

Trauma Informed Practice: WORKING WITH COMMUNITIES AFFECTED BY INTERGENERATIONAL TRAUMA AND MANAGING VICARIOUS TRAUMA

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Appreciating and understanding the traumatising effects of native legal processes and the ongoing effects of ongoing intergenerational trauma upon Aboriginal and Torres Strait Islander communities is part of 'trauma informed practice' in Indigenous Peoples and the Law. For many Aboriginal and Torres Strait Islander communities of native title holders, the significant pressure to produce evidence of connection as part of the requirements in native title¹ compounds the effect of intergenerational trauma.

It is now well known that between 1930 to 1960 Australia wide, governments adopted assimilation policies for Aboriginal peoples. These policies were designed to achieve the ultimate biological assimilation into white Australia.² Or as Professor Irene Watson has correctly described it: 'A time when crimes of genocide were made lawful by the Aborigines Acts.'³ To require communities of native title holders to demonstrate connection to their lands and waters, language and culture and 'prove' their native title without sufficient consideration of the impact of historical attempted genocide represents a form of ongoing trauma.

colonialism and the legal system

It is important to examine the role of law in the emergence of race in the native title context⁴ because law has been the channel through which racist policies have been argued and enforced by successive governments. 'Race

policies and philosophies mean little unless acted upon. Law has become the vehicle used to give policy credibility and political-social legitimacy. Policy becomes enshrined, achieving a kind of holy-writness, suggesting that the law has magical qualities beyond those of the men who enacted it.'⁵

Professor Watson has argued that the entire system of native title is fundamentally inadequate because it refuses to address the issue of Indigenous rights to land and the issue of sovereignty.⁶ Invasion was accompanied by an entrenched belief at the time that non-white people were inferior to a white person,⁷ which underpins the false conception of white supremacy. So much so that the first major legislative acts in the colony were focused on implementing the White Australia Policy.⁸

In Australia this dominant colonial ideology continues to make the oppression of Indigenous peoples seem normal.⁹ These racialised fears are heightened by the native title process to and undermine the land justice aspirations of Indigenous Peoples.¹⁰ As a result there is the impression that once racist policy becomes law it is extremely difficult to mount a successful challenge to such law. To revoke such racist laws enacted by parliament is a lengthy and difficult process, requiring many years of lobbying, and goodwill on the part of parliamentarians.¹¹ Repealing such laws is less likely to occur in a colonial legal system such as Australia where 'there is significant reluctance to disturb the colonial inheritance of 200

years of denial of the rights of Indigenous peoples'.¹²

critical Race Theory and Intergenerational Trauma

It is important to remember the racialised context of native title law and the direct impact of institutionalised racism of Aboriginal and Torres Strait Islander people's rights before the law and in terms of their experiences with the legal system.¹³ Critical Race Theory (CRT) explores the emergence of the nature of racial privilege.¹⁴ In Australia the development of CRT has been evolving since colonialism, now considered Indigenous Critical Race Theory.¹⁵ It has been pioneered in the writing of scholars such as Professor Irene Watson and distinguished Professor Aileen Moreton-Robinson.¹⁶ The increasing impact of critical race theory in both the theoretical study of law (jurisprudence) and in broader terms, is of direct relevance to the lived experiences of Aboriginal and Torres Strait Islander communities in both a historical and contemporary setting.

The intergenerational trauma experienced by Aboriginal and Torres Strait Islander communities is connected to institutionalised racism and colonisation.¹⁷ As a result of colonisation: Indigenous peoples have endured multiple forms of oppression and violence: attempted cultural genocide; legislated control of Indigenous identity and colonisation based upon economic social and political disadvantage, which continues to disproportionately affect Indigenous peoples.¹⁸



The historical and contemporary context of invasion and child removal overlap current experiences of grief and loss for Aboriginal and Torres Strait Islander communities. It is estimated that between 1 in 10 and 1 in 3 Indigenous children were taken from their families between 1910 and 1972-affecting most Aboriginal and Torres Strait Islander communities in Australia.¹⁹ Today, Aboriginal children and young people grow up in chronic states of grief and loss. The loss of one person is an experience of grief to many people.²⁰ When looking at viable kinship systems, this loss of one person and the grief of many is softened largely by the kinship system alongside ceremony, knowledge-rich traditions and protocol that involve everyone in some way.²¹ As Ambelin Kwaymullina writes: 'In the wake of colonialism, the damaged and broken connections between people and country mean that we can struggle to see our world and ourselves clearly.'²²

Barker reflects on the experience of Indigenous Peoples in North America:

Many Native Americans and current day anthropologists believe that historical trauma, or soul wounding, among Native Americans resulted from colonialism, acculturative stress, cultural bereavement, racism, and genocide that has been generalized, internalized and institutionalized...such trauma is cumulative, unresolved, historic and ongoing. While historical trauma has just begun to be accepted by mainstream psychologists, researchers have embraced the concept of historical trauma for the last several years in an attempt to explain the heightened risk of depression, traumatic stress, alcohol abuse, child maltreatment, and domestic violence that exists in Native American communities. To understand this soul wounding, one must understand the history of the Native American people.²³



Managing Vicarious Trauma and Trauma Informed Practice

Vicarious trauma is described as the negative transformation in the helper (therapist, advisor, lawyer, or other professional) that results from a period of empathic engagement with trauma survivors and their traumatic material, combined with a commitment or responsibility to help them. The greater the exposure to traumatic material, the greater the risk of vicarious trauma. People who work in services to which people with traumatic histories present seeking help, or who work with traumatic material are at particular risk. For professionals working in the native title area, exposure to communities experiencing disadvantage and intergenerational trauma and the traumatic processes involved in the gathering of connection evidence in native title matters makes managing vicarious trauma a matter of priority.²⁴

Looking after personal wellbeing and the wellbeing of clients is interconnected.²⁵ Managing vicarious trauma for community liaison officers, legal advisers and other professionals engaged in the native title space is also a legal obligation of employers to act in the best interest of their employees. The potential exposure to damages for psychological injury is a reasonably foreseeable risk for professional staff engaged with clients who have experienced and continue to experience trauma or traumatic issues.²⁶ Having an effective

vicarious trauma management plan is the responsibility of all service providers in the native title field.

Trauma informed practice is ultimately an ethical responsibility for practitioners working in the area of Indigenous Peoples and the Law. Trauma informed practice is a framework grounded in an understanding of and responsiveness to the impact of trauma that emphasises physical, psychological and emotional safety for everyone and creates an opportunity for survivors to rebuild a sense of control and empowerment. This framework is informed by new knowledge around attachment, development, working with the body, memory and an understanding of self. Frameworks of care and treatment are changing from purely bio-medical or purely psychoanalytical to include the psycho-social or trauma-informed recovery focussed and recovery-oriented approaches.²⁷

Appreciating the methodologies that will promote healing for Aboriginal and Torres Strait Islander communities in accordance with Indigenous epistemologies, knowledge and beliefs, and world views is also a part of trauma informed practice. Consulting and engaging with Aboriginal and Torres Strait Islander communities about the initiatives that promote healing is important²⁸ as is an efficient vicarious trauma management plan for professionals and other staff who work with Indigenous communities experiencing intergenerational trauma.

Further information and resources:

Blue Knot Foundation:

<https://www.blueknot.org.au/>

Dr Tracy Westerman, Indigenous psychology services: <https://indigenoupsychservices.com.au/>

We al-li: <https://wealli.com.au/>

- 1 Palmer, Kingsley *Australian Native Title Anthropology: Strategic Practice, the Law and the State* (ANU Press, Canberra 2018)
- 2 Gordon, Sue 'The effect of early Australian laws on Aboriginal people' in *Indigenous Australians, Social Justice and Legal Reform* (Editors Hossein, E., Worby, G., Tur, S. (Federation Press, Sydney 2016.) p125
- 3 Watson, Irene 'From a Hard Place: Negotiating a Softer Terrain' in *Indigenous Australians, Social Justice and Legal Reform* (Editors Hossein, E., Worby, G., Tur, S. (Federation Press, Sydney 2016.) p120. See also Watson, Irene, key note address to the National Indigenous Legal Conference: 'Aboriginal Peoples: our laws have always been here!' University of Western Australia, 26 September 2018.
- 4 Watson, I. *Buried Alive* (2002) 13 *Law and Critique* 253; Watson, I. *From a Hard Place: Negotiating Softer Terrain* (2004) (7)(2) *Flinders Journal of Law Reform* 205
- 5 Colin Tatz, 'Racism, Responsibility and Reparation: South Africa, Germany and Australia' (1985) 31(1) *Australian Journal of Politics and History* 162, 165 cited in Bielefeld, S. *The dehumanising violence of racism the role of law* (D Phil thesis, Southern Cross University, 2010) available at: <https://epubs.scu.edu.au/cgi/viewcontent.cgi?article=1174&context=theses> 12
- 6 Watson, I. *Buried Alive* (2002) 13 *Law and Critique* 253, 257.
- 7 Bielefeld, S. *The dehumanising violence of racism the role of law* (D Phil thesis, Southern Cross University, 2010) available at: <https://epubs.scu.edu.au/cgi/viewcontent.cgi?article=1174&context=theses>
- 8 Ibid. 46- as cited in Bielefeld, S. *The dehumanising violence of racism the role of law* (D Phil thesis, Southern Cross University, 2010) available at: <https://epubs.scu.edu.au/cgi/viewcontent.cgi?article=1174&context=theses> 287
- 9 Bielefeld, S. *The dehumanising violence of racism the role of law* (D Phil thesis, Southern Cross University, 2010) available at: <https://epubs.scu.edu.au/cgi/viewcontent.cgi?article=1174&context=theses> 9
- 10 Watson, I. *Law and Indigenous Peoples: the impact of colonialism on Indigenous cultures'* (1996) 14(1) *Law in Context* 107, 108.
- 11 Bielefeld, S. *The dehumanising violence of racism the role of law* (D Phil thesis, Southern Cross University, 2010) available at: <https://epubs.scu.edu.au/cgi/viewcontent.cgi?article=1174&context=theses> 12
- 12 Strelein, L, *Compromised Jurisprudence – Native Title cases since Mabo* (AIATSIS Research Publications, Canberra, 2006) 1
- 13 Moreton-Robinson, A. *Witnessing the Workings of White Possession in the Workplace: Leesa's Testimony* (2007) 26 *Australian Feminist Law Journal* 81, 82.
- 14 Delgado, R. and Stefancic, J. *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?* in Delgado and Stefancic (eds), *Critical Race Theory – The Cutting Edge* (2nd ed, 2000) 232
- 15 Bielefeld, S. *The dehumanising violence of racism the role of law* (D Phil thesis, Southern Cross University, 2010) available at: <https://epubs.scu.edu.au/cgi/viewcontent.cgi?article=1174&context=theses> 44
- 16 See for example: Watson, I. *Settled and Unsettled Spaces: Are We free to Roam* (2005) 1(1) *Australian Critical Race and Whiteness Studies Association Journal* 40; Watson, I. *De-Colonisation and Aboriginal Peoples: Past and Future Strategies'* (2007) 26 *The Australian Feminist Law Journal* 111; Moreton-Robinson, A. *The House that Jack Built: Britishness and White Possession* (2005) 1 *Australian Critical Race and Whiteness Studies Association Journal* 21, 21–22
- 17 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) 271–275; See also Australian Institute of Health and Welfare *Aboriginal and Torres Strait Islander Stolen Generations and Descendants; Numbers demographics characteristics and deselected outcomes* (2018), report available at: <https://www.aihw.gov.au/getmedia/a6c077c3-e1af-40de-847f-e8a3e3456c44/aihw-ihw-195.pdf.aspx?inline=true>
- 18 Bourassa, C., McKay-McNabb, Kim, Hampton, Mary 'Racism Sexism and Colonialism: The impact on the health of Aboriginal women in Canada' *Canadian Woman Studies*, Volume 24 (1)23: 27. See also *Manado [on behalf of the Bindunbur Native Title Claim Group] v State of Western Australia* [2017] FCA 1367 at [192]- [193]
- 19 <http://healingfoundation.org.au/stolen-generations/>
- 20 (2018) Australian Institute of Health and Welfare *Aboriginal and Torres Strait Islander Stolen Generations and descendants: numbers demographic characteristics and selected outcomes:* <http://healingfoundation.org.au/app/uploads/2019/02/Coping-with-the-Impacts-of-Trauma-Brochure.-Aer.-WEB.pdf>
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- 22 Kwaymullina, Ambelin 'The Creators of the future: Women Law and Telling Stories in Country' in *Us Women Our Ways Our World* (Magabala Books, Broome 2017) 102
- 23 Barker, T *The Psychological Impact of historical Trauma on the Native American People* (2013.) Regis University EPublications available at: <https://epublications.regis.edu/cgi/viewcontent.cgi?article=1218&context=theses> p20
- 24 In light of the recent decision of the High Court of Australia in *Northern Territory v Mr A. Griffiths (deceased) and Lorraine Jones on behalf of the Ngaliwurru and Nungali Peoples* [2019] HCA 7: the process of making applications for compensation for loss or extinguishment of native title will also involve examining what has been lost or extinguished in the native title context. 'In addition, the emerging international literature on indigenous health and wellbeing and intergenerational trauma may also yield concepts, language and other research that will aid in the task of assessing some of the deeper cumulative consequences of loss of connection to country'-See McGrath, Pam *Native Title Anthropology after the Timber Creek decision*, AIATSIS Issues Paper (2017) available at: https://aiatsis.gov.au/sites/default/files/products/issues_paper/native_title_anthropology_after_the_timber_creek_decision.pdf
- 25 See Healing Foundation: Coping with the impacts of trauma: <http://healingfoundation.org.au/app/uploads/2019/02/Coping-with-the-Impacts-of-Trauma-Brochure.-Aer.-WEB.pdf>
- 26 In the recent Victorian County Court decision of *YZ v The Age Company Limited* [2018] VCC 148 a former *Age* crime and courts reporter won \$180,000 in damages from the newspaper in a world-first court settlement after suffering psychological injuries from covering some of Victoria's most serious and gruesome crimes. The Victorian County Court judgment found that *The Age* failed in its duty of care for the journalist as she was repeatedly exposed to trauma and increasingly showing signs of psychological injury.
- 27 See Blue knot Foundation: Trauma Informed Practice <https://www.blueknot.org.au/Workers-Practitioners/For-Health-Professionals/Resources-for-Health-Professionals/Trauma-Informed-Care-and-practice>
- 28 Atkinson, J Nelson, J Brooks, R Atkinson, C Ryan K *Working Together Addressing Individual and Community Transgenerational Trauma* (2010)