To have justice without healing is not possible, it is just short changing people. To heal, a person must be able to come to a place that is safe and allows them to deal with the pain of the past, process this and begin their healing journey. If people don’t heal, they will not be able to change their behaviours and will continue to be victims and perpetrators of violence. Aboriginal people in Australia must be able to govern their own path of healing, to deal with past injustices, such as colonisation and its effects, in order to move into a future which will sustain their livelihood and foster a just society.

1.0 LEGACIES OF PAST INJUSTICE

For some time Aboriginal people across Australia have endured attacks on culture and identity since invasion by the British. Denied ownership of land and use of their traditional lore and language, Western culture was imposed upon Aboriginal people causing great destruction to Aboriginal communities. The legacy of colonisation for Australia’s first people is fractured communities. Government historically viewed Aboriginal people as a ‘problem’. Aboriginal people were forced to live under segregation, protection and assimilation policies and denied the freedom to determine their own future. The extent of intrusion was wide ranging, it included restrictions on movement, relationships and marriage, the control of employment of Aboriginal people and the removal of Aboriginal children from parents and family members. Legislation allowing this treatment was passed in every State. These policies created dependence, caused great pain and had devastating and lasting effects on the Aboriginal population. The destruction and devastation caused by colonisation has resulted in the breakdown of social structures and traditional values across many generations. Attempts to improve circumstances have been relatively unsuccessful as there has been little acknowledgement and understanding of the
historical context. The fragmentation of family relationships and the learned helplessness has had a crippling effect on successive generations. Deprived adequate health care, education and economic independence has left many Aboriginal people without hope. Not having a meaningful place in society has seen them turning to a life of alcohol, drugs and crime to survive.

Today Aboriginal people experience much higher rates of violence in comparison to the wider Australian community. This violence is reflected in the high morbidity and mortality rates with Aboriginal women largely the victims. Aboriginal and Torres Strait Islander women experience family violence at a rate of 45 times more than that of non-Aboriginal women and alarmingly 69% of all reported assaults against women are inflicted by an intimate partner. Aboriginal people who were removed from their family have almost twice the probability of being a victim of violence. Aboriginal people are not only victims but also perpetrators of violence with Aboriginal and Torres Strait Islander women being incarcerated at a greater rate than any other group in 2008. During this same time Aboriginal and Torres Strait Islander people in Western Australia were 20 times more likely to be serving time in prison than non-Aboriginal people and as of the 30th June 2008 Aboriginal prisoners accounted for 24% of all prisoners nationally.

### 2.0 Providing Justice to Aboriginal People: The Family Violence Context

Many barriers are experienced by Aboriginal people when accessing justice services. A fundamental disparity is how violence is viewed and what the best approach to addressing the issue is. Broadly speaking Aboriginal people prefer the term family violence over domestic violence as it includes violence between intimate partners, immediate and extended family and other relationships of mutual obligation which are part of Aboriginal culture. Family violence incorporates into its definition the effects colonisation has had on Aboriginal people and the continuing inequalities and power struggles that Aboriginal people face.

The Australian Institute of Criminology reported 41% of Indigenous people in remote areas believed assault and family violence was a community problem, this belief is at odds with the criminal justice approach which is in place across Australia. In addition to this many

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5 Al-Yaman F Van Doeland M Wallis M above note 3 at p 2–3.
7 Mulroney above note 6.
12 Partnerships Against Domestic Violence ‘What is domestic violence’ (nd) <www.padv.org> 14.07.09 date of retrieval.
Aboriginal people do not view the criminal justice system as an appropriate response to family violence as it is that system that has enforced draconian laws, thereby oppressing Aboriginal people. This system is often not seen as providing protection and as a result is not accessed. In light of this it is evident Aboriginal people require an alternative approach in order to reduce the gross over representation of Aboriginal people in the prison population and the escalating and compounding violence in Aboriginal communities. New ways of working which work with their communities in meaningful ways are required.

Providing equitable service entails identifying and addressing the barriers. When doing this Aboriginal culture must not be seen as the ‘problem’ instead it must be valued and respected as Western culture is. Aboriginal culture does not condone violence and it is essential that all who work with victims and perpetrators of violence understand this as misinformation and ignorance are detrimental to Aboriginal communities. Barriers to the justice system experienced by Aboriginal people include: low socio-economic status, communities under resourced, racism, cultural insensitivity, language barriers, poor literacy, fewer services available in regions, increased distance to travel to receive a service, lack of understanding about Aboriginal perspectives on violence, paternalism and the stereotyping which does not recognise Aboriginal people as a victim.

3.0 PROMOTING HEALING

Restoring Aboriginal communities is a long term process which requires a holistic approach. It involves addressing injustices, promoting healing by breaking cycles of dysfunction and reconnecting Aboriginal people to their culture. Aboriginal people have specific healing needs that must be addressed, particularly around the unresolved grief experienced over many generations. The constant layering of trauma has severely impacted on health and well being with Aboriginal people experiencing increased rates of social and emotional well being problems and some mental disorders. Without healing recovery from past trauma, grief and loss is difficult. If people do not have the opportunity to address difficulties in their past and recover from those experiences they are likely to continue along the same path unable to break the cycle of dysfunction. Any healing program developed for Aboriginal people must be a strengths based approach to work with the community to generate solutions to their problems. This

17 Blagg above note 15.
18 Al-Yaman F Van Doeland M Wallis M above note 4 at 3.
ensures communities get the intervention they want and need. It also positions the community in an active partnership with the project so that the process of deciding what to do is actually part of community development and the healing process. Healing programs must be strongly linked to empowerment and building community capacity.

Healing is a relatively new concept in Australia and is notoriously hard thing to define and measure as it means different things for different communities. Healing is a long term process which requires meaningful partnerships and equal commitment from all involved. It must address the transmission of intergenerational trauma and pain resulting from colonisation to provide the foundation for cultural renewal. Healing of Aboriginal people needs to take place on an individual level as well as among families, community and as a nation. Healing programs must be developed from an Aboriginal perspective and address the connection between the spiritual, emotional and physical.

### 3.1 Servicing Aboriginal People

Over the years many services and programs have become available for Aboriginal people. These services have predominantly been designed by mainstream organisations with a belief that there can be culturally neutral service delivery. This approach lacks understanding about Aboriginal history, culture and the needs of Aboriginal people. It is important programs are not set up with the intention of ‘fixing’ problems for Aboriginal people as this is a common mistake that has happened in the past and continues today to the detriment of Aboriginal people. Successful Aboriginal programs are those that are designed to address the specific needs of Aboriginal people in a particular location.

Programs must be developed from an Aboriginal perspective and aimed at meeting the needs the local Aboriginal community has identified. It has been found programs are more likely to succeed if they are developed by people who have an intimate understanding of the chosen community, the issues faced and the resources available. This knowledge greatly contributes to developing solutions that will be accepted by the wider community and are sustainable. Encouraging Aboriginal people to take an active role in their community will reduce feelings of powerlessness. Through colonisation Aboriginal people have been stripped of basic human rights and the after effects are felt by Aboriginal communities across Australia today. Handing back power and responsibility will greatly assist in undoing past injustices, reduce feelings of helplessness and will see communities becoming less reliant on authority structures and support services.

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22 Phillips above note 20.
23 Hovane above note 14 at 11.
25 Memmott above note 24.
3.2 Providing Healing in Justice — Learning from the Canadians

The Australian government, in its delivery of the National Apology to the Stolen Generations, acknowledged the past injustices inflicted on Aboriginal people and the role of Aboriginal people in Australia’s history. For Aboriginal people this allows them to move forward and openly address these issues with the support of the Government. Canada’s experience was a very similar colonisation process and their Aboriginal people also adhere to the similar notions of Aboriginal healing such as the need for emotional, spiritual, physical and cultural connection. Without these things being aligned, there is chaos and people will continue to perpetrate violence and create victims. Canada has managed to find its way through the myriad of trauma attached to their nation’s histories, both good and bad, and incorporating healing into its broader service system. Therefore, Australia can, on many different levels learn from their experience.

For over 20 years a number of Indigenous communities in Canada have been incorporating healing into the broader justice system as a response to family violence and sexual assault. The most documented of these communities is Hollow Waters in Manitoba where the community worked closely with justice agencies to develop the Community Holistic Circle Healing program. Initially the program focussed on sexual assault, but over the years has broadened to include family violence. The Canadian healing programs are based on the premise that the victim is always a priority, however it is also acknowledged that the perpetrator’s behaviour needs to be addressed, as so frequently they remain within or connected to the community. The other premise is that healing is only possible when people are in a safe place and are ready to deal with their issues. Therefore perpetrators are only eligible for the healing programs if they admit to their abusive behaviours. The Canadian experience of colonisation and the principles of healing in Canadian Indigenous communities resonate closely with the Australian Indigenous context so this allows us to consider that Canadian healing models could work effectively within Australia.

The Community Holistic Circle Healing program in Hollow Waters has been so successful that it has since been replicated in other Canadian communities and around the world. There are a number of benefits for victims, perpetrators, families, communities and the justice system itself in undertaking healing programs within this context. Essentially the healing programs are in place from the time of disclosure of family violence or sexual assault until healing has occurred for all parties involved. It involves the implementation of a variety of services that meet the psychological, physical, cultural and spiritual needs of victims, perpetrators, families and communities. The programs are integrated directly into the criminal justice system and the healing programs directly influence decisions made by the courts. Victims are able to disclose to and access services from a trusted community program. The level of support provided to them through the healing circle model is more holistic and allows for a more supportive intervention. As agencies work so closely together, the victim is able to access the various support components more easily. The delivery of the services by the circle programs ensures that they are culturally relevant and consequently more effective. The process assists in the victim’s individual healing, especially as the perpetrator is often a family or community member. There is less pressure on the victim to feel responsible for the abuse; the pressure is placed on the perpetrator who must be
accountable for their actions instead. Victims often do not want the offender to go to gaol; they simply want the abuse to stop. Consequently the victim does not feel responsible for breaking up the family or the community and is able to contribute to process to ensure that their views and feelings are considered in all work done with the perpetrator and the family. Perpetrators are able to access culturally relevant services that they could not access previously, either in jail or in the community. In addition the programs allow for an offender to remain in their community to address their offending behaviours and accept responsibility for their crime. Criminal justice agencies work collaboratively to ensure that perpetrator are monitored and supported throughout the process allowing the offenders to receive a high level of holistic integrated support. The perpetrator is held to account for their actions by the people who are most impacted by the crime. They gain an insight into the impact of their behaviour, which has a profound effect on them and is a critical factor in reducing the likelihood of reoffending.

The circle process also provides an opportunity for the affected families to deal with the abuse together. This means that families do not have to take sides with the victim or the perpetrator. The family is facilitated to address the issues that have arisen as a result of the violence and provided with a safe environment for collective healing to occur. There is no mechanism for this in the western criminal justice system. The community supports the perpetrator in taking responsibility for their actions and see it as a strength that can be used by the rest of the community to move forward. Families and communities participate in the program, as it is a community driven process, which provides them with a sense of ownership and responsibility to the program. Effectiveness of the circle program is evidenced in an evaluation of Biidaaban in 2003. It was found that within five years the community self reported that its state of health and wellness had improved dramatically.26

Traditional healing practices are incorporated into all levels of programming to ensure that they are culturally relevant to all Aboriginal people involved. The circle program allows for people involved to have an understanding of the impacts of the offences which assists in their ability to heal. Healing models allow people to respect each other and come together on common ground and accept that it is okay to have a different way of seeing things but still have value in the group. The circle program also provides a sense of belonging that gives confidence and increases community functioning. The circle provides a framework for people to heal at their own rate in their own way. The open nature of the service and programming provides a safe venue for offenders and victims to explore the issues and develop their own healing practices. The holistic focus of the healing circle model is used to emphasis the spiritual, mental, emotional and physical healing rather than compartmentalising people and bringing balance back into the lives of the individual, family and community.

The ability of the Western criminal justice system and the traditional healing approach working together allows a better outcome for both victims and offenders. The model provides a level of community participation in addressing justice issues and supporting families that is unable to be provided anywhere else. This makes the healing circle process extremely powerful and effective. It involves all of the relevant affected people and is good for the overall community and

helps the programs and the community come together and strengthen their common focus. People are forced to work in a more holistic way, which provides for a better overall outcome for both victims and offenders.

The protection of children and women is the primary concern for all involved in the process. Therefore, support services that interact with victims, families and the offenders allows for a sharing of information and ultimately an increase in protection for victims. The circle process allows for this collaboration to happen and therefore increases the safety of not only the individual victim, but the family and community as well. They are provided with a more holistic and focused level of support. The healing circle model allows for open and non-threatening dialogue throughout the process facilitating people to make more informed decisions based on their understanding of both the circle and criminal justice processes.

There are a number of things that must be in place for healing programs to be successful in a justice context. They include: commitment from the Aboriginal community in the involvement and implementation is critical; collaborative partnerships between all stakeholders; extensive planning and development phases; extensive consultation with Aboriginal communities and stakeholders; comprehensive risk management framework; clear policies and protocols to guide service delivery; functional and supportive program structure; ensure that the program is holistic and includes a range of services. A range of programs being available for both the individual and groups ensures that responses are holistic and have the ability to adapt to the community’s needs. Aboriginal people feel comfortable with the service as they are an Aboriginal program run by Aboriginal people allowing a higher level of cultural sensitivity within service delivery for clients; comprehensive evaluation and research framework.

There are very few limitations to operation of the healing models within the justice system in Canada. This is a result of the circle process being adapted to fit with the individual community, as well as a high level of consultation and support from criminal justice agencies and the community itself. The limitations and barriers experienced by the circle programs which inhibit the programs can include; inadequate and/or insecure funding; changes in the political climate; breakdown in communication between stakeholders; lack of clear guidelines on stakeholder responsibilities; lack of community understanding of the program; lack of training and support for the program; and lack of judicial support.

**4.0 CURRENT JUSTICE INITIATIVES IN AUSTRALIA**

Nationally over the past twenty years Australian criminal jurisdictions have made a number of moves towards improving their systems to manage domestic and family violence and meet the needs of Aboriginal victims and offenders more generally. Most jurisdictions have implemented specialist court and justice process for domestic violence in recognition of the nature of the crime and the need to incorporate victims in the process. These programs vary depending on the jurisdiction, for example in Western Australia the model is focused in programming for perpetrators following a plea of guilty and in NSW, Victoria and the ACT the model begins from
the time of investigation and considers programming and support for both victims and perpetrators. All of the programs aim to develop a high level of integration and coordination of services to apply a holistic response that meets the needs of its clients.

Whilst, they are not necessarily specific to family violence, jurisdictions have recognised the need to provide tailored responses to Aboriginal offenders. The bulk of these programs targets Aboriginal participation in the justice process and the ability for Aboriginal communities to be responsible for their communities. Examples of this include Circle Sentencing in NSW, Koori Courts in Victoria and Murri Courts in Queensland. The premises of these programs, often based in restorative justice, ensures that Aboriginal people are involved in their development and implementation and take ownership them. They take a more holistic view of offenders needs and consider causal factors for offending, such as past abuse, family issues and impacts of colonisation, in an attempt to make it a more holistic process. There are arguments for and against the use of the existing programs and restorative justice processes in family violence which are well documented. However the Canadian experience has proven that these types of models resonate well with traditional values and approaches and are consequently successful in addressing family violence issues in a healing context.

Currently the Federal and State criminal justice policies would support the implementation of the inclusion of healing in justice processes. The current Criminal Justice and Child Protection systems focus on collaborative responses to child sexual abuse. This collaborative focus allows for the possibility of expansion to community service providers. Healing programs could quite easily be developed and established in partnership with these existing services and structures and the community. Particularly in relation to coordinating and providing victim support. Currently there is very limited support available for offenders, so this aspect of service delivery would provide offenders access to support services to assist in addressing their offending behaviour at the earliest opportunity.

4.1 Current Policy Climate in Australia

Within the current political climate there is a willingness for change, the Australian government recently stated there intent with the key signings of international instruments such as the United Nations Convention on the Elimination of All Forms of Violence against Women and Declaration of Rights for Indigenous people. The commitment for change on the violence against women agenda was a pre election commitment of the current government in 2007.

In May 2008, the Australian Government established the National Council to Reduce Violence against Women and their Children (the Council). The 11 member Council’s brief was to provide expert advice and direction to the Australian Government on measures to reduce the prevalence and effect of sexual assault and domestic and family violence on victims. In developing the national plan the Council consulted widely across government and the community. These included interviews, on line surveys and community meetings with a range of stakeholders in all state and territory capital cities, and some regional and remote centres, desktop

analysis of key Australian and international research on sexual assault and domestic and family violence, new research which did a comparative analysis of sexual assault and domestic violence and family violence laws across jurisdictions and the production of a projected analysis of violence on the Australian economy. The Council reviewed 370 submissions, convened 6 expert round tables — including 2 legal and 2 Aboriginal and Torres Strait Islander specific roundtables, identified current major initiatives addressing violence against women across Australia and briefed several Federal, State and Territory ministers, including representatives of the Federal Opposition.

The National Council’s vision for Australia²⁸ is that women and children live free from violence, within respectful relationships and in safe communities. Based on this vision and its collective expertise, extensive consultation, and research, the Council is resolute that the following 6 outcomes are necessary for any significant reduction in violence against women. These outcomes are;

1. Communities are safe and free from violence
2. Relationships are respectful
3. Services meet the needs of women and their children
4. Responses are just
5. Perpetrators stop their violence
6. Systems work effectively together

To achieve these 6 outcomes, Time for Action²⁹ identifies a total of 25 strategies and 117 actions to be implemented by 2021. In addition to these, the National Council made 11 recommendations³⁰ directly to the Australian Government. The Council recommends that Time for Action be implemented through a series of 3 year plans, with the support and active involvement of the Council of Australian Governments (COAG).

The Council’s message for the whole of the National plan is that violence against women and their children is a fundamental breach of human rights. The intersectional approach of the plan recognises the diversity of culture and circumstance for every woman, as each is different. Violence against women can not be excused or justified under any circumstances; the Australian Government has taken the position that there must be an adoption of zero tolerance to violence against women.

Research shows that the overwhelming majority of such violence in Australia is perpetrated by men against women; therefore we can not dismiss the gendered nature of this issue. Currently, Aboriginal and Torres Strait Islander women are 45 times more likely to suffer family violence and sustain serious injury requiring hospitalisation, and 10 times more likely to die due to family violence, than non-indigenous women. This is no black or white issue, this is a societal and intergenerational issue that needs to change and requires further work for prevention in the future. This will require work from government and community, to work on the huge

²⁹ As above.
³⁰ As above.
burden violence places onto society. This burden comes at a very big cost to each and every one of us. In the economic analysis, the current cost of violence against Aboriginal and Torres Strait Islander women will be at $2.2 billion by 2021 if we continue without intervention or change. The current cost of domestic violence on the legal system is estimated at $480 million; again without intervention or change this is estimated to be $555 million in 2021.

There is a need for better legal, crisis and support services to respond to violence against Aboriginal and Torres Strait Islander women and their children, a key theme in the consultations with Aboriginal and Torres Strait Islander people. The presence of overcrowded housing and alcohol issues often leads to a cycle of trauma and crisis for many communities, preventing them from ever being able to concentrate on or being able to build the capacity for healing to occur. The Council recommends specifically for Aboriginal and Torres Strait Islander communities, in particular in isolated and remote communities, increased access to appropriate housing to reduce overcrowding and the incidence of sexual assault and family violence that arise from such situations; the provision of support for local communities that take a stand against the excessive use of alcohol and other substances that exacerbate violence against women and their children; and the anticipation of flow on effects and the need for additional services; and by the creation of a rapid response capability.

It is clear there must be a holistic lens placed over the issue to provide an immediate system response for Aboriginal and Torres Strait Islander communities to be safe and non violent. These messages were consistent throughout the Council’s consultation processes in many direct forums and settings, including the Roundtable hosted by Federal Ministers Macklin and Plibersek31; an event which brought together Aboriginal and Torres Strait Islander experts and leaders from across Australia to dialogue about violence and the way forward. One of the opening addresses given by Bess Nungarrayi Price was a personal and moving account of her experiences and observations32, in particular the lack of appropriate crisis intervention to violence related incidents for Aboriginal women in remote communities.

Some of the recommendations are intrinsically related to healing programs and approaches which need to be delivered by the Australian government, these issues are crucial in constructing the foundation for healing to commence. Most of the following listed recommendations are not explicitly detailed for Aboriginal and Torres Strait Islander communities, but are suitable and relevant at working towards building a holistic healing approach as outlined in the international analysis of the Canadian model for healing. The recommendations were to increase the development and availability of leadership and mentoring programs for women and men, to harness the positive capacities within communities, improve community safety in disadvantaged areas, provide culturally-appropriate mediation and conflict resolution training for non-violent men and women in Aboriginal and Torres Strait Islander communities, strengthen the role of non violent men and women and assist to solve community and family disputes which occur as part of their everyday life. The Council recommended funding be provided to support a national network

of locally developed healing centres and other emerging initiatives and support services for Aboriginal and Torres Strait Islander communities in urban, regional, remote and isolated areas, to address their experiences of trauma and violence. These programs need to be evaluated as there is limited evidence of the effectiveness of healing programs in Australia. In comparison extensive longitudinal evaluations have been undertaken in Canada. Australia needs to improve its evaluation of programs to consider the efficacy of healing for both Aboriginal perpetrators and victims of violence. The implementation of the recommendations from the National Councils Time for Action report would be a considerable step forward in helping to heal the intergenerational trauma and work at preventing its transference to the next generation.

5.0 CONCLUSION: EMBEDDING HEALING IN JUSTICE

Embedding healing programs and processes in the criminal justice system will assist in redressing some of the previous injustices and trauma inflicted on Aboriginal Australians. It will allow for healing of the casual factors for the perpetration of violence and victimisation of men, women and children in Aboriginal communities. The healing as stated earlier must be tailored for individual, families, communities and society which includes partnership with non-Aboriginal people as part of de-colonising of Australia history. Consequently, by not embedding holistic healing into the service system for Aboriginal people, justice will never be provided.