

The following information is extracted from Judicial Commission of NSW, *Equality before the law Bench Book*, Section 2 “[Aboriginal people](#)”.

2.2.2 Intergenerational/transgenerational trauma

Understanding intergenerational and transgenerational trauma

Multiple government inquiries in the last three decades have acknowledged that the legacy of historic dispossession and dislocation from country, culture and family has had ongoing harmful physical, mental and socio-economic effects.⁵¹ This legacy is increasingly acknowledged and characterised in medico-legal literature and government policy as inter or transgenerational trauma.

Trauma may be acquired or inherited cumulatively and transmitted by an individual and/or collectively by a group. Genetic, physiological, behavioural and psychological factors are considered when making a medical or psychological diagnosis of trauma.⁵² The primary or distal cause of trauma for Aboriginal people was colonisation and attendant practices including massacres,⁵³ dislocation to stations and missions, government policies that forcibly removed children from their families, often into servitude and sexual abuse. Secondary to this have been the individual and collective losses of many Aboriginal people due to racism, prejudice, poverty and genetic poor health. Loss of connection to land is acknowledged as permanent and intergenerational.⁵⁴ This loss continues to be manifested in serious negative health outcomes including post-traumatic stress disorder, depression, anxiety, a lack of or loss of self-esteem, suicide, self-destructive behaviours including drug and alcohol abuse, and changes in molecular processes. Recent research has found an accumulating amount of evidence of an enduring effect of trauma exposure to be passed to offspring transgenerationally via the epigenetic inheritance mechanism of DNA methylation alterations which has the capacity to change the expression of genes and the metabolome.⁵⁵ Many Aboriginal (and non-Aboriginal) people consider that the statistics in 2.1 above are a direct result of intergenerational trauma and the way in which the non-Aboriginal community has largely refused to respect the validity of Aboriginal people’s prior claim to the land and has, over the years, in their view, attempted to assimilate or destroy Aboriginal culture. Proximate factors such as drug

51 ALRC, *Pathways to justice — inquiry into the incarceration rate of Aboriginal and Torres Strait Islander people*, ALR Report 133 (Final Report), 2018, [2.92]–[2.100] at www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf, accessed 22 October 2019.

52 American Psychiatric Association, *Diagnostic and statistical manual of mental disorders (DSM-5)*, 2013.

53 For information and a visual map of known massacre sites in Australia compiled by the University of Newcastle Colonial Frontier Massacres Project team, see <https://c21ch.newcastle.edu.au/colonialmassacres/>, accessed 17 October 2019. There are 250 known sites in Australia currently mapped.

54 *Northern Territory v Griffiths* [2019] HCA 7 at [230].

55 Epigenetics refers to the process by which gene expression is inhibited or enhanced, ie switched on or off. DNA methylation is the attachment of methyl groups to the DNA molecule. When methyl groups are attached to the promoter, they typically act to repress gene transcription: N Youssef, L Lockwood, et al, “The effects of trauma, with or without PTSD, on the transgenerational DNA methylation alterations in human offsprings” (2018) 8 *Brain Sci* 83 at www.ncbi.nlm.nih.gov/pmc/articles/PMC5977074/, accessed 17 June 2019. See also A Kuffer, A Maercker and A Burri, “Transgenerational effects of PTSD of traumatic stress: do telomeres reach across the generations?”, (2014) *Journal of Trauma & Treatment*, accessed 17 June 2019.

and alcohol abuse, child neglect and abuse, poor school performance and unemployment, have been identified as directly contributing to these statistics.

Aboriginal people are vastly over-represented in Australia in the criminal justice system and this has been described as a “national disgrace”.⁵⁶

Connected to this, the police, government services and the law are frequently distrusted and/or seen as tools of oppression. For example, under protectionist policies, Aboriginal people were moved from their own land and forced to live on church or government “missions” (often with people from different tribal groups) and/or made to work for no or minimal wages. Under assimilationist policies (1910-1969), many (particularly light-skinned) children were “stolen” from their families so that they could be trained in how to speak English and live in non-Aboriginal ways. This was government practice up until 1969 and continued in some areas for some time after this. “Stolen” children were frequently physically, sexually, and/or emotionally abused and mistreated. Despite such practices, many Aboriginal cultural practices, values and ways of interrelating survived, but generally at great socio-economic cost, as illustrated at 2.1 above.⁵⁷

A trauma-informed approach to service delivery

The efficacy of a trauma-informed approach to working with Aboriginal people is increasingly being recognised in the legal and justice context. Therapeutic jurisprudence, for example, assumes that a person appearing as a defendant in court proceedings will have complex trauma and that trauma is a primary cause for their offending behaviour.⁵⁸

Government policy is beginning to acknowledge the critical importance of healing from intergenerational trauma. For example, the NSW Government has included healing as a key priority in its Aboriginal Affairs plan.⁵⁹ While many Aboriginal people regard white settlement of Australia as an “illegal occupation” or colonisation, the concept of “reconciliation” is important. The goal of reconciliation was the culmination of the 1991 *Royal Commission into Aboriginal Deaths in Custody*. Volume 5, Part G, entitled “Towards Reconciliation”, recognised that mechanisms had to be put in place to achieve this goal. These included recognition of the underlying cultural, social and legal factors which have a bearing on Aboriginal deaths in custody; mechanisms by which the diverse needs of Aboriginal people for land can

56 House of Representatives, Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing time — time for doing, report into Indigenous youth in the criminal justice system*, June 2011, at [2.5], [2.6]. For an overview of the impact of colonisation, see for example, P Dudgeon, H Milroy and R Walker (eds), *Working together: Aboriginal and Torres Strait Islander mental and health and wellbeing principles and practice*, 2nd edn, Australian Government Department of Prime Minister and Cabinet, 2014, accessed 18 July 2016, Chapters 1, 6, 17, 30.

57 For more information about Aboriginal history, experience and interaction with the law since white settlement see, for example, the many books and articles written by Henry Reynolds and Chris Cunneen — for instance, C Cunneen, *The impact of crime prevention on Aboriginal communities*, 2001; and 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*, 1997, at www.humanrights.gov.au, above, n 17.

58 See for example P Hora, “The trauma-informed courtroom”, International Society for Therapeutic Jurisprudence, at <https://mainstreamtj.wordpress.com/2018/12/14/the-trauma-informed-courtroom-tj-court-craft-series-14/>, accessed 10 October 2019.

59 OCHRE, “NSW Government Plan for Aboriginal affairs: education, employment & accountability”, at www.aboriginalaffairs.nsw.gov.au/pdfs/OCHRE/AA_OCHRE_final.pdf, accessed 29 October 2019.

be achieved; and mechanisms whereby recognition can be given to the past injustices and continuing inequality experienced by Aboriginal people. Recommendation 339 was that “all political leaders and their parties recognise that reconciliation between the Aboriginal and non-Aboriginal communities in Australia must be achieved if community division, discord and injustice to Aboriginal people are to be avoided” and that “political leaders use their best endeavours to ensure bi-partisan public support for the process of reconciliation and that the urgency and necessity of the process be acknowledged”. Reconciliation involves an acceptance by the non-Aboriginal community of the way the Aboriginal community views the overall impact of colonisation, or truth-telling. The many losses suffered by Aboriginal communities as a result of colonisation were recognised in the formal apology given on 13 February 2008 by then Prime Minister Rudd and in then Prime Minister Paul Keating’s Redfern speech on 10 December 1992.

The 2017 National Constitutional Convention formulated the “Uluru Statement from the Heart”. This has called for two reforms: 1) a constitutionally enshrined First Nations voice to federal Parliament and 2) a Makarrata Commission to oversee agreement-making between First Nations people with federal and State Governments and to provide a forum for truth telling about history.⁶⁰

Truth telling is seen as essential to acknowledging the wrongs of the past and creating a path for reconciliation.

For further information on a trauma-informed approach, see the following articles in the *Judicial Officers’ Bulletin*:

- P Hora, “The trauma-informed courtroom”, (2020) 32 *JOB* 11
- W Hunt, “Adopting a trauma-informed approach in the District Court of NSW” (2020) 32 *JOB* 14
- R Dive, “The trauma-informed approach of the Drug Court of NSW” (2020) 32 *JOB* 19
- S Duncombe, “The trauma-informed approach of the NSW Youth Koori Court” (2020) 32 *JOB* 21
- S McCarthy, “The trauma-informed barrister” (2020) 32 *JOB* 28

⁶⁰ University of Melbourne, “Uluru Statement from the heart: information booklet”, at https://law.unimelb.edu.au/data/assets/pdf_file/0010/2764738/Uluru-Statement-from-the-Heart-Information-Booklet.pdf, accessed 22 October 2019.