

transmitted. But it is also that in an increasingly image-saturated world, the sexualised image is imbued with meaning that goes beyond the individual digitally captured in its frame. Like 'strip poker' and playing 'doctor', it is a role play. But it is a role play that has to live up to the expectations of participants now well versed in a selfie culture that reproduces social norms and expectations of beauty and sexuality, even to the point of stereotypical poses and perspectives.

As we have noted, while the harms associated with prosecution have been acknowledged to some degree, the response from some jurisdictions has been to provide a defence to child pornography charges but not to remove the possibility of prosecution. New offences have also been introduced, designed to capture the non-consensual distribution of intimate images, either driven by a concern to provide an alternative avenue to prosecute young sexters or by concerns to address revenge pornography. Some (for example, the Victoria Police) argued against introducing offences which would apply to sexting in the alternative of child pornography charges on the basis that this could lead to young people being prosecuted rather than diverted from proceedings.⁷⁰ There is already some evidence of this at this point in time,⁷¹ which indicates that harm can certainly be an unintended consequence of legal regulation, and that reducing the direct and indirect harms of sexting may be an ongoing project.

Aboriginal children's lives, sexual violence and the settler state

Terri Libesman and Hannah McGlade

Mainstream media, law and policy representations of and responses to sexual violence against Indigenous children is part of a broader ongoing colonial failure to listen to Aboriginal and Torres Strait Islander communities, in particular to women and children. We argue that there are two dichotomised responses to Aboriginal child sex abuse, both of which are conceptually linked to ongoing colonial violence. These responses are part of a continuity in failure to perceive value in Indigenous Australian cultures, to take responsibility for the intergenerational harms which colonial policies – including forced removals from land and culture and associated violence – have caused, and in the ongoing imposition of assimilationist values.

These dichotomised responses are exemplified in dual representations of Aboriginal communities. On the one hand they are represented as dysfunctional, failed and sites for predatory sexual abuse of Aboriginal children who need to be saved by white intervention. This characterisation and the reiteration of a racial hierarchy, with Anglo-Western values proffered as the solution to Indigenous communities' problems, is evident in the Northern Territory (NT) Emergency

Response (the Intervention) and subsequent Stronger Futures program. On the other hand, Indigenous children are responded to as unworthy of care, with a lightly veiled willingness to ignore huge deprivation, and sexual and other violence by state actors, Indigenous and non-Indigenous community members, carers and strangers. Nowhere has this been more apparent than in the history of treatment of Aboriginal children in the care and detention of the state. This has been highlighted by the recent royal commissions in the NT as a result of documented abuse of Aboriginal children in detention and nationally in response to widespread institutional child sexual abuse.¹

These experiences of violence and institutional neglect are related to a more pervasive exclusion of many Indigenous children from citizenship and human rights accorded to other Australian children, in particular the rule of law, because black children's lives do not in law or practice matter sufficiently.²

Australia as a nation ostensibly denounced its racist colonial past with the 1967 referendum, when the country was asked to vote on whether Aboriginal people should be included in the national census. In 1975 the Commonwealth Parliament agreed that racial discrimination was no longer acceptable when it ratified the United Nations Convention on the Elimination of All Forms of Racial Discrimination. In 2008 the prime minister at the time, Kevin Rudd, also issued a public national apology for the past mistreatment of Indigenous people, in particular to the Aboriginal children stolen from their families and communities under laws and policies which deemed their families unfit to raise them. These policies were denounced as genocidal by the Australian Human Rights Commission in its report *Bringing Them Home*.³ Notwithstanding all of the above, the continued mistreatment of Aboriginal children, illustrated most recently with the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory (the Don Dale Royal Commission),⁴ shows substantive equality for Aboriginal children to be highly elusive.

The representation of Indigenous communities as dysfunctional

In 2007 a frenzy of media attention focused on child sexual abuse in Aboriginal communities in the NT.⁵ The stories recounted on both flagship and shoddy current affairs programs, in the tabloids and by the shock jocks were horrific. After decades of government neglect of Australia's poorest First Nations communities, thousands of pages of carefully considered reports and recommendations with respect to child sexual abuse in Indigenous communities⁶ and consistent lobbying by the peak Australian Indigenous children's organisation falling on the deaf ears of successive governments,⁷ the conservative Howard government identified sexual abuse of Indigenous children as an opportunity and made a hasty decision to respond with the Northern Territory Intervention.⁸

The presentation of Aboriginal communities, and Aboriginal women in particular, as silent and failing to take action to protect their children is an aspect of the dysfunctional and failed racist stereotype propagated to justify the Intervention and its policy successors. There has been a persistent failure to provide the resources to support the initiatives of Aboriginal women, Aboriginal organisations and recommendations from the plethora of reports.⁹

Shortly after the release of the *Ampe Akelyernemane Meke Mekarle* [*Little Children Are Sacred*] report,¹⁰ commissioned by the NT Government to investigate child sexual abuse in NT Aboriginal communities, the Howard government, which did not consult with either the NT Government, Aboriginal communities, child welfare researchers or any other body, announced the Northern Territory Emergency Response (NTER). The focus on child sexual abuse was used to implement a program of fundamental market-economy reforms, which had been on the Howard government's Indigenous affairs agenda across the three terms of office which they governed. The NTER commenced with the Australian army entering communities and 'securing' 73 prescribed areas in August 2007 as part of a three-stage, five-year plan, described by Mal Brough, the minister for Aboriginal affairs at the time, as 'stabilise, normalise and exit'.¹¹

Rather than work with the NT Government to support the recommendations of *Little Children Are Sacred*, co-chaired by a senior Aboriginal woman, Pat Anderson, the Howard government declared that an 'emergency' military-style response involving the Australian army would instead be implemented. Neither the NT nor federal government responses to date to Aboriginal child sexual abuse have prioritised the imperatives of Aboriginal communities including culturally based responses, preferring instead increased police and statutory intervention powers. There is no evidence that the responses, which invest in non-Indigenous authorities and decision-makers at the expense of Aboriginal women and communities, have had any success in addressing or decreasing Aboriginal child sexual abuse.¹² This is so notwithstanding that the Intervention was heavily funded,¹³ and contributed to the entrenchment of what is widely known as the 'Aboriginal industry'.

While the Intervention can be understood in the context of the Howard government's broader policy of framing Indigenous self-determination as a failure, with Howard's abolition of Australia's representative political body, the Aboriginal and Torres Strait Islander Commission (ATSIC), and adoption of a policy of 'practical reconciliation', it can most directly be understood in terms of two particular neoliberal policy ambitions.¹⁴ The first was to dismantle the most successful transfer of land to Australian Aboriginal peoples and the parallel establishment of powerful land councils to represent traditional owners' interests under the *Aboriginal Land Rights (Northern Territory) Act 1976*. The second was welfare reform, with the problems faced by Indigenous communities framed as being caused by 'passive welfare'. The Cape York Institute, under the leadership of Noel Pearson, obtained enormous traction for its manifesto *From Hand Out to Hand Up*, which saw addressing Aboriginal 'dysfunctionality' as centrally about transitioning people to the 'real' economy.¹⁵

The main objectives of the Intervention, which was initiated through more than 500 pages of composite legislation in 2007, notable for its lack of reference to children, was rebadged 'Closing the Gap NT' in 2008 and again 'Stronger Futures' in 2012, included the following:

- Mandatory leasing of Aboriginal land under various land tenures to the Commonwealth Government initially for five years and subsequently 99 years.
- Abolition of the permit system which enabled Indigenous community control over who came onto their land.
- Implementation of 'free market' principles such as 'market-based' rents for housing.
- Income management with the partial quarantining of income to be used on a basics card on prescribed goods at prescribed stores.
- Oversight of community organisations and transfer of decision-making from community organisations to government business managers.
- Linking of welfare to school attendance.
- Increased policing.
- Regulation of the sale and consumption of alcohol in the prescribed areas, along with the banning of pornography and monitoring of computers.¹⁶

While *Little Children Are Sacred* was used to catalyse the Intervention, its first recommendation and the subsequent intention of the report – to urgently and with genuine engagement with Aboriginal organisations develop responses to child sexual abuse in NT Aboriginal communities – was blatantly ignored.¹⁷

The Howard government was able to enact this radical political agenda with bi-partisan political support and minimal opposition by enlisting the language and justification of humanitarian intervention, claiming that it was taking action to protect vulnerable people in response to an emergency. The sexual violence experienced by Aboriginal children in the NT was presented as either inherent to, or part of, a failed society, but either way a phenomenon which is Indigenous and which requires intervention and the transformation of Indigenous culture. In this way complex issues were simplified and the responsibility for wrongs experienced were transferred from colonial policy and practice to Indigenous peoples. Following this framing of responsibility for the harm, authority for determining how

to fix the problem was transferred from Indigenous people to Western intervention.

Minister for Aboriginal Affairs Mal Brough's second reading speech described Aboriginal society as 'failed' where 'basic standards of law and order and behaviour have broken down and where women and children are unsafe'.¹⁸ The moral response to humanitarian crises requires urgent intervention and this was seen as a situation where the 'niceties' of the law could be put aside. As Howard asked at the time of the Intervention, 'What matters more: the constitutional niceties, or the care and protection of young children?'¹⁹ The crises of child sexual abuse mandated a state of exception. The trajectory of Western progress is evident in the Intervention, where the state of exception and rule of law will be reinstated once communities are 'normalised'; that is, assimilated. The process of 'normalisation' was extended from Brough's initial five-year plan to 2022 with Stronger Futures.²⁰

Nowhere in the federal political response was it recognised that the crisis of sexual abuse and victimisation of Aboriginal children was founded in the violence of colonisation, which dispossessed Aboriginal people of traditional laws and customs, and inflicted immeasurable trauma including by way of widespread sexual abuse by non-Aboriginal men on Aboriginal women and children. This was so notwithstanding that the sexual abuse of Aboriginal children by non-Aboriginal men was well known. Victims spoke out bravely many times, including in national inquiries when powerful perpetrators were involved, as was the case in relation to the Australian Labor Party senator Bob Collins, who committed suicide before charges against him could be heard in court. Collins was granted the honour of a state funeral even though he was subject to criminal charges involving the sexual assault of children as young as 12 years of age. The actor Tom E. Lewis spoke publicly about the serious impact Collins' abuse had on his life.²¹

Aboriginal people know that sexual abuse was part and parcel of colonisation but there has been little official acknowledgement of the widespread sexual abuse of Aboriginal women and girls, who were regarded as promiscuous and lacking in morality.²² This shameful aspect

of history has not been given proper recognition and official apologies have failed to acknowledge sexual violence within colonisation processes.²³ As historians Heather Goodall and Jackie Huggins wrote many years ago, 'The process of colonisation across the continent began violently with invasion, massacre and rape, and continues to be violent since that time. Sexual abuse of Aboriginal women and children by white men was a well known outcome of such invasion and indeed was often a weapon of war'.²⁴ Aboriginal women and girls fell outside the protection of the colonial law, deemed apparently unable to be raped, thereby encouraging non-Aboriginal males to act with impunity towards Indigenous women and children.²⁵

Moreover, sexual violence towards and rape of Indigenous women was linked to indiscriminate massacres, such as the massacre in 1880 in Ravensthorpe, also known as Cocanarup, in Western Australia (WA). Aboriginal men had speared and killed a pastoralist for the rape of a young girl and in response the pastoralists massacred more than 36 men, women and children.²⁶ Aboriginal children were removed into non-Aboriginal families from the point of frontier conflict when adult communities were massacred or died as a result of introduced European diseases.²⁷ Later, the forced removal of Aboriginal children into state-based missions and reserves is well documented.²⁸ And while it is not given adequate attention, the physical, emotional and sexual abuse of children removed into non-Aboriginal care is documented from the time of colonisation and is ongoing.²⁹

The removal of Aboriginal children from their mothers and families during the extensive period known as the Stolen Generations facilitated widespread sexual abuse of Aboriginal children in missions, homes and non-Aboriginal households that procured children as often unpaid domestic servants and labourers. As the *Bringing Them Home* inquiry reported, 'Children in every placement were vulnerable to sexual abuse and exploitation'.³⁰ Indeed in 1940 the NSW Board of Protection reported to parliament: 'It has been known for years that these unfortunate people are exploited. Girls of 12, 14 and 15 years of age have been hired out to stations and have become pregnant. Young male aborigines [sic] who have ben sent to stations receive no

payment for their services...'.³¹ Sexual abuse of Aboriginal children was reported to the Royal Commission into Institutional Responses to Child Sexual Abuse. Religious institutions also permitted endemic sexual abuse of Aboriginal children, with notorious institutions including New Norcia, Sister Kate's Home, Kinchela Boys Home and Retta Dixon Home.

Rather than understanding child sex abuse in the context of colonial history, in particular in the context of discriminatory policies of child removal and stolen wages, child sexual abuse is framed as a problem with Aboriginal communities. Poverty and protection are tied, in the Intervention narrative, to the colonial 'hierarchy of races', and the more neutral palette of 'development' is presented as what is needed to overcome moral flaws. Within this narrative, Indigenous communities' lack of 'development' is enmeshed in their suffering. In this way, protection and development are conceptual tools used to snuff out other claims to either addressing child sexual abuse or more broadly to exercise Indigenous jurisdiction such as history, laws, belief and traditions. 'Normal society' is contrasted with 'violent Indigenous society', which is defined by a lack of development and therefore sexual abuse can be addressed through 'temporary', authoritarian-style protection measures and development reforms.³²

Some aspects of the Intervention have subsequently been extended across Australia as a result of collaboration between the Liberal-National Coalition government and mining entrepreneur 'Twiggy' Forrest, who was engaged by the Commonwealth to inquire into Indigenous disadvantage. The 'Forrest Report' called for punitive restrictions to social security that are now being imposed on largely Aboriginal communities in the form of the 'Cashless Debit Card' (CDC), which restricts access to the cash component of social security.³³ The way that the sexual abuse of Aboriginal children was publicly used in 2017 to justify the expansion of the CDC echoed the way the Intervention was introduced over a decade ago.³⁴ The CDC is managed by a private company, Indue, which has been awarded multi-million-dollar contracts to oversee the card.³⁵ It has caused considerable hardship to many Aboriginal women looking after children and there is evidence

that crime and domestic violence reports have increased since the card was introduced in the Kimberley region.³⁶

The response to the widespread sexual abuse and violence against Aboriginal children is in this way connected to a narrow Western development agenda. The power relations and ideological commitments that attend the Intervention are treated as incidental to or separate from the moral call to protect vulnerable children. The moral mission masks questions about how to effectively address sexual abuse in communities, the proper limits of powers to intervene, and who has the right and responsibility to speak on behalf of vulnerable Indigenous children. In this way the NT Intervention and its successor Stronger Futures have enacted a contemporary 'saving and civilising' mission.

'Lives don't matter' approach

Recent indicators of the extent of child sexual abuse are contained in the 2016 Council of Australian Governments' *Overcoming Indigenous Disadvantage* report. While it is noted that the actual prevalence of child sexual assault by Indigenous status is not known, data from incidents recorded by police highlight the particular vulnerability of Indigenous children to sexual assault. In 2015, Aboriginal and Torres Strait Islander child victims (aged less than 15 years) of sexual assault accounted for 48.4 per cent (NSW), 54.5 per cent (Queensland), 36.4 per cent (SA) and 38.0 per cent (NT) of sexual assault victims in each jurisdiction (section 4.12, table 4A.12.9).³⁷

In considering such figures it needs to be kept in mind that under-reporting is a significant issue and that the true extent of victimisation is not known. Under-reporting occurs for a range of reasons which traverses Indigenous and non-Indigenous children's experience of sexual abuse; however, additional factors within Indigenous communities include the victimisation of victims, the failure to take Indigenous complaints seriously, including a failure to adequately investigate, the fear of reprisals within small communities, and the routinising and normalising of neglect and abuse within communities.³⁸

Sexual abuse of Aboriginal children is, and has been for well over two decades, a matter of great concern to many Aboriginal people

and communities who, as stated above, have provided evidence of the gravity of the problem to numerous state-based inquiries set up in response. These inquiries all found sexual abuse of Aboriginal children 'widespread', with under-reporting a major factor.³⁹ Notwithstanding, there was typically a lack of legal intervention, with perpetrators free to repeatedly offend against children. Some patterns of abuse were extremely predatory, with older men plying girls with alcohol and petrol. There was too often a normalisation of abuse, and services for Aboriginal child victims were virtually non-existent. Victims who did report were often ostracised and left with little choice but to leave their homes and communities.⁴⁰

While offenders are often adults, it is also increasingly recognised that children and youth are also offending and engaging in 'peer to peer sexual abuse'. Frequently the offending is also directed against younger children. Research in 2013 by Griffith University concerning West Cairns and Aurukun explored key themes, including the prevalence of family- and community-based violence, the fact that children were often not monitored, boys' sense of entitlement and girls' lack of knowledge of their right to say 'no'. Targeted primary, secondary and tertiary interventions are required for the community, perpetrators and victims.⁴¹

Notwithstanding the 'epidemic' of Aboriginal child sexual abuse (perpetrated by both Indigenous and non-Indigenous men), important recommendations made by the various government inquiries have typically not been implemented and have been disregarded by governments unwilling to listen. *Little Children Are Sacred*, which found that 'the sexual abuse of Aboriginal children was common, widespread and grossly under-reported' recommended that the Commonwealth and NT governments establish a collaborative partnership and memoranda of understanding to protect children and that both governments commit to genuine consultations with Aboriginal people in devising initiatives to protect children. As discussed, the federal government ignored this key recommendation but used the report's focus on sexual abuse as leverage to gain support for the Intervention.

The NT Intervention and subsequent Stronger Futures programs as discussed above were designed to change people's behaviour through

punitive measures. The juxtaposition of measures in both and failures to respond to or support pervasive child sex abuse in Indigenous communities suggest continuity in discrimination and assimilation policies and values. The intense interest in child sex abuse in Indigenous communities used to justify the Intervention stands in stark contrast to the routine inhumane indifference to the suffering of Indigenous child sex abuse victims. These victims' worthiness and equality appears to remain in abeyance until they comply with colonial values.

There can be no doubt that while Aboriginal children are at significantly higher risk of sexual assault and abuse than other Australian children, government responses, both in terms of the Intervention and the failure to respond to recommendations made by Aboriginal women and organisations, have been woeful. Although there have been numerous inquiries conducted across Australia into Aboriginal child sexual abuse, important information and key recommendations from these inquiries and reports have not been responded to or implemented.⁴² In Western Australia (WA) the Gordon Inquiry supported a 'community development approach that works with leaders and members of the community, and focuses on strengthening families' and communities' capacity'.⁴³ This approach was not adopted, however, and the recent revelations of extensive child sexual abuse in the small Pilbara town of Roebourne, resulting in charges being laid against 44 men for over 350 offences against children, shows the dire consequences of the state's negligence and failure.⁴⁴

The Gordon Inquiry was triggered in response to a coronial inquiry into the death of 16-year-old Susan Taylor, found dead by hanging at an Aboriginal community only two weeks after making a report of sexual abuse by male relatives. The coroner could not conclude the cause of her death, as police failed to treat the scene of her death as a potential crime scene and failed to follow their own investigation procedures. On the evidence, the coroner found that Susan had been sexually abused and that this abuse 'played a large part in the circumstances of her death'. Furthermore, it was considered that sexual abuse of Aboriginal children throughout the state of WA was 'widespread' with few cases being reported.⁴⁵

The inquiry urged the establishment of Aboriginal Healing Centres and the 'One Stop Shop' model, being a holistic approach to address family violence and its underlying factors, with local action groups of Aboriginal people who could guide the work of the One Stop Shop and relevant government agencies. The state rejected these approaches and invested millions of dollars' worth of funding into establishing multi-function police stations based on a statutory child protection mandate. This approach has not resulted in decreased levels of family violence and child sexual assault, as was evidenced recently in Roebourne.

There are many shocking examples of state indifference to Aboriginal child sexual assault and victimisation but the hypocrisy of the NTER was most apparent in late 2007 when, while the army was rolling into prescribed communities ostensibly to address child sex abuse, a little eight-year-old boy was reported missing to police from the NT Borroloola community.⁴⁶ Police initially told his worried family that he would just come home. What followed, like the investigation into Susan Taylor's death discussed above, was a litany of disregard and failed policing and other institutional practices. Three days after he went missing, the body of young K was found in a muddy waterhole, covered by large rocks that appeared to be weighing him down. Probative evidence with respect to criminal wrongdoing was ignored, evidence was destroyed or not collected, and the police persisted with a presumption that he drowned accidentally, even though this was improbable. Five years later when the NT coroner examined the boy's death he found significant shortfalls in the investigation and that K died at the hands of person or persons unknown. Among the evidence destroyed by police were anal and fingernail swabs, which meant that it was not possible to connect the DNA found on a beer can close to the site of the waterhole where the boy's body was recovered to the crime. Tellingly, the DNA on the beer can was a match to that of a known child sex offender. There was never any justice for K's family, although in 2010 and following a damning Coronial report, the NT police apologised for 'several significant failings in the initial investigation'.⁴⁷

The 'Bowraville murders' involved the killing of three Aboriginal children from the small northern New South Wales town in the

early 1990s, and again highlighted the failure of the law to protect Aboriginal children.⁴⁸ The main suspect in the killing of four-year-old Evelyn Greenup, 16-year-old Clinton Speedy-Deroux and 16-year-old Colleen Walker (whose body was never found) was acquitted by juries (likely not to have included any Aboriginal people) in two separate trials in 1996 and 2006. Evidence potentially linking all victims was never heard by the juries, and the victims' families, who have fought for 25 years for justice for their children, have campaigned to have all three cases heard together. In 2010 and 2013 the NSW Attorney-General rejected the victims' families' application but in 2016 the Attorney-General agreed to refer the entire brief of evidence to the NSW Court of Criminal Appeal. The police in 2017 again charged the suspect and the case is proceeding for the third time in court.⁴⁹ Sexual abuse of Aboriginal children and youth is regarded as a clear motivation for the murders of the children.

The contrast between the high-profile investigation which eventually resulted in a conviction for the murder of a young white boy, Daniel Morcombe, and the failures in the response to sexual assault and deaths of known Aboriginal child victims exemplify the inequality in the way Western, non-Indigenous law is applied to Indigenous child victims. The law's failure to protect Indigenous children publicly signals non-Indigenous Australian prejudice that holds that Aboriginal children's lives don't matter and encourages impunity, rather than accountability, for adult male perpetrators against Aboriginal children. In turn, this contributes to creating conditions that further entrench Aboriginal children's vulnerability to child sexual abuse and the magnitude of psychological, physical, emotional and spiritual trauma associated with such abuse.

The systemic discrimination against Indigenous children in which non-Aboriginal political and legal institutions engage in removing Aboriginal children from their families and communities is reaching national and international attention. Nationally Aboriginal children are now ten times more likely to be removed from their families and communities, and since the historic apology of Prime Minister Rudd in 2008 there has been a recorded 123.8 per cent increase in Aboriginal

child removals.⁵⁰ According to the Family Matters national campaign, without urgent intervention this is estimated to triple by 2036.⁵¹

Increasingly, children are placed into the care of non-Aboriginal foster carers, and the Aboriginal Child Placement Principle is ignored and routinely not complied with. In some states the removal rates are much higher than the national average, with social workers frequently removing children of Aboriginal mothers who are experiencing family violence, a form of gender-based discrimination. In WA, Aboriginal children are 17.5 times more likely to be removed than their non-Aboriginal counterparts (and currently comprise more than 54 per cent of all the children in state care).⁵² Contemporary child removal and its link with youth incarceration was further noted by the UN Special Rapporteur on Indigenous Peoples, who visited Australia in 2017 and found Indigenous incarceration rates were among the worst in the developed world, and the rate of child removal especially concerning.⁵³ The United Nations Committee on the Elimination of Race Discrimination further expressed deep concern about the high numbers of Aboriginal children and youth incarcerated and removed from families and placed into care that is not culturally appropriate and in which they may also suffer abuse.⁵⁴

Reflecting on the Royal Commissions

Whilst the state was keen to override the NT *Little Children Are Sacred* report to invade Aboriginal communities deemed unsafe, it has preferred to pay far less attention to the fact that much of the sexual abuse of Aboriginal children and youth has taken place while children were in state care or neglected by the state. This is clear from the recent Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission), which heard significant evidence from Aboriginal people across Australia concerning their childhood experience of sexual abuse and violence in state 'care'. The Royal Commission has recommended a national redress scheme and supported compensation for adults abused as children, a significant proportion of whom are Aboriginal people.⁵⁵ The sad reality is that many of the Stolen Generations who experienced such abuse are no longer alive, having

taken their own lives or otherwise passed on without any form of justice for the gross violations of human rights that they endured as children. The immediate implementation of recommendations from the Royal Commission stands in contrast to the failure, 20 years on, to implement the recommendations from *Bringing Them Home*, which outlined the sexual and other forms of gross abuse of Aboriginal children's and families' human rights.⁵

The Royal Commission heard evidence from 8,013 survivors of institutional child sexual abuse, of which more than 14 per cent identified as Indigenous.⁵⁷ It found that a high proportion of the abuse occurred in out-of-home care: before 1990, 36 per cent of the abuse occurred in out-of-home care.⁵⁸ More than one in five of the survivors of residential abuse were Aboriginal people.⁵⁹ Many of the Indigenous survivors told the commission they were sexually abused in out-of-home care and it was recognised that the Aboriginal experience of the trauma of child sexual assault was bound up with the trauma of separation from family and culture.⁶⁰ The Royal Commission report recognised that Indigenous children may be exposed to more crisis that places them at risk of institutionalisation, and that Aboriginal children's vulnerability was due to 'a range of historical and contemporary factors' including the impact of past removal policies, as well as ongoing systemic racism, which reduces protective factors for Aboriginal children and increases their vulnerability to institutionalisation and sexual abuse.⁶¹ Notwithstanding this important observation, there is insufficient attention devoted to addressing structural discrimination in the final report, undermining its potential impact.

The Royal Commission was urged to support a collective redress model or process and affirm the importance of the Aboriginal child placement principle and culture. It was also encouraged to develop formal relationships with Indigenous peoples and to support the right to self-determination in Article 3 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). However, the commission does not appear to have adopted this approach. The UNDRIP also contains participatory rights, as set out under Article 18 which states: 'Indigenous peoples have the right to participate in

decision-making in matters which would affect their rights through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own Indigenous decision-making institutions'. It is not evident that the right to self-determination and participatory rights are supported by the commission's final report.

The commission's final report supports the funding of Aboriginal and Torres Strait Islander healing approaches as part of advocacy, support and treatment for Aboriginal victims and survivors of child sexual assault (Recommendation 9.2).⁶² As outlined above, various reports and inquiries have established Aboriginal child sexual assault to be endemic in communities, as a result of factors including the history of institutionalised child sexual abuse perpetrated as part of colonial processes. Collective and community-based approaches are critical in addressing the foundational colonial wrongs which continue to have an impact on sexual harms inflicted on Aboriginal and Torres Strait Islander children, young people and adult survivors.⁶³ Aboriginal communities should be supported to establish Healing Centres to address and prevent high levels of Aboriginal child sexual abuse, consistently with principles of self-determination. The Commission's final report importantly acknowledges that the Aboriginal and Torres Strait Islander Child Placement Principle, which is frequently not adhered to by statutory authorities when they remove Aboriginal children, should be reinforced.⁶⁴

Recommendation 12.20 provides:

Each state and territory government, in consultation with appropriate Aboriginal and Torres Strait Islander organisations and community representatives, should develop and implement plans to:

- a. fully implement the Aboriginal and Torres Strait Islander Child Placement Principle
- b. improve community and child protection sector understanding of the intent and scope of the principle
- c. develop outcome measures that allow quantification and reporting on the extent of the full application of the principle, and evaluation

of its impact on child safety and the reunification of Aboriginal and Torres Strait Islander children with their families

- d. invest in community capacity building as a recognised part of kinship care, in addition to supporting individual carers, in recognition of the role of Aboriginal and Torres Strait Islander communities in bringing up children.

It has not been possible to scrutinise on a case-by-case basis the lack of adherence to and respect for the Aboriginal Child Placement Principle (ACPP) developed in response to the history of genocide and the national inquiry *Bringing Them Home* findings and recommendations, as child protection decisions remain largely confidential. However, there are numerous anecdotal accounts of failure to apply the principle. For example, in a recent Western Australian case, child protection workers placed an Aboriginal baby from East Kimberley with non-Aboriginal carers in Perth over 2,000 kilometres away. Local family members were not investigated, contrary to the ACPP, and there was no consideration of the principle of self-determination. The magistrate overseeing the case, Magistrate Horrigan, asked of the Department for Child Protection, 'What about her parents, her family, her culture, her dislocation in Perth away from family and country?'⁶⁵ In Victoria the *Taskforce 1000* inquiry highlighted that a staggering 62 per cent of Aboriginal children in the 1,000 Aboriginal case reviews were placed with non-Indigenous carers notwithstanding the ACPP.⁶⁶

The Royal Commission's suggested planning processes to affirm the ACPP will need to directly address the problem of systemic and racial bias inherent in the non-Indigenous child protection system. Departments to date, however, appear unwilling to engage with the issue of structural racial discrimination, preferring to focus on the less confronting issue of cultural awareness and diversity. In Canada where Indigenous peoples face this crisis, Cindy Blackstock from First Nations Child and Family Caring Society has urged more commitment in this regard, stating, 'Let's just be real about the racism and discrimination that is going on in these decisions that are being taken and it just has to stop'.⁶⁷

The Royal Commission into the Protection and Detention of Children in the Northern Territory was announced in 2016 after *Four Corners* presented images of NT Aboriginal youth being beaten, tear-gassed and shackled, not unlike the treatment by US soldiers engaged in torturing prisoners at Abu Ghraib or Guantanamo Bay.⁶ Following expressions of national and international concern, including from the UN Office of the High Commissioner for Human Rights, Prime Minister Turnbull announced the commission to investigate treatment of Aboriginal youth in NT detention centres. The commission, amongst a litany of wrongs, found sexual abuse and harassment of Aboriginal girl detainees, both inside and outside of the detention mandate, by male youth justice officers. The final report of the Royal Commission recognised the interaction between youth detention and child protection systems and made recommendations to reform the out-of-home care system to a public health preventative approach, supporting Aboriginal communities' ability to prevent and address family violence and child abuse. It reported that children and young people in detention in NT made 138 cases of assault, indecent assault and sexual assault between 2007 and 2016.⁶⁹ This would be a significant underestimate as reportage in such a vulnerable situation would be even more difficult than in other circumstances. The situation for children in out-of-home care was no better, with a high number of complaints about Aboriginal children being abused in care.⁷⁰

The commission noted that the key recommendations of *Little Children Are Sacred* were not implemented, and urged that a Child Abuse Taskforce should be established to ensure this happens. It recommended the establishment of Family Support Centres, finding many Aboriginal parents did not know what to do to have their children returned to them.⁷¹ These services could be 'Recognised Entities' given a right to participate in court processes and engage in decision-making. The Commission also recommended periodic reviews of compliance with the ACP, increased support for kinship carers and the establishment of a new Children's Commission, with an Aboriginal Children's Commissioner and Aboriginal staff with increased powers and responsibilities.

The Royal Commission did not provide unequivocal support to Aboriginal community-controlled organisations, noting the Family Support Centres may not necessarily be Aboriginal-owned services and the decision to remove children would still be retained by the statutory department.⁷² This approach leaves too much room for systemic bias in child removal decision-making and is not consistent with a key recommendation of *Bringing Them Home*: that jurisdiction for Aboriginal child welfare be transferred to Aboriginal people in accordance with their desire and capacity.⁷³

Conclusion

Restitution requires recognition of past wrongs and responses which address the underlying causes of violence, including sexual violence, experienced disproportionately by Indigenous women and children. Colonial justifications of *terra nullius* and a hierarchy of races deny the agency and cultural value of Indigenous communities. Indigenous women have not been silent over the past decades waiting for an intervention. The policies of the Intervention have not been a response to unknown revelations. What we have seen is an active undermining of the laws and customs which establish order and appropriate behaviour in communities, a failure to provide policing and other support for victims of violence with a frequent victimisation of the victims, a failure on the part of governments to take responsibility for the intergenerational harms which colonial policies continue to perpetuate, and reframing of victims of violence as responsible for their own harms because they do not comply with a particular understanding of what constitutes a valid way of community life.

A varied but recurring theme in colonial relations has been the simultaneous exclusion of Indigenous peoples from the rule of law with the implicit claim that they will share in the protections of the rule of law once they fit the contemporary, dominant prescription of an Anglo subject. In the contemporary context, this is most starkly evident in the suspension of the *Race Discrimination Act 1975 (Cth)* with the implementation of the NT Intervention. This exceptionalism creates an enduring lack of legitimacy with respect to colonial sovereignty and

a complicity of the law in the ongoing colonial violence experienced by Indigenous peoples. This enduring colonialism is evident in the dual non-Indigenous response to child sexual assault, with enormous resources and interest invested in publicising and transforming 'dysfunctional' Aboriginal communities while simultaneously normalising widespread inequality, violence including sexual violence, and deprivation experienced by Indigenous children and young people.

Modern love: young people, sex, relationships and social media

Catharine Lumby, Kath Albury and Alan McKee

In 2017, a 15-year-old boy was found guilty of sexually assaulting a 15-year-old girl at a party in Sydney's well-heeled Eastern suburbs. Another was found guilty of filming the assault and then sharing the footage with others. The boy said he filmed it for 'revenge' on the student who perpetrated the assault. The student who filmed and distributed the footage of the assault was sentenced to 18 months probation with no conviction recorded. The student who was convicted of the sexual assault was sentenced to 20 months probation for sexual assault and 18 months probation for distributing the video.¹ The magistrate told the perpetrator: 'Don't make this hold you back'.

The story was widely reported as proof that young men had become desensitised to sexual assault by a hypersexualised world fuelled by online, social and mobile media. Of the assault, *Marie Claire* writer Georgina Dent wrote:

The worst part? It's not a nightmare...and there is no end to the horror it entails. That it took place at all. That it was filmed. That it was so openly shared. That we are talking about *15 year olds*: these