s [Regional Report of Inquiry in New South Wales, Victoria and Tasmania](#) records the extraordinary statistics on the extent of removals between 1912 and 1938 in New South Wales where the state was home to between 6,000 and 10,000 Aboriginal people – not families – observing that more than 1,500 Aboriginal children were taken from their families:

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<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

\* Refer to Bar Book chapter [Aboriginal and Torres Strait Islander Stolen Generations and Descendants](#).

<sup>27</sup> [Bringing Them Home](#) (n 17) 22.

<sup>28</sup> Ibid 34.

<sup>29</sup> Ibid 21–131.

Many others, for whom there are few accessible records, were channelled into the Child Welfare system, where their Aboriginality was officially denied, yet where they suffered subtle, covert racism. Despite attempts to obstruct them, one in five of the children taken by the Board absconded and around three quarters of them returned eventually to their own or another Aboriginal community, but the emotional scars borne by these children and their families form a stark and enduring monument to racism.<sup>30</sup>

### ***Impact of education on Cultural Dispossession***

- 19 The RCIADIC's [\*Regional Report of Inquiry in New South Wales, Victoria and Tasmania\*](#) identified the two-sided influence of education:

As an instrument for transmitting culture from one generation to the next, education can be a powerful force either for assimilation or for the preservation of cultural identity. From the point of view of an indigenous (*sic*) people, such as the Australian Aboriginals, the education system of the dominant community presents a catch 22 situation. If their children take part in it fully, accepting its values, they will be alienated from their parents and their culture. If they do not participate in it, they will have no opportunity to acquire the skills on which financial and vocational success in the wider community depend, or which are necessary if the indigenous (*sic*) communities are to develop their own professionals and other skilled individuals so as to be independent of the experts of the dominant culture.<sup>31</sup>

- 20 Education was used as a mechanism to assimilate Aboriginal children. This was enforced through missions and government settlements. The [\*Bringing Them Home\*](#) Report states:

Governments and missionaries also targeted Indigenous children for removal from their families. Their motives were to 'inculcate European values and work habits in children, who would then be employed in service to the colonial settlers' (Ramsland 1986 quoted by Mason 1993, 31). In 1814 Governor Macquarie funded the first school for Aboriginal children. Its novelty was an initial attraction for Indigenous families but within a few years it evoked a hostile response when it became apparent that its purpose was to distance the children from their families and communities.<sup>32</sup>

- 21 Attendance at school is compulsory and it is not uncommon for the schools which Aboriginal children are required to attend to be 'culturally hostile' environments.<sup>33</sup> There has been little tolerance of the prioritising ceremonial and kinship obligations over school and institutional commitments. Instead,

schools and their curricula and teaching methods had naturally been developed, and their staffs trained, to be effective instruments for passing on the culture of the invaders. Indeed it rarely occurred to anyone that the schools, or for that matter Australian society at large, did reflect a particular culture and set of values. It was assumed that schools simply taught the truth, in the language, and inculcated the values of civilised society. Hackneyed as it is, there is still no better example than the long unquestioned teaching of Australian history, with Tasman discovering Tasmania, Torres being the first to sail through Torres Straits,

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<sup>30</sup> Royal Commission into Aboriginal Deaths in Custody, [\*Regional Report of Inquiry in New South Wales, Victoria and Tasmania\*](#) (n 8) ch 15.

<sup>31</sup> *Ibid* ch 21.

<sup>32</sup> [\*Bringing Them Home\*](#) (n 17) 22.

<sup>33</sup> Royal Commission into Aboriginal Deaths in Custody, [\*Regional Report of Inquiry in New South Wales, Victoria and Tasmania\*](#) (n 8) ch 21.

Cook being the discoverer of eastern Australia, and the brave settlers being set upon by treacherous blacks who lacked any respect for property. When it came to manners, there was no thought that there could be legitimacy in other attitudes to time than that expressed in the punctuality of an industrial society, or in other attitudes to language and clothing than that of middle-class decorousness.<sup>34</sup>

## Impacts of Dispossession

### *Aboriginal identity*

- 22 Cultural Dispossession has significantly impacted Aboriginal people and has manifested in many ways. A submission to the 1997 [National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families](#) states:

We may go home, but we cannot relive our childhoods. We may reunite with our mothers, fathers, sisters, brothers, aunties, uncles, communities, but we cannot relive the 20, 30, 40 years that we spent without their love and care, and they cannot undo the grief and mourning they felt when we were separated from them. We can go home to ourselves as Aboriginals, but this does not erase the attacks inflicted on our hearts, minds, bodies and souls, by caretakers who thought their mission was to eliminate us as Aboriginals.<sup>35</sup>

- 23 The Report also cites a 1980s longitudinal study undertaken in Melbourne, which ‘revealed the numerous differences between respondents removed in childhood (33%) and those who were raised by their families or in their communities (67%)’.<sup>36</sup> The results showed that the children removed from their families were:

- less likely to have undertaken a post-secondary education;
- much less likely to have stable living conditions and more likely to be geographically mobile;
- three times more likely to say they had no-one to call on in a crisis;
- less likely to be in a stable, confiding relationship with a partner;
- twice as likely to report having been arrested by police and having been convicted of an offence;
- three times as likely to report having been in gaol;
- less likely to have a strong sense of their Aboriginal cultural identity, more likely to have discovered their Aboriginality later in life and less likely to know about their Aboriginal cultural traditions;
- twice as likely to report current use of illicit substances; and

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<sup>34</sup> Ibid. For a thorough and state-specific overview of the segregation of Aboriginal children, see ch 15.

<sup>35</sup> [Bringing Them Home](#) (n 17) 11, quoting Link-Up (NSW), Submission No 186 to Human Rights and Equal Opportunity Commission, *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (April 1997) 29.

<sup>36</sup> [Bringing Them Home](#) (n 17) 12.



- much more likely to report intravenous use of illicit substances.<sup>37</sup>

### *Diminution of social, cultural and emotional wellbeing for collective and individual*

- 24 The effect of cultural dispossession on individual wellbeing is difficult to measure and consequently empirical evidence is not readily ascertainable.<sup>38</sup> The Commonwealth Office for the Arts in its 2013 [Culture and Closing the Gap](#) fact sheet stated that:

[T]he strengthening of Indigenous culture is a strategy to reduce disadvantage in itself... Aboriginal and Torres Strait Islander peoples and communities know and articulate the many benefits of keeping culture strong. The empirical evidence base lags behind community voices and experiences as the effect of culture is difficult to measure. Current research relies heavily on qualitative and international studies, and cross-sectional surveys which should be interpreted with care. However, there is a growing body of research supporting the community view that positive outcomes stem from keeping culture strong.<sup>39</sup>

### *Links to the criminal justice system*

- 25 The 1997 [Bringing Them Home](#) report acknowledged that it was ‘not surprising that Aboriginal organisations and commentators draw attention to the historical continuity in the removal of Indigenous children and young people’, noting that ‘the key issues in relation to juvenile justice have already been identified for some time yet the problem of over-representation appears to be deepening’.<sup>40</sup> Six years prior, the [RCIADIC](#) commented on the embedded nature of the links between the long history of conflict, loss and violence and contact with police:

It does not take much close contact with Aboriginal people to convince one that the explanation for their disproportionate conflict with the criminal justice system does not lie in greater viciousness and criminality of character in comparison with the rest of the community. One encounters as much gentleness, kindness, integrity and desire for a peaceful life amongst them as amongst the general population. Equally, close contact with police soon shows that most police are simply trying to do a job as they have learnt it, and that, as in the rest of society, there is a wide range of personalities and attitudes. Many have tried to improve a situation which they do not like and have retreated puzzled, and sometimes hurt, by what they see as a lack of response on the part of Aboriginals.<sup>41</sup>

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<sup>37</sup> [Bringing Them Home](#) (n 17) 11, quoting Jane McKendrick, Victorian Aboriginal Mental Health Network, Submission No 310 to Human Rights and Equal Opportunity Commission, *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (April 1997) 22.

<sup>38</sup> Office for the Arts (Cth), [Culture and Closing the Gap](#) (Fact Sheet, Department of the Prime Minister and Cabinet, 2013) 2.

<sup>39</sup> *Ibid* 1–2.

<sup>40</sup> [Bringing Them Home](#) (n 17) 474.

<sup>41</sup> Royal Commission into Aboriginal Deaths in Custody, [Regional Report of Inquiry in New South Wales, Victoria and Tasmania](#) (n 8) ch 13.

## Treatment and Healing\*

In responding to colonization, oppression and injustice, cultural survival and resilience are qualities that are highly valued by Aboriginal people. Maintaining respect for, and the integrity of Aboriginal culture is a legacy that is carried by all Aboriginal people. Ensuring that children are knowledgeable of their Aboriginal culture, its values and customs, and draw pride from this, is something that is sought by all Aboriginal parents. As Aboriginal people have become more assertive in stating that Aboriginal identity is not solely about heritage, or about skin colour or “traditional” lifestyles, but about connectedness, relationships, and family stories there are more and more people who feel able (and safe) to express their identity as first nations people.<sup>42</sup>

26 The Office of the Arts cites studies which establish the following:

- ‘Traditional Aboriginal and Torres Strait Islander cultures contain natural protective and wellbeing factors such as kinship networks; and language, culture and cultural identity have been found to be key protective factors that predict resilience in children.’<sup>43</sup>
- ‘Connection to land, family, culture and spirituality can protect against ill health and serious psychological distress.’<sup>44</sup>
- ‘Aboriginal and Torres Strait Islander people with strong cultural attachment are significantly more likely to be in employment than those with moderate or minimal cultural attachment.’<sup>45</sup>
- ‘Aboriginal and Torres Strait Islander people who speak Indigenous languages, participate in cultural activities and have strong cultural attachment are less likely to abuse alcohol or be charged by the police.’<sup>46</sup>

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\* The research contained in relation to treatment and healing does not attempt to prescribe or recommend what is required for any individual. This will of course be determined by factors such as the individual’s personal experience or condition, the advice of any relevant experts, health providers or other support persons and the availability of treatment and opportunities to recover and heal.

<sup>42</sup> Stephen Ralph, ‘Some Considerations for Family Law Practitioners in Working with Aboriginal and Torres Strait Islander Children and Their Families’ (Legal Aid Independent Children’s Lawyers Training Paper, 2018) 14.

<sup>43</sup> Centre for Rural and Remote Mental Health Queensland, *Key Directions for a Social, Emotional, Cultural and Spiritual Wellbeing Population Health Framework for Aboriginal and Torres Strait Islander Australians in Queensland* (Report, 2009) cited in Office for the Arts (Cth), [Culture and Closing the Gap](#) (n 38) 2.

<sup>44</sup> Australian Indigenous Doctor’s Association, [AIDA Submission to the National Preventative Health Taskforce](#) (11 February 2009); Kerrie Kelly et al, [Living on the Edge: Social and Emotional Wellbeing and Risk and Protective Factors for Serious Psychological Distress among Aboriginal and Torres Strait Islander People](#) (Cooperative Research Centre for Aboriginal Health Discussion Paper Series No 10, December 2009) cited in Office for the Arts (Cth), [Culture and Closing the Gap](#) (n 38) 2.

<sup>45</sup> Alfred Michael Dockery, ‘Culture and Wellbeing: The Case of Indigenous Australians’ (Discussion Paper Series 09/01, The Centre for Labour Market Research, 2009), cited in Office for the Arts (Cth), [Culture and Closing the Gap](#) (n 38) 3.

<sup>46</sup> Alfred Michael Dockery (n 45); Alfred Michael Dockery, ‘Traditional Culture and the Wellbeing of Indigenous Australians: An Analysis of the 2008 NATSISS’ in Boyd Hunter and Nicholas Biddle, [Social Science Perspectives on the 2008 National Aboriginal and Torres Strait Islander Social Survey](#) (Centre for Aboriginal Economic Policy Research, Australian National University, 2012), cited in Office for the Arts (Cth), [Culture and Closing the Gap](#) (n 38) 3. Conversely, ‘[I]oss of language in Australia has been found to have negative impacts on directly affected generations and high levels of acculturative stress have been found

- ‘Aboriginal and Torres Strait Islander youth in remote areas who speak an Indigenous language are less likely to engage in high risk alcohol consumption and illicit substance use, and to have been a victim of physical or threatened violence.’<sup>47</sup>

27 Cunneen observes the importance of the collective experience:

Indigenous programmes start with the collective Indigenous experience: individual harms and wrongs are placed within a collective context. ... They begin with understanding the outcomes and effects of longer-term oppression and move from there towards the healing of individuals.<sup>48</sup>

28 In this respect, responses to offending behaviour by Aboriginal people are to be contrasted with ‘the dominant risk/need paradigms in offender management’.<sup>49</sup> Further:

Healing is not simply about addressing offending behaviour as an individualised phenomenon. Healing is tied to Indigenous views of self-identity that are defined by kinship (including ancestry and communal bonds), spiritual relationships and responsibilities – all of which are inseparable from each other and the land and nature.<sup>50</sup>

29 A collective experience and drawing upon Aboriginal and Torres Strait Islander culture involves an understanding of ‘the disruptions of culture, the changing of traditional roles of men and women, the collective loss and sorrow of the removal of children and relocation of communities’.<sup>51</sup>

### *Cultural renewal programs*

30 These understandings demonstrate the important link between strong ‘cultural engagement’ and non-recidivism. Shepherd et al conducted a study of 122 adults from 11 prisons in Victoria on their levels of cultural identification and cultural engagement. Shepherd et al observed that:

For Australian Indigenous people in custody, ‘cultural engagement’ was significantly associated with non-recidivism. The observed protective impact of cultural engagement is a

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in children living in regional centres where language loss is occurring.’: J A De Maio et al, *Measuring the Social and Emotional Wellbeing of Aboriginal Children and the Intergenerational Effects of Forced Separation* (Report, Curtin University of Technology and Telethon Institute for Child Health Research, 2005); Australian Human Rights Commission, *Social Justice Report 2009* (2009) cited in Office for the Arts (Cth), *Culture and Closing the Gap* (n 38) 2.

<sup>47</sup> Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander Wellbeing: A Focus on Children and Youth* (Catalogue No 4725.0, 23 May 2012), cited in Office for the Arts (Cth), *Culture and Closing the Gap* (n 38) 3.

<sup>48</sup> Chris Cunneen ‘[Sentencing, Punishment and Indigenous People in Australia](#)’ (2018) 3(1) *Journal of Global Indigeneity* 16–17.

<sup>49</sup> Tony Ward and Shadd Maruna, *Rehabilitation: Beyond the Risk Paradigm* (Routledge, 2007), cited in Cunneen (n 48) 16.

<sup>50</sup> Cunneen (n 48), citing Tony B Benning, ‘Western and Indigenous Conceptualizations of Self, Depression and Its Healing’ (2013) 17(2) *International Journal of Psychosocial Rehabilitation* 129, 130.

<sup>51</sup> Cunneen (n 48) 15.

novel finding in a correctional context. Whereas identity alone did not buffer recidivism directly, it may have had an indirect influence given its relationship with cultural engagement. The findings of the study emphasise the importance of culture for Indigenous people in custody and a greater need for correctional institutions to accommodate Indigenous cultural considerations.<sup>52</sup>

- 31 This leads to consideration of the importance of self-determination in relation to healing.

### ***Self-Determination***

- 32 The ALRC's [\*Pathways to Justice\*](#) Report (2017) stated:

The Royal Commission's [RCIADIC] finding that reforms to the criminal justice system alone are not sufficient to address the over-representation of Aboriginal and Torres Strait Islander people in prisons has been echoed many times since. Reflecting on the 25 years since the RCIADIC, in 2016, Aboriginal and Torres Strait Islander peak organisations issued the *Redfern Statement*, calling for action to address Aboriginal and Torres Strait Islander disadvantage. The *Redfern Statement* emphasised that addressing disadvantage required meaningful engagement with Aboriginal and Torres Strait Islander peoples: '[t]his, known as self-determination, is the key to closing the gap in outcomes for the First Peoples of these lands and waters'. The *Redfern Statement* also made a number of specific recommendations to address disadvantage across the domains of health, disability, violence prevention, employment, housing, early childhood, and justice, all of which foregrounded the need for Aboriginal and Torres Strait Islander peoples to have leadership in developing and delivering any initiatives.<sup>53</sup>

- 33 The Healing Foundation notes that

[h]ealing is a complex and often lengthy process; 'a journey rather than an event. Healing models for Aboriginal and Torres Strait Islander people need to reflect their unique history, culture and family and community structure, and holistic world view.'<sup>54</sup>

- 34 The Healing Foundation articulates the critical elements of healing:

According to Caruana nurturing a sense of 'cultural distinctiveness' is integral for spiritual, emotional, [and] social health and wellbeing and is also an important part of strengthening communities. This can be facilitated through the recovery of language and traditions, art, dance, stories, traditional food and medicines.<sup>55</sup>

- 35 Considering the research, the Aboriginal and Torres Strait Islander Healing Foundation 'has identified eight critical elements to inform the development and evaluation of quality Australian healing initiatives':

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<sup>52</sup> Stephanie M Shepherd et al, 'The Impact of Indigenous Cultural Identity and Cultural Engagement on Violent Offending' (2017) 18(50) *BMC Public Health* 1.

<sup>53</sup> Australian Law Reform Commission (n 19) 61–2. See also Chris Cunneen, 'Racism, Discrimination and the Over-Representation of Indigenous People in the Criminal Justice System: Some Conceptual and Explanatory Issues' (2006) 17 *Current Issues in Criminal Justice* 329, 335; Change the Record Coalition Steering Committee, [\*Blueprint for Change\*](#) (Policy Framework, November 2015).

<sup>54</sup> Australian Indigenous HealthInfoNet, [\*Promising Practice\*](#) (Web Page).

<sup>55</sup> Office fo

- developed to address issues in the local community
- driven by local leadership
- have a developed evidence base and theory base
- combine Western methodologies and Indigenous healing
- understand the impact of colonisation and trans-generational trauma and grief
- build individual, family and community capacity
- be proactive rather than reactive
- incorporate strong evaluation frameworks.<sup>56</sup>

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<sup>56</sup> Australian Indigenous HealthInfoNet, [Promising Practice](#) (Web Page), citing The Healing Foundation, [A Theory of Change for Healing](#) (Report, 2019).