Specific considerations - Aboriginal and Torres Strait Islander people - Key Literature

Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities* (Human Rights and Equal Opportunity Commission, 2006).

This report overviews a number of issues about domestic and family violence in Indigenous communities. The section titled: ‘Resolving conflicts between human rights and Aboriginal customary law’ (p14) makes a number of points relevant to sentencing, in particular that Indigenous custom and law can adapt to general societal change and women’s right to individual safety and freedom from violence should be ensured.


This state of knowledge paper draws on both national and international literature and policy and program evaluations, to establish what is currently known about innovative responses to violence against Indigenous women in Australia. It provides an overview of current literature about innovate justice practices that have been developed specifically for and often by Indigenous communities. The authors identify a trend towards holistic and responses. Among other things the authors identify that part of a holistic response to violence against women in Indigenous communities requires: ‘The increased provision of behavioural change programs, including anger management programs and drug and alcohol programs, and the introduction of skills-oriented employment programs that are accessible and culturally appropriate.’ (p17) While the authors identify support for secondary and tertiary interventions (including men’s behaviour change programs), they caution that programs should be culturally sensitive and specific to address the needs of Indigenous men and that logistical and administrative issues may need to be addressed (for example transport to the program.) These issues may be particularly pertinent for men living in rural and remote communities. (p13-14)

The author is a Justice of the Northern Territory Supreme Court. She observes that imprisonment is the most common form of punishment in cases of assaults by men against women (p. 4). She observes: ‘Although incarceration as a response to violence in this setting may serve a purpose in providing respite to victims for the term of imprisonment, it is clearly not deterring like-minded offenders. More significantly, for many offenders, it is not effecting behavioural changes to stop the physical violence. All studies emphasise the need to engage men both as individuals and members of social groups to effect transformative change. Recent international literature dealing with similar problems emphasises primary, secondary and tertiary interventions, the first two being preventative to assist in reducing violence of this kind and other harmful practices’ (p. 13).

In the Northern Territory, respectful relationships education to young people is being used as a primary prevention strategy to stop men and boys using violence in the first place (p. 13). Secondary measures are aimed at reducing opportunities for violence. These include the imposition of DVOs (p. 14). In terms of tertiary stage intervention, the Indigenous Family Violence Offender Program (Family Violence Program) is important. The FVP aims to re-educate and shift attitudes in relation to women. It is particularly effective when people have self-referred and is inappropriate for serious matters. Participation in the program needs to be encouraged at the first sign of offending (p. 15). ‘Practitioners need to proceed with an awareness of how entrenched the ideas of control by violence are for many Aboriginal men’ (p. 16).


The research underlying this ground breaking report was carried out in the Northern Territory in 1989-1990. Data were collected in a variety of ways, the major ways being informal talks with Aboriginal women individually or in small groups, meetings of women's organisations, or by observation of events in communities. Aboriginal men in communities who were willing to discuss the issues were also approached both as individuals and as members of Aboriginal organisations. See especially p50: ‘As in other societies around the world there was still, in the final analysis, a culture of male dominance. However, it seems clear that the combination of inaccurate anthropological representations of Aboriginal women and the experience of colonisation have worked against them so that their status has deteriorated. Their situation today is affected by issues of race and gender, which intersect to influence negatively their position both within Australian society at large and within their own culture. One result of this is that they are now subject to violence from their own men of a kind which would not have been countenanced within traditional society. There are now three kinds of violence in Aboriginal society “alcoholic violence, traditional violence and bullshit traditional violence.” Women are victims of all three. By bullshit traditional violence is meant the sort of assault on women which takes place today for illegitimate reasons, often by drunken men which they then attempt to justify as a traditional right’.

This study evaluates 11 studies of the effectiveness of interventions for Aboriginal men who commit domestic violence. A significant finding was that programs targeted at Aboriginal men must address multiple power constructs. Interventions should recognise that colonisation continues to have a significant impact on Aboriginal communities, but should not excuse the impact that men’s violence has on female victims (p 61).


This Australian paper draws predominately on findings and observations from the Murri Court in Queensland to consider important factors that arise when sentencing indigenous offenders for domestic violence. Author Hennesssey is a practicing magistrate and author Willie is a community development officer. The authors highlight the importance of ensuring that any rehabilitation aspect of sentencing is culturally appropriate and effective. They note an inequity in relation to the availability of appropriate programs for Indigenous people. Drawing on a small sample the authors explain that through the Murri Court, (a specialist sentencing court) domestic violence offenders can be placed on a probation orders, requiring regular meetings with community Elders or a Community Justice Group, attending counselling through an Indigenous Healing Centre, attending counselling for substance abuse with an indigenous health organisation and other programs as may be appropriate to the offender’s situation (p 7). The authors argue that this approach reduced short term recidivism (p 8). The authors emphasise the need to consider culturally appropriate and effective counselling and treatment for offenders whilst, at the same time, ensuring they are suitably punished (p 10).

Kelly, Judith. ‘The intersection of Aboriginal customary law with the NT criminal justice system: the road not taken?’ Paper presented at the NTBA, Dili, Conference 10 July 2014 Dili.

In this presentation, a judge of the Northern Territory Supreme Court considers how traditional Aboriginal law and the law of the Northern Territory can co-exist. Domestic Violence is mentioned sporadically throughout the paper and it is concluded that despite whatever used to be the norm with regard to domestic violence, traditional law has reformed and violence in any respect is no longer appropriate. The authors state that Indigenous Australians traditionally did have a different approach to violence, punishment and discipline and state: ‘The practice of interpersonal violence as a form of punishment, the infliction of violent revenge, and the belief in the legitimacy of such practices, have continued through the second half of the twentieth century and beyond.’ (p7)

Abstract: ‘This article draws on research conducted over the past four years on the use of Indigenous sentencing courts in Australia for sentencing Indigenous offenders of intimate partner violence (IPV). It presents interview findings of offenders’ perceptions of justice of a sentencing process that involves the participation of Elders and Community Representatives, as moral and cultural guides. This study concludes that the vast majority of interview participants found an Indigenous sentencing court process is fairer than a mainstream sentencing court process despite the fact that it is more challenging and confronting facing Elders and Community Representatives when being sentenced for an IPV offence. Their respect for Elders and Community Representatives, and the respect afforded to Elders and Community Representatives by the mainstream criminal justice system created a forum that both ‘shamed’ and supported the offenders in ways that reflected cultural values and norms’ (p. 86).


Indigenous sentencing courts exist ‘to create a more meaningful sentencing process that has a deeper impact on Indigenous offenders’ attitudes and, ultimately, their behaviour. Drawing from interviews with 30 Indigenous offenders, [this paper explores] the ways in which the courts can motivate Indigenous partner violence offenders on pathways to desistance’ (p.1).

The study shows that it is not impossible to change offending behaviours. Marchetti and Daly write, ‘[u]sing culture as a “hook for change” (Giordano, Cernkovich, & Rudolph, 2002), Indigenous perpetrators of partner violence, with a readiness to change, can find the support and motivation to desist from further offending in towns that have Indigenous sentencing courts. By “using culture” as a hook for change, we mean a rekindling of Indigenous values, and of being reminded of one’s cultural heritage and identity, which requires respecting not only one’s Elders, but also family, kin, and partners. When we probe with care into patterns of offending after an Indigenous sentencing process, we are able to re-define “success” by including those who are on pathways to desistance’ (pp.16-17). They also note that the process of change is not ‘linear and immediate, but zigzag and lengthy’ (p.17).


In this Australian research, the attitude of women towards responses to domestic violence is examined. The author interviewed 10 Indigenous women and ten non-Indigenous women (the Indigenous women in the sample were drawn from various urban and remote locations which were spread over a distance of almost 2000 kilometres and included two indigenous communities). None of the Indigenous women interviewed
preferred the criminal justice system as a response to domestic and family violence (p 95). However, Indigenous women did say criminal law needed to be applied in cases of homicide, serious assaults and sexual abuse of children - as these types of cases were too ‘big’ (sensitive) for communities to handle on their own. The majority of Indigenous women interviewed preferred restorative justice. Indigenous critique of criminal justice system (p 97): irrelevant (symbolically), it often escalated rather than ended violence and its interventions continued to separate families.

**Olsen, Anna and Ray Lovett,** *Existing knowledge, practice and responses to violence against women in Australian Indigenous communities: Key findings and future directions* (ANROWS, 2016).

This resource provides a brief summary of published literature on Indigenous women and violence. It is based on *Existing knowledge, practice and responses to violence against women in Australian Indigenous communities: State of knowledge paper.* This literature review found that “the cumulative nature of socio-economic disadvantage (such as personal, family and economic related stressors) and the lasting effects of colonisation are thought to be linked to violence against women in Indigenous communities. Any attempts to reduce violence in Indigenous communities requires a multi-faceted and holistic approach including efforts to improve the wider social, economic and health of Indigenous communities”.


In this presentation the author (a traditional Owner for Milingiimbi, Gamurr-Guyurra, Arnhem Land, Northern Territory of Australia; leading Yolngu customary law identity and Ngarra Elder) attempts to describe the Ngarra law of Arnhem Land in order to provide access to the law for interested people, especially “white” (Balanda) lawyers. The law described is that of the Yolngu people (who speak the Yolngu matha languages). The author notes: ‘domestic violence is not permitted. Domestic violence is no longer appropriate. Ngarra law has no place for domestic violence. In the past, husbands did hit their wives sometimes – this happened in both Balanda and Yolngu society. The law – both Balanda law and Yolngu law – allowed it to happen. Not anymore! We do not have to be ashamed of what happened in the past, but we all need to work together now as a nation.’ (p28)

“Pay back’ is another thing that has changed over time. When ‘pay back’ happened in the past, it involved physical punishment, just like in the Old Testament: ‘an eye for an eye and a tooth for a tooth’. These days ‘pay back’ is more like a mutual obligation: when you look after my children when they visit you, I have to ‘pay back’ by looking after your children when they visit me. When people break the Ngarra law these days they can be punished by other means, including compensation of discipline training camps in the bush (Gunapipi). When there has been a really serious breach of law, say murder or rape, the Balanda system can take care of it. The Ngarra law can work together with the Balanda law’(p28).
This book includes chapters on a wide range of issues associated with Aboriginal and Torres Strait Islander mental health. The editors identify that the purpose of the book is to provide an appropriate resource for a range of health professionals who work with Aboriginal and Torres Strait Islander people, including Aboriginal and Torres Strait Islander health workers, counsellors, and other staff of Indigenous health services. Chapter 1 ‘Australian Aboriginal and Torres Strait Islander Mental Health: An Overview’ by Robert Parker provides a good summary of relevant issues, see especially from p5-7. See also chapter 10 ‘Trauma, Transgenerational Transfer and Effects on Community Well-being’ by Judy Atkinson et al.