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Abstract	This chapter explores how institutional inter-generational trauma is perpetuated by criminal justice interventions into the lives of Indigenous women. We illustrate how past and present colonial policies and practices have shaped Indigenous women's lives and resulted in disproportionate incarceration across welfare and penal domains. The chapter then examines the ways in which the criminal justice system characterises trauma to problematise and pathologise Indigenous women. It calls for a paradigm shift from prisons to healing centres for Indigenous women through illustrations of healing, well-being and self-determination models embedded in Indigenous women's organisations and services.
Keywords (separated by " - ")	Indigenous women - Australian justice system - Inter-generational trauma - Healing responses to trauma - Colonialism - Self-determination

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- Q2 Keywords "Australian justice system" and "Healing responses to trauma" haven't been used in the text. Please consider removing these keywords from the list.

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Transcending Colonial Legacies: From Criminal Justice to Indigenous Women's Healing

Thalia Anthony, Gemma Sentance, and Lorana Bartels

Introduction: Cycles of Indigenous Women's Criminalisation and Inter-generational Trauma

This chapter explores how institutional inter-generational trauma is perpetuated by criminal justice interventions into the lives of Indigenous women in Australia. We explain how incarceration, including in police

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11 watch-houses, prisons and youth detention, is a form of institutional vio-
12 lence for Indigenous women. Prisons coexist with other forms of institu-
13 tional violence that constitute the colonial project, including the forced
14 removal of Indigenous children and dispossession of land. We begin this
15 chapter by illustrating how past and present colonial policies and prac-
16 tices have shaped Indigenous women's lives. The chapter then examines
17 the ways in which the criminal justice system characterises trauma to
18 problematise and pathologise Indigenous women. The effect is to further
19 institutionalise and traumatise Indigenous women, rather than facilitate
20 healing. It calls for a shift in discourse away from "trauma" and towards
21 recognition of oppression, suffering and resistance.

22 Alternative healing models are outlined in the final section. These
23 models have been initiated by Indigenous organisations to build on
24 women's strengths in a holistic and self-determination framework. Unlike
25 deficit-based institutional models that seek to "fix" Indigenous women,
26 healing models are premised on recognising Indigenous women's dignity
27 and cultural standpoint. They harness Indigenous ways of doing, being
28 and knowing (Sherwood, 2010, p. 56). This chapter concludes by sug-
29 gesting that healing is also collective and involves the decolonisation of
30 socio-economic-racial relationships. Huggins et al. (1991) articulated
31 that their struggles as Indigenous women are against the state, the system,
32 social injustices and primarily racism (p. 506). These struggles are in
33 themselves part of healing, because they enliven Indigenous women's col-
34 lective action. As noted by Torres Strait Islander, Dr Noritta Morseu-
35 Diop (2017), justice and healing materialise in the voice-claiming of
36 Indigenous women.

37 **Problematism Concepts of Trauma**

38 Indigenous women scholars, practitioners and activists have identified
39 how Indigenous women's roles, responsibilities and relationships are
40 undermined through dispossession of land, children and culture and
41 exploitation of Indigenous women's labour. They variously describe the
42 effects of these colonial processes as Indigenous inter-generational trauma,

grief, loss and cultural destruction¹ (e.g., Atkinson, 2002a, 2002b, 2008; 43
 Behrendt, 1997, 2016; Braveheart-Jordan & DeBruyn, 1995; Cox, 2017; 44
 Huggins, 2018; Linklater, 2014; Longbottom, Roe, & Fredericks, 2016; 45
 Morseu-Diop, 2017; Roach, 2016; Sherwood, 2015; Watson, 2008; 46
 Wirihana & Smith, 2014). Dixie Link-Gordon (in Wahlquist, 2016) 47
 describes the build-up of inter-generational trauma on Indigenous fami- 48
 lies “like layers of sediment since colonisation”. 49

We argue in this chapter that these concepts of institutional inter- 50
 generational trauma, oppression and suffering are at odds with the 51
 Western bio-medical concept of trauma (see Richardson & Wade, 2010). 52
 Bio-medical concepts are embedded in trauma-informed practices that 53
 are widespread in the Global North, including in corrections facilities 54
 (see Miller & Najavits, 2012) and embedded in cognitive behavioural 55
 therapy and skills development “care models” for Aboriginal women in 56
 prisons and mainstream diversion schemes (Cox, 2017). They focus on 57
 the pathology of the individual victim, which conceals social experiences 58
 of colonisation (Dudgeon & Walker, 2015; see also Linklater, 2014). As 59
 Clark (2016) has noted: “A focus on trauma as an individual health prob- 60
 lem prevents and obscures a more critical, historically-situated focus on 61
 social problems under a (neo)colonial state that contribute to vio- 62
 lence” (p. 1). 63

We engage the terminology of *institutional inter-generational* trauma to 64
 explore the role of institutionally sanctioned violence and oppression in 65
 the colonial legacy of the criminal justice system. We argue that the 66
 Australian criminal justice system is complicit in institutional inter- 67
 generational trauma by oppressing and violating the rights of Indigenous 68
 women. Dudgeon and Walker (2015) explained the impact of such 69
 trauma on social and emotional well-being as follows: “For the majority 70
 of Indigenous Australians, colonial disruptions to domains of family, 71
 spirituality, land, and culture have often produced a profound sense of 72
 grief and a deep longing to reconnect with their cultural heritage and 73
 ancestry” (p. 281). 74

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¹ Atkinson and Ober (1995, p. 201) also refer to this as “dispossession disaster trauma”.

75 **Intersectionality and Histories of Institutional**
76 **Inter-generational Trauma**

77 Our intersectional analysis of the oppression of Indigenous women in
78 past and ongoing colonial practices draws on the colonial frame devel-
79 oped by Bidjara and Birri-Gubba Juru woman, Professor Jackie Huggins
80 and her colleagues (1991). In the widely cited Bell-Huggins debate (for
81 discussion, see Moreton-Robinson, 2000), Huggins et al. (1991) located
82 Indigenous women's subordination in the colonial matrix of power: "our
83 country was colonized on both a racially and sexually imperialistic base",
84 yet "sexism does not and will never prevail over racial domination in this
85 country" (p. 506). They emphasised that colonial interventions have been
86 a thread in Indigenous women's lives in remote and urban centres. More
87 recently, the subordination of Indigenous women has been described as
88 "patriarchal colonialism" (Baldry & Cunneen, 2014; Guerrero, 2003).

89 The imposition of hierarchies of race and gender were foreign to
90 Indigenous societies. While Indigenous women and men, pre-
91 colonisation, had separate roles, they were not based on oppression or
92 subordination (Behrendt, 1995). Dispossession introduced a "coloniality
93 of gender" in which gendered hierarchies have been central to the "colo-
94 niality of power" (Lugones, 2008). In Australia, sexual stereotyping of
95 Aboriginal men and women has pervaded administrative decision-
96 making, policy formulation and engagements between Aboriginal people
97 and their employers, the police and White male sexual predators (Goodall,
98 1995; also see Conor, 2016; Moreton-Robinson, 2000). Goenpul
99 woman, Professor Aileen Moreton-Robinson (2000), explained how
100 White Australia has come to "know" the "Indigenous woman" through
101 the colonial gaze in which "Indigenous women are objects who lack
102 agency" (p. 1).

103 Larissa Behrendt (2000) and Nicole Watson (2011, 2014) have
104 explained the postcolonial state's relationship to Indigenous women as a
105 *colonial binary* of control and blindness. This binary has targeted
106 Indigenous women through coercive legal practices, including in the
107 criminal justice system, while ignoring them as citizens with legal rights.
108 The silencing of Indigenous women has a "deep colonising" effect through

governments being seen to enact change in the name of Indigenous women, such as with the Northern Territory Emergency Response (NTER), without their participation or design (Bird Rose, 1996). The NTER resulted in the theft of Aboriginal women's land, restrictions on their welfare income and policing and epistemic violence (Watson, 2011).

These colonising experiences for Indigenous women were cemented in the nineteenth to mid-twentieth centuries, when they were incarcerated under protectionist legislation. Through confining Indigenous women on settlements, homesteads, orphanages and missions, the state implemented its objectives of civilisation, acculturation and assimilation. The Aboriginal Protection Acts across Australia, like in Canada, assigned a "Protector of Aborigines" (a White male, often a police officer or pastoralist) to control Aboriginal peoples' employment, money, sexual relations and marriage, rations and movement (Anthony, 2013). Aboriginal women were subject to strict routines, including domestic labour that was often conjoined with sexual servitude to white employers (Huggins, 1987/1988; Wolfe, 1994). Aboriginal women who sought to abscond from domestic servitude and other indentured labour under these Acts risked being "hunted, captured and punished" by police and their masters, including punishment in the form of a "thrashing or prison" (Huggins, 1987/1988, p. 14; also see Huggins, 1995). Revealing the insidious intersection between colonisation and criminalisation, police were at the forefront of colonising Aboriginal women, including by taking their land and their children, unleashing violence on Indigenous nations and controlling Indigenous lives.

Indigenous women were also denied their roles as mothers. As Robertson, Demosthenous, and Demosthenous (2005) pointed out, although "Aboriginal women were seen as fit to care for and rear the children of white women ... they were not seen as fit to mother their own" (p. 41). This either resulted in epistemic violence and threats (being told that they could not care for their children) or brutal tactics where police, protectors and welfare agents dragged away screaming Indigenous children who were clinging to their mothers (Haebich, 2000). They were thrown into pickup trucks and transported long distances from their homes and families (National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (National

145 Inquiry), 1997; Tranter, 2003). Evidence reported by the National
146 Inquiry (1997) reveals the damaging tactics of police in removing
147 children:

148 I was at the post office with my Mum and Auntie [and cousin]. They put
149 us in the police ute and said they were taking us to Broome. They put the
150 mums in there as well. But when we'd gone [about ten miles] they stopped,
151 and threw the mothers out of the car. We jumped on our mothers' backs,
152 crying, trying not to be left behind. But the policemen pulled us off and
153 threw us back in the car. They pushed the mothers away and drove off,
154 while our mothers were chasing the car, running and crying after us. (p. 6)

155 Colonisation is an ongoing experience for Indigenous women. They
156 continue to disproportionately experience the removal of their children;
157 imprisonment; discrimination by the state and private sector; poverty;
158 and dispossession of land, through mining, pipelines and other capitalist
159 pursuits. Institutional inter-generational trauma flows from these collec-
160 tive and overlapping experiences of colonial harm and oppression. Today,
161 police continue to be involved in the forcible removal of Indigenous chil-
162 dren from their families. This was detailed by Aboriginal grandmothers,
163 mothers and children in evidence to the Northern Territory Royal
164 Commission. One mother spoke about being stood over by police, who
165 threatened to arrest them while gripping their gun, if she did not hand
166 over her children (Royal Commission into the Protection and Detention
167 of Children in the Northern Territory (Royal Commission), 2017a).
168 Another Aboriginal mother said that six police officers dragged her son
169 away from her while she called out to her crying, begging son that "there's
170 nothing I can do" (Royal Commission, 2017a, p. 89). That mother experi-
171 enced the grave realisation "of what happened with our grandparents
172 and the Stolen Generation", involving the forcible, mass removal of
173 Aboriginal children over decades (Royal Commission, 2017a, p. 91). A
174 grandmother expressed the removal of her granddaughter from her care
175 as a death within herself: "I see a death in me. I can't take it anymore. It's
176 just too shaming. It's like heart attack" (Royal Commission, 2017a, p. 92).

Linking the Past to the Present

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We link the past experiences of institutional trauma to the present in two ways. We refer to how the *past* policies and practices of dispossession and child removal contribute to ongoing trauma for Indigenous women (see Ralph et al., 2018). We additionally refer to how *contemporary* institutionalisation *renews* trauma. Survivors of colonial violence and cultural destruction transfer their trauma to second and further generations of descendants of the survivors (Atkinson, Nelson, & Atkinson, 2010). This is enforced through descendants' own experiences of colonisation, creating "cumulative emotional and psychological wounding" (Mu'id, 2004, p. 9). Inter-generational colonisation is a key challenge to healing (see Atkinson, 2013). Māori Professor Linda Tuhiwai Smith (1999) has potentially highlighted the past and ongoing effects:

Imperialism still hurts, still destroys and is reforming itself constantly. Indigenous peoples as an international group have had to challenge, understand and have a shared language for talking about their history, the sociology, psychology and the politics of imperialism and colonialism as an epic story telling of huge devastation, painful struggle and persistent survival. (p. 19)

The continuing harm from the Stolen Generations and ongoing stealing of children are re-traumatising Indigenous mothers and children (Atkinson, 2002a, 2002b). The report of the National Inquiry (1997), *Bringing them Home*, extensively documented the grief and loss arising from stealing Indigenous children. Decades after the official laws of the Stolen Generations discontinued, Indigenous women, children and others left behind continued to experience "immense pain, grief and anguish" (National Inquiry, 1997, p. 185). Indigenous mothers felt "hurt", "shamed and humiliated" and were made to "feel [like] failures; unworthiness of loving and caring for their own children" (National Inquiry, 1997, p. 185). Consequently, they "judge themselves harshly, never forgiving themselves for losing their children" (National Inquiry, 1997, p. 185). While in care, many Aboriginal children suffered institutional abuse, including sexual abuse, which aggravated the injustice.

210 Indigenous mothers' loss of their children includes the denial "of the
211 opportunity to participate in growing up the next generation" and shap-
212 ing "the future of their community" (Link-Up submission, cited in the
213 National Inquiry, 1997, p. 185). Forcible separation meant Indigenous
214 children lost opportunities to "acquire cultural knowledge", develop their
215 identity and spiritual connection to country and build their communities
216 (National Inquiry, 1997, p. 488). This may limit Indigenous parents' and
217 grandparents' leadership and ability to "provide the vision, the strength
218 and the responsibility to carry our communities forward into the future"
219 (Link-Up submission, cited in National Inquiry, 1997, p. 242). A sub-
220 mission to the National Inquiry (1997) by the Sydney Aboriginal Mental
221 Health Unit stated that the ongoing child removals are "tantamount to a
222 continuing *cultural and spiritual genocide* both as an individual and a
223 community experience" (p. 171) (italics added).

224 **Contemporary Manifestations of Institutional** 225 **Inter-generational Trauma** 226 **for Indigenous Women**

227 Contemporary Australian state policies and practices, whether overtly
228 discriminatory, such as the position in the Northern Territory setting
229 aside laws for regulating Indigenous land and welfare,² or implicitly
230 biased against Indigenous women, such as in the universal childcare and
231 protection laws, have a detrimental impact on Indigenous women's well-
232 being. Stereotypes about Indigenous women and mothers generate
233 trauma in the child "welfare", "health" and criminal "justice systems"
234 (Chelsea Bond & Juanita Sherwood, cited in Behrendt, 2019). The sta-
235 tistics below paint a picture of the ongoing and disproportionate harms
236 experienced by Indigenous women and girls in these systems. They are
237 just a snapshot and do not address all indices of institutional trauma,

² *Northern Territory National Emergency Act 2007* (Cth); *Stronger Futures in the Northern Territory Act 2007* (Cth). These laws required the suspension of the *Racial Discrimination Act 1975* (Cth) and have contributed to unprecedented numbers of Aboriginal women having their children removed, entering prisons and having their daughters enter detention centres (Royal Commission, 2017b).

including poverty, labour exploitation and a lack of access to education, 238
 safe housing, food and water. Therefore, the discussion below is part of a 239
 gamut of intersecting institutional trauma predictors, including, but not 240
 limited to, everyday racism, discrimination in education, employment, 241
 housing and mental health interventions (see Sherwood, 2015). 242

Disproportionate Taking of Indigenous Children 243

Indigenous children continue to be removed from families and commu- 244
 nities at alarmingly high and disproportionate rates. Family Matters et al. 245
 (2017) reported that out of 1000 Indigenous children today, 15 were 246
 admitted into out-of-home care. At June 2018, Indigenous children were 247
 ten times more likely than their non-Indigenous peers to be placed on 248
 care and protection orders (Australian Institute of Health and Welfare 249
 (AIHW), 2019a). According to data provided to Lorana Bartels by the 250
 AIHW (2019b) in 2016–2017, more than a third of girls in out-of-home 251
 care (36.8%) were Indigenous. This creates new layers of institutional 252
 trauma to add to enduring trauma from the Stolen Generations. It has 253
 been estimated that there are nearly 21,000 Aboriginal survivors remain- 254
 ing from the pre-1972 official Stolen Generations period, 56% of whom 255
 were Indigenous women (AIHW, 2018a). 256

Victimisation: Family Violence and Personal Violence 257

Compared with non-Indigenous women, Indigenous women experience 258
 higher rates of family violence (AIHW, 2018b) and fewer protections and 259
 supports, including by the health system. In 2017, Indigenous women 260
 were 32 times more likely to be hospitalised due to family violence 261
 (AIHW, 2018b). Despite public stereotypes, family violence is not neces- 262
 sarily inflicted by Indigenous men, with many non-Indigenous men 263
 bearing responsibility (Our Watch, 2018). Given that 78.2% of 264
 Indigenous persons are in a relationship with a non-Indigenous person 265
 (Australian Bureau of Statistics (ABS), 2018a, Table 3.2), many 266
 Indigenous women are likely to experience family violence at the hands 267

268 of non-Indigenous men. This demonstrates the interaction of gendered
269 and racial harms for Indigenous women.

270 More broadly, violence is inflicted on Indigenous women at greater
271 proportions. The ABS (2019b, Table 17) recorded that the assault victi-
272 misation rate in 2018 was 4.3 times higher for Indigenous women than
273 non-Indigenous women in New South Wales (NSW), 9.6 times higher in
274 South Australia and 13.1 times higher in the Northern Territory (data
275 were not available for the other jurisdictions). However, these statistics
276 are likely to be an under-estimate, given the high levels of non-disclosure
277 of violence on the part of Indigenous women (see Willis, 2011).
278 Furthermore, Indigenous women victims of violence are less likely to
279 receive legal protection and justice (Atkinson, 2001; Purdy & McGlade,
280 2001), continuing a frontier legacy that sanctioned violence and rape
281 against Indigenous women (Behrendt, 2000).

282 **Discrimination in the Health System**

283 Indigenous women experience racial bias in the health system, which, as
284 mentioned in the foregoing section, affects their treatment following vio-
285 lence. Bias in the health system is due to stereotyping, prejudice and/or
286 discrimination (Paradies et al., 2015; Paradies, Truong, & Priest, 2014;
287 Sherwood, 2013). Aboriginal health scholars Bond and Sherwood have
288 commented that it is not uncommon for Aboriginal women and
289 Aboriginal mothers to be turned away from health services, not to be
290 believed about illnesses and to receive culturally unsafe health care (cited
291 in Behrendt, 2019). The ramifications of discrimination extend into
292 other areas of treatment, such as Indigenous women being less likely than
293 Indigenous men to receive cervical and breast cancer diagnosis and
294 screening and treatment (Dasgupta et al., 2017; Diaz et al., 2015; Moore
295 et al., 2016; Whop et al., 2016). In the recent inquest into the death in
296 hospital of Wiradjuri woman Naomi Williams, the NSW Deputy State
297 Coroner found bias in the way she was treated by the hospital staff and
298 several recommendations were made to address this issue and develop
299 culturally safe healthcare for Indigenous people (Jackson, 2019).

From Welfare to Penal Incarceration

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Whereas earlier periods of incarceration under protectionist legislation had a “welfare” countenance, incarceration in late modernity has taken the prevailing form of penal custody, notwithstanding ongoing practices of detaining Indigenous girls and women in out-of-home care residential institutions, group homes and psychiatric wards (Royal Commission, 2017a). There has been a steep increase in the number of Indigenous women and girls being sent to prisons and youth detention since the late twentieth century. In the Northern Territory, over the past decade there has been the creation of an Indigenous female youth detention population (Royal Commission, 2017a). The number of Aboriginal and Torres Strait Islander adult women in prison increased by 20%, from 1025 in June 2015 (ABS, 2016, Table 4) to 1230, only two years later (ABS, 2018b, Table 5). In June 2019, Indigenous women were nearly 14 times more likely to be imprisoned than Australian women generally (483.5 and 35.2 per 100,000 respectively) (ABS, 2019a, Tables 12 and 15). Given that over one-third (33.9%) of females in prison are Aboriginal and/or Torres Strait Islander (ABS, 2019a, Tables 1 and 11), the rate of over-representation compared to non-Indigenous women will be significantly higher. Indigenous women and girls’ engagement with the criminal justice system is typified by cycling in and out of prison on remand and short sentences for minor crimes (Australian Law Reform Commission (ALRC), 2017; see also Anthony & Blagg, 2013; MacGillivray & Baldry, 2015), with a continuity of surveillance in their lives.

Indigenous females in custody are often treated indecently and cruelly, including forced strip searches, assaults and inappropriate touching (Human Rights Law Centre, 2017; Royal Commission, 2017a). They are disproportionately confined in high risk cells (Armstrong, Baldry, & Chartand, 2007) and receive inadequate health care (Wahlquist, Evershed, & Allam, 2018). Prejudice in prisons resulted in women such as Yamatji woman, Ms Dhu, dying in inhumane circumstances (Braybrook, 2017; Fogliani, 2016).

Incarceration represents a form of “institutional violence” for Indigenous women, because it fractures bonds and relationships (Blagg

334 & Anthony, 2019, p. 218). It is estimated that 80% of Indigenous women
335 in prisons are mothers (Sherwood & Kendall, 2013; also see Bagaric,
336 2019). Families suffer from being denied mothers, sisters, aunts, daugh-
337 ters and grandmothers. Indigenous children of mothers in prison face an
338 increased likelihood of being placed in the out-of-home care system per-
339 manently (ALRC, 2017). Yued-Kanyigang woman and researcher,
340 Dorinda Cox (2017), explains the critical effect of prison for Indigenous
341 women in terms of interrupting “attachment to their children resulting in
342 transmission of inter-generational trauma and further entrenching cycles
343 of disempowerment, sometimes resulting in multiple generations of
344 Aboriginal women from the same families incarcerated at the same
345 time” (p. 1).

346 **The Child Protection to Incarceration Pipeline**

347 State interventions cycle in and out of their lives to produce a continuum
348 of control: one of these is the cross-over between child welfare and crimi-
349 nal justice interventions. Indigenous babies and girls who are subject to
350 child removal tend to also be subject to incarceration. Nearly three-
351 quarters (72%) of Indigenous girls in youth detention had also been in
352 the child protection system (AIHW, 2019c; also see McFarlane, 2010).
353 Indigenous girls face greater reporting to police in foster homes, group
354 homes and residential institutions, including for minor property offences
355 within homes (Royal Commission, 2017a),³ putting them at greater risk
356 of being charged and ending up in youth detention.

³This has also been reported by NSW Aboriginal Legal Service lawyers interviewed by Thalia Anthony as part of the Australian Research Council Project, ‘Where are the women in Indigenous sentencing?’ (March, 2019).

Characterisation of Indigenous Women in the Criminal Justice System: Trauma, Risk and Deficit

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Indigenous women in the criminal justice system are characterised and assessed in terms of their risk. Increasingly this includes the risk generated from their past experiences of trauma, including in relation to child removal, homelessness and family violence. This catalyses penal interventions (in the same way it does for child welfare interventions), rather than reducing them. Courts and corrections agencies on occasion refer to Indigenous women’s “intersecting identities”—as both “offenders” and victims—but primarily with a view to “fixing” and controlling them through increasing state measures, rather than adopting healing strategies. In our interviews about sentencing in NSW prisons, Indigenous women have told Thalia Anthony and Gemma Sentance that their past is used to punish them and they felt that there was little acknowledgment of the good work that they have undertaken.⁴ There is little focus by corrections agencies or courts on institutional inter-generational trauma, including how it is compounded by imprisonment (Shepherd & Anthony, 2018). The focus is instead on the perceived problems of the individual victims, rather than consideration of broader systemic issues (see also Anthony, Bartels, & Hopkins, 2015).

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We highlight some sentencing remarks by higher courts to demonstrate how they have framed Indigenous women’s circumstances in ways that problematise the women. In the Victorian Supreme Court (2014), sentencing remarks in the case of *DPP v Kerr* [2014] VSC 374 focused on her physiological, psychological and addiction problems and very low intelligence. Justice Hollingworth asserted that:

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You are easily irritable, and prone to angry outbursts and reckless and self-destructive behaviour, all of which can be exacerbated by alcohol. It seems that some of that behaviour may be related to your post-traumatic stress disorder. In so far as that behaviour may be a personality trait, courts now recognise that the experience of growing up in a socially-disadvantaged

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⁴ Deidentified participant #6, March 2019.

389 environment, surrounded by alcohol abuse and violence, may leave a mark
390 on a person throughout life [citing *Bugmy v R* [2013] HCA 37]; your
391 upbringing has helped make up the person that you are today. [34]

392 The Court did not locate the trauma beyond her childhood abuse. Nor
393 did Hollingworth J consider Kerr's sexual victimisation at the time of the
394 offence, the inadequate services in the Victorian regional town of Echuca
395 where she lived or the effect of having her six children removed from her
396 care. Her trauma was clearly treated narrowly to explain wrongdoing.

397 The Australian Capital Territory Supreme Court (ACTSC) (2014)
398 case of *Smorhun v Devine* [2014] ACTSC 208 involved an Indigenous
399 woman who had been sentenced for driving offences (drink-driving, fail-
400 ing to obey traffic signal and speeding), which commonly give rise to
401 criminalising Indigenous women broadly (MacGillivray & Baldry, 2015).
402 The Supreme Court referred to the woman's history of being in an abu-
403 sive relationship but did not provide mitigation in this regard (ACTSC,
404 2014a). Instead, in response to the Crown's appeal, Penfold J increased
405 the woman's sentence, due to the magistrate's failure to give reasons for
406 accepting the relatively lenient sentence handed down on the advice of
407 the Indigenous panel of the Galambany Circle Sentencing Court ("Circle
408 Court"). In *Smorhun v Devine (No 2)* [2014] ACTSC 302 (ACTSC,
409 2014b), she resentenced the "offender", focusing on the serious nature of
410 the offences to more than double the fines imposed. However, she did
411 not accommodate the Circle Court's concern that Devine's alcohol con-
412 sumption was for the sole reason of pain relief and her healing could be
413 better managed through Aboriginal law and communicating with her
414 Elders. In other words, the Court dismissed the trauma underpinning her
415 issues and any healing remedies.

416 In *Fejo v Sims & Anor* [2014] NTSC 9 (Northern Territory Supreme
417 Court (NTSC), 2014), an Indigenous woman who belonged to the
418 Acacia Larrakia community, south-east of Darwin, was convicted of
419 shoplifting and was in breach of a suspended sentence. The person's crim-
420 inal history since 2003 consisted of five stealing offences and one offence
421 of common assault. The Northern Territory Supreme Court dismissed
422 the appeal against the severity of an imprisonment sentence. Evidence
423 was submitted that, in the seven months between Fejo's offence and the

sentencing hearing, she had stopped drinking and re-established a supportive relationship with her partner, demonstrating “that remaining in the community was likely to greatly enhance the chances of further reform” and rehabilitation, whereas “any sentence of imprisonment was likely to significantly undermine the progress she had made” (2014, [30]). This was especially so, given that imprisonment increased the likelihood of re-entering prison by almost 50% and was “counter-productive as an instrument of reform and rehabilitation” (2014, [32]). However, the Supreme Court found that these arguments were not material matters to the case and would undermine individualised justice. The fact that the issues were deemed irrelevant in this case reveals the failure to see systemic issues connected with institutional inter-generational trauma as directly bearing on Indigenous women.

These sentencing remarks reveal the focus of the courts on the risks Indigenous women present to the community and the need to manage these risks through carceral options. The Human Rights Law Centre and Change the Record (2017) noted that “the criminal justice system has been blind ... for too long” to the everyday realities of “systemic race and sex discrimination” for Indigenous women (p. 12) (also see ALRC, 2017). In relation to sentencing, Watson (2008) noted that the “dominant conversation never engaged the view of inter-generational trauma and its source—colonialism” (p. 15). Accordingly, “the complexity of Aboriginal traumas will also stay stuck in the colonial paradigm of blaming the ‘backward native’”. Moreover, it does not give any significant weight to the strengths Indigenous women can offer to the community.

Healing Alternatives to Custodial Settings 449

Congruent with healing is inverting the risk and deficit model that is applied to Indigenous women. We need to see the criminal justice system as a risk for Indigenous women. It contributes to institutional inter-generational trauma by undermining social and emotional well-being. Its deficit lies in its failure to heal Indigenous women and the continuation (rather than discontinuation) of cycles of incarceration, oppression and

456 discrimination (ALRC, 2017; Cunneen, Rowe, & Tauri, 2017; Human
457 Rights Law Centre (HRLC) & Change the Record, 2017).

458 By turning our critical gaze to the state as part of the problem, rather
459 than the solution, we can open our eyes to strategies outside of the state
460 rubric. These include Indigenous-owned strategies that counter-balance
461 the impacts of state interventions through Indigenous resistance and
462 resurgence. Indigenous justice advocates frame this in terms of a shift
463 from prisons to healing and well-being centres (Morseu-Diop, 2017;
464 National Conference on Indigenous Incarceration, 2018).

465 Healing involves not only individuals but communities. It strengthens
466 Indigenous self-determination on a collective and personal level (Cox,
467 2008). Healing programmes and services located in Indigenous organisa-
468 tions strengthen the community by virtue of providing Indigenous peo-
469 ple with control over their own well-being. The work of these Indigenous
470 organisations strengthens bonds and relationships among people and
471 with country (Cox, Young, & Bairnsfather-Scott, 2009). They also
472 enhance the social and emotional well-being of Indigenous users of their
473 services by operating in a holistic, strengths-based framework. They are
474 centred on Indigenous knowledges, cultures and spirituality (Sherwood
475 et al., 2015, pp. 186–187, see, e.g., Murrigunyah Family & Cultural
476 Healing Centre, 2019). Healing programmes embed Indigenous women
477 in their communities and include their children and support family rela-
478 tionships (ALRC, 2017; HRLC & Change the Record, 2017).

479 The Indigenous women's centres illustrated below are controlled by
480 Indigenous women and draw on Indigenous women's strengths, support
481 networks and leadership, whether that be in urban, regional or remote
482 communities. The Indigenous women who manage the programmes live
483 within the local community and have shared experiences and histories
484 with members of the community, which is regarded as necessary for heal-
485 ing (Cox et al., 2009; Memmott, 2002). This ensures that programmes
486 prioritise and respond to the values and aspirations identified by
487 Indigenous women who are leaders, mentors, mothers, grandmothers,
488 aunts and sisters within the community.

489 In regional NSW, the Waminda South Coast Women's Health and
490 Welfare Aboriginal Corporation (2019b) seeks to empower Aboriginal
491 women and their families to have control over their own well-being. It

provides supportive, holistic services that include opportunities for healing, health, fitness, well-being, job support, art, culture, knowledge sharing and networking. Its healing space, known as *Balaang Gunya*—“women’s place/home”, was created by local Elders and Aboriginal women with a view to facilitating Aboriginal women “gain perspective, heal, revitalise and reconnect to self, community, culture and country” (Waminda, 2019a). Waminda works in resistance to the oppressive interventions confronting its Aboriginal women, including in the child protection system and criminal justice system, and supports Aboriginal women’s ways of knowing, doing and being.

In the remote Kimberley region of Western Australia, the Marninwarrtikura Women’s Centre in Fitzroy Crossing is a healing centre developed and led by local Aboriginal women to heal their women. Marninwarrtikura (2019b) is a Walmajarri word that means “women who belong to this region, these countries and each other, have come together”. Marninwarrtikura Women’s Centre supports Fitzroy Valley women and their families by encouraging safety and well-being, fostering leadership and financial independence. It provides activities, mentoring, support, advocacy and access to culturally sensitive and respectful services (2019a). It offers a place for women to share their experience and stories. The Aboriginal women running the centre have firsthand stories and knowledges relating to Aboriginal women’s experience (Blagg et al., 2018). These women are in a position in which they can respond appropriately and effectively to support and empower Aboriginal women within the community, as opposed to non-Aboriginal institutions that regard Aboriginal communities and culture as a problem (Aboriginal and Torres Strait Islander Social Justice Commissioner, 2011; Blagg, 2006).

In Sydney’s inner-city urban setting, Mudgin-Gal (meaning “Women’s Place”) is an Aboriginal organisation “run by Aboriginal women, for Aboriginal women” (Mudgin-Gal, circa 2011, p. 2). It “offers a safe haven and active support for women, girls and their families through services” that are, according to its website (The Redfern Foundation, 2019) and Thalia Anthony’s experiences working with Mudgin-Gal, uniquely “peer to peer”. It provides mentoring, support for homeless Indigenous women and women experiencing family violence, and programmes to empower Aboriginal women and girls to become role models for their own

528 children, families and communities. Co-located with Mudgin-Gal is the
529 Sydney group of Grandmothers Against Removal (GMAR). This group
530 is concerned with supporting Aboriginal mothers and grandmothers
531 whose children and grandchildren (“grannies”) are in the child protection
532 system. It runs workshops, clinics and outreach to strengthen parents in
533 their fight to have their children returned to them (Anthony, 2016, p. 26;
534 Sherwood, 2015).

535 The importance of Indigenous healing programmes has been shown in
536 the Aboriginal Girls Circle project, which was conducted in Dubbo,
537 NSW (NAPCAN, 2014). The local community was provided with a
538 platform to control the process, including through the leadership of local
539 Elders. As a result, Indigenous culture, knowledge and values were at the
540 core of the programme (NAPCAN, 2014). By centring culture in healing
541 programmes, young Aboriginal women felt empowered in their capacity
542 to honour their connections and this, consequently, increased their self-
543 esteem, improved their well-being and developed cultural identity and
544 security (NAPCAN, 2014).

545 Black, Federico, and Bamblett (2019) recently conducted interviews
546 on two cultural healing programmes run by the Victorian Aboriginal
547 Child Care Agency (VACCA), an Aboriginal Community Controlled
548 Organisation. They interviewed six survivors of institutional sexual abuse
549 participating in the Wurundjeri Women’s Healing Programme and 11
550 survivors participating in the Dja Dja Wurrong Women’s Cultural
551 Healing Gathering, as well as interviews with seven programme facilita-
552 tors. They found that women being able to share their stories and con-
553 necting was a strong indicator of improved well-being. For example, one
554 facilitator spoke about the survivor she saw as having made the most
555 significant changes since attending the programme. This woman was ini-
556 tially reluctant to talk about her story, but since participating in the pro-
557 gramme with other women who had had similar experiences, “she
558 connected with these women and was able to share her story, which
559 helped her process her pain and trauma” (2019, p. 1074).

560 Across the above-mentioned programmes, there is a self-determining,
561 strengths-based and holistic approach to healing for Indigenous women.
562 They support the strengths, resilience and resistance that exist within
563 community and within Indigenous women. As Black et al. (2019) noted:

“Cultural healing works, it returns what was taken; this is healing. 564
 Strengthening and practicing culture is itself healing. Cultural healing is 565
 based on thousands of years of wisdom and the potential power of cul- 566
 tural healing needs to be acknowledged and amplified” (p. 1077). 567

Conclusion: Not Seeing the Forest 568 for the Trees/Not Seeing the Structural 569 Oppression of Trauma 570

In this chapter, we have argued for a shift from *pathologies and discourses* 571
of trauma, which are embedded in the criminal justice system, to *acknowl-* 572
edgments of inter-generational colonisation and suffering, which are adopted 573
 by Indigenous women’s healing organisations. As a recolonising project 574
 however, “trauma” becomes a vehicle for focusing on the shortcomings of 575
 individual Indigenous women and justifying further institutionalisation 576
 (see Coates & Wade, 2007). It obscures the wrongs created by the 577
 colonial-carceral system in the collective lives of Indigenous women. In 578
 addition, “trauma” can become a deficit discourse that highlights inferior- 579
 ity, dysfunctionality and risk of Indigenous women. It has the effect of 580
 isolating Indigenous women from, rather than connecting them to, their 581
 strengths. 582

Through Indigenous-owned healing programmes, “relationality” with 583
 culture, country and community is nurtured (Moreton-Robinson, 2000). 584
 This is an anathema to criminal justice interventions that foster exclu- 585
 sion. Cox (2017) explained that imprisonment removes Aboriginal 586
 women from “their support mechanisms and their cultural obligations” 587
 and creates “a revolving door for Aboriginal women in the justice system” 588
 (p. 1). Whereas the criminal justice system undermines dignity and 589
 emphasises Indigenous women’s risks, Indigenous women’s healing 590
 organisations and programmes focus on Indigenous women’s “human 591
 dignity and resistance” in the face of demeaning, humiliating and oppres- 592
 sive circumstances (Richardson & Wade, 2010, pp. 137–138). 593

While in prison, Yuin woman and member of the Stolen Generations, 594
 Vickie Roach (2008) wrote: “Real justice would be fair and ultimately 595

596 seek to heal rather than punish” (p. 4). She later noted that the current
597 system “punishes Aboriginal and Torres Strait Islander women for actions
598 that are the consequence of failed child removal and forced assimilation
599 policies” (Roach, 2016, p. 3). The dissipation of such policies is a crucial
600 feature of healing, alongside utilising Indigenous women’s knowledges
601 and resources to lead responses to oppression and injustice. In the words
602 of Cox et al. (2009), healing enables Indigenous people to “govern their
603 own path of healing, to deal with past injustices, such as colonisation and
604 its effects, in order to move into a future, which will sustain their liveli-
605 hood and foster a just society” (p. 151; see also Black et al., 2019).

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Author Queries

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Queries	Details Required	Author's Response
AU1	Please check the affiliation details of the authors and amend if necessary.	
AU3	The citation "Dudgeon and Walker (2016)" has been changed to "Dudgeon and Walker (2015)" to match the author name/date in the reference list. Please check if the change is fine in this occurrence.	
AU4	The citation "Anthony, Bartels & Hopkins, 2013" has been changed to "Anthony, Bartels, & Hopkins, 2015" to match the author name/date in the reference list. Please check if the change is fine in this occurrence.	