

Cultural Dispossession and Cultural Resilience: Aboriginal and Torres Strait Islander Peoples Experiences of Colonising Practices

The purpose of this document is to collate published research, government reports and inquiries and academic commentary in relation to Aboriginal and Torres Strait Islander people's culture and ongoing colonial practices of cultural dispossession. It is intended to explain how culture and colonisation may affect a person's behaviour, development, physical, mental, and social well-being and why Aboriginal and Torres Strait Islander people have become disproportionately overrepresented in youth and adult criminal justice systems.

Note: The researchers and experts involved in the development of this chapter wish to acknowledge that Aboriginal and Torres Strait Islander peoples maintain strong connections to their culture despite the detrimental impact of colonisation. This chapter does not go into detail in relation to all elements of Aboriginal culture and other aspects of culture are also 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. The chapter is to be read in the context of this diversity.

Introduction

- 1 Cultural dispossession of Aboriginal and Torres Strait Islander people is a consequence of European settler colonisation.¹ Dudgeon et al (2010) summarise key aspects of colonisation, observing:

Since 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.²

¹ Pat Dudgeon et al, 'Aboriginal Social, Cultural and Historical Contexts' in Pat Dudgeon, Helen Milroy and Roz Walker (eds), *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice* (Department of Prime Minister and Cabinet, Telethon Institute for Child Health Research/Kulunga Research Network and University of Western Australia, 2nd edn, 2014) 3–24.

² Ibid 18.

- 2 The Royal Commission into Aboriginal Deaths in Custody ('RCIADIC')³ expresses the importance of acknowledging the role of Australia's colonising history in explaining 'the deep sense of injustice felt by Aboriginal people, their disadvantaged status today, and their current attitudes towards non-Aboriginal people and society'.⁴
- 3 Colonialism and colonial practices in Australia are not historical issues; they are contemporary issues that affects all Australians. Colonisation inherently privileges the rights of settler communities and their descendants. Through colonisation, the political autonomy, personal autonomy and religious freedom of Aboriginal people have often come – and continue to come – under attack. Archibald notes that '[t]he experience of being colonised involves loss',⁵ which has a very direct and adverse impact on people's health, social and economic wellbeing, and sense of belonging.⁶

Elements of Culture

Connection to Country

- 4 Country is an archive that holds immense knowledge. It is recognised by First Nations people globally as a sacred ecological and life-sustaining source. In 1991, the RCIADIC recognised the great significance of Country for Indigenous people as integral to identity. Country is understood as animate, as agency, as relational.⁷ Culturally, Aboriginal and Torres Strait Islander people view Country as an extension of self; as family; and as the holder of memory, lore, songlines, creation stories and life-sustaining knowledge.⁸ It is at the heart of the kin-centric ecosystem, with implicit obligations and rights.⁹ In Australia and the Torres Strait, through skilful management, Country has for many thousands of years been cherished and nurtured to ensure the continuity of human and non-human life.¹⁰

³ [Royal Commission into Aboriginal Deaths in Custody](#) ('RCIADIC') (Final Report, 15 April 1991) ('RCIADIC Final Report').

⁴ Ibid (National Report vol 2, part C, ch 10, 8). For an explanation of the Commission's structure, see National Archives of Australia, [Royal Commission into Aboriginal Deaths in Custody](#) (Research Guide).

⁵ Linda Archibald, *Decolonization and Healing: Indigenous Experiences in the United States, New Zealand, Australia and Greenland* (Aboriginal Healing Foundation, 2006) 49, quoted in Chris Cunneen '[Sentencing, Punishment and Indigenous People in Australia](#)' (2018) 3 *Journal of Global Indigeneity* 15.

⁶ 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); Aileen 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(2) *Social Movement Studies: Journal of Social, Cultural and Political Protest* 121, discussing the negative impact of neoliberal framing.

⁷ RCIADIC Final Report (n 3).

⁸ Anne Marie Monchamp, 'Country, Memory, Culture' in Anne Marie Monchamp (ed), *Autobiographical Memory in an Aboriginal Australian Community: Culture, Place and Narrative* (Palgrave Macmillan UK, 2014) 115–35.

⁹ Anne Poelina et al, '[Feeling and Hearing Country as Research Method](#)' (2023) 29 (10) *Environmental Education Research* 1486, 1487.

¹⁰ Bruno David, *Cultural Burning: Elements in Current Archaeological Tools and Techniques* (Cambridge University Press, 2024); Zena Cumpston, Michael Fletcher and Lesley Head, *Plants: Past, Present, and Future* (First Knowledges series, Margo Neale (ed), Thames & Hudson Australia, 2022); Michael-Shawn Fletcher et al, '[Indigenous Knowledge and the Shackles of Wilderness](#)' (2021) 40 *Proceedings of the National Academy of Sciences (PNAS)* 118, 1–7; Penny Olsen and Lynette Russell, *Australia's First Naturalists: Indigenous Peoples' Contribution to Early Zoology* (NLA Publishing, 2019).

5 The Uluru Statement from the Heart (2017) emphasised the sovereignty of Aboriginal and Torres Strait Islander tribes that practised their own laws and customs on Country.¹¹ ‘Our Aboriginal and Torres Strait Islander tribes were the first sovereign Nations of the Australian continent and its adjacent islands, and possessed it under our own laws and customs.’¹²

6 Aboriginal understandings of ‘Country’ differ from the European use of the same term as a ‘generalised or undifferentiated type of place’ associated with phrases like ‘spending a day in the country’.¹³ Country is defined by Deborah Bird Rose as

a place that gives and receives life ... it is lived in and lived with. Country in Aboriginal English is not only a common noun, but also a proper noun. People ... 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...home and peace: nourishment for body, mind and spirit.¹⁴

7 A description by a Noongar researcher of Noongar people’s feelings about Country explains the way Country, culture and spirituality are intertwined:

Noongar people refer to one’s spirit as *wirrin*. *Kwop wirrin* means good spirit or spirits, while *warra wirrin* means bad spirit/spirits. Noongar people believe that our ancestors’ *kwop wirrin* are in the hills, the trees and the rocks. Their *kwop wirrin* is everywhere. Noongar people carry their own *wirrin* and so are able to connect with the *wirrin* of our ancestors. When we move about *boodjar* (Country), our *wirrin* speak to each other through ‘feeling’, in an emotional way. Our ancestors will let us feel both the *kwop wirrin* and the *warra wirrin* around us. Our senses become heightened, we become more aware of our surroundings. If there is *warra wirrin* – one gets that prickly feeling of uneasiness – our gut instinct kicks in. Culturally we associate this uneasiness with our stories and knowledge of the *spirit world*. Noongar people will intuitively go to their cultural knowledge for explanations or ‘rules’.¹⁵

8 Senior Wardaman Elder, Bush Professor and artist Bill Yidumduma Harney describes going ‘to university in the bush, under the tree, beneath the stars’.¹⁶ Harney recounts of Country:

[T]he landscape, the walking and dark on foot all around the country in the long grass, spearing, hunting, gathering with our Mum ... How to travel? Follow the star along ... We only lay on our back and talk about the stars. We talk about emus and kangaroos, the whole and the stars, the turkeys and the willy wagtail, the whole lot, everything up in the star we named them all with Aboriginal names ... [W]e didn’t have a watch in those days. We always followed the star for the watch ... If you lay on your back in the middle of the night you can see the stars all blinking. They’re all talking.¹⁷

¹¹ [Uluru Statement from the Heart](#) (2017).

¹² *Ibid*, opening paragraph.

¹³ Deborah Bird Rose, [Nourishing Terrains: Australian Aboriginal Views of Landscape and Wilderness](#) (Australian Heritage Commission, 1996) 7.

¹⁴ *Ibid*.

¹⁵ Anne Poelina et al, ‘[Feeling and Hearing Country](#)’ (2020) 14 *PAN: Philosophy, Activism, Nature* 6–15, 10.

¹⁶ As quoted by Jan Wositzky, *Born Under the Paperbark Tree: A Man’s Life* (JB Books, 2008) 179.

¹⁷ Ray Norris and Bill Harney, ‘[Songlines and Navigation in Aboriginal Cultures](#)’ (2014) 17(2) *Journal of Astronomical History and Heritage* 141, 143, quoting B Y Harney, ‘Wardaman astronomy’ (Unpublished presentation at AIATSIS symposium *Ilgarijiri*, 27 November 2009, Canberra, ACT).

Language

9 Around the world, language holds cultural knowledge within societies. When a community is forbidden or somehow prevented from knowing or practising their language, great harm is done to their capacity to understand who they are, where they come from, and to which culture they belong. When the British arrived on Australian shores in the late 1700s, there were more than 500 Aboriginal languages and language groups.¹⁸ These language groups represented a diverse web of interconnected and highly successful communities with strong ancestral traditions. The eradication of these languages is a particularly notorious impact of centuries of colonisation. Australian government policies, particularly those created in the early-to-mid 1900s, specifically targeted Aboriginal families and their ability to speak and share their languages and cultural traditions.¹⁹ The 2020 *National Indigenous Languages Report* noted, with reference to a survey by the Australian Institute of Aboriginal and Torres Strait Islander Studies (‘AIATSIS’):

- The AIATSIS 2018–19 Survey of 141 Aboriginal and Torres Strait Islander language varieties finds that at least 123 are in use or being revitalised/ revived in Australia today ...
- The AIATSIS 2018–19 Survey finds that there are at least 31 Aboriginal and Torres Strait Islander language varieties being reawakened by communities in Australia
- Most of these languages are highly endangered. The AIATSIS survey found only 12 relatively strong traditional languages and two strong new languages.²⁰

10 A Walpiri Patu Kurlangu Jaru submission to a standing committee of the House of Representatives in 2012 pointed to the centrality of language to Aboriginal cultures:

[O]ur own language and culture play the biggest role in growing our spirit, our connection to our land and the stories of our grandmother and grandfathers. With our language we know where we belong, we know the names from our country and Jukurrpa (Dreaming stories and designs). Young people can’t lead a good, healthy and happy life without this... They need to feel pride in their language and culture and know that they are respected.²¹

11 The National Congress of Australia’s First Peoples submission to the same Committee noted that language and culture

are intertwined. Language describes cultural attachment to place, cultural heritage items, and puts meaning within the many cultural activities that people do. Furthermore, language plays a fundamental part in binding communities together as a culture.²²

¹⁸ The [Map of Indigenous Australia](#) can be purchased from the Australian Institute of Aboriginal and Torres Strait Islander Studies (‘AIATSIS’) or viewed online. It shows the immense diversity of Australian Aboriginal languages, social and nation groups.

¹⁹ Anna Haebich, *Broken Circles: Fragmenting Indigenous Families, 1800–2000* (Fremantle Press, 2000).

²⁰ Australian Institute of Aboriginal and Torres Strait Islander Studies, *National Indigenous Languages* (Report, 2020) 9.

²¹ Standing Committee on Aboriginal and Torres Strait Islander Affairs, Australian Parliament, *Our Land Our Languages* (Report, 17 September 2012) 2.18, Walpiri Patu Kurlangu Jaru [Submission 121](#), 6 [6].

²² *Ibid*, National Congress of Australia’s First Peoples, [Submission 139](#), 2 [1].

- 12 A Language Policy Symposium held in 2022 emphasised that knowing Indigenous languages ‘strengthens Indigenous people from the inside out ... creates pride and builds confidence ... [and] has a positive impact on wellbeing and health.’²³

Kinship and family structures

- 13 In its 2006 *Aboriginal Customary Laws* Report, the Law Reform Commission of Western Australia described kinship as being ‘at the heart of [traditional and contemporary] Aboriginal society’ and as underpinning customary law rules and norms.²⁴ 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.²⁵

- 14 The Australian Human Rights Commission’s *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.²⁶

- 15 The Australian Institute of Health and Welfare’s *Connection to Community* Report (2022) found that, in addition to reducing suicide, cultural continuity and connection to community

reclaims cultural identity and so provides a buffer against the impacts of racism (Currie et al. 2019; Stein et al. 2014), protects mental health, and has been found to increase the self-esteem of Indigenous youth ...

[C]ivic participation increased social capital, wellbeing, positive social development, prosocial and pro healthy behaviour (Liebenberg et al. 2019).²⁷

Destruction of Culture

- 16 The *Connection to Community* Report also described the impact of Cultural Dispossession on Aboriginal communities:

Many communities have been subjected to waves of cultural destruction through forced removal of children across generations and the subsequent grief and shattering of community,

²³ Lauren W Reed, Alison L Mount and Denise Angelo, *Strengthening Australian Languages: Between Policy and Practice* (Report, 2024, on the Language Policy Symposium, 26–27 September 2022, AIATSIS Research Publications) 12.

²⁴ Law Reform Commission of Western Australia, *Aboriginal Customary Laws* (Project 94, Final Report, September 2006) 66, quoted in Lynette Riley and Deirdre Howard-Wagner, *Kinship Module Teaching and Learning Framework* (University of Sydney, 2014) (*Aboriginal Customary Laws Report*); see also *Kinship Online Module Learning and Teaching Website* (University of Sydney).

²⁵ *Aboriginal Customary Laws* Report (n 24) 66; Riley and Howard-Wagner (n 24).

²⁶ Australian Human Rights Commission (‘AHRC’), *Bringing Them Home* (Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, Final Report, April 1997) 393 (*Bringing Them Home Report*).

²⁷ Pat Dudgeon et al, *Connection to Community* (Report, Australian Institute of Health and Welfare, 25 March 2022) (*Connection to Community Report*) 33.

family and kinship networks, punitive colonial interventions, genocidal assimilation policies, systemic institutionalised racism, which has led to dehumanising levels of social and economic marginalisation.²⁸

17 Milroy, Platell and Kashyap (2022) explain that First Nations people

have also endured cultural and spiritual trauma experienced through denial and denigration of beliefs and practices, the mislabelling of behaviours and experiences, and the destruction and desecration of sacred sites, objects, and deceased persons ... The consequences of such trauma are complex and intergenerational. Central to the experiences of overwhelming and sustained trauma is the sense of complete helplessness combined with ongoing fear and distress ...²⁹

Violence, dispossession and displacement

18 *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 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 ... Yet they retained the determination to contest the loss of their lands... [and] 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.³⁰

19 This process continued as colonisation expanded. The colonial government's authorisation of settlement allowed Aboriginal deaths at the hands of Europeans to take place with impunity.³¹ In 2024 it was estimated that there are some 438 massacre sites Australia-wide in which more than 10,000 Aboriginal people (men, women and children) were killed.³² The earlier *Overcoming Indigenous Disadvantage Report* (2020) suggested that 'the number of Aboriginal people declined by between 30 and 80 per cent from the time of European settlement to the early 1900s,'³³ and that, during

²⁸ Ibid 14.

²⁹ Helen Milroy, Monique Platell and Shradha Kashyap, 'The Interface: Western Tools and the Mental Health and Wellbeing of Aboriginal and Torres Strait Islander Peoples' in Barbara L Mercer, Heather Macdonald and Caroline Purves (eds), *Psychological Interventions from Six Continents: Culture, Collaboration and Community* (Routledge, 2022) 259–85, 263, references omitted.

³⁰ 'New South Wales: The Initial Dispossession' in Royal Commission into Aboriginal Deaths in Custody ('RCIADIC') ([Regional Report of Inquiry in New South Wales, Victoria and Tasmania, 1991](#)) pt 5, ch 15, 201–2 ([paged PDF](#)).

³¹ Australian Law Reform Commission, *Pathways to Justice: Inquiry into the Incarceration Rates of Indigenous Peoples* (ALRC Report 133, 27 March 2018) ('*Pathways to Justice Report*') [2.7] 57; *A History of Aboriginal Sydney* (website, 2010–2013, University of Western Sydney, updated 15 May 2023); Peter Read, *A Hundred Years War: The Wiradjuri People and the State* (Australian National University Press, 1988); Grace Karskens, 'Appin Massacre', *Dictionary of Sydney* (2015).

³² Lyndal Ryan et al, *Colonial Frontier Massacres in Australia 1788–1930* (University of Newcastle archived website to ch 21, Stage 5, 2024) and [Map](#).

³³ Productivity Commission, for Steering Committee for the Review of Government Service Provision, 'The Historical Context', [Overcoming Indigenous Disadvantage: Key Indicators 2020](#) (Report, 3 December 2020) [1.2].

the period known as ‘the frontier wars ... [there were over 300 massacres, with more than 8000 Aboriginal people and about 170 colonists killed].³⁴

- 20 The dire and tragic impact of early frontier expansion was acknowledged by the *Royal Commission into Aboriginal Deaths in Custody* (‘RCIADIC’), which noted ‘clear evidence of Aboriginal poverty and distress by the 1870s’.³⁵ The Commission noted that Aboriginal people moved to towns seeking compensation for their lost livelihood and ‘were pushed entirely out of employment and away from any access to their country for traditional social activity or subsistence harvesting’.³⁶

Displacement to missions, stations and reserves

- 21 The expansion of British settlements in New South Wales up to the 1880s led to increasing dispossession of Aboriginal land and the establishment of Aboriginal reserves, which were sites of segregation, small parcels of government-owned land separate from white settlements and ‘designed primarily to separate Aborigines from white society’.³⁷ These were followed by Aboriginal missions, established by churches or religious individuals with purposes that included housing, training in Christian ideals, and preparing them for work outside the mission.
- 22 From 1883 onwards, a New South Wales Protection Board established Aboriginal stations, or reserves, managed by government-appointed officials. First Peoples were forcibly relocated to and from these reserves.³⁸ The Board represented a new phase of control over Aboriginal people’s lives in New South Wales, which historian Anna Doukakis has termed ‘intervention’.³⁹ Egan, writing of the first period of the Board (1883–1897) notes that it ‘established key infrastructure ... [but] failed to meet the material needs of Aboriginal people, remained aloof from its clientele and did not reflect on its policy positions.’⁴⁰ In its second phase (1897–1916), the Board ‘gained legislative power and wielded it to the detriment of Aboriginal communities ... advocating the removal of Aboriginal children, particularly the “almost white” girls, from the camps, reserves and stations and their placement into domestic apprenticeships.’⁴¹
- 23 Crook and Short (2019) discuss dispossession as an ongoing practice in Australia:

In 1996, responding to another High Court case, the Howard government amended the *Native Title Act* to detail a host of white property interests that would automatically extinguish native title ... This modern day act of dispossession has been described, quite

³⁴ Productivity Commission, for Steering Committee for the Review of Government Service Provision, ‘The Historical Context’, *Overcoming Indigenous Disadvantage: Key Indicators 2020* (Report, 3 December 2020) [1.2].

³⁵ ‘New South Wales: The Initial Dispossession’ in Royal Commission into Aboriginal Deaths in Custody (‘RCIADIC’) ([Regional Report of Inquiry in New South Wales, Victoria and Tasmania](#)) (n 30) [vol 1], pt 5, ch 15, 203 ([paged PDF](#)).

³⁶ *Ibid.*

³⁷ Amy Nethery, ‘Aboriginal Reserves’ in Klaus Neumann and Gwenda Tavan (eds), *Does History Matter? Making and Debating Citizenship, Immigration and Refugee Policy in Australia and New Zealand* (ANU Press 2009), ch 4.

³⁸ ‘Protection and Welfare Boards in New South Wales’ in RCIADIC Regional Report (nn 3, 35) 247.

³⁹ Anna Doukakis, *The Aboriginal People, Parliament and ‘Protection’ in New South Wales, 1856–1916* (The Federation Press, 2006).

⁴⁰ Richard Egan, *Power and Dysfunction: The New South Wales Board for the Protection of Aborigines 1883–1940* (ANU Press, 2022), 13.

⁴¹ *Ibid* 14–15.

rightly, by the United Nations monitoring *Committee on the Elimination of all forms of Racial Discrimination* (CERD) as a racially discriminatory piece of legislation.⁴²

24 Ford and Roberts (2022) emphasise that many Indigenous Australians today are

triply dispossessed: uncompensated for their dispossession; reaping none of the paltry benefits of modern legal recognition of title; and not sharing equally in the economic bounties of settler citizenship.⁴³

*Systemic child removals**

25 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.⁴⁴

26 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’.⁴⁵ The report details the history of legislation and policy which sanctioned mass removals of Aboriginal children with the intention to destroy their connections with family, culture and Country.⁴⁶

27 The *Royal Commission into Aboriginal Deaths in Custody* (‘RCIADIC’) recorded the extraordinary statistics on the extent of Indigenous child removals between 1912 and 1938 in New South Wales, when the state was home to between 6000 and 10,000 Aboriginal people, observing that more than 1500 Aboriginal children were taken from their families: ‘their Aboriginality was officially denied, yet ... they suffered subtle, covert racism’.⁴⁷

28 David Pollard, a former Senior Assistant Secretary of the New South Wales Ministry of Aboriginal Affairs, was quoted in the *Family is Culture* report:

Assimilation was an attempt to force differing cultures together to form a single culture ... [T]his meant the extinction of what was distinctive in the Aboriginal subculture under the

⁴² [Martin Crook and Damien Short, ‘A Political Economy of Genocide in Australia: The Architecture of Dispossession Then and Now’ in Jeffrey Bachman \(ed\), *Cultural Genocide: Law, Politics, and Global Manifestations* \(Routledge, 2019\) 140–78, 150.](#)

⁴³ Lisa Ford and David A Roberts, ‘Settlement and dispossession’ in Peter Cane, Lisa Ford and Mark McMillan (eds), *The Cambridge Legal History of Australia* (Cambridge University Press, 2022) 305, 327.

* See *Bugmy* Bar Book chapter [Aboriginal and Torres Strait Islander Stolen Generations and Descendants](#).

⁴⁴ Australian Human Rights Commission (‘AHRC’), *Bringing Them Home* (Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, Final Report, April 1997) 393 (‘*Bringing Them Home* Report’). (n 26) 22.

⁴⁵ *Ibid* 34.

⁴⁶ *Ibid*, Part 2, ‘Tracing the History, 21–131.

⁴⁷ ‘The Second Dispossession’, in *Royal Commission into Aboriginal Deaths in Custody* ([Regional Report of Inquiry in New South Wales, Victoria and Tasmania](#), 1991) (n 30) ch 15, 20 ([paged PDF](#)).

weight of mainstream values. Aboriginal culture was not to be preserved because it was not worth preserving. Implicit ... was the further assumption that Aboriginal culture was not worth preserving because Aborigines were themselves marginal and valueless people.⁴⁸

- 29 The Sydney Aboriginal Mental Health Unit has stated that the process of forced removal ‘has been tantamount to a continuing cultural and spiritual genocide both as an individual and community experience’, creating intergenerational harm.⁴⁹

- 30 A Stolen Generations survivor recalled her understanding of culture, as communicated to her daughter and provided to a reporter in 1977:

It’s incredible what my mother learnt about herself when the tribal people weren’t even supposed to come near her. My mother was in the compound, huge wire fence, concentration camp fence and the tribal people, old tribal women would come up to the fence and call the little children over. When the children came over they would hold their little hands through the wire and tell them who they were, who their mothers were, where they’d come from, what their skin was, what their totem and dreaming was.⁵⁰

- 31 The 2023 *Family Matters* Report commented on the ‘deeply distressing parallels’ between permanent care orders today and the Stolen Generations,⁵¹ in which a stable sense of identity and cultural connection is compromised during childhood.⁵²

Impact of education on cultural dispossession

- 32 In a Regional Report, the *Royal Commission into Aboriginal Deaths in Custody* (‘RCIADIC’)⁵³ 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 ... 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 ... to develop their own professionals and other skilled individuals so as to be independent of the experts of the dominant culture.⁵⁴

⁴⁸ Megan Davis, *Family Is Culture: Independent Review of Aboriginal in Out-of-Home Care* (NSW Government) and Review Report (2019) (‘*Family is Culture* Report’) 5, citing David Pollard, *Give & Take: The Losing Partnership in Aboriginal Poverty* (Hale & Iremonger, 1988), 31.

⁴⁹ Australian Human Rights Commission (‘AHRC’), *Bringing Them Home* (Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, Final Report, April 1997) 393 (‘*Bringing Them Home* Report’) (n 26) 171, quoting Sydney Aboriginal Mental Health Unit, Submission 650, 4–5.

⁵⁰ Minette Salmon et al, *Defining the Indefinable: Descriptors of Aboriginal and Torres Strait Islander Peoples’ Cultures and Their Links to Health and Wellbeing* (Literature review, Lowitja Institute, 2019) (‘*Defining the Indefinable* Review’) 25, quoting Kevin Gilbert, *Living Black: Blacks Talk to Kevin Gilbert* (Wilkie and Company Ltd, 1977) 11.

⁵¹ Secretariat of National Aboriginal and Islander Child Care (‘SNAICC’) et al, *Family Matters* (Report, 2023) 30 (‘*Family Matters* Report’) 28.

⁵² *Ibid* 110.

⁵³ *Royal Commission on Aboriginal Deaths in Custody* (‘RCIADIC’) ([Regional Report of Inquiry in New South Wales, Victoria & Tasmania](#)) (n 30).

⁵⁴ *Ibid* pt 7, ch 21, 359 ([paged PDF](#)).

- 33 Historically, education was used as a mechanism to assimilate Aboriginal children into European society and culture, devaluing and disconnecting children from Aboriginal cultural norms and practices.⁵⁵ 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’ ... In 1814 Governor Macquarie funded the first school for Aboriginal children ... its purpose was to distance the children from their families and communities.⁵⁶

- 34 Today, attendance at school is compulsory and it is not uncommon for schools which Aboriginal children attend to be ‘culturally hostile’ environments.⁵⁷ There has been little tolerance of the prioritising of ceremonial and kinship obligations over school and institutional commitments, reinforcing systems of cultural dispossession. 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 ... Hackneyed as it is, there is still no better example than the long unquestioned teaching of Australian history, with ... Torres being the first to sail through Torres Straits, 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.⁵⁸

Impacts of Dispossession

Aboriginal identity

- 35 Culture is central to identity since it ‘defines who we are, how we think, how we communicate, what we value and what is important to us’.⁵⁹ The *Bringing Them Home* Report (1997) cited a submission that showed the effects of cultural dispossession on identity:

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,

⁵⁵ Australian Human Rights Commission (‘AHRC’), *Bringing Them Home* (Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, Final Report, April 1997) 393 (‘*Bringing Them Home* Report’) (n 26) 33.

⁵⁶ Australian Human Rights Commission (‘AHRC’), *Bringing Them Home* (Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, Final Report, April 1997) 393 (‘*Bringing Them Home* Report’) (n 26) 22 (references omitted).

⁵⁷ ‘Education’ in *Royal Commission into Aboriginal Deaths in Custody* (‘RCIADIC’) (Final Report, 15 April 1991) (‘RCIADIC Final Report’) (n 3) ch 21, 359.

⁵⁸ *Ibid.* For a thorough and state-specific overview of the segregation of Aboriginal children, see ch 15 of that Report.

⁵⁹ Minette Salmon et al, *Defining the Indefinable: Descriptors of Aboriginal and Torres Strait Islander Peoples’ Cultures and Their Links to Health and Wellbeing – A Literature Review* (Lowitja Institute, 2019) (‘*Defining the Indefinable* Report’) 24 quoting Steve Larkins, ‘Strengthening Culture, Strengthening Identity: Keys to Healing for Aboriginal and Torres Strait Islander Children and Young People and Securing their Social and Emotional Wellbeing’, (2010)(17) *Family Relationships Quarterly* 10–13, 11.

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.⁶⁰

36 The report also cited 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%)’.⁶¹ 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 jail;
- 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
- much more likely to report intravenous use of illicit substances.⁶²

37 A 2023 systematic review conducted on the impacts of land dispossession noted:

[A] member of the Yolngu people reflected on the impact of a mine in their territory, in Australia’s northeast Arnhem Land, as going to the core of their strength as Yolngu people: ‘They are digging up the backbone of the Yolngu’.⁶³

38 The *Defining the Indefinable Report* (2019) provides insight into the wellbeing derived from caring for country:

Research has shown that, for some people, simply being on Country is sufficient to make them feel better. However, for others, wellbeing is contingent on carrying out activities on Country that are perceived as worthwhile. The critical factor is autonomy over self and control over Country ...⁶⁴

39 Anthony Watson (a *Yiriman* cultural boss) is quoted on the issues that arise in the absence of a strong sense of identity or direction when ‘young people live in another culture ... When they’re lost in the wind is when they could end up in jail; they could

⁶⁰ Australian Human Rights Commission (‘AHRC’), *Bringing Them Home* (Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, Final Report, April 1997) 393 (‘*Bringing Them Home Report*’) (n 26) 11, quoting Link-Up (NSW), Submission No 186, 29.

⁶¹ Australian Human Rights Commission (‘AHRC’), *Bringing Them Home* (Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, Final Report, April 1997) 393 (‘*Bringing Them Home Report*’) (n 26) 11, quoting Link-Up (NSW), Submission No 186, 12.

⁶² *Ibid*, quoting Jane McKendrick, Victorian Aboriginal Mental Health Network, Submission 310, 22.

⁶³ Melody E Morton Ninomiya et al, ‘[Indigenous Communities and the Mental Health Impacts of Land Dispossession Related to Industrial Resource Development: A Systematic Review](#)’ (2023) 7(6) *The Lancet* 501, e511.

⁶⁴ Minette Salmon et al, *Defining the Indefinable: Descriptors of Aboriginal and Torres Strait Islander Peoples’ Cultures and Their Links to Health and Wellbeing – A Literature Review* (Lowitja Institute, 2019) (‘*Defining the Indefinable Report*’) (n 59) 8–9 (references omitted).

end up dead, end up not contributing anything to the community, but becoming a lot of trouble.’⁶⁵

- 40 However, as the *Defining the Indefinable* Report notes, ‘the history of resistance and resilience are as much part of contemporary Aboriginal and Torres Strait Islander culture and identity as are those experiences of devastation’.⁶⁶

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

- 41 The *Defining the Indefinable* Report notes that:

Colonisation, dispossession, the forcible removal of children and the devaluation of Aboriginal and Torres Strait Islander cultures have had profound effects on health and social and emotional wellbeing for individuals, families and communities.⁶⁷

- 42 Dr Tracy Westerman AM (a Nyamal woman from the Pilbara region of Western Australia) has published widely in the discipline of psychology, specifically regarding the mental health and well-being of Aboriginal and Torres Strait Islander youth and families. Westerman argues strongly for trauma-informed, culture-informed, community-driven, early intervention and whole-of-family health care for Aboriginal people.⁶⁸ Her position is supported by Aboriginal Organisations nationwide.⁶⁹

- 43 Milroy, Platell and Kashyap (2022) discuss the role culture plays in social and emotional well-being and the impact of cultural displacement:

The seven social and emotional wellbeing domains (body, mind, and emotions, family and kin, community, culture, country, and spirituality and ancestors) are optimal sources of wellbeing and connection that support a strong identity grounded in a collective perspective ... These connections are influenced by social (e.g., education, employment, housing, life stress), historical (past government policies, oppression, and cultural displacement), and political determinants of SEWB (land rights, control of resources, cultural security, and the right to self-determination) ...⁷⁰

- 44 The 2022 *Connection to Community* Report recorded the destructive impact colonisation has had on the cultural determinants of health:

⁶⁵ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System* (Report, June 2011) 14, quoting Kimberley Aboriginal Law and Culture Centre (KALACC) exhibit 5, 6.

⁶⁶ Minette Salmon et al, *Defining the Indefinable: Descriptors of Aboriginal and Torres Strait Islander Peoples’ Cultures and Their Links to Health and Wellbeing – A Literature Review* (Lowitja Institute, 2019) (*‘Defining the Indefinable* Report’) (n 59) 24 (references omitted).

⁶⁷ Ibid.

⁶⁸ See Tracy Westerman *‘The Westerman Aboriginal Symptom Checklist: Youth Version: National Data from a Clinical Sample of Aboriginal Youth’* (2024) 59(6) *Australian Psychologist*, 523–32; Tracy Westerman *‘Culture-Bound Syndromes in Aboriginal Australian Populations’* (2021) 25(1) *Clinical Psychologist* 19–35; Tracy Westerman *‘Engaging Australian Aboriginal Youth in Mental Health Services’* (2010) 45(3) *Australian Psychologist* 212–22; Tracy Westerman and Greg E Dear, *‘The Need for Culturally Valid Psychological Assessment Tools in Indigenous Mental Health’* (2023) 27(3) *Clinical Psychologist* 284–89; Tracy Westerman and Lorraine Sheridan *‘Whole of Community Suicide Prevention Forums for Aboriginal Australians’* (2020) 55(4) *Australian Psychologist* 1–12.

⁶⁹ In particular the Australian Institute of Aboriginal and Torres Strait Islander Studies (*‘AIATSIS’*), the Secretariat of National Aboriginal and Islander Child Care (*‘SNAICC’*) and the National Aboriginal Community Controlled Health Organisation (*‘NACCHO’*).

⁷⁰ Helen Milroy, Monique Platell and Shradha Kashyap, *‘The Interface: Western Tools and the Mental Health and Wellbeing of Aboriginal and Torres Strait Islander Peoples’* in Barbara L Mercer, Heather Macdonald and Caroline Purves (eds), *Psychological Interventions from Six Continents: Culture, Collaboration and Community* (Routledge, 2022) 259, 261 (references omitted).

The collective wellbeing of many Indigenous communities has been chronically impaired by colonisation, which undermined the protective cultural determinants of health, complex Indigenous systems of cultural, social and spiritual governance that once ensured healthy and harmonious social relations and wellbeing.⁷¹

- 45 Milroy, Platell and Kashyap (2022) say, of the cultural trauma experienced by First Peoples,

Aboriginal and Torres Strait Islander peoples... have also endured cultural and spiritual trauma experienced through denial and denigration of beliefs and practices, the mislabelling of behaviours and experiences, and the destruction and desecration of sacred sites, objects, and deceased persons ... Central to the experiences of overwhelming and sustained trauma is the sense of complete helplessness combined with ongoing fear and distress.⁷²

- 46 Research shows particularly poor outcomes for Stolen Generations survivors and descendants. As the *Family Matters* Report (2022) notes:

Stolen Generations descendants are significantly more likely to have experienced discrimination, violence, criminalisation, or poor health, and to have low levels of trust in the general community. Left unresolved, this has long lasting negative impacts on future generations.⁷³

- 47 While the effect of cultural dispossession on individual wellbeing is difficult to measure, The Commonwealth Office for the Arts, in its 2013 *Culture and Closing the Gap* fact sheet, stated that ‘the strengthening of Indigenous culture is a strategy to reduce disadvantage in itself’.⁷⁴ This fact sheet, and other reports, highlight the need for government investment in locally based, culturally informed healing and empowerment programs for families and communities.⁷⁵

Links to contact with the criminal justice system

- 48 The 2017 Terms of Reference for the Australian Law Reform Commission’s *Inquiry into the Incarceration Rates of Indigenous Peoples*⁷⁶ emphasised the ‘contextual factors contributing to Aboriginal and Torres Strait Islander incarceration’ including:

⁷¹ Pat Dudgeon et al, [Connection to Community](#) (Report, Australian Institute of Health and Welfare, 25 March 2022) (‘*Connection to Community* Report’) (n 27) 42.

⁷² Helen Milroy, Monique Platell and Shradha Kashyap, ‘The Interface: Western Tools and the Mental Health and Wellbeing of Aboriginal and Torres Strait Islander Peoples’ in Barbara L Mercer, Heather Macdonald and Caroline Purves (eds), *Psychological Interventions from Six Continents: Culture, Collaboration and Community* (Routledge, 2022) (n 70) 259, 263 (references omitted).

⁷³ Secretariat of National Aboriginal and Islander Child Care (‘SNAICC’) et al, [Family Matters](#) (Report, 2022) (‘*Family Matters* Report’) [1.2] 13.

⁷⁴ Office for the Arts (Cth), [Culture and Closing the Gap](#) (Fact Sheet, Department of the Prime Minister and Cabinet, 2013) 1.

⁷⁵ Healing Foundation, [Make Healing Happen: It’s Time to Act](#) (Report, May 2021).

⁷⁶ Australian Law Reform Commission, [Pathways to Justice: Inquiry into the Incarceration Rates of Indigenous Peoples](#) (ALRC Report 133, 27 March 2018) (‘*Pathways to Justice* Report’ (n 31) 6, 41–2).

the relationships between Aboriginal and Torres Strait Islander offender and incarceration and inter-generational trauma, loss of culture, poverty, discrimination, alcohol and drug use, experience of violence, including family violence, child abuse and neglect, contact with child protection and welfare systems, educational access and performance, cognitive and psychological factors, housing circumstances and employment.⁷⁷

- 49 A report commissioned by the *Bugmy Bar Book** titled *Significance of Culture to Wellbeing, Healing and Rehabilitation* notes:

[T]he harm inflicted on Aboriginal and Torres Strait Islander cultures and futures through the disruption of community relationships is a function of colonialism, and both contributes to, and is perpetuated by, current over-representation in the criminal justice system, the disproportionate removal of Aboriginal and Torres Strait Islander children from their families and communities, and even the disparities in health outcomes. That is, the 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).⁷⁸

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 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.⁷⁹

...

[E]ffective approaches to healing and rehabilitation empower communities and individuals, emphasise culture and supportive relationships (both within and across generations), and foster core capabilities such as emotional regulation. They also foster a sense of mastery and re-establish important social and cultural norms that foster healing and rehabilitation.⁸⁰

⁷⁷ Australian Law Reform Commission, *Pathways to Justice: Inquiry into the Incarceration Rates of Indigenous Peoples* (ALRC Report 133, 27 March 2018) ('*Pathways to Justice Report*') (n 31) 6, 41–2.

* Refer to related *Bugmy Bar Book* chapters for summaries of the available research in these areas: [alcohol and drug use](#), [family violence](#), [child abuse and neglect](#), [contact with child protection and welfare systems](#), [educational access and performance](#), [housing circumstances](#). With respect to cognitive factors, specific chapters are available on [acquired brain injury](#), [hearing impairment](#), [low socioeconomic status](#), and [unemployment](#). Further *Bugmy Bar Book* chapters on child neglect and adult experiences of family violence are forthcoming.

⁷⁸ Vanessa Edwige and Paul Gray, *Significance of Culture to Wellbeing, Healing and Rehabilitation* (*Bugmy Bar Book Committee*, 2021) [177] 42.

* The research 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.

⁷⁹ Stephen Ralph, '[Child Protection and Indigenous Children](#)' (Lawyer Education Series, Legal Aid New South Wales, undated) 12–13.

⁸⁰ Edwige and Gray, *Significance of Culture* (n 78) 6.

50 *Culture and Closing the Gap*, a Commonwealth Office for the Arts fact sheet (2013)⁸¹ cited studies which establish positive effects of culture in schooling, health, economic participation, safe communities, governance and leadership: In particular:

- 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.⁸²
- Connection to land, family, culture and spirituality can protect against ill health and serious psychological distress.⁸³
- 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.⁸⁴
- 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.⁸⁵
- 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.⁸⁶

51 The *Overcoming Indigenous Disadvantage: Key Indicators* (2020) Report outlined some strengths and capabilities of Aboriginal and Torres Strait Islander cultures. They are:

- child-rearing practices that encourage independence, and that build children's capacities to self-judge and take risks from an early age ...
- strong connections with family and kin, and cultural and spiritual practices that support resilience ...
- a strong belief that it is the responsibility of family to provide care and support

⁸¹ Office for the Arts (Cth), [Culture and Closing the Gap](#) (Fact Sheet, Department of the Prime Minister and Cabinet, 2013) (n 74).

⁸² Ibid 2, quoting 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); Department of Education and Early Childhood Development, Victoria, *The State of Victoria's Children 2009: Aboriginal Children and Young People in Victoria* (State Government of Victoria, 2010).

⁸³ Office for the Arts 2 (n 74, 81); 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); see also see also Australian Indigenous Doctors' Association ('AIDA') Submission to the National Preventative Health Taskforce (11 February 2009).

⁸⁴ Office for the Arts 3 (n 74, 81); Alfred Michael Dockery, 'Culture and Wellbeing: The Case of Indigenous Australians' (Discussion Paper Series 09/01, The Centre for Labour Market Research, 2009).

⁸⁵ Office for the Arts 3 (n 74, 81), citing Dockery (n 84); see also 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). Conversely, '[l]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 in children living in regional centres where language loss is occurring.' J A De Maio et al, *The Western Australian Aboriginal Child Health Survey: Measuring the Social and Emotional Wellbeing of Aboriginal Children and the Intergenerational Effects of Forced Separation* (Curtin University of Technology and Telethon Institute for Child Health Research, 2005); Australian Human Rights Commission ('AHRI') and Aboriginal and Torres Strait Islander Social Justice Commissioner, [Social Justice Report 2009](#) (Report 1, 2010).

⁸⁶ Office for the Arts 3 (n 74, 81), citing Australian Bureau of Statistics, [Aboriginal and Torres Strait Islander Wellbeing: A Focus on Children and Youth](#) (Catalogue No 4725.0, 23 May 2012).

- respect for the leadership of Elders, their role in decision-making and the value of spending time with them ...
- an acceptance of differences and diversity, which helps build a sense of belonging and community ...
- connection with, and caring for, Country, which is considered as caring for oneself and one's community and is also associated with the management of land ...⁸⁷

52 The 2022 *Connection to Community* Report discussed the importance of cultural continuity and connection to community to social and emotional wellbeing:

[T]here is existing and strong evidence that culture can support better health outcomes: 'Cultural determinants are enabled, supported and protected through traditional cultural practice, kinship, connection to land and Country, art, song and ceremony, dance, healing, spirituality, empowerment, ancestry, belonging and self-determination.'⁸⁸

53 Cunneen (2018) noted 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.⁸⁹

54 In this respect, responses to offending behaviour by Aboriginal people are to be contrasted with 'the dominant risk/need paradigms in offender management'.⁹⁰ 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 ...⁹¹

55 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'.⁹²

Truth telling

56 The *Overcoming Indigenous Disadvantage* report (2020) identified that 'respect for Aboriginal and Torres Strait Islander cultures underpin[s] race relations, equality and equity, institutional integrity, unity, and historical acceptance'.⁹³ The report found:

⁸⁷ Productivity Commission, for Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2020* (Report, 3 December 2020) ('*Overcoming Disadvantage* Report') [3.1] 3.2 (internal references omitted).

⁸⁸ Pat Dudgeon et al, *Connection to Community* (Report, Australian Institute of Health and Welfare, 25 March 2022) ('*Connection to Community* Report') (n27) 12, quoting Department of Health, *My Life My Lead: Opportunities for Strengthening Approaches to the Social Determinants and Cultural Determinants of Indigenous Health* (Consultation Report, 2017), 7.

⁸⁹ Chris Cunneen 'Sentencing, Punishment and Indigenous People in Australia' (2018) 3(1) *Journal of Global Indigeneity* 1–22, 16–17.

⁹⁰ Ibid 16, citing Tony Ward and Shadd Maruna, *Rehabilitation: Beyond the Risk Paradigm* (Routledge, 2007).

⁹¹ Cunneen (n 89) 16, citing Tony B Benning, 'Western and Indigenous Conceptualizations of Self, Depression and Its Healing' (2013) 17(2) *International Journal of Psychosocial Rehabilitation* 129, 130.

⁹² Cunneen (n 89) 15.

⁹³ Productivity Commission (n 87) 5.5.

[T]ruth telling about the history of colonisation and the experiences and consequences of intergenerational trauma that Aboriginal and Torres Strait Islander people have experienced ... as key to improving their wellbeing.⁹⁴

- 57 Dudgeon et al (2021) discuss how connections to family and kinship networks can facilitate truth telling:

By strengthening the process of enculturation (cultural identity), healthy connections to family and kinship networks pass on vital intergenerational cultural knowledge, include histories that have been marginalised through assimilation. In this respect, connection to family and kinship can be a form of consciousness-raising and truth telling which rebuilds cultural dignity and respect across generations.⁹⁵

Cultural renewal programs

- 58 These understandings demonstrate the important link between strong ‘cultural engagement’ and non-recidivism. Shepherd et al (2017) conducted a study of 122 adults from 11 prisons in Victoria on their levels of cultural identification and cultural engagement, and found:

For Australian Indigenous people in custody, ‘cultural engagement’ was significantly associated with non-recidivism. The observed protective impact of cultural engagement is a 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.⁹⁶

Self-Determination

- 59 Edwige and Gray point to the acknowledgement in the National Agreement on Closing the Gap that ‘Aboriginal and Torres Strait Islander control of service design and delivery ... [is important for] achieving optimal outcomes ... [and] better life outcomes’.⁹⁷
- 60 *Pathways to Justice*, the Final Report of the Australian Law Reform Commission Inquiry into the Incarceration Rates of Indigenous Peoples (2017), found:

[R]eforms to the criminal justice system alone are not sufficient ... [I]n 2016, Aboriginal and Torres Strait Islander peak organisations issued the *Redfern Statement* ... [which] 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* ...

⁹⁴ Productivity Commission, for Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2020* (Report, 3 December 2020) (‘*Overcoming Disadvantage Report*’) (n 87) [5.1], Box 5.1.1.

⁹⁵ Pat Dudgeon et al, *Connection Between Family, Kinship and Social and Emotional Wellbeing* (Report, 14 July 2021) 53.

⁹⁶ Stephane M Shepherd et al, ‘*The Impact of Indigenous Cultural Identity and Cultural Engagement on Violent Offending*’ (2017) 18(50) *BMC Public Health* 1–7, 1.

⁹⁷ Vanessa Edwige and Paul Gray, *Significance of Culture to Wellbeing, Healing and Rehabilitation* (Bugmy Bar Book Committee, 2021) 11, citing Coalition of Aboriginal and Torres Strait Islander Peak Organisations and Australian Government, *National Agreement on Closing the Gap* (July 2020) 2 [6].

foregrounded the need for Aboriginal and Torres Strait Islander peoples to have leadership in developing and delivering any initiatives.⁹⁸

- 61 In a 2015 report, the Healing Foundation noted that cultural identity, connection to country and participation in community are integral to effective healing programs, and emphasised the importance of adopting community-led and trauma-informed approaches to healing:

Critical to healing programs is an emphasis on restoring, reaffirming and renewing a sense of pride in cultural identity, connection to country and participation in community. Cultural identity and connection to country are seen as crucial elements of everyday life for Indigenous people. Cultivating a sense of this cultural distinctiveness is inextricably linked with spiritual, emotional, social health and wellbeing and is also an important part of strengthening communities.

... There is increasing evidence that services that adopt a trauma-informed approach...and that respect and draw on the ancient wisdom of Indigenous cultures are most successful in facilitating healing and recovery (van der Kolk 2007). It is also critical that communities have responsibility and control for the design, development and delivery of their own healing.⁹⁹

- 62 Considering the research, the Aboriginal and Torres Strait Islander Healing Foundation identified critical elements that will continue to evolve to inform the development and evaluation of quality Australian healing initiatives. They:

- are developed to address issues in the local community
- are 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
- are proactive rather than reactive
- incorporate strong evaluation frameworks.¹⁰⁰

- 63 Tran and Barcham (2018) identified the need for self-determined management and expression of the intangible aspects of cultural heritage and Indigenous knowledge, such as ‘stories of significance related to a particular site’.¹⁰¹ They found:

Investment in processes that enable bottom-up control and engagement are a critical element of the positive protection and generation of Indigenous knowledge and heritage. One of the key elements of this protection is the renewal of heritage via cultural practice. Deacon has argued that ‘the most successful incentives and safeguarding strategies will involve the use of intangible heritage forms as springboards for new cultural expression that have relevance and meaning in the modern world.’¹⁰²

⁹⁸ Australian Law Reform Commission, *Pathways to Justice: Inquiry into the Incarceration Rates of Indigenous Peoples* (ALRC Report 133, 27 March 2018) (‘*Pathways to Justice Report*’) (n 31) 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* 329–46, 335; Change the Record Coalition Steering Committee, *Blueprint for Change* (Policy Framework, November 2015).

⁹⁹ Healing Foundation, *Growing Our Children Up Strong and Deadly: Healing for Children and Young People* (Report, 2015) 4.

¹⁰⁰ Healing Foundation, *A Theory of Change for Healing* (Report, 2019) 6–7.

¹⁰¹ Tran Tran and Clare Barcham, *(Re)defining Indigenous Cultural Heritage* (Australian Institute of Aboriginal and Torres Strait Islander Studies (‘AIATSIS’) Research Discussion Paper No 37, June 2018) 20.

¹⁰² *Ibid* 17–18.

- 64 Finally, a *Review of the Cultural Determinants of Health for Aboriginal and Torres Strait Islander People* (2021) concluded that cultural identity at an individual level:

is important to benefiting from other cultural determinants of health [, while] self-determination and connection to culture and community-controlled organisations are integral factors to increase Aboriginal resilience and resistance and improve health and wellbeing outcomes.¹⁰³

¹⁰³ Ebony Verbunt et al, '[Cultural Determinants of Health for Aboriginal and Torres Strait Islander People: A Narrative Overview of Reviews](#)' (2021) 20(181) *International Journal for Equity and Health* 1, 7.