Aboriginal and Torres Strait Islander children and child sexual abuse in institutional contexts

Report for the Royal Commission into Institutional Responses to Child Sexual Abuse

CONTENT WARNING:

This report contains material readers may find distressing. It contains information about sexual abuse and other forms of violence committed against Aboriginal and Torres Strait Islander peoples.

Preface

On Friday, 11 January 2013, the Governor-General appointed a six-member Royal Commission to inquire into how institutions with a responsibility for children have managed and responded to allegations and instances of child sexual abuse.

The Royal Commission into Institutional Responses to Child Sexual Abuse is tasked with investigating where systems have failed to protect children, and making recommendations on how to improve laws, policies and practices to prevent and better respond to child sexual abuse in institutions.

The Royal Commission has developed a comprehensive research program to support its work and to inform its findings and recommendations. The program focuses on eight themes:

1. Why does child sexual abuse occur in institutions?
2. How can child sexual abuse in institutions be prevented?
3. How can child sexual abuse be better identified?
4. How should institutions respond where child sexual abuse has occurred?
5. How should government and statutory authorities respond?
6. What are the treatment and support needs of victim/survivors and their families?
7. What is the history of particular institutions of interest?
8. How do we ensure the Royal Commission has a positive impact?

This research report falls within theme 1.

The research program means the Royal Commission can:

- obtain relevant background information
- fill key evidence gaps
- explore what is known and what works
- develop recommendations that are informed by evidence, can be implemented and respond to contemporary issues.

For more on this program, please visit www.childabuseroyalcommission.gov.au/research

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Introduction

> Hearing, understanding, and incorporating Aboriginal history into the psyche of all Australians is a painful, emotionally provocative but necessary process if we are to prepare the way for future generations to live in a society of acceptance, understanding and harmony with one another.
>
> Professor Helen Milroy (in Zubrick et al, 2005: xvi)

The Royal Commission into Institutional Responses to Child Sexual Abuse commissioned the Telethon Kids Institute to collaborate on a report examining the question of Aboriginal and Torres Strait Islander children's past and contemporary vulnerability to child sexual abuse in institutional contexts. The research team was guided and supported by the advisory group and the Royal Commission's Aboriginal Knowledge Circle. Both groups have made a substantial contribution to the ideas presented in this report.

The report addresses the following questions developed by the Royal Commission and advisory group:

- In the past, were Aboriginal and Torres Strait Islander children at risk of sexual abuse in institutions?
- What have been the impacts of past racist legislation, policies and practices on the wellbeing of Aboriginal and Torres Strait Islander peoples, and in turn the risk of Aboriginal and Torres Strait Islander children being placed in contemporary institutions?
- In the present day, are Aboriginal and Torres Strait Islander children at risk of sexual abuse in institutions?

Methodology

This research draws on multiple sources of evidence. The research team drew on the substantial expertise, knowledge and experience of the advisory group. The research team and advisory group worked together in an iterative process of reviewing material and filling gaps in existing evidence. While the research team could only draw on material that has been documented and evidenced, they acknowledge that there is much evidence that is oral and much work needed to be done to overcome the inherent bias in the kinds of accounts that make up the historical evidence base. Both the advisory group and the Aboriginal Knowledge Circle provided cultural governance over this project and were also critical in contributing their knowledge of oral histories so that the researchers could go back and look for documented evidence of events.

The research team also reviewed national and state inquiries that addressed, in whole or part, the past and present vulnerability of Aboriginal and Torres Strait Islander children to physical, emotional and sexual abuse.

These inquiries included:

National inquiries

- Human Rights and Equal Opportunity Commission (1997)*, Bringing them home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, Australia.
- Senate Community Affairs References Committee (2001), *Lost Innocents: Righting the Record, Report on Child Migration*, Australia.
- Senate Community Affairs References Committee (2004), *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*, Australia.
- Senate Community Affairs References Committee (2012)*, Commonwealth Contribution to Former Forced Adoption Policies and Practices*, Australia.

State inquiries

- Forde, L, Thomason, J, & Heilpern, H (1999) *Commission of Inquiry into Abuse of Children in Queensland Institutions,* Queensland.
- Gordon, S., Hallahan, K., & Darrell, H. (2002) *Putting the picture together: Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, Western Australia.
- Tasmanian Ombudsman (2004) *Listen to the children: Review of claims of abuse from adults in State care as children*, Tasmania.
- Aboriginal Child Sexual Assault Taskforce (2006) *Breaking the Silence, Creating the Future: Addressing child sexual assault in Aboriginal communities in NSW*, New South Wales.
- Wild, R and Anderson, P (2007) *Ampe Akelyernemane Meke Mekarle "Little Children are Sacred"*, Northern Territory.
- Mullighan, E (2008) *Children on Anangu Pitjantjatjara Yankunytjatjara (APY) Lands: Commission of Inquiry: A Report into Sexual Abuse*, South Australia.
- Wood, J (2008), *Special Commission of Inquiry into Child Protection Services in NSW*, New South Wales.
- Mullighan, E (2008) *Children in State Care Commission of Inquiry: Allegations of sexual abuse and death from criminal conduct*, South Australia.
- Carmody, C (2013) *Queensland Child Protection Commission of Inquiry*, Queensland.
- Family and Community Development Committee (2013), *Betrayal of Trust, Inquiry into the handling of child abuse by religious and other non-government organisations*, Victoria.
- Victorian Commission for Children and Young People (2015) *"…as a good parent would…" Inquiry into the adequacy of the provision of residential care services to Victorian children and young people who have been subject to sexual abuse or sexual exploitation whilst residing in residential care*, Victoria.
- Nyland, M (2016) *Child Protection Systems Royal Commission Report*: *The life they deserve*, Government of South Australia.

The research team supplemented the findings of these inquiries with information from a range of other sources, including a narrative literature review of:

- past legislation, policies and practices affecting Aboriginal and Torres Strait Islander populations
- collective and intergenerational trauma, including evidence from a large-scale epidemiological survey on Aboriginal and Torres Strait Islander wellbeing
- contemporary child protection policies and practices.

Approach

The authors applied a critical cultural perspective to the research questions to explore a broad view of culture and its power relations across historical and contemporary settings. This approach allowed the authors to examine colonisation as a distinct cultural process that has significantly altered the lives of Aboriginal and Torres Strait Islander peoples (Durie, 2004; Morrissey, Pe-Pua, Brown & Latif, 2007; Rigney, 2001; Smith, 1999). Amidst the growing body of research into cultural and community perceptions of child sexual abuse, the influence of dominant cultural paradigms and the colonial process has not been sufficiently considered (Sherwood, 2009, 2013; Sherwood & Edwards, 2006). In line with Michael Morrissey (2007) and colleagues' notes on culture as a social process, the significance of power relations and structural factors that may contribute to the increased vulnerability of children to sexual abuse in institutional contexts needs to be addressed. In light of this, the authors analysed how policies and practices are often shaped by dominant cultural world views, such as those of white Australia, and how this can have negative consequences for other cultural groups such as Aboriginal and Torres Strait Islander peoples (Morrissey et al., 2007; Rigney, 2001; Smith, 1999; Wright & O'Connell, 2015).

The authors acknowledge that institutional settings are part of a larger sociocultural system that defines the ways institutions are structured and resourced to meet the real and perceived needs for which they were established. These processes may also contribute to the heightened vulnerability of Aboriginal and Torres Strait Islander children to sexual abuse in institutional contexts, evident in factors such as targeting and silencing, barriers to disclosure, exploitative factors used by perpetrators, and, more broadly, the over-representation of Aboriginal and Torres Strait Islander children in institutional care (AIHW, 2016a; Tilbury, 2009).

The authors of this report undertook this analysis in light of the historical experiences of Aboriginal and Torres Strait Islander children forcibly removed from their families, and the resulting intergenerational trauma. This phenomenon has been explained by a significant body of research undertaken nationally and internationally by researchers such as Judy Atkinson (2002), Hannah McGlade (2012), Helen Milroy (2014) and Cindy Blackstock (2007). Scholars have successfully mapped the link between colonisation and ongoing trauma experienced across multiple generations of family members that contributes to the ongoing disadvantage and poverty, and in some cases community-level dysfunction, experienced by Aboriginal and Torres Strait Islander peoples (see also De Maio et al., 2005; Kelly et al., 2009; Milroy, 2014; Sherwood, 2013; Zubrick et al., 2010).

Finally, the authors drew on research about both risk and protective factors for child sexual abuse. The literature identifies strong cultural connection and a positive sense of Aboriginal or Torres Strait Islander identity as potential protective factors against child sexual abuse in institutional contexts.

This kind of research, which has been framed by Aboriginal world views, prompts reconsideration of the factors that impact Aboriginal peoples around the world (Durie, 2004; Nakata, 2007; Rigney, 2001; Smith, 1999). In Australia, Aboriginal and Torres Strait Islander researchers have suggested that developing a deeper understanding of the cultural determinants of the social and emotional health and wellbeing of Aboriginal and Torres Strait Islander families presents an opportunity to create a well-integrated systematic framework for the care and protection of Aboriginal children (Atkinson, 2002; Milroy, 2014; VACCA, 2015). Such a framework, first and foremost, values Aboriginal and Torres Strait Islander world views, bringing these together with non-Aboriginal world views to develop different ways of protecting children, while at the same time retaining the unique strengths of Aboriginal and Torres Strait Islander cultures.

Structure

The paper is divided into three parts. Part 1 examines whether Aboriginal and Torres Strait Islander children were vulnerable to child sexual abuse in institutional settings in the past. It theorises that since colonisation, there were particular dimensions of the experience of Aboriginal and Torres Strait Islander children that, first, increased their vulnerability to being in high-risk institutions and, second, increased their vulnerability to being sexually abused while in those institutions. Part 2 briefly outlines some of the documented impacts of past policies and practices on Aboriginal and Torres Strait Islander peoples. It provides important background linking past experiences of Aboriginal and Torres Strait Islander peoples with contemporary experiences. Part 3 examines contemporary institutional settings and theorises that there are particular risk and protective factors for child sexual abuse for Aboriginal and Torres Strait Islander children in these contexts. The conclusion and discussion section highlights some of the key implications of the research and areas in need of further research.

Part 1: Historical residential institutions and vulnerability to child sexual abuse

All children were vulnerable to sexual abuse in historical residential institutions

In the past, thousands of children in Australia grew up in residential institutions that had a particularly high level of risk of child sexual abuse (Parkinson and Cashmore, 2017: 6). Children were placed in orphanages, missions, hostels, boarding houses, reformatory schools, group homes, work placements, foster homes and adoptive families where their wellbeing was entrusted to both government and non-government institutions.

While it is acknowledged that the risk of a child being sexually abused in an historical residential institution was particularly high, it is difficult to determine exactly how many of these children experienced sexual abuse while in institutions. When allegations of sexual abuse were made, official records were rarely created or retained (Musgrove, 2013: 130). If a child reported abuse, institutions frequently refused to believe the child or consciously turned a blind eye to the mistreatment occurring under their supervision (Human Rights and Equal Opportunity Commission, 1997: 140–45). The persistent failure of authorities to act on allegations of abuse undoubtedly empowered some perpetrators and discouraged other children from disclosing mistreatment at the time.

Recent research has helped us theorise about the nature of historical residential institutions and the characteristics that contributed to the risks of child sexual abuse in these contexts (Parkinson & Cashmore, 2017; Kaufman & Erooga, 2016). For example, Kaufman and Erooga's research indicates that children are vulnerable to abuse in situations where potential perpetrators have 'access to, privacy with and authority over children' (2016: 9). In this way, historical residential institutions were likely to present particularly high situational risk and institutional risks[1] for child sexual abuse because potential perpetrators had virtually unfettered access to children and were mostly unsupervised, and the leadership and governance of the institutions operated within a social and political context in which children had few rights.

Over the last two decades, the growing public awareness of harms done to children in residential institutions has prompted three state and four national inquiries.[2] Seven inquiries confirmed that in the past, the sexual abuse of children in residential institutions was 'widespread' and not confined to

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[1] According to Parkinson and Cashmore in their typology of risk for child sexual abuse, 'situational risk' arises from the opportunities for abuse that the environment offers. Vulnerability risk arises from the characteristics of children in the institution and 'institutional risk' stems from the characteristics of an institution that may make abuse more likely to occur or less likely to be dealt with properly if disclosed (2017: 7).

[2] *Commission of Inquiry into Abuse of Children in Queensland Institutions* (Forde, 1999), *Listen to the Children* (Tasmanian Ombudsman, 2004)*, Children in State Care Commission of Inquiry* (Mullighan, 2008), *Bringing them home* (Human Rights and Equal Opportunity Commission, 1997), *Lost Innocents* (Senate Community Affairs References Committee, 2001)*, Forgotten Australians* (Senate Community Affairs References Committee, 2004), and *Commonwealth Contribution to Former Forced Adoption Policies and Practices* (Senate Community Affairs References Committee, 2012)*.

a particular type of institution.[3] In each inquiry, findings about sexual abuse were based on the testimony of participants who came forward and felt able to disclose their experiences. This is likely to be an under-estimate of the numbers, since not all inquiries specifically asked about sexual abuse, and even when asked, there are many reasons why participants may not disclose. Despite these limitations, the high proportions of participants who did report experiences of child sexual abuse indicates that it was a significant problem.

The percentages of participants in previous inquiries who reported abuse are:

- *Bringing them home* – 17 per cent for females, 7.7 per cent for males
- *Lost Innocents* – 18.4 per cent
- *Forgotten Australians* – 20.9 per cent
- *Listen to the Children* – 62 per cent.[4]

Although the inquiries into Queensland institutions (Forde et al, 1999: iv), State care in South Australia (Mullighan, 2008: xii–xiv) and forced adoptees (Senate Community Affairs References Committee, 2012: 72–3) did not provide overall statistics on allegations of sexual abuse, they noted it was a significant issue that affected many of the participants who provided testimonies.

While the work of the current Royal Commission is ongoing, when this is complete, it is likely that our knowledge of the nature and extent of abuse in the past will be improved.

Aboriginal and Torres Strait Islander children faced heightened vulnerability to sexual abuse in historical residential institutions

We cannot know the full extent to which Aboriginal and Torres Strait Islander children experienced sexual abuse in institutional contexts in the past because there is no comprehensive data. Few systematic records of allegations were kept, and some existing records were destroyed (Human Rights and Equal Opportunity Commission, 1997). *Bringing them home* does, however, provide evidence that Aboriginal and Torres Strait Islander children experienced widespread sexual as well as physical, emotional and cultural abuse in residential institutions (Human Rights and Equal Opportunity Commission, 1997).

While previous inquiries have shown that all children were vulnerable to sexual abuse in residential institutions, it is likely that Aboriginal and Torres Strait Islander children faced additional vulnerabilities to child sexual abuse, relative to non-Aboriginal children. As *Bringing them home* found:

> Institutionalised Indigenous children faced a hazard over and above that experienced by institutionalised non-Indigenous children. This was the continual denigration of their Aboriginality and that of their families. (Human Rights and Equal Opportunity Commission 1997: 200)

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[3] (Forde, 1999: iv; Human Rights and Equal Opportunity Commission, 1997: 140; Mullighan, 2008: xii-xiv; Senate Community Affairs References Committee, 2001: 4, 131; Senate Community Affairs References Committee, 2012: 72-73; Tasmanian Ombudsman, 2004: 25-28)

[4] Human Rights and Equal Opportunity Commission, 1997: 25-28*; Senate Community Affairs References Committee,* 2001: 76; Senate Community Affairs References Committee, 2004: 410; Tasmanian Ombudsman, 2004.

But why did Aboriginal and Torres Strait Islander children face additional vulnerabilities in institutions? First, racially discriminatory policies of 'protectionism' and later assimilation led to fair-skinned Aboriginal and Torres Strait Islander children being institutionalised to a much great extent than non-Aboriginal children. Second, the broader social context of the time – of which 'protectionism' and assimilation were just one part – is likely to have contributed to greater vulnerability for Aboriginal and Torres Strait Islander children experiencing child sexual abuse while in these institutions.

Social context

This section will outline the social attitudes, policies and practices that contributed to the heightened vulnerability Aboriginal and Torres Strait Islander children faced in historical institutional settings.

From the earliest days of colonisation, the humanity of Aboriginal and Torres Strait Islander peoples was actively debated in white society. Aboriginal and Torres Strait Islander peoples were subject to violence, exploitation and a range of discriminatory attitudes, legislation, policies and practices 'on the grounds of presumed racial superiority' of colonisers (McCorquodale, 1986: 8). For example, human habitation of Australia was ignored in the doctrine of *terra nullius*. There are accounts of strychnine being used to poison Aboriginal people (Evans, 2003, in Muller, 2014: 38) and suggestions that venereal diseases were deliberately spread (Rose, 2004: 111; see also Elder, 2003: 259).[5] In many places, Aboriginal and Torres Strait Islander peoples were sexually exploited (McGlade, 2012; Rose, 2004; Atkinson, 2002) and massacred (see Human Rights and Equal Opportunity Commission, 1997: 101; Elder, 2003; Carter & Nutter, 2006; Green, 1984: 120; Menzies & McNamara, 2008: 39), in some areas such as Bathurst and Van Dieman's land (modern day Tasmania), Governors declared martial law and authorized soldiers to shoot Aboriginal people on sight, and their children were taken for their labour (Human Rights and Equal Opportunity Commission, 1997: 27). This high level of violence was sanctioned by a lack of consequences for white people who committed violence against Aboriginal and Torres Strait Islander peoples. As Beresford and Omaji (1998) found:

> Events from the nineteenth century showed that white men who murdered Aborigines were rarely tried; if tried, rarely convicted; and if convicted, rarely punished. In other words, Aborigines were regarded as legal nonentities, denied the legal rights which white society otherwise thought belonged to all humans.

In the Australian Constitution, from Federation in 1901 to the 1967 Referendum, Aboriginal and Torres Strait Islander peoples were not included in the census – the official count of humans (McCorquodale, 1986: 9). Official policies were aimed at the 'eradication' of Aboriginal and Torres

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[5] Venereal disease was unknown in Australia prior to colonisation, but after the arrival of white men became one of the leading causes of death among Aboriginal and Torres Strait Islander peoples. As historian Bruce Elder (2003: 263) writes, 'While some venereal disease was obviously transmitted in total ignorance, Mounted Constable Thorpe argued there was a history of conscious transmittal by certain bushmen at the turn of the century:
'A very silly yet general impression exists among some ignorant bushmen that when suffering from gonorrhea all that they need do is to impart the disease to some female, then the severity of such disease upon themselves will be greatly modified, or perhaps totally cured...I have seen poor young gins, mere children between 11 and 14 years of age, suffering from syphilis in all its stages. The old blacks assured me that white men had run them down and ruined them' (Mounted Constable Thorpe, from South Australian Parliamentary Proceedings, 1899 cited in Elder, 2003: 263).

Strait Islander populations and the 'disappearance of the black race'. Alongside policies of 'protectionism', Aboriginal peoples were being massacred across the country (Elder, 2003). Later, the *Bringing them home* inquiry would find the removal of Aboriginal and Torres Strait Islander children from their families 'for the purpose of raising them separately from and ignorant of their culture and people' was consistent with an act of 'genocide as defined by international law' (Human Rights and Equal Opportunity Commission, 1997: 266).[6]

Perpetrators would have been aware of and party to social attitudes that tolerated and sanctioned (in cases of martial law) violence against Aboriginal and Torres Strait Islander peoples, and this would have heightened the risk for all forms of abuse, including the sexual abuse of children. The following sections outline the dominant social attitudes that contributed to this vulnerability.

Racist beliefs about the 'inferiority' of Aboriginal and Torres Strait Islander peoples

The idea that Aboriginal and Torres Strait Islander peoples were 'lower in the human order' (Goddard & Stannage, 1984: 55)[7] has its basis in social Darwinism and eugenics, a popular – albeit unscientific – theory that suggested the possibility and desirability of breeding out the genetic characteristics of a supposedly 'inferior' race (Milroy, 2005: xix). At the height of segregation and 'protectionist'[8] policies it was thought that Aboriginal and Torres Strait Islander peoples would inevitably die out from exposure to a supposedly superior race. As Dr Cecil Cook, Chief Protector Northern Territory, (1927–39) believed:

> Generally by the fifth and invariably by the sixth generation, all native characteristics of the Australian aborigine are eradicated. The problem of our half-castes will quickly be eliminated by the complete disappearance of the black race, and the swift submergence of their progeny in the white … The Australian native is the most easily assimilated race on earth, physically and mentally. (Sydney Sun, 2 April 1933, Human Rights and Equal Opportunity Commission, 1997: 137)

Some missions and reserves were established by humanitarians who sought to 'protect' Aboriginal and Torres Strait Islander peoples from the frontier violence, massacres and sexual violence of the time. Others were established to 'smooth the dying pillow' (George Barton in Yarwood & Knowling, 1982: 44) of what they believed was a race 'doomed to extinction' (Yarwood & Knowling, 1982: 101). For example, an extract from an article 'Can we help the Blacks?' from the *Western Australian Times*, printed on 4 September 1877 states:

> Although the extinction of that wretched people may appear to be inevitable, an unavoidable evil of that sort is not to be contemplated without some mental disquietude. It is impossible to avoid the consciousness that – in consequence perhaps of the extreme

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[6] Genocide has been defined under international law as acts committed with intent to destroy, in whole or part, a national, ethnic, racial or religious group, including the act of forcibly transferring children of the group to another group. It is a crime against humanity as defined in a 1946 United Nations Resolution, and a 1948 United Nations Convention Australia ratified in 1951 (Human Rights and Equal Opportunity Commission, 1997). The *Bringing them home* inquiry agreed with this broad definition of genocide given that: 'When a child was forcibly removed that child's entire community lost, often permanently, its chance to perpetuate itself in that child. The Inquiry has concluded that this was a primary objective of forcible removals and is the reason they amount to genocide.' (Human Rights and Equal Opportunity Commission, 1997: 218)

[7] Prominent pastoralist John Forrest commented that 'there is no doubt' that Aboriginal people are 'lower in the human order' (in Goddard and Stannage, 1984: 55).

[8] As Swain (2014: 17) highlights, legislation sometimes used a language of protection, but its primary purpose was the separation of Aboriginal and Torres Strait Islander children from the influence of their families and culture in order that they be assimilated.

> difficulty of discovering what to do with these creatures to ease their decline – we have done too little. (in Berman, 1984: 40)

By contrast, other missions were explicitly established to break down resistance to settler encroachments on Aboriginal and Torres Strait Islanders' traditional lands. Where Aboriginal or Torres Strait Islander peoples' resistance posed a threat to settler expansion, breaking up families and interfering in the sophisticated systems of social relationships of Aboriginal and Torres Strait Islander nations was done for strategic purposes. For example, throughout the 1880s, attempts to claim land in some areas of Western Australia had failed because Aboriginal people kept driving the white settlers off their country. When Ernest Gribble, a missionary and ex-stockman arrived in Forrest River, Western Australia in 1913 to establish a European settlement, it is reported that to do so he had to 'forcefully contribute to a weakening of Aboriginal culture and resistance' (Fitzgerald, 1984: 19).

> On the mission itself, Gribble divided its members into working parties on the bases of age and gender, separated children from their parents, and organised marriages on non-traditional lines. That is, he did not allow traditional ways of life to continue on the mission, and he substituted a European model for these. (Fitzgerald, 1984: 20)

Whether the rationale was to 'smooth the dying pillow', Christianise Aboriginal and Torres Strait Islander communities or weaken resistance to colonisation, the missions and related institutions were based on ideologies that saw white men as superior and Aboriginal and Torres Strait Islander peoples as less than human.

From the mid 20th century, the theory of eugenics that underpinned 'protectionism' became increasingly unacceptable and this drove a shift toward culturally assimilationist policies. Assimilation still aimed to eradicate Aboriginal and Torres Strait Islander cultures. Assimilation was to be achieved by forcibly separating Aboriginal and Torres Strait Islander children from their families; their traditional lands, over which they had obligations and responsibilities; their Elders, who would teach the history and lore of their people; and all cultural practices. The majority of institutions prohibited the practice of ceremony and language, and inculcated children into European values and Christian religions. During this time, the missions took on an 'expanded role as the inculcation of Christian 'moral values' was seen as a way of promoting assimilation' (Human Rights and Equal Opportunity Commission, 1997: 140)

The teaching of European values to Aboriginal and Torres Strait Islander children fell short of Enlightenment values (Human Rights and Equal Opportunity Commission, 1997: 252). Instead, Aboriginal and Torres Strait Islander children were deprived of their liberty (Human Rights and Equal Opportunity Commission, 1997: 252), trained only in basic skills and forced to provide unpaid labour and domestic service on pastoral properties and in private homes (Walden, 1995; Robinson, 2008).

Patriarchal beliefs about white men's sexual entitlement

Like other colonies around the world, ignorance, racism and expediency led to the widespread mistreatment and exploitation of Aboriginal and Torres Strait Islander peoples in Australia, including the sexual abuse of Aboriginal and Torres Strait Islander women and children (Broome, 2001; Human Rights and Equal Opportunity Commission, 1997:272). As Atkinson notes, 'colonisers came from patriarchal societies' with a culture based on 'hereditary male privilege' (2002: 58–9). In particular, patriarchal attitudes about the entitlement of white men to sex with Aboriginal and Torres Strait

Islander women and children may have also increased the risk for Aboriginal and Torres Strait Islander children in historical institutions.

Drawing on the work of historians such as Heather Goodall and Jackie Huggins, and the 1986 report *Women's Business* by the Aboriginal Women's Taskforce, McGlade has highlighted the high levels of sexual violence perpetrated against Aboriginal and Torres Strait Islander women and children by white men (2012: 40). The overt sexualisation of Aboriginal and Torres Strait Islander women and children in settler accounts, and documented social and legal tolerance of the sexual victimisation of Aboriginal and Torres Strait Islander women and children by white men strongly supports this. For example, the normalisation of the sexual abuse of Aboriginal and Torres Strait Islander women and girls can be seen in the everyday language that white settlers used in Australia to describe these women and girls. These words are not repeated here but have been well documented by Judy Atkinson (2002: 60–1, 227). Rose (2004: 102, also 109, 111) also documents euphemistic accounts by white men of their participation in the gang rape of Aboriginal and Torres Strait Islander women, and Hunt (1984: 47) documents sexual violence by white men against Aboriginal and Torres Strait Islander peoples. Rose wrote of the use of sexual violence among other forms of violence to collectively humiliate and degrade Aboriginal and Torres Strait Islander peoples:

> [white] Men took as of right immature girls (Berndt & Berndt, 1948: 48); they took as of right other men's wives … they paraded their sexual relations with women to the women's fathers, brothers and others who were their protectors within Aboriginal law; they engaged in gang rape, and they beat women and men unmercifully … (Rose, 2004: 109)

There are also accounts that describe the systematic use of Aboriginal and Torres Strait Islander women and girls for the sexual gratification of white pastoralists that points to widespread risk of sexual abuse. For example, according to Bill Harney (1945), a patrol officer for the Northern Territory Native Affairs Branch, on stations in the Victoria River District 'young women were regarded as part of the wages paid to keep [European] men on the stations' (in Rose, 2004: 109). George Bush, 'an important Gascoyne pastoralist and member of the Anglican church' in Western Australia, is quoted in the newspaper of the day as saying:

> I have sent the women off to the white men myself. The probable consequences of such is that the women will be used as the white man wishes. (*Inquirer*, 1 June 1887, in Hunt, 1984: 47)

This kind of predatory behaviour was not confined to the early stages of colonisation but continued well into the 20th century. Nor was it confined to the frontier or remote settlements but often took place in residential institutions under the missions system – such as 'in the homes of "respectable" white people' where Aboriginal and Torres Strait Islander girls were sent to work as domestic servants (McGlade, 2012: 41). For example:

> In 1899, a protectress was appointed to supervise girls sent to work as domestics in and around Brisbane. By 1914, she was supervising 137 Aboriginal girls, 'many of them fresh from leaving school, some as young, even, as ten years of age' (Bleakley 1961: 295). Twenty of these girls were soon returned to their home settlements, including 13 who were pregnant. Archbishop Donaldson, visiting Barambah in 1915, noted that of the girls sent out to service 'over 90% come back pregnant to a white man' (quoted by Kidd 1994: 273). Girls who contracted venereal disease could find themselves labelled 'immoral' and removed yet again as punishment. (Human Rights and Equal Opportunity Commission, 1997: 75)

Sexualisation of Aboriginal and Torres Strait Islander peoples

The colonists not only brought patriarchal attitudes of sexual entitlement and humiliation to Australia. Colonisers' lack of understanding of the strict social norms governing relationships between Aboriginal and Torres Strait Islander peoples was soon filled with racist stereotypes of Aboriginal and Torres Strait Islander peoples' sexuality. For example is was thought that 'long hours and exhausting work' was needed to 'curb the sexual promiscuity attributed to them by non-Indigenous people' (Human Rights and Equal Opportunity Commission, 1997: 31). Colonisers sexualised traditional lifestyles. They misinterpreted nakedness as sexual availability when it had no equivalent meaning within any Aboriginal or Torres Strait Islander culture (Rose, 2004: 101). For example, Constable Willshire, reflects the distorted and ill-informed perceptions about Aboriginal and Torres Strait Islander peoples' promiscuity in his advice to fellow policeman:

> There are those who would be shocked to hear of hundreds of black virgins all nude and in the full tide of youthful enjoyment … but this is how they are in their wild state, free from the vices of civilisation. (Constable Willshire 1896: 7, quoted in Rose, 2004: 101)

This overt sexualisation of Aboriginal and Torres Strait Islander peoples was likely to have contributed to heightened risks for Aboriginal and Torres Strait Islander children. It appears that these attitudes meant Aboriginal and Torres Strait Islander children who reported sexual abuse were more likely to receive a poor response, such as having their allegation dismissed by white officials. For instance, McGlade (2012) has shown that during the 1934 Western Australian Commission into the treatment of Aboriginal people, Commissioner Henry Moseley 'refused to accept' evidence that Aboriginal and Torres Strait Islander women and children were frequently being sexually assaulted by white men. Instead, Moseley implied the issue was Aboriginal and Torres Strait Islander promiscuity and immorality – a common and persistent stereotype connected to the objectification of Aboriginal and Torres Strait Islander women and girls in white Australian culture (McGlade, 2012: 44).

As McGlade notes, the dismissal of serious allegations of violence 'sanctioned the sexual abuse of Aboriginal and Torres Strait Islander women and girls' and therefore allowed abuse to continue unchecked' (2012: 44). In a later example, in New South Wales in the 1940s, a 16-year-old Koorie girl sued her previous employer for sexual assault. Despite the medical evidence confirming she had been raped, the 'Aborigines Protection Board officials to whom the matter was reported' chose not to act and instead 'accused the girl of being a "sexual maniac" who had lived with "dozens of men"' (Human Rights and Equal Opportunity Commission, 1997: 165). McGlade has argued that by failing to prosecute perpetrators of abuse such as this girl's rapist, white officials allowed them to act with impunity (2012: 44).

Racist attitudes about Aboriginal sexuality persisted well into the 20th century, contributing to heightened risks for Aboriginal and Torres Strait Islander women and children relative to non-Aboriginal peoples. For example, in 1980, Justice Gallop of the Northern Territory commented:

> There is evidence before me, which I accept, that rape is not considered as seriously in Aboriginal communities as it is in the white communities … and indeed the chastity of women is not as importantly regarded as in white communities. Apparently the violation of an Aboriginal woman's integrity is not nearly as significant as it is in the white community. (Justice Gallop, quoted in McGlade, 2006)

As well as discouraging disclosure, it is probable this kind of racist stereotyping of Aboriginal sexuality made Aboriginal and Torres Strait Islander children more likely to be targeted by

perpetrators who could exploit the prejudice of officials to avoid punishment. This was likely to have made Aboriginal and Torres Strait Islander children more vulnerable to sexual abuse while in institutions in the past.

'Protectionist' and assimilation policies contributed to the over-representation of Aboriginal and Torres Strait Islander children in institutions

The historical record shows the legislation, policies and practices of 'protection' and assimilation in each jurisdiction led to the systematic removal of Aboriginal and Torres Strait Islander children from their families, making these children more likely to be placed in residential institutions than children from any other population (Haebich, 2000; Human Rights and Equal Opportunity Commission, 1997: 485). Due to the dominant eugenicist ideas of the time, Aboriginal and Torres Strait Islander children with paler skin were at even greater risk of being removed into a residential institution (Human Rights and Equal Opportunity Commission, 1997: 215). Despite the use of the term 'protection', the primary purpose of removing Aboriginal and Torres Strait Islander children from their families and communities was assimilation and genocide rather than protection Human Rights and Equal Opportunity Commission, 1997: 266). This is why these children, removed over multiple generations, are referred to as the Stolen Generations.

Bringing them home concluded that 'between one in three (33 per cent) and one in ten (10 per cent) Aboriginal and Torres Strait Islander children were forcibly removed from their families in the period from approximately 1910 until 1970' (Human Rights and Equal Opportunity Commission, 1997: 37). It is important to note that Aboriginal and Torres Strait Islander children were forcibly removed from their families from the earliest days of colonisation, and these figures do not include those children taken in the lead-up to 1910. To put the scale of removals into perspective, it is important to understand that in some communities, all the children were stolen in a sudden mass trauma. For example, one one day in 1955, all the children of Moola Bulla in the Kimberley were taken away on a truck (Neate, 2012). Parents had 'no idea where their children were being taken' and some chased the truck (Neate, 2012). The children were driven 300 kilometres away to Fitzroy Crossing, with many attempting to escape (Neate, 2012).

In contrast, *Forgotten Australians* (Senate Community Affairs References Committee, 2004) found the national average was significantly less for other children. Although more research is needed, current data suggests the figure was approximately 1 per cent of the population under the age of 15.[9] This evidence confirms that the discriminatory nature of removal laws, policies and practices meant that Aboriginal and Torres Strait Islander children were at a significantly greater risk of being separated from their parents and placed in an institution that failed to adequately protect them from sexual abuse.

Later, under the child welfare legislation, in some jurisdictions a child could be judged neglected and removed from their family into an institution purely on the basis of Aboriginality (Swain, 2014: 7, 87). Unlike general child welfare policies that aimed to protect children from neglect and poor

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[9] It is unclear if this figure includes the Aboriginal and Torres Strait Islander population. For more information see Senate Community Affairs References Committee (2004: 395).

parenting, legislation authorising Aboriginal and Torres Strait Islander child removal was based on the 'fundamental conviction that in order for "savage" children to be "civilized" they needed to be "rescued" from their parents' (Swain, 2002: 133). This belief stemmed from the misconception that Aboriginal and Torres Strait Islander culture could not provide suitable guidance and protection for children. This view resulted in a range of discriminatory policies and practices that severely disadvantaged Aboriginal and Torres Strait Islander children, parents, families and communities.

Residential institutions

Aboriginal and Torres Strait Islander children who had been forcibly removed from their families were generally put in residential institutions that catered for large numbers of children. These institutions included the missions and reserves, and mission-related institutions such as orphanages, reformatory schools, segregated dormitories and boarding houses (Haebich, 2000: 51–2, Human Rights and Equal Opportunity Commission, 1997). Large numbers of children were often sent to and from these institutions on work placements as domestic servants in private homes and businesses or as agricultural labourers on pastoral stations (Human Rights and Equal Opportunity Commission, 1997; Menzies & McNamara, 2008). These work placements were authorised by governments as part of the broader system of missions and reserves, and as such the Royal Commission considers them as institutional settings.

In Victoria, where Aboriginal children were considered under general child welfare laws earlier than other jurisdictions, it was more common for Aboriginal children to be in 'mixed' institutions with non-Aboriginal children. In the other states, Aboriginal and Torres Strait Islander children were more likely to be segregated from non-Aboriginal children in separate institutions. A detailed description of the states' different approaches to Aboriginal and Torres Strait Islander children can be found in Bringing them home (Human Rights and Equal Opportunity Commission, 1997: 50–130) and Haebich (2000: 272–348).

In the 19th century, both Aboriginal and Torres Strait Islander and non-Aboriginal children taken into institutions were typically housed in residential institutions such as dormitories, orphanages and industrial schools. In the second half of the century, research into the effectiveness of this system indicated that large institutions were expensive and often failed to meet the basic needs of children. As a result, non-Aboriginal children were increasingly placed in foster care arrangements (Haebich, 2000: 254; Musgrove, 2013: 31–7). By contrast, Aboriginal and Torres Strait Islander children remained in large residential institutions long after these institutions were considered to be unsafe for non-Aboriginal children. According to Haebich, '[r]ace prejudices constructed Aborigines as a "child race"' which 'aligned them with those groups believed to require institutionalisation – the criminal, the insane, the unfit, the diseased and disabled' (2000: 259).

Eventually, in the 1950s, 'excessive overcrowding' and 'prohibitive costs' led to Aboriginal and Torres Strait Islander children being placed with non-Aboriginal foster families (Menzies & McNamara, 2008: 42). In some places, such as Thursday Island in the Torres Strait, Aboriginal and Torres Strait Islander children were still housed in dormitories right up until the late 1970s and in homes such as Bomaderry in NSW until 1980 (Human Rights and Equal Opportunity Commission, 1997: 75).

Resistance to removals

> There are no studies solely devoted to opposition by Aboriginal people to the removal of their children. It is a history that demands to be written, one that would provide a fascinating and tragic account of a struggle that has been at the core of the battle for survival of Aboriginal people. It is a subject that would highlight the role of Aboriginal women - and men in the protection of the only guarantee for their survival when they had little or no material possessions and negligible civil rights. Resistance moreover, did not occur in confrontational ways alone; more often than not it was through evasive means, given the absolute lack of power of Aboriginal People.
>
> SNAICC submission (Human Rights and Equal Opportunity Commission, 1997: 435)

Aboriginal and Torres Strait Islander communities resisted removals by any means they had and this did not go unnoticed by those charged with the removals. Inspector Thomas Clade, a Sub-Protector of Aborigines in South Australia wrote to the Commissioner of Police in 1910, reporting that Aboriginal and Torres Strait Islander peoples:

> have as much love and affection for their children as the white people have, and they will fight for the sake of their children. Such being the case it appears to me to be a very cruel thing to enforce. And it is looked upon by the settlers in the interior as being nothing short of kidnapping… (Human Rights and Equal Opportunity Commission 1997: 258)

Anna Haebich's research on the Stolen Generations shows that 'Aboriginal families did not sit passively as their families were broken up' (2000: 513). They employed a range of different strategies to confront or circumvent the law, policies and practices, to protect their families and culture. These strategies included confronting government representatives (often police officers) tasked with removing children from their families; disguising and hiding children to prevent them being taken, maintaining contact with their children after they were institutionalised, despite the enormous difficulties this entailed; writing personal letters to politicians and officials (Human Rights and Equal Opportunity Commission, 1997: 70)[10]; and challenging unjust laws and practices in public forums (Haebich, 2000: 513–14). In some places, parents chased the trucks that came for the children, and children swam across fast-flowing rivers trying to escape (Neate, 2012). One survivor who provided evidence to the *Bringing them home* inquiry, described how:

> Every morning our people would crush charcoal and mix that with animal fat and smother that all over us, so that when the police came they could only see black children in the distance. We were told always to be on the alert and, if white people came, to run into the bush or run and stand behind the trees as stiff as a poker, or else hide behind logs or run into culverts and hide. Often the white people – we didn't know who they were – would

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[10] For example, as 'Paul' recalls in his testimony to Bringing them Home - 'Throughout all these years - from 5 and a half months old to 18 years of age, my Mother never gave up trying to locate me. She wrote many letters to the State Welfare Authorities, pleading with them to give her son back. Birthday and Christmas cards were sent care of the Welfare Department. All these letters were shelved. The State Welfare Department treated my Mother like dirt, and with utter contempt, as if she never existed. The Department rejected and scoffed at all my Mother's cries and pleas for help.' (Human Rights and Equal Opportunity Commission, 1997: 70)

come into our camps. And if the Aboriginal group was taken unawares, they would stuff us into flour bags and pretend we weren't there. We were told not to sneeze. We knew if we sneezed and they knew that we were in there bundled up, we'd be taken off and away from the area. (Human Rights and Equal Opportunity Commission, 1997: 26)

Despite this resistance, between 1910 and 1970, 'up to 50,000 children were forcibly taken from their families' (Rudd, 2008: 169) and placed in a range of different institutions where they were vulnerable to child sexual abuse. Even those who escaped having their children removed would lead lives governed by the threat of having their children taken away.

Other institutions

There is limited information about the experiences of Aboriginal and Torres Strait Islander children in historical institutions other than in the missions and related residential institutions. In the past, racist social attitudes meant that Aboriginal and Torres Strait Islander children were segregated from many aspects of mainstream society – from sporting clubs and churches (Broome, 2001) to swimming pools – as demonstrated by the famous Moree Baths protests in NSW as part of the 1965 Freedom Rides. They were excluded from attending mainstream schools (Bin-Sallik, 2003: 22), and records from industrial schools report the deaths of Aboriginal children in their care (see Elder, 2003: 262). [11] As Richard Broome has described, this 'unofficial caste barrier' meant that many '[c]hurches, community organisations and social clubs generally discouraged Aboriginal participation' (2001: 148). It is probable that this type of segregation prevented Aboriginal and Torres Strait Islander children from becoming involved in recreational, social and community institutions alongside non-Aboriginal children.

Aboriginal and Torres Strait Islander children experienced sexual abuse at significant levels in historical institutions

There is no comprehensive data to know the full extent to which Aboriginal and Torres Strait Islander children were sexually abused in historical residential institutions. Of those who gave testimony as part of *Bringing them home*, 17 per cent of women and 7.7 per cent of men reported having been sexually abused in an institutional setting (Human Rights and Equal Opportunity Commission, 1997: 25–8). This is likely to substantially underestimate the full extent of abuse. These figures do not include the experiences of people who did not participate, or people who died before the inquiry was held. As *Bringing them home* highlighted, some inquiry participants may have chosen as adults not to share their experiences of sexual abuse because of the 'many reasons, personal and procedural, for deciding against volunteering' information about sexual abuse in childhood (Human Rights and Equal Opportunity Commission, 1997: 162).

Nevertheless, *Bringing them home* found that Aboriginal and Torres Strait Islander children in every type of 'placement were vulnerable to sexual abuse and exploitation' (Human Rights and Equal Opportunity Commission, 1997: 162). The evidence gathered as part of the inquiry did find 'for girls in particular the risk of sexual assault in a foster placement was far greater than in any other' (Human Rights and Equal Opportunity Commission, 1997: 162).

Governments failed to adequately protect Aboriginal and Torres Strait Islander children from sexual abuse

Bringing them home confirmed systematic failure on a national level to regulate and monitor the 'care' of Aboriginal and Torres Strait Islander children separated from their families. Although a significant number of institutions were operated by non-government groups such as religious organisations, the state governments were responsible for the oversight and regulation of institutions in their jurisdiction. As *Bringing them home* made clear, the state governments failed to fulfil this responsibility. Significantly, the report pointed out that while '[b]asic safeguards protected the integrity of non-Indigenous families and the well-being of non-Indigenous wards of the State' these 'were cast aside when it came to Indigenous families and children throughout Australia' (Human Rights and Equal Opportunity Commission, 1997: 252).

Guardianship for all Aboriginal and Torres Strait Islander children resided with the Chief Protector in each jurisdiction.[12] The relevant *Aboriginals Protection Acts* in each jurisdiction gave Chief Protectors complete authority over all aspects of Aboriginal and Torres Strait Islander peoples' lives.[13] They could force Aboriginal and Torres Strait Islander people onto and in-between missions and government reserves; forcibly separate Aboriginal and Torres Strait Islander children from their families; and prohibit cultural practice and language (Human Rights and Equal Opportunity Commission, 1997).[14]

In practice, the Protection Acts resulted in a wide variety of arrangements that disempowered Aboriginal and Torres Strait Islander peoples. Some Aboriginal and Torres Strait Islander peoples lived on missions or reserves that had been established on their country. Many Aboriginal and Torres Strait Islander peoples were forced off their traditional lands and forced to live on the country of other groups (Human Rights and Equal Opportunity Commission, 1997, p 419). Some families were forced to move around between missions to keep family together, avoid contact with Welfare and to find work such as fruit picking. Families were often separated and sent to many different missions. In some areas children stayed on the mission or reserve with their families at certain times. As the aim of 'protectionism' and assimilation was based on the now defunct theory of

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[12] Legislation that stripped Aboriginal and Torres Strait Islander people of their parental rights existed in Western Australia from 1905 until 1963, the Northern Territory from 1910 until 1964, South Australia from 1911 until 1962, and Queensland from 1939 until 1965. As the *Bringing them home* report described, this legislation appointed a 'Chief Protector or similar official the legal guardian of all children defined to be Indigenous' (Human Rights and Equal Opportunity Commission, 1997: 255).

[13] For example: *Aboriginal Protection Act 1869*, as applied in Victoria; *Aborigines Protection Act 1886*, as applied in Western Australia; *Aboriginals Protection and Restriction of the Sale of Opium Act 1897*, as applied in Queensland; *Aborigines Protection Act 1909*, as applied in New South Wales; *Aboriginals Ordinance 1911*, as applied in the Northern Territory; *Aboriginals Act 1911* and then *Aborigines Act 1923* as applied in South Australia; *Cape Barren Island Reserve Act 1912*, as applied in Tasmania; *Aborigines Act 1923*, as applied in South Australia; Appendices 1–7, (Human Rights and Equal Opportunity Commission, 1997: 600–47).

[14] Different institutions had different ideas about the complete separation of children from their parents. For example, Reverend John Smithies, who set up a School for Native Children in Perth in 1840, felt that parents should be encouraged to visit regularly as a way of promoting Christianity among the broader population. However, when Reverend George King started a Native Establishment in Fremantle in 1841, he felt that the children had to be "exclusively and permanently" under his supervision, and went "personally among the blacks and collected eighteen children" between five and ten years old. His belief was that civilisation and spiritual enlightenment were quite practicable provided the children were separated from the "dark influences of the wandering tribe" (Barley, 1984: 26–7).

eugenics, paler skinned children were more likely to be forcibly separated from their family and put into a separate institution (Human Rights and Equal Opportunity Commission, 1997: 108). Some children were taken to the missions without their parents or sent to separate missions. Some children were separated from their fathers and uncles because Aboriginal and Torres Strait Islander men were often expelled from the missions or prevented from entering the missions as punishment for resistance. In Queensland the power to 'expel people from reserves was not abolished until 1979. Until then family members could be prevented from living together by the use of this power' (Human Rights and Equal Opportunity Commission, 1997: 78-79). Some children were separated from their mothers by sending the mothers out of the mission for domestic service. Many Aboriginal and Torres Strait Islander children were separated from their families by being placed into institutions such as dormitories, industrial schools or training institutions, or by being hired out as domestic servants in white households and on pastoral stations (Human Rights and Equal Opportunity Commission, 1997).

Parents and families had no rights to see their children or know where they had been sent. If they were able to find their children, they had no rights to advocate or protect their children by removing them from an unsafe institution (Human Rights and Equal Opportunity Commission, 1997: 252).[15] Aboriginal and Torres Strait Islander children were lied to and told their families did not want them or that their parents were dead. Their parents were similarly lied to (Human Rights and Equal Opportunity Commission, 1997: 155-7).

Further, while Chief Protectors had legal guardianship over Aboriginal and Torres Strait Islander peoples in their jurisdiction, it is not clear that they ever exercised their responsibilities in defence of an Aboriginal and Torres Strait Islander child. McCorquodale suggests that 'no Aboriginal administrator in Australia ever prosecuted a tortious action as legal guardian for and on behalf of his wards' (1986: 16).

In Queensland, the Bleakley Report (1929) found that government institutions were 'badly situated, inadequately financed and insufficiently supervised' (Franklin, 1976: 121, in Human Rights and Equal Opportunity Commission, 1997). In Western Australia, Haebich has shown that 'the checks and balances built into the *State Children's Act 1907* to protect state wards from abuse and to ensure adequate living conditions, were absent from the 1905 Act [*Aborigines Act 1905*]' (2000: 225). Government officials had total power over Aboriginal and Torres Strait Islander children and regulatory processes 'were punitive in relation to children and failed to specify criteria to protect their best interest' (Haebich, 2000: 226). While the government's failure to exercise its duty of care resulted in widespread systematic abuse for children in general, the lack of regulation regarding the care of Aboriginal and Torres Strait Islander children – that was available to other children – made them especially vulnerable (Human Rights and Equal Opportunity Commission, 1997).

Part 1 summary

It is clear that in the past Aboriginal and Torres Strait Islander children were vulnerable to sexual abuse in institutions. This was not to do with anything that was inherently to do with their Aboriginality, but due to the context of racist social attitudes and discriminatory legislation, policies and practices against Aboriginal and Torres Strait Islander peoples.

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[15] For example, as in the 1911 amendment to the *Aborigines Act 1905*, as applied in Western Australia (Human Rights and Equal Opportunity Commission, 1997: 629).

Aboriginal and Torres Strait Islander peoples were dehumanised, and women and children were sexualised. Allegations of abuse were denied even in the face of overwhelming evidence. While colonisation broke up diverse and sophisticated systems of governance and lore in traditional Aboriginal and Torres Strait Islander communities, this was replaced with a Western legal system that discriminated against Aboriginal and Torres Strait Islander peoples, provided little protection and actively prevented parents from caring for their children. These social conditions enabled perpetrators to exploit this prejudice and avoid punishment.

Aboriginal and Torres Strait Islander children were also in residential institutions at substantially higher rates relative to non-Aboriginal children due to racist policies of forced removal. They were forced into residential institutions, which previous inquiries found to be high-risk situations for child sexual abuse, and excluded from other institutions. Aboriginal and Torres Strait Islander children were also exposed to high situational and institutional risk for longer than their non-Aboriginal counterparts.

Policies that prevented Aboriginal and Torres Strait Islander parents from raising, visiting, advocating for or protecting their institutionalised children, and the systematic failure of governments to protect Aboriginal and Torres Strait Islander children meant sexual abuse was not confined to a particular time, place or type of institution. After colonisation, child sexual abuse occurred across Australia in a range of different eras, geographic locations and residential institutions. By failing to properly regulate and monitor the treatment of Aboriginal and Torres Strait Islander children in residential institutions, Australia's state and territory governments systematically failed to uphold the duty of care they assumed when Aboriginal and Torres Strait Islander children were separated from their families.

Part 2: The impacts of past child removal policies and practices

> It is probably fair to say that except for the remotest regions of the nation, there was not a single Aboriginal family which had not been touched by the policy of removal. Everybody had lost someone.
>
> (Read, 1988: 9)

Today Aboriginal and Torres Strait Islander communities continue to survive, representing the oldest continuous cultures in the world (Rudd, 2008). The songlines of Aboriginal and Torres Strait Islander peoples predate colonisation by tens of thousands of years (Tobler et al., 2017). In this time, Aboriginal and Torres Strait Islander peoples successfully managed trauma and traumatic events that affected their communities (Zubrick et al., 2010: 83; Funston 2013: 3818). At colonisation, Aboriginal and Torres Strait Islander peoples were 'considered to be much healthier than many of the British people who arrived suffering a raft of afflictions including malnutrition, infectious diseases, alcoholism and violence' (Funston 2013: 3818). In their early encounters with Aboriginal and Torres Strait Islanders, colonisers remarked upon the health of these communities. For example, on 6 May 1831, Lieutenant William Preston noted in this diary 'the children were in general the finest I had seen and appeared to be well fed' (in Carter & Nutter, 2006: 147).

Like other Indigenous peoples in colonised nations, Aboriginal and Torres Strait Islander peoples experience collective trauma and grief on a magnitude that would compromise the resources of any community to manage the impacts. Collective trauma refers to traumatic experiences that affect large groups of people, with that group likely to share some of the psychological, cultural, physical and social impacts of the trauma (Atkinson, 2002: 53). Ordinarily, when an individual or individual family experiences trauma, the community around the survivor has ways of helping them to manage the impacts of trauma. When a whole group experiences a trauma, such as in the case of Aboriginal and Torres Strait Islander peoples, this trauma may overwhelm the resources that community may have ordinarily mobilised to heal or come to terms with traumatic events. This is particularly relevant where authorities compound the initial trauma – such as that of colonisation and dispossession – with a response that disrupts the social fabric of a community or otherwise disempowers the community – such as removing multiple generations from the same community (Atkinson, 2002; see also Erikson, 1976: 47) so that there are intergenerational effects.

In this way, collective trauma has been described as providing a 'blow to the basic tissues of social life that damages the bonds attaching people together and impairs the prevailing sense of communality' (Erikson, 1994: 223). In this way, the presence of collective trauma complicates the process of individual and collective healing as the impacts of trauma accumulate and community resources for recovery are put under increasing pressure the longer the trauma goes unresolved.

The following section outlines the impacts, including population impacts, cultural impacts and intergenerational impacts of past legislation, policies and practices. It must be noted that there are also physical impacts that are not outlined below, and these include acquired disability and internal injuries from physical and sexual abuse, poor nutrition and neglect, as well as chronic health impacts and burden of disease disproportionately affecting many Aboriginal and Torres Strait Islander communities as a result of chronic stress, grief and injustice (sometimes referred to as allostatic

load) and acculturative stress of having to consistently navigate culturally unsafe environments (Sarnyai et al, 2016).

The past is in the present

> [E]very morning as the sun came up the whole family would wail. They did that for 32 years until they saw me again. Who can imagine what a mother went through?
>
> > Confidential evidence 305 (Human Rights and Equal Opportunity Commission, 1997: 130).

When considering the impacts of past policies, it is important to keep in mind that the unresolved grief and trauma of the Stolen Generations is a current, lived experience for Aboriginal and Torres Strait Islander peoples today. As then Prime Minister Kevin Rudd acknowledged in his historic apology to the Stolen Generations:

> … let us remember the fact that the forced removal of Aboriginal children was happening as late as the early 1970s. The 1970s is not exactly a point in remote antiquity. There are still serving members of the parliament who were first elected to this place in the early 1970s. It is well within the adult memory span of many of us. (House of Representatives, 13 February, 2008: 168)

The sexual abuse of Aboriginal and Torres Strait Islander children was widespread under 'protectionism' and assimilation (Human Rights and Equal Opportunity Commission, 1997), so that many girls who had been assaulted became pregnant and then had their children subsequently removed either under assimilation or later under general child welfare laws (Human Rights and Equal Opportunity Commission, 1997: 30). Some of these children have only recently left contemporary out-of-home care. The following scenario from Menzies and Gilbert (2013) is used to explain to today's social work students just how recent the 'past' trauma is for Aboriginal and Torres Strait Islander communities by showing there has yet to be a generation reach adulthood free from the direct impacts of assimilation:

> In 1969, Anne was two years old; she has been made a ward of the state in 1967 and placed with a non-Aboriginal foster family as part of assimilation policy. During her time in foster care Anne experienced abuse and neglect, loss of identity and was disconnected from her community and culture. Anne was discharged from wardship when she turned 19 in 1987, and in mid-1995, when she was 26, she gave birth to her first child, Ben. Anne, who constantly suffered from nightmares and flashbacks and regularly used alcohol and narcotics, found it difficult to care for herself and her baby. By late 1995 Ben was placed in a non-Aboriginal foster family under a child protection order. In 2012, Ben is 17 and will exit care when he turns 18 in 2013. (Menzies & Gilbert, 2013: 62)

The trauma of forced removal is in the living memory of multiple generations of Aboriginal and Torres Strait Islander peoples. Even those who escaped having their children removed lived in constant fear of their children being taken away.

Population impacts

The scale of the trauma has population-wide effects that can be seen today. Colonisation, the ensuing frontier wars and later laws, policies and practices of 'protectionism' and assimilation devastated Aboriginal and Torres Strait Islander populations (Zubrick et al., 2004: xiv). Whole communities were wiped out by massacres, death and disease. For example, it's estimated that the Aboriginal population of Western Australia went from 60,000 to 20,000 between colonisation and 1937 (Human Rights and Equal Opportunity Commission, 1997). Later, there were communities from which the entire child population was stolen, such as from Moola Bulla in the Kimberley in 1955 (Neate, 2012). For a range of reasons – not least of which was that this was the stated aim of assimilation – not all Aboriginal and Torres Strait Islander children who were forcibly removed will have reclaimed their Aboriginal and Torres Strait Islander identities (see Human Rights and Equal Opportunity Commission, 1997: 217–18, Milroy, 2005: xx).

The whole-scale loss of Aboriginal and Torres Strait Islander lives through death and disease can also be seen in the differences in population pyramids of Aboriginal and Torres Strait Islander peoples and non-Aboriginal Australians today. The non-Aboriginal community has large numbers of adults and older people, and relatively few children. By contrast, Aboriginal and Torres Strait Islander populations are characterised by high numbers of children relative to adults (Breckenridge & Flax, 2016: 31; Arney et al., 2015). The ratio of adults to children in any community, called the *youth dependency ratio*, is important for children's wellbeing and safety.[16] Nationally, the youth dependency ratio for non-Aboriginal people is 0.27, and 0.6 for Aboriginal and Torres Strait Islander peoples (ABS, 2013; Arney, et al., 2015). This means there is a 'greater proportion of Aboriginal and Torres Strait Islander children to the proportion of Aboriginal and Torres Strait Islander adults potentially available to care for them' (Arney et al., 2015: 9). This may result in some children being required to care for younger children and taking on adult roles earlier than they would have to otherwise.

Intergenerational impacts

The trauma created by the systematic and forced separation of Aboriginal and Torres Strait Islander children from their families in Australia's history has been multiple, pervasive, disabling and intergenerational (Atkinson, 2002; Atkinson et al., 2014; Human Rights and Equal Opportunity Commission, 1997: 488–89). The research documenting the intergenerational impacts of this trauma in Aboriginal and Torres Strait Islander communities is now well established. The work of Atkinson and others has shown that trauma does not diminish with time but is inherited from generation to generation (Atkinson, 2002; Atkinson et al., 2014; Human Rights and Equal Opportunity Commission, 1997: 192; Milroy, 2005: xxi). In line with this research, the *Bringing them home* inquiry found that the emotional trauma created by the forcible removal of Aboriginal and Torres Strait Islander children resounds 'through the generations of Indigenous families' and is often inherited by subsequent generations in 'complex and sometimes heightened ways' (Blackstock, 2007; Human Rights and Equal Opportunity Commission, 1997: 193–231).

The Western Australian Aboriginal Child Health Survey (WAACHS) provides the first population-level epidemiological study on the extent of intergenerational impacts of past child removal policies and practices (De Maio et al., 2005). The data gathered as part of the survey found that Aboriginal carers

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[16] The youth dependency ratio is calculated by dividing the percentage of the population aged under 15 by the percentage of the population aged 15–64.

who were forcibly separated from their natural family by a mission, the government or welfare were:

- more likely to live in households where there were problems caused by the overuse of alcohol or gambling
- almost twice as likely to have been arrested or charged with an offence at some time in their life
- less than half as likely to have someone with whom they could discuss their problems
- one and a half times more likely to have had contact with mental health services in Western Australia prior to the survey.

A lack of therapeutic support for dealing with the impacts of, and adaptions to, trauma, combined with pervasive racism and structural disadvantage, contribute to secondary trauma in some of the children and grandchildren of the Stolen Generations (Human Rights and Equal Opportunity Commission, 1997; Peeters et al, 2014; Heath et al., 2011: 303). For example, the WAACHS also found that children of the Stolen Generations:

- were more than twice as likely to be at high risk of clinically significant emotional or behavioural difficulties
- had levels of both alcohol and other drug use that were approximately twice as high as children whose Aboriginal primary carer had not been forcibly separated from their natural family (De Maio et al., 2005: 465–6).

Economic impacts

Contemporary experiences of poverty in Aboriginal and Torres Strait Islander communities cannot be separated from past policies and practices that devastated Aboriginal and Torres Strait Islander populations; introduced diseases; removed people from their lands and its resources; banned cultural practices that included knowledge of how to live off the land; and prevented Aboriginal and Torres Strait Islander peoples earning wages by making them work for rations or through stolen wages; and provided poor-quality or no education in the missions system (Kidd, 2006, 2007; Muller, 2014: 39; Ranzijn et al., 2009). The institutionalised racism that disinherited Aboriginal and Torres Strait Islander peoples from their ancestral birth rights and prevented them from accumulating economic wealth is likely to have ongoing impacts on the economic security of Aboriginal and Torres Strait Islander families and communities today and into the future (Kidd, 2006, 2007; Muller, 2014: 39; Ranzijn et al., 2009). Today, Aboriginal and Torres Strait Islander peoples experience poverty at disproportionate rates. Around 40 per cent of all Aboriginal and Torres Strait Islander peoples live in the most disadvantaged areas of Australia, with only 2 per cent of this population living in the most advantaged areas (Shlonsky et al., 2016: 8).

Cultural impacts

> They changed our names, they changed our religion, they changed our date of birth, they did all that. That's why today, a lot of them don't know who they are, where they're from.
>
> > Confidential evidence 450 (Human Rights and Equal Opportunity Commission, 1997: 130: 156)

> I guess the most traumatic thing for me is… you forbad us to speak our own language and we had no communication with our family…I realised later how much I'd missed of my culture and how much I'd been devastated. Up until this point of time I can't communicate with my family, can't hold a conversation. I can't go to my uncle and ask him anything because we don't have that language … Once that language was taken away, we lost a part of that very soul. It meant our culture was gone, our family was gone, everything that was dear to us was gone.

> Confidential evidence 305 (Human Rights and Equal Opportunity Commission, 1997: 130)

Past child removal laws, policies and practices profoundly influenced the cultural connection and identity of Aboriginal and Torres Strait Islander peoples. The principle aim of historical policies governing Aboriginal and Torres Strait Islander child welfare was to weaken children's cultural links by separating them from their families and communities (Human Rights and Equal Opportunity Commission, 1997: 293). State Acts specifically for Aboriginal and Torres Strait Islander peoples across the country determined that Aboriginal 'children were to be *prevented from acquiring the habits and customs of the* Aborigines' (South Australia's Protector of Aborigines in 1909; Human Rights and Equal Opportunity Commission, 1997: 121). This was to be achieved by forcibly separating Aboriginal and Torres Strait Islander children from their parents:

> Unlike white children who came into the state's control, far greater care was taken to ensure that [Aboriginal children] never saw their parents or families again. They were often given new names, and the greater distances involved in rural areas made it easier to prevent parents and children on separate missions from tracing each other (van Krieken 1991 in Human Rights and Equal Opportunity Commission, 1997: 29).

The institutions in which Aboriginal and Torres Strait Islander children were placed were not culturally neutral spaces, but designed to assimilate Aboriginal and Torres Strait Islander children, banning their native languages, preventing any contact with Aboriginal and Torres Strait Islander family members, denigrating Aboriginal and Torres Strait Islander peoples and culture and punishing non-compliance (Human Rights and Equal Opportunity Commission, 1997: 154). At the same time Aboriginal and Torres Strait Islander people were not embraced by white society and were excluded from most other institutions. Lorraine Peeters, a survivor of the Cootamundra Aboriginal Girls' Training Home, has described how Aboriginal children like her were forcibly assimilated while in residential institutions:

> I was told … my family didn't want me and that they didn't care or love me … They also said my culture was not important and that we had to forget about it and never talk about it … We were told the only proper way was to dress and act like white people … Once we were removed we were not allowed contact with our families, if they came looking for us they were told we were not there. My eldest sisters had their first names changed for this very reason. (1995: 17)

The focus on culturally assimilating Aboriginal and Torres Strait Islander children like Peeters often significantly impaired their development of a positive cultural identity through to adulthood. Instead, as Menzies and McNamara have noted, 'children were indoctrinated to despise their race, their culture, their families and, by implication, themselves' (2008: 40). Many witnesses who gave evidence in the *Bringing them home* inquiry 'spoke of their strong sense of not belonging either in the Indigenous community or in the non-Indigenous community' (Human Rights and Equal

Opportunity Commission, 1997: 203; see also Peeters, Hamann & Kelly, 2014, and Menzies & McNamara, 2008: 42).

The impacts of past policies and practices increase the risk of maltreatment in some Aboriginal and Torres Strait Islander families and communities

Western concepts are inadequate for describing the complex and varied belief systems and lived experiences of Aboriginal and Torres Strait Islander peoples. We do not intend to diminish or reduce these concepts when we attempt to say that Aboriginal and Torres Strait Islander societies are founded on connection to country, kinship and community. While Aboriginal and Torres Strait Islander cultures are diverse, children are central to the life of all communities (Lohoar, Butera & Kennedy, 2014). As *Bringing them home* found, 'When the children were taken, the community was bereft of their role and purpose in connection with those children' (Human Rights and Equal Opportunity Commission, 1997: 215). This sense of cultural alienation fed into the trauma created by other aspects of the common experiences of emotional, physical, cultural and sexual abuse in institutions. While the survival of Aboriginal and Torres Strait Islander cultures is evidence of the resilience of Aboriginal and Torres Strait Islander peoples, it must be acknowledged that these experiences have adversely impacted the health and wellbeing of Aboriginal and Torres Strait Islander communities today.

The numerous impacts include:

- the disruption of family and community connections
- impaired parenting abilities from multiple generations raised in institutions
- unresolved grief and trauma
- behavioural issues linked with trauma and victimisation, including violence
- self-medication with alcohol and other drugs to cope with symptoms of trauma
- depression and other forms of mental illness resulting from trauma (Atkinson, Nelson, Brooks, Atkinson & Ryan, 2014; Human Rights and Equal Opportunity Commission, 1997: 154–98).

Research and inquiries have consistently pointed to a clear link between the impacts of past legislation, policies and practices, ongoing experiences of dispossession and marginalisation, and the full range of social and economic problems that face Aboriginal and Torres Strait Islander communities today (McGlade, 2012: 33; Atkinson, 2014: 292; Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 1998; Bromfield et al., 2005; Cunneen & Libesman, 2000; O'Brien, 2008; Stanley et al., 2003; Memmott & Stacy, 1999, 2001; Tilbury, 2009). While many Aboriginal and Torres Strait Islander families are thriving, the adverse social and environmental conditions that many Aboriginal and Torres Strait Islander children and their parents face contribute to higher rates of maltreatment than among non-Aboriginal children.

The table below summarises the data on abuse and neglect types in 2014–15 compiled by the Australian Institute of Health and Welfare (AIHW, 2016a: 91). It shows that the greatest proportion of substantiations for Aboriginal and Torres Strait Islander children are on the basis of neglect, which is highly related to poverty (Shlonsky et al., 2016: 20). Many commentators also point to the presence of unresolved trauma and trauma-related behaviours such as drug and alcohol abuse in

contributing to neglect (Bamblett & Lewis, 2006: 46; Stanley et al., 2003). This is in stark contrast to the data for non-Aboriginal children, where the proportion of substantiations due to neglect, physical abuse and sexual abuse are similar.

Table 1: Summary of data on abuse and neglect types, 2014–15 (rate per 1,000)		
Abuse and neglect type	Aboriginal and Torres Strait Islander children	Non-Aboriginal children
Physical	6.1	1.1
Sexual	3.4	0.9
Emotional	15.0	2.7
Neglect	15.2	1.2
Total (a)	39.8	5.9

Source: AIHW, 2016.

The data also shows that sexual abuse is a problem in some Aboriginal and Torres Strait Islander families, although it is the least common abuse type substantiated by child protection services (AIHW, 2016a: 91). Over the last 15 years, four State inquiries have investigated allegations of child sexual abuse in Aboriginal and Torres Strait Islands communities: *Putting the picture together* (WA) (Gordon et al., 2002), *Breaking the Silence* (NSW) (Aboriginal Child Sexual Assault Taskforce, 2006)*, Little Children are Sacred* (NT) (Wild & Anderson, 2007) and *Children on APY Lands* (SA) (Mullighan, 2008). The reports concluded child sexual abuse is a serious issue in some Aboriginal and Torres Strait Islander families and communities. This heightened risk must be viewed in the context of the impacts of colonisation and ensuing collective and intergenerational trauma; the ongoing and often unmet need for healing of trauma; as well as interpersonal and systemic racism (Funston, 2013; Breckenridge & Flax, 2016).

Part 2 summary

Past legislation, policies and practices, and a lack of support for resolving the mass trauma and grief, mean that Aboriginal and Torres Strait Islander children now experience disproportionately higher rates of abuse and neglect, including child sexual abuse, than non-Aboriginal children. The following section will show how these impacts contribute to the over-representation of Aboriginal and Torres Strait Islander children in institutional settings such as out-of-home care.

Part 3: Contemporary institutional contexts and vulnerability to child sexual abuse in institutions

While there is data on the numbers of Aboriginal and Torres Strait Islander children in contemporary institutional care, it is not currently collected in such a way as to know the extent to which Aboriginal and Torres Strait Islander children experience sexual abuse in these settings relative to non-Aboriginal children. Previous research has identified generic risk and protective factors for abuse more generally. The following section will show that for a range of reasons, Aboriginal and Torres Strait Islander children are more likely to face a combination of these risks and less likely to experience protections. Therefore, despite the absence of data, it can be theorised that Aboriginal and Torres Strait Islander children continue face heightened risk of being placed in institutions with high situational risk of child sexual abuse (Parkinson & Cashmore, 2017: 25), and of face heightened vulnerability to child sexual abuse within those institutions, relative to non-Aboriginal children.

Aboriginal and Torres Strait Islander children are in contemporary residential institutions at higher rates than non-Aboriginal children

The impacts of past policies and practices, combined with systemic failures, mean that Aboriginal and Torres Strait Islander children are disproportionately subject to child protection and policing, receive poorer services and face entrenched structural disadvantage in society, making them over-represented in institutions such as out-of-home care (Shlonsky et al., 2016) and juvenile detention (AIHW, 2017). This section outlines the out-of-home care and juvenile detention figures for 2014–15 and briefly addresses the impact of past and contemporary systemic racism on contemporary child protection systems and how this may contribute to the over-representation of Aboriginal and Torres Strait Islander children in institutions. (The impacts of past policies and practices on Aboriginal and Torres Strait Islander communities were addressed above in Part 2).

Out-of-home care

Child protection data from 2014–15 published by the Australian Institute of Health and Welfare (AIHW, 2016a) shows that Aboriginal and Torres Strait Islander children are removed from their families into out-of-home care at a significantly higher rate than non-Aboriginal children. The number of Aboriginal and Torres Strait Islander children in out-of-home care was 9.5 times that of non-Aboriginal children in 2014–15. As of 30 June 2015, 15,455 Aboriginal and Torres Strait Islander children were in out-of-home care. Over the last five years, the number of Aboriginal and Torres Strait Islander children placed in out-of-home care has risen from 43.2 to 52.5 per 1,000 children compared with a rise from 5.2 to 5.5 per 1,000 among non-Aboriginal children in the same period (AIHW, 2016a: 53–4, 58).

While poverty, unresolved grief and despair, and intergenerational trauma – all impacts of past racist policies and practices – contribute to the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care, there are also systemic issues. The false construction of Aboriginal parenting as neglectful that allowed professionals to remove Aboriginal children under past 'protectionism' and assimilation policies (Conor, 2006) may still 'inform current policy and practices by many professionals today' (GMAR & Nigro, 2014, in Sherwood, 2015: 2). For example,

practitioners who are not culturally competent may also fail to recognise the many strengths of Aboriginal and Torres Strait Islander parenting (Lohoar, Butera & Kennedy, 2014). For example:

> … sharing the care of children between multiple adults, not all of whom are biologically related, does not fit with Anglo-centric assessment models based on concepts of a biological nuclear family being the "safest" configuration. (FaHCSIA, 2012, in Arney et al., 2015)

As the recent *Child Protection Systems Royal Commission* in South Australia found, '[p]oor knowledge of culture and parenting practices may lead non-Aboriginal practitioners to identify child protection concerns where there are none' (Nyland, 2016: 449). Some child protection workers may be reluctant to do early intervention work because of a fear of being seen as racist (Nyland, 2016: 452). Because of this fear, they may miss opportunities for early intervention and deliver a lower standard of service to Aboriginal and Torres Strait Islander families relative to non-Aboriginal families.

A system where child protection workers are not adequately supported to be culturally competent or confident in engaging Aboriginal and Torres Strait Islander families may be ill-equipped and under-resourced to comply with the Aboriginal child placement principles, including family preservation work or work required to support family connections or reunification after removal. Inadequate implementation of the child protection cultural safety recommendations arising from the *Wood Special Commission of Inquiry into Child Protection Services in NSW* (2008) may also contribute to over-representation, as well as a lack of protective factors for Aboriginal and Torres Strait Islander children in institutions. [17]

Most children in out-of-home care have experienced abuse or neglect severe enough to warrant their removal. This in itself means that children in out-of-home care face additional vulnerabilities to sexual abuse than those in the broader population (AIHW, 2013; Bromfield & Higgins, 2005; Finkelhor and Dzuiba-Leatherman, 1994; Irenyi et al., 2006; Libesman, 2007; O'Brien, 2008). Four of the recent State inquiries found that children continue to be at significant risk of sexual abuse in contemporary out-of-home care (Forde et al., 1999; Tasmanian Ombudsman, 2004; Mullighan, 2008; Commission for Children and Young people, 2015).

While data is not collected in such a way to know the extent to which Aboriginal and Torres Strait Islander children are sexually abused in out-of-home care, there are some indications that Aboriginal and Torres Strait Islander children face heightened vulnerability. Not only are Aboriginal and Torres Strait Islander children in out-of-home care in higher proportions than non-Aboriginal children, they tend to be kept in out-of-home care for longer periods relative to non-Aboriginal children (Tilbury, 2009: 61; Libesman, 2011: 53). This means Aboriginal and Torres Strait Islander children are more likely than non-Aboriginal children to be in an institutional environment that puts them at risk of sexual abuse in an institutional setting.

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[17] In particular: Recommendation 8.5 –'The NSW Government should develop a strategy to build capacity in Aboriginal organisations to enable one or more to take on a role similar to that of the Lakidjeka Aboriginal Child Specialist Advice and Support Service, that is, to act as advisers to DoCS in all facets of child protection work including assessment, case planning, case meetings, home visits, attending court, placing Aboriginal children and young persons in OOHC and making restoration decisions'.
Recommendation 16.12 – 'Due to the large numbers of Aboriginal children and young persons in OOHC, priority should be given to strengthening the capacity for Aboriginal families to undertake foster and kinship caring roles' (Wood, 2008).

The Victorian Commission for Children and Young People reports that Aboriginal children are being sexually abused in residential care:

> As at 30 June 2014, there were 90 Aboriginal children placed in residential care in Victoria. This represents 17 per cent of the total number of children in residential care. There were 25 individual Aboriginal children subject to 43 reports of sexual abuse in residential care during the Inquiry period. This means that more than one-quarter (27 per cent) of the Aboriginal children in residential care have been subject to a sexual abuse CIR. However, this figure is likely to be higher given that the identified practice issue of not accurately ascertaining a child's Aboriginality. (Victorian Commission for Children and Young People, 2015: 53)

> Most reports received for Aboriginal children (14 children) related to 'sexual assault rape' where the identified source of harm was an external predator. Almost one-quarter (23 per cent) of sexual abuse reports for Aboriginal children identified co-residents as the source of harm. (Victorian Commission for Children and Young People, 2015: 54)

Juvenile detention

In 2014–15, Aboriginal and Torres Strait Islander children aged 10–17 were 24 times as likely to be in detention and 14 times as likely to be under community-based supervision (AIHW, 2016b: 7). Although Aboriginal and Torres Strait Islander children only constituted 6 per cent of young Australian people in 2014–15, they made up 43 per cent of the population under supervision by the youth justice system.

While the rates of both Aboriginal and Torres Strait Islander and non-Aboriginal children under supervision have dropped over the last five years, the decrease in the Aboriginal and Torres Strait Islander rate was smaller. This means that since 2011, the over-representation of Aboriginal and Torres Strait Islander children in the youth detention has increased (AIHW, 2016b). As with children in out-of-home care, there is a strong correlation between being in juvenile detention and having a history of reported neglect and abuse (AIHW, 2014). This makes them a population at higher risk of sexual abuse.

The over-representation of Aboriginal and Torres Strait Islander children in juvenile detention and out-of-home care means they are disproportionally exposed to the risk of child sexual abuse while in institutions. It is not known whether those children who are in both out-of-home care and juvenile detention face an even greater vulnerability to abuse.

Research shows that children entering institutional care arrangements are vulnerable to abuse despite steps to improve how institutionalised care is provided (Gallagher, 2000; Irenyi, Bromfield, Beyer & Higgins, 2006). As Gallagher points out in his study of the welfare system in the United Kingdom, institutional settings offer perpetrators greater opportunities to target and entrap their victims. This is particularly true of institutions that cater for larger numbers of children, such as boarding schools and juvenile detention centres; however, it also applies to other kinds of institutions, such as family based care (Gallagher, 2000).

In institutional contexts, Aboriginal and Torres Strait Islander children face more risk factors for sexual abuse and fewer protective factors, relative to non-Aboriginal children

Due to the ongoing impacts of past racist policies and practices, and contemporary racism, Aboriginal and Torres Strait Islander children are likely to face multiple risk factors associated with sexual abuse in institutional contexts. For the same reasons, they are also likely to face fewer protective factors in institutional contexts. The broad literature on Aboriginal and Torres Strait Islander child safety indicates that 'provided the necessary social conditions are in place' Aboriginal and Torres Strait Islander cultures 'act[s] as a protective force for children and families' (Lohoar, Butera & Kennedy, 2014: 2). This suggests that improving connection to culture for Aboriginal and Torres Strait Islander children in institutions and addressing systemic racism may increase protective factors against sexual abuse. While this alone will not address the over-representation of Aboriginal and Torres Strait Islander children in institutions where there is high situational risk of child sexual abuse, it may improve the safety of those children once they are in institutional settings.

Risk factors for child sexual abuse

Researchers have examined risk factors for child maltreatment in organisations (Irenyi et al., 2006). Their study confirms risk factors such as age, gender, disability, and prior abuse or neglect are equally relevant for all children regardless of race (Irenyi et al., 2006).

As a result of complex historical, social and economic disadvantage, Aboriginal and Torres Strait Islander children more commonly face many of these risk factors, including:

- social and economic deprivation (AIHW, 2013: 12; Libesman, 2007)
- family break-up, maternal depression, and self-medication with alcohol (Finkelhor, 1979)
- past maltreatment (Bromfield & Higgins, 2005; Finkelhor & Dzuiba-Leatherman, 1994; Irenyi et al., 2006: 6; Kaufman & Erooga, 2016: 26; Boney-McCoy & Finkelfor, 1995)
- disability, including hearing impairment and foetal alcohol syndrome (Kaufman & Erooga, 2016: 26-27; Gallagher, 1998, 1999; Irenyi et al., 2006; O'Brien, 2008; Sullivan & Beech, 2002; Sullivan & Knutson, 2000; see also Llewellyn et al., 2016: 32)
- Social and cultural isolation (SNAICC, 2010; AIFS, 2017).

Perpetrators may see these vulnerabilities and groom children accordingly (Kaufman & Erooga, 2016: 87).

Wendy O'Brien's (2008) literature review for the Australian Crime Commission showed that some non-Aboriginal perpetrators were preying on the precarious existence of some children in Aboriginal and Torres Strait Islander communities. For example, O'Brien highlights examples of taxi drivers, truck drivers and mining workers sexually exploiting Aboriginal girls (2008: 43–4).

Perpetrators may also be aware of the significant barriers Aboriginal and Torres Strait Islander children may face in disclosing abuse, being believed and receiving an appropriate response. We also know that some of the above listed factors, such as certain kinds of disability, may make it more difficult for children to disclose abuse, seek help or receive an appropriate response when they do disclose (Llewellyn et al., 2016). Authors can theorise that isolation from kin and community, and

cultural supports limits the number of trusted adults to whom a child can disclose abuse, or who can be alerted by a change in the child's behaviour that might indicate abuse in the absence of direct disclosure.

The literature outlines significant barriers to disclosure for all children who have experienced child sexual abuse, with additional barriers experienced by Aboriginal and Torres Strait Islander children. A range of barriers to disclosure were also identified by the State inquiries, which sought to understand why under-reporting occurs. These barriers included:

- fear of reprisals from perpetrators and/or their families
- isolation from service providers in remote communities
- a lack of community understanding about child sexual abuse and how to address it, and a lack of culturally tailored sex education for children in schools[18]
- shame experienced by children and/or their families
- concern or fear about how disclosure will impact family and community networks (Aboriginal Child Sexual Assault Taskforce, 2006; Gordon et al., 2002; Mullighan, 2008; Wild & Anderson, 2007).

Other systemic issues include a lack of support from institutions for Aboriginal and Torres Strait Islander children to communicate about sex or make disclosures in languages other than English, a lack of cultural safety in the mainstream service system and the absence of Aboriginal-specific sexual assault services (Breckenridge & Flax, 2016; Victorian Auditor-General, 2014: 47–8; ACSAT, 2006: 171; Funston, 2013). For Aboriginal and Torres Strait Islander children in out-of-home care, a lack of cultural safety and cultural connection in their placement, or the absence of a trusted adult figure in their lives who is from the same cultural group as them, can make it difficult for them to disclose sexual abuse. Some of these system level risk factors are briefly outlined below.

Lack of accessible and culturally safe sexual assault services

Leticia Funston, from the NSW Health Education Centre Against Violence argues that service responses to child sexual abuse are often experienced as racist and 'culturally, financially and/or geographically inaccessible' (2013: 3818). Others have suggested that many service providers tasked with dealing with allegations of child sexual abuse frequently fail to understand the 'complex interplay of the multitude of factors contributing to Indigenous experiences of violence' (Cripps & McGlade, 2008: 243). As Cripps and McGlade point out, 'there is now quite an extensive body of literature that clearly illustrates what has long been known at an Indigenous community level: that typical "western" responses to family violence like women's refuges, criminal justice responses and programs of a therapeutic nature have mostly been culturally inappropriate and ineffective' (Cripps & MGlade, 2008: 243). Cripps and McGlade argue that 'Indigenous experiences with these approaches have found them to be disempowering and processes by which methods of power and control can be reinforced' (2008: 243). Research also suggests that some Aboriginal and Torres Strait Islander people would only access mainstream health services when 'when all traditional avenues had been exhausted and there was no other treatment option available' (Vicary & Bishop, 2005: 11).

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[18] 'Yarning Up About Child Sexual Abuse: A Guide for Aboriginal and Torres Strait Islander Parents and Carers' is one example of a tool being used to communicate about child sexual abuse.

Perpetrators exploit Aboriginal and Torres Strait Islander communities' fear and mistrust of service providers

Perpetrators may reinforce feelings of shame or fears about community reactions to dissuade a child from reporting abuse. Perpetrators may also capitalise on the mistrust of service providers stemming from past child removal policies and practices to silence children and avoid prosecution. Contemporary fears of having a child who has been sexually abused removed into out-of-home care may also make disclosure or reporting more difficult. As one interviewee told the Aboriginal Child Sexual Assault Taskforce in New South Wales:

> … perpetrators threaten. They threaten, you know, that "You'll go to a home", that "I'll kill you, I'll kill your mother, I'll do this, I'll do that. (Aboriginal Child Sexual Assault Taskforce, 2006: 188)

Past and contemporary experiences of child removal as a barrier to help-seeking and disclosure

As the previous section indicated, experiences of injustice and lack of confidence in service providers is a significant barrier to disclosure affecting Aboriginal and Torres Strait Islander children and their families. This issue is directly connected to past child removal practices which targeted Aboriginal and Torres Strait Islander families because of discriminatory policies and racist assumptions. These policies and practices have led to ongoing distrust of the child welfare and protection systems as well as the police and justice system more broadly. As the *Breaking the Silence* report highlighted:

> The traumatic impact that colonisation, dispossession, marginalisation and the stolen generation has had on Aboriginal families and communities has resulted in a mistrust of the system and a reluctance to engage services that have in the past been so damaging to Aboriginal communities. Whenever police respond inappropriately to Aboriginal people, this mistrust is reinforced and the alienation of Aboriginal people from police continues. (Aboriginal Child Sexual Assault Taskforce, 2006: 151; Gordon et al., 2002: 205–6)

Given the profound impact past child removal policies and practices had on many Aboriginal and Torres Strait Islander families, and the disproportionately high rate of Aboriginal and Torres Strait Islander children currently in out-of-home care, the fear of the possible removal of a child from the community has been identified as a barrier to reporting child sexual abuse (Wild & Anderson, 2007: 76).

Normalisation of violence and abuse

The fact that many Aboriginal and Torres Strait Islander children experienced sexual abuse while in institutions in the past may also act as a barrier to disclosure. The mistreatment of Aboriginal and Torres Strait Islander children in institutions normalised abuse and violence. This has likely contributed to the intergenerational transmission of violence and abuse in some Aboriginal communities along with other violent aspects of colonisation (Atkinson et al., 2014: 61). As stated by the authors of *Little Children are Sacred*, 'it is unrealistic to expect that child abuse will be reported where community violence is high'. They add that the 'enculturation of violence, where the violence is socially and culturally accepted and therefore minimised and justified' is reflected and reinforced

by the mainstream society through individuals and institutions with whom Aboriginal and Torres Strait Islander people interact, and 'victims are often held responsible or blamed for the violence and/or abuse that they experience' (quoted in Wild & Anderson, 2007: 78).

Shame

Shame is a considerable barrier to disclosure for all people who have experienced child sexual abuse. *Little Children are Sacred* identified that 'victims and their families may experience feelings of shame when a report is made and responded to, and that these feelings can be reinforced by the perpetrator to ensure secrecy' (Wild & Anderson, 2007: 77). As Funston highlights, ongoing experiences of racism compound this problem by shaming, blaming or punishing the victim/s rather than addressing the impacts of trauma:

> … disclosures of abuse by an Aboriginal person is likely to be represented in the mainstream media as evidence of Aboriginal dysfunction and used to justify extreme interventions, such as child removal, rather than supportive, family and community led capacity building approaches. (2013: 3827–8)

For Aboriginal and Torres Strait Islander survivors, feelings of shame may also be heightened due to the cultural abuse Aboriginal and Torres Strait Islander peoples were subject to under 'protectionist' and assimilation policies. For some survivors, the shame they were encouraged to associate with their Aboriginal or Torres Strait Islander identity is interconnected with the shame of experiencing child sexual abuse. As outlined in Part I, the use of sexual exploitation as a tool of collective humiliation during colonisation contributes additional complexities to the shame Aboriginal and Torres Strait Islander survivors of child sexual abuse experience when attempting to disclose or seek help.

Experiences of injustice in the criminal justice system

The current approach of the criminal justice system can be a significant barrier to the disclosure of child sexual abuse. Cripps and McGlade's research has shown that many Aboriginal and Torres Strait Islander people feel that the current justice system 'can exacerbate an already volatile situation' and consequently choose not to engage with available services (Cripps & McGlade, 2008: 243). This reluctance to report violence and abuse is potentially compounded by the historically high rates of Aboriginal deaths in custody, which have further undermined trust in the system (Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 1998; Wild & Anderson, 2007: 77).

Language barriers

During the *Little Children are Sacred* inquiry, one Alyawerre Elder described how different worldviews and language barriers can significantly impede communication about child sexual abuse in some Aboriginal communities:

> … by discussing child sexual abuse in English you take it out of the hands of the people and into the white forum. By doing this the people will respond to what the white person wants rather than speaking truthfully. These types of issues need to be dealt with a bit more innovatively and intelligently utilising language. People need to feel like they own the story and then they will speak truthfully about it. (Wild & Anderson, 2007: 51)

These issues are compounded when non-Aboriginal institutions lack cultural competence and safe supports for disclosures to be made in languages other than English.

Systemic racism may heighten the risk of sexual abuse for Aboriginal and Torres Strait Islander children

'Societal commissions or omissions' also play a role in the vulnerabilities Aboriginal and Torres Strait Islander children face (Stanley et al., 2003) relative to non-Aboriginal children. For example, community risk for all forms of abuse is heightened by systemic racism that results in poorer and less service delivery to Aboriginal and Torres Strait Islander communities. The Gordon Report (2002) showed evidence of a child protection system failing to respond in a timely fashion to reports involving Aboriginal and Torres Strait Islander children (see also McGlade, 2012: 85).

Likewise, the NSW Ombudsman's Report found that the child protection system is not responding as well in communities where there are high proportions of Aboriginal and Torres Strait Islander peoples compared with the state average:

> The most serious reports usually receive a comprehensive face-to-face caseworker assessment, where resources are available. Recent state-wide data shows that 55 per cent of all risk of sexual harm reports to Community Services received such an assessment, but the figure for Aboriginal communities was just 26 per cent. (NSW Ombudsman, 2012: iv)

Community risk is also increased when there are insufficient resources to fully implement the Aboriginal child placement principle and child protection policies, or effectively deal with reports where there is inadequate training and staff supervision to manage reports in Aboriginal and Torres Strait Islander communities (Royal Commission into Institutional Response to Child Sexual Abuse, 2014: 114).

Protective factors against child sexual abuse

Aboriginal and Torres Strait Islander cultures are protective of children

There is no documented evidence to indicate child sexual abuse was a problem in Aboriginal and Torres Strait Islander communities before colonisation. It is important to understand that any heightened risk that Aboriginal and Torres Strait Islander children face today is 'not part of Aboriginal tradition or culture' (Dodson, 2003). As Professor Mick Dodson, in his 2003 National Press Club address emphasised, Aboriginal and Torres Strait Islander peoples 'have no cultural traditions based on humiliation, degradation and violation'.

Evidence gathered in the course of the four inquiries does not support the myth that Aboriginal culture condones child sexual abuse in any way. As the *Little Children are Sacred* report made clear, the '[s]exual assault of children is not acceptable in Aboriginal culture, any more than it is in European or mainstream society' (Wild & Anderson, 2007: 12). Rather:

> When traditional women are asked about rape and about the incidence of incestuous sexual assaults, their responses are emphatic that it is not the Aboriginal way, that it is not in accordance with Aboriginal traditions or customary law. They said that a man could be put to death for rape or speared in the thigh. (Australian Law Reform Commission, 1994: 123 in McGlade, 2006: 6)

Quantitative studies such as the West Australian Aboriginal Child Health Survey have established that strong connection to culture is protective (Silburn et al., 2006). Grassroots initiatives in Aboriginal and Torres Strait Islander communities have also consistently rejected the myth of sexual abuse as part of Aboriginal and Torres Strait Islander cultures through campaigns such as 'Sexual abuse is not our lore', run by Wirringa Baiya Aboriginal Women's Legal Centre (2015).[19] The way in which some communities in Western Australia's Kimberley region have responded to the issue of child sexual abuse is discussed in a report entitled *Transgenerational Trauma, Suicide and Healing from Sexual Abuse in the Kimberley Region*. The report highlights a range of factors contributing to child sexual abuse in Aboriginal families and communities, such as family dysfunction, alcohol and substance misuse, and witnessing violence (Ralph, Hamaguchi & Cox, 2006). Significantly, it highlights that Aboriginal people have identified the high, yet under reported, extent of sexual abuse across the Kimberley and clearly responded as a community that sexual abuse is not part of Aboriginal culture. As a result, Aboriginal communities in the Kimberley have developed a range of resources to support young people and families to mitigate these social and personal factors and provide much-needed support to families (Ralph et al., 2006).

> Prior to European contact, when an Aboriginal 'state' was maintained, families with their multiple roles practiced the age-old Indigenous practices of bringing up children. Work, safety, shelter and food, culture, pride in being black and Aboriginal, truthfulness and honour were all vital parts of growing up. It also included sharing responsibility for the caring of each precious child which was cherished as a significant experience. (Kopusar, 2005: v)

The broad literature on Aboriginal and Torres Strait Islander child safety shows that 'provided the necessary social conditions' Aboriginal and Torres Strait Islander cultures 'act as a protective force for children and families' (Lohoar, Butera & Kennedy, 2014: 2). While Aboriginal and Torres Strait Islander cultures are diverse and dynamic, a common feature across cultures is that children are central to the life and purpose of the community and responsibility for child-rearing is often still shared among multiple adults (SNAICC, 2010 in Lohoar, Butera & Kennedy, 2014: 4). In Aboriginal and Torres Strait Islander communities, 'parenting roles, nurturing and socialising responsibilities are widely shared'.[20] This collective approach to raising children may provide additional protection against abuse because there are 'many eyes' watching out for children (Lohoar et al., 2014: 6), and may help children to be 'physically safe' by increasing their 'access to a wide range of support when they experience difficulties and need someone to turn to' (2014: 7). In the language of protective factors, Aboriginal and Torres Strait Islander child-rearing practices increase the number of secure attachment relationships children have in their extended kin network (Bamblett et al., 2014; Iannos et al., 2013; Price-Robertson & McDonald, 2011; SNAICC, 2014; Brendt et al., 2013; in Office of the

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[19] See   http://www.heysis.com.au/Portals/0/Documents/Presentation%20Slides%20-%20Wirringa%20Baiya%20(Part%201)%20Low%20Res.pdf

[20] This sense of collective responsibility for children is also demonstrated in the greater willingness of Aboriginal and Torres Strait Islander peoples, relative to non-Aboriginal peoples, to provide formal and informal kinship care for children who need out-of-home care (Bromfield et al., 2007; McGuinness & Arney, 2012; AIFS, 2015).

Guardian of Children and Young People, 2015: 6). The specific literature on child sexual abuse indicates that positive peer relationships and a secure attachment to parents or care givers are associated with decreased likelihood of being a victim of child sexual abuse (Goldman, Salus, Wolcott & Kennedy, 2003, in Kaufman & Erooga, 2016).

Empirical data now supports the idea that connection to culture is associated with better emotional, social and physical health of Aboriginal and Torres Strait Islander peoples (Silburn et al., 2006; Burgess, Johnston, Bowman & Whitehead, 2005; Dockery, 2010; Garnett et al., 2009; Kingsley, Aldous, Townsend, Phillips & Henderson-Wilson, 2009; McDermott, O'Dea, Rowley, Knight & Burgess, 1998). Positive cultural connection may in this case indirectly increase protective factors by supporting the social conditions necessary for adults to manage trauma, be well and foster strong attachments with children in their communities.

It may be that positive cultural connection can also increase the protective factors available to Aboriginal and Torres Strait Islander children by helping them to develop their identities, fostering high self-esteem, emotional strength and resilience (Lewis & Burton, 2014; Arney et al., 2015, Chandler & Lalonde, 2008: 3). The Western Australian Aboriginal Child Health Survey uses language as a proxy for culture and provides empirical evidence supporting these assertions. The study found promising evidence that:

> Fewer children in the primary care of persons who were conversant in an Aboriginal language were at high risk of clinically significant emotional or behavioural difficulties than either children whose carers knew a few words of an Aboriginal language or children with carers who did not speak an Aboriginal language.
>
> Where carers indicated that at least one child in their care was conversant in an Aboriginal language, fewer children in such situations were at high risk of clinically significant emotional or behavioural difficulties compared with children who either lived in households where at least one child knew only a few words of an Aboriginal language or no children spoke an Aboriginal. (Zubrick et al, 2005: 131)

The importance of being connected to culture is likely to hold for all children. Australian children from Anglo-Celtic backgrounds may take their connection to culture for granted and may be so immersed in culture that they cannot see it (Moreton-Robinson, 2003: 6). By default, Australian society poses no challenge to the validity of their cultural identity, and overall they are likely to grow up surrounded by messages, role models and institutions that affirm their cultural values, practices and ways of being in the world (Bamblett et al., 2010).[21]

However, some children are less likely to be raised in their own culture than others and more likely to face racism and discrimination. Mainstream society expects Aboriginal and Torres Strait Islander children, in particular, to bridge at least two distinctive cultures (McKendrick & Thorpe, 2014: 91). Maintaining a positive connection to culture is not easy in the context of high levels of racism and the 'cumulative impact over generations of the denial of Aboriginal history and its effective invalidation of the lived experience of Aboriginal peoples' (Milroy, 2005: xvi).[22]

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[21] 'Whiteness is both the measure and the marker of normalcy in Australian society, yet it remains invisible for most white women and men, and they do not associate it with conferring dominance and privilege.' (Moreton-Robinson, 2003: 66 cited in Bamblett et al, 2010).

[22] Also – 'Consider the impact of having to deny your true self, severing and rejecting ties to generations of ancestry and culture, living a false and recreated identity at the hands of government officials, yet still failing to be considered equal by broader society'. (Milroy, 2005: xx).

When the culture of a people is ignored, denigrated, or worse, intentionally attacked, it is cultural abuse. It is abuse because it strikes at the very identity and soul of the people it is aimed at; it attacks their sense of self-esteem, it attacks their connectedness to their family and community. And it attacks the spirituality and sense of meaning for their children. (Bamblett et al., 2010: 5)

Today, Aboriginal and Torres Strait Islander peoples face interpersonal racism in their day-to-day lives that makes it difficult for them to construct a positive self-identity. There are many examples. The Experiences of Racism 2010–11 study in Victoria found that 97 per cent of Aboriginal and Torres Strait Islander respondents had experienced racism in the 12 months prior to being surveyed (Ferdinand, Paradies & Kelaher, 2013).[23] Aboriginal and Torres Strait Islander children are also exposed to consistent misrepresentations of their culture in mainstream media as violent and irresponsible.[24] The heckling of Adam Goodes, a two-time Brownlow Medal winner in the AFL for demonstrating pride in his culture and for standing up to racist taunts, was not so different to the language used by early colonisers and eugenicists, referring to Mr Goodes as a 'monkey' and 'ape' and telling him to 'go back to the zoo' (see Baum, 2015).

In this context, connection to culture and the 'restoration of cultural vitality' is protective where it helps Aboriginal and Torres Strait Islander children to maintain their sense of self and positive identity in the face of racism (Lock, 1997, in Richardson, Bromfield & Higgins, 2005: 10). As the *Bringing them home* report noted:

Becoming familiar with black people, learning about black history and achievements, and knowing the music and language of their own culture will help the children to begin to build up an inner store of self-worth of their blackness. This will help them to combat the damage done by racism. The child or young person needs direct contact with black people who are positive about their own black identity and needs positive black role models to counteract the negative images so often presented by the media. (Human Rights and Equal Opportunity Commission, 1997: 587)

Historically, and in contemporary times, racism – including systemic racism and interpersonal racism – contributes to the trauma and disadvantage in Aboriginal and Torres Strait Islander communities. It contributes to the disproportionate institutionalisation of Aboriginal and Torres Strait Islander children in out-of-home care and juvenile justice, where the situational risks for child sexual abuse are high; and contributes to the heightened risk of Aboriginal and Torres Strait Islander children being abused in those settings by separating them from the protections of strong Aboriginal and Torres Strait Islander cultures. In this way, strong connections to culture may be protective for Aboriginal and Torres Strait Islander children via their role in combating racism. The *state of Victoria's Children Report* found:

Strong Aboriginal culture is also important in the education of the non-Aboriginal community, with increased acknowledgement of and respect for the diversity of Aboriginal culture helping to break down negative stereotypes. Culture has enabled the resilience and survival of Aboriginal peoples for over two centuries of colonial imposition. Culture becomes the means for building resilience and self-determination. A positive cultural identity assists Aboriginal children and young people to deal with racism and to navigate dominant culture.

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[23] A summary of this report is also available: http://www.lowitja.org.au/sites/default/files/docs/LEAD_Racism_Survey_Summary_Report.pdf
[24] Bill Leak's series of racist cartoons, published in mainstream media, can be seen here: https://newmatilda.com/2016/08/04/artistic-arse-the-great-racist-works-of-cartoonist-bill-leak/

It also helps to mitigate the inherent trauma from being a minority group in your own country. Accessible cultural practice can also reduce the negative impacts of colonisation. (State Government Victoria, 2009: 45)

Culturally appropriate care as one mechanism to protect Aboriginal and Torres Strait Islander children from child sexual abuse in out-of-home care

In the 1950s and 1960s, Aboriginal and Torres Strait Islander resistance to assimilation grew stronger and Australia faced international pressure over its racially discriminatory practices (Bourke & Bourke, 1994; Read, 1988). The success of these movements saw a change in official government policy from assimilation to self-determination (Read, 1988: xv) from 1972 to 1996.[25] Out of these movements grew a grassroots campaign to 'break the cycle of devastation caused to the Stolen Generations' and create legislation that recognised the need to protect Aboriginal and Torres Strait Islander children in care from suffering 'further harm through loss of contact with family, culture, community and country' (Queensland Aboriginal and Torres Strait Islander Child Protection Peak, 2011: 3; see also Arney et al., 2015).

The first Aboriginal-controlled child and welfare service was established in Victoria in 1977, followed by other Aboriginal and Torres Strait Islander child care agencies that advocated for an Aboriginal and Torres Strait Islander Child Placement Principle to protect the interests of Aboriginal and Torres Strait Islander children. By the mid-1980s, the principle was adopted – albeit not fully implemented – across all Australian states and territories (Human Rights and Equal Opportunity Commission, 1997: 381–401; SNAIC, 2013).

Table 2: Core elements of the Aboriginal and Torres Strait Islander Child Placement Principle

Element	Description
Prevention	Each Aboriginal and Torres Strait Islander child has the right to be brought up within their own family and community.
Partnership	The participation of Aboriginal and Torres Strait Islander community representatives, external to the statutory agency, is required in all child protection decision-making, including intake, assessment, intervention, placement and care, and judicial decision-making processes.
Placement	Placement of an Aboriginal or Torres Strait Islander child in out-of-home care is prioritised in the following way: 1. with Aboriginal or Torres Strait Islander relatives or extended family members, or other relatives or extended family members; or

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[25] For examples of growing resistance from Aboriginal and Torres Strait Islander movements, see Victorian Aborigines Advancement League, Federal Council for the Advancement of Aborigines and Torres Strait Islanders (FCAATSI), Yirrkala Bark Petitions (1964), Freedom Rides (1965), Daguragu (Wave Hill) Gurindji Walk-off (1966–75) and the establishment of the Aboriginal Tent Embassy at Parliament House (1972).

	2. with Aboriginal or Torres Strait Islander members of the child's community; or 3. with Aboriginal or Torres Strait Islander family-based carers. If the preferred options are not available, as a last resort the child may be placed with: 4. a non-Indigenous carer or in a residential setting. If the child is not placed with their extended Aboriginal or Torres Strait Islander family, the placement must be within close geographic proximity to the child's family.
Participation	Aboriginal and Torres Strait Islander children, parents and family members are entitled to participate in all child protection decisions affecting them regarding intervention, placement and care, including judicial decisions.
Connection	Aboriginal and Torres Strait Islander children in out-of-home care are supported to maintain connection to their family, community and culture, especially children placed with non-Indigenous carers.

Source: Tilbury, 2013: 7, in Arney et al., 2015: 5

The Aboriginal and Torres Strait Islander Child Placement Principle is now a key legislative requirement for governments and agencies to meet the specific needs of Aboriginal and Torres Strait Islander children and families in an otherwise inequitable welfare system that has inadvertently perpetuated a cycle of disadvantage for these peoples. It provides an important acknowledgement that previous policies that deliberately separated Aboriginal and Torres Strait Islander children from their family, communities and culture, caused immense suffering, and reflects the right of Aboriginal and Torres Strait Islander peoples to raise their children in their communities (Lock, 1997). It indicates that all stages of child protection should be conducted in partnership between government agencies and Aboriginal and Torres Strait Islander organisations.

Genuine adherence to the principle is essential to the safety of Aboriginal and Torres Strait Islander children in out-of-home care. Yet there is currently 'no Australia-wide systematic protocol in place to [effectively] monitor and assess implementation of the Principle' (Arney et al., 2015). The available data compiled by AIHW focuses on the placement hierarchy alone without measuring compliance with the other elements. It includes children placed with non-Aboriginal kin and those placed not in the community but in Aboriginal residential care (Shlonsky et al., 2016: 42). Based on this limited proxy measure for adherence, only 66 per cent of Aboriginal and Torres Strait Islander children in out-of-home care are placed with 'family, kin or other Aboriginal and Torres Strait Islander carers' and this represents a decline nationally (Shlonsky et al., 2016: 42). Where there have been audits of compliance, practical compliance with the principle is lower than on the proxy measure. For example, in Queensland, 15 per cent of matters adhered to the legislative requirements relating to the principle (Queensland Commission for Children and Young People, 2012, in Shlonsky et al., 2016: 42). In Victoria, no matters were fully compliant (Victorian Commission for Children and Young People, 2016, in Shlonsky et al., 2016: 42).

The failure of child protection agencies to adequately implement the principle means some children in out-of-home care are still not receiving culturally appropriate care (Arney et al., 2015). For example as the Victorian Aboriginal Child Care Agency (VACCA) highlights, in Victoria, 'the majority of Aboriginal children in care are the responsibility of mainstream community service agencies, not Aboriginal agencies' and 'most of those children are living with non-Aboriginal families' (Bamblett,

2014: 135). Despite being an Aboriginal agency, VACCA themselves are 'directly and contractually responsible for fewer than 200 out of approximately 1030 Aboriginal children in care across Victoria' (Bamblett, 2014: 135).

Nationally, Aboriginal and Torres Strait Islander children are also less likely to have contact with their families and less likely to be reunified with their families when they are placed with non-Aboriginal families (Barber, Cooper & Delfrabbro, 2000, in Libesman, 2011: 53). In this way, inadequate implementation of the principle disconnects Aboriginal and Torres Strait Islander children from maintaining many and strong relationships with family, a strong cultural identity, positive self-esteem and emotional resilience associated with wellbeing. By extension, it also disconnects them from key protective factors against experiencing child sexual abuse while in institutional care.

Wellbeing and strong identity are generic protective factors against child sexual abuse. These factors are documented in a number of publications in the areas of Aboriginal and Torres Strait Islander health, mental health, child and family support, and healing related to the Stolen Generations. They include connection to land, culture, spirituality and ancestry, social cohesion, a sense of positive wellbeing, and cultural resilience (Dudgeon, Wright, Paradies, Garvey & Walker, 2014; Kelly et al., 2009: 3).[26] Not only is culturally appropriate care important for a child's cultural identity, it is also protective of their health and wellbeing in general.

To provide more culturally appropriate approaches to the protection and care of Aboriginal children, Walker and Shepherd (2008) note that there are, for example, culturally specific differences in parenting and family functioning between Aboriginal and Torres Strait Islander and non-Aboriginal families. Developing culturally appropriate approaches based on these differences is an important step in supporting children, parents and families to remain strong and connected in the face of complex challenges (Walker & Shepard, 2008: 2).

A range of barriers continue to impact the successful implementation of the principle. According to the Australian Institute of Family Studies, these barriers include:

- the increasing over-representation of Aboriginal and Torres Strait Islander children in the statutory child protection system
- a high need for kinship carers relative to the number of kinship carers available, noting that Aboriginal and Torres Strait Islander families demonstrate a greater willingness to care for the children of others than non-Aboriginal families
- poor identification and assessment of carers
- inconsistent involvement of, and support for, Aboriginal and Torres Strait Islander peoples and organisations in child protection decision-making
- deficiencies in the provision of cultural care and connection to culture and community
- practice and systemic issues impacting the operation of Aboriginal and Torres Strait Islander child care agencies
- inconsistent quantification, measurement and monitoring of the principle across jurisdictions (in Arney, et al., 2015).

In addition to these barriers, the inadequate support available to carers is an issue that also needs to be addressed. Overall, as a result of the range of barriers impeding the implementation of the

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[26] For information about healing models and programs, see Part 6 of Dudgeon, Milroy & Walker (2014).

principle, many Aboriginal and Torres Strait Islander children in out-of-home care are still not receiving culturally appropriate care (AIHW, 2014; Arney et al., 2015; Shlonsky et al, 2016).

Genuine implementation of the principle underpins cultural care for Aboriginal and Torres Strait Islander children in out-of-home care. However, where the principle has been reduced to a hierarchy of placement, this is insufficient to meet the cultural needs of Aboriginal and Torres Strait Islander children in out-of-home care. Many Aboriginal and Torres Strait Islander children continue to be placed with non-Aboriginal carers, and not all Aboriginal and Torres Strait Islander children are under the care of an Aboriginal and Torres Strait Islander out-of-home care provider (Shlonsky et al, 2016) so there is a need to support cultural care in all forms of placement.

The growing awareness of the importance of culture is also now recognised in the *National Framework for Protecting Australia's Children (2009–2020).* The *National Standards for Out-of-Home Care* are a priority under the National Framework. As an outcome, Standard 10: Children and young people in care are supported to develop their identity, safely and appropriately, through contact with their families, friends, culture, spiritual sources and communities and have their life history recorded as they grow up, is measured by:

> 10.1 Proportion of Aboriginal and Torres Strait Islander children and young people who have a current cultural support plan and

> 10.2 Proportion of children and young people who demonstrate having a sense of connection with the community they live.

What is cultural care?

Libesman (2011) describes cultural care in the following way. 'There are two components to cultural care for Aboriginal and Torres Strait Islander children in out of home care and they both need to be fully supported. The first involves collecting and recording the names of the child or young person's parents, mob, family, and ancestors. This provides the child or young person with a personal history which they can keep and refer to into adult life. This record of the family tree is often done in a diagrammatic form called a genogram. It can help them to find out, in addition to crucially important information about their family, information about their heritage such as the country which their mother and father's families come from, which clan's they are connected to; stories associated with their country and their totem.

The second aspect of cultural care involves helping the child or young person to connect or stay connected in a day to day way with their Aboriginal or Torres Strait Islander communities. This is a more active and ongoing aspect of cultural care. It involves working out how the child/young person can be supported in their participation and inclusion in their communities in practical and ongoing ways. It involves spending time with family and community not just on NAIDOC day or other special occasions but being part of family gatherings where the child or young person can be embraced by their family. Cultural care/support plans need to be living documents, rather than records which are updated from time to time, because cultural identity is formed out of ongoing experiences.'

Culturally appropriate care takes into account the human rights of children to be raised in their own family and community, and for children and their families to participate in decisions about their care. It recognises the strengths of Aboriginal and Torres Strait Islander approaches to child care. It maintains Aboriginal and Torres Strait Islander children's connection to culture and, in doing so, may increase the protective factors against child sexual abuse.

Given the growing recognition of the importance of strong culture to the wellbeing of children, and the fact that juvenile detention and boarding schools are also residential institutions where children are removed from their families and culture, a review to identify the implementation of cultural care of Aboriginal and Torres Strait Islander children in other residential settings may also be of value.

Part 3 summary

While we do not know whether Aboriginal and Torres Strait Islander children experience child sexual abuse in institutions at higher rates than non-Aboriginal children, we know that there is nothing inherent about being Aboriginal or Torres Strait Islander that predisposes children to being victims of child sexual abuse.

Instead, the picture is rather more complex. Aboriginal and Torres Strait Islander children are disproportionately subject to child protection and juvenile justice, resulting in their over-representation in institutions with high situational risk. Given what we are learning about the generic risk and protective factors for child sexual abuse in institutions, we have shown that Aboriginal and Torres Strait Islander children are likely to face more risk factors and less protective factors relative to non-Aboriginal children in institutions, noting that all children in out-of-home care face heightened risk of child sexual abuse.

What makes institutional care particularly risky for Aboriginal and Torres Strait Islander children is that they are much more likely than non-Aboriginal children to be raised outside of their culture because of inadequate implementation of the Aboriginal Child Placement Principle and adherence to the National Standards. When they are separated from culture, they are separated from the protective factors associated with being strong in culture – including a strong identity, high self-esteem, and many and strong attachments.

Discussion and conclusion

Our review of government inquiries confirms that in the past, sexual abuse of children in institutions was widespread. There is no comprehensive data to know how many Aboriginal and Torres Strait Islander children experienced sexual abuse in these institutions. However, due to discriminatory laws, policies and practices of 'protectionism' and assimilation, Aboriginal and Torres Strait Islander children were institutionalised in higher numbers than non-Aboriginal children and therefore were more likely to be exposed to child sexual abuse in institutions.

The *Bringing them home* inquiry found that Aboriginal and Torres Strait Islander children were sexually abused in every type of institution. Institutions included dormitories and other large residential institutions as well as private homes and pastoral stations where children were sent to and from the missions as domestic servants under 'protectionism' and assimilation. Many children were sexually abused in multiple institutions.

We have theorised from the historical evidence that it is likely that Aboriginal and Torres Strait Islander children faced a heightened risk of child sexual abuse in these institutions relative to non-Aboriginal children. We have highlighted the racist social attitudes that dehumanised, denigrated and sexualised Aboriginal and Torres Strait Islander peoples and empowered perpetrators by providing legal and social sanction to high levels of sexual and other violence committed against Aboriginal and Torres Strait Islander peoples.

Aboriginal and Torres Strait Islander children also appeared to be more vulnerable to child sexual abuse in institutional contexts because institutions for Aboriginal and Torres Strait Islander children were even less regulated than institutions for non-Aboriginal children and lacked safeguards. Aboriginal and Torres Strait Islander parents had no legal rights to care for, advocate for, or otherwise protect their children.

Colonisation, 'protectionism' and assimilation also severely disrupted Aboriginal and Torres Strait Islander peoples' relationship to kin, community and country, and prohibited the practice of Aboriginal and Torres Strait Islander cultures. In this way, the missions system broke down the traditions, lore and practices of communities that previously kept children safe. When the missions system ended, governments and churches left the missions with no infrastructure or resources to replace traditional lore or custom ((Best and Lucashenko, 1995; Blagg, 2000; Keel, 2004; Robertson, 2000). This vacuum is likely to have heightened the risks and vulnerability of Aboriginal and Torres Strait Islander children to outside perpetrators. Institutionalised racism meant Australian law did not adequately fill this gap created by the missions system either. Instead, when Aboriginal and Torres Strait Islander victims of sexual abuse sought protection under Australian law, officials used racist stereotypes to blame the victims.

While 'protectionism' and assimilation are discussed as being in the 'past', this experience is in the living memory of Aboriginal and Torres Strait Islander peoples today. These laws, policies and practices affected all Aboriginal and Torres Strait Islander families and had a range of negative consequences for families and communities.

The forcible removal of multiple generations of Aboriginal and Torres Strait Islander children from their families and the abuse they experienced in institutions frequently impaired their sense of cultural identity, including preventing them from learning their languages, had ongoing impacts on mental and physical health, and undermined the transmission of traditional healing and parenting

practices that had previously kept families and communities safe and well. These policies also broke up families and communities, put pressure on surviving Aboriginal and Torres Strait Islander cultures and lore, and created widespread and unresolved trauma and grief.

The *Bringing them home* inquiry, which remains the most comprehensive study of the Stolen Generations, concluded that the many negative consequences of past child removal policies and practices have directly affected subsequent generations and 'increased their likelihood of institutionalisation' (Human Rights and Equal Opportunity Commission, 1997: 555).

There is no comprehensive data to know whether Aboriginal and Torres Strait Islander children experience child sexual abuse at higher rates than non-Aboriginal children in contemporary institutions. This represents a critical gap in data needed to monitor and improve the safety of Aboriginal and Torres Strait Islander children in institutions.

This report has highlighted that child sexual abuse is not a part of any Aboriginal or Torres Strait Islander culture and that there is nothing inherent to being an Aboriginal or Torres Strait Islander child that makes a child more vulnerable to sexual abuse. Instead, the findings of this research suggest that Aboriginal and Torres Strait Islander children are more likely to encounter circumstances that increase their risk of abuse in contemporary institutions, reduce their ability to disclose or report abuse and, if they do report, reduce their chances of receiving an adequate response.

Due to the impacts of past policies and practices as well as the ongoing experiences of structural and institutionalised racism, Aboriginal and Torre Strait Islander children are disproportionately placed in out-of-home care and juvenile detention. The closed nature of these institutions means they carry higher situational risk for child sexual abuse, relative to other types of institutions where potential perpetrators do not routinely have unfettered access to vulnerable children. For the same reasons, Aboriginal and Torres Strait Islander children face more of the known risk factors for child sexual abuse in institutional settings compared with non-Aboriginal children. When they are in residential institutions they also face less of the known protective factors such as connection to culture, high self-esteem, strong identity and access to Aboriginal and Torres Strait Islander adults they know and trust.

Provided the necessary social conditions are in place, this research has highlighted contemporary Aboriginal and Torres Strait Islander cultures as a protective force for children and families (Lohoar, Butera & Kennedy, 2014: 2). It is now increasingly being recognized, both in Australia and internationally that positive connection to one's culture also helps children to develop their identities; fosters positive self-esteem, emotional strength and resilience; and increases the number of secure attachment relationships around the child.

Aboriginal and Torres Strait Islander children need to have positive connections with their families and communities to benefit from the protections associated with being raised in their culture. However, the risk of being disconnected from the protection of culture is particularly acute for Aboriginal and Torres Strait Islander children in out-of-home care, juvenile detention (Libesman, 2011: 8) and in boarding school environments.

The Aboriginal Child Placement Principle and the National Standards acknowledge the importance of connection to culture for children in out-of-home care, yet many Aboriginal and Torres Strait Islander children are still being placed outside of culture and have inadequate contact with their families. Biological families and communities may not be receiving appropriate and culturally safe support for healing grief and trauma after having a child/children removed. This may compromise

the capacity of the family to maintain a positive connection to their child in out-of-home care and the secure attachment now associated with child wellbeing and safety.

Therefore, when Aboriginal and Torres Strait Islander children are separated from culture, they are more likely to be separated from the protective factors that secure attachments and a strong and positive social network can provide. This logic suggests that increasing the protective factors for Aboriginal and Torres Strait Islander children in out-of-home care requires genuine adherence to all elements of the Aboriginal Child Placement Principle, including prevention and partnership, participation and cultural connection, as well as adherence to the placement hierarchy if institutionalisation is necessary. Juvenile detention and boarding schools are also residential institutions where children are removed from their families and culture. A review to identify the implementation of cultural care of Aboriginal and Torres Strait Islander children in juvenile detention and other residential settings may also be of value.

This report has highlighted some of the injustices perpetrated by authorities and institutions against Aboriginal and Torres Strait Islander peoples and the fear this engenders in contemporary Aboriginal and Torres Strait Islander communities. In order to counter the fear and mistrust of institutions that may discourage disclosure of child sexual abuse and engagement with services more broadly, communities may need to see and feel confident that agencies are consistently complying with the principle. This is so that they do not have to fear that making a report or seeking services for themselves or their children will result in a child being removed from their community. If a child does enter the child protection system, institutions need to earn communities' trust by ensuring that their children are safe and well, and that making a report or disclosure does not mean a child is 'lost' to the community by being isolated from their kin, community and culture as happened previously to the Stolen Generations.

The extent of collective trauma, the continuing loss and grief in communities, and emerging evidence showing that strong culture is associated with health and wellbeing for Aboriginal and Torres Strait Islander peoples suggests that collective healing approaches, culturally safe health services, alongside other supports for cultural revitalisation, should also be explored as a means to increase the protective factors available to Aboriginal and Torres Strait Islander children in institutional settings. Support for Aboriginal and Torres Strait Islander organisations to partner with research institutions in large scale epidemiological studies such as the Western Australian Aboriginal Child Health Survey, may increase our understanding of these factors.

This report also suggests that past and contemporary racism has contributed to the risks Aboriginal and Torres Strait Islander children face in contemporary institutional settings. Therefore it may also be of value to investigate whether cultural revitalization can play a role in reducing risk by challenging racist stereotypes about Aboriginal and Torres Strait Islander peoples and educating non-Aboriginal peoples to acknowledge and value the diversity of Aboriginal and Torres Strait Islander cultures.

Finally, Aboriginal and Torres Strait Islander peoples have been very specific in their call for all governments to directly involve them in any and all decisions that affect them and the lives of their families. It is a call for a deeper, more respectful and mature relationship that seeks to address the imbalance in power, access and use of resources to enable Aboriginal and Torres Strait Islander peoples to participate fully in Australian society without having to forgo who they are.

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