

THE PARADOXICAL  
INTERVENTION OF  
THE AUSTRALIAN  
LEGAL SYSTEM  
IN THE CONTEXT  
OF INDIGENOUS  
AUSTRALIANS AND  
FAMILY VIOLENCE

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- 1 See Commonwealth, *Royal Commission into Aboriginal Deaths in Custody, Aboriginal Deaths in Custody: Overview of the Response by Governments to the Royal Commission (1991)* 24.
- 2 Andrew Day et al, 'Indigenous Family Violence: An Attempt to Understand the Problems and Inform Appropriate and Effective Responses to Criminal Justice System Intervention' (2012) 19 *Psychiatry, Psychology and Law* 104, 105.
- 3 NSW Department of Health, 'Aboriginal Family Health Strategy 2011–2016: Responding to Family Violence in Aboriginal Communities' (Report, 30 April 2011) 7.

## I INTRODUCTION

Since colonisation, the experiences of Indigenous Australians have been marked by excessive intervention, leading to their over-representation in every stage of the criminal justice system.<sup>1</sup> The opposite is true regarding their health and welfare, marked by a failure to intervene appropriately, or at all. This is particularly prevalent regarding Indigenous over-representation as victims of domestic violence, where there is seemingly little intervention. Where there is, it is usually a harmful experience. This article will examine the historical tensions of colonisation that detrimentally influence the relationship between Indigenous Australians and support services, including police assistance, court systems and protection programs. It will consequently recognise that the fragmentation of jurisdictions governing domestic violence in Australia is problematic and inhibits accessibility to a range of services. Finally, this article will examine existing avenues of support and rehabilitation for both Indigenous victims and perpetrators of domestic violence. It will advocate for changes in current responses through addressing areas of contemporary colonialism and encouraging Indigenous self-determination.

## II CONTEXTUALISING DOMESTIC VIOLENCE

### A DEFINITIONS

A significant difficulty in responding to domestic violence, in any context, is defining and recognising it. This is especially true in Indigenous communities, whose familial relations and kinship make understanding and responding to issues of domestic violence more complex.<sup>2</sup> For the purposes of this article, the term 'Indigenous Australians' refers to people of both Aboriginal and Torres Strait Islander descent, while recognising the existence of inherent cultural and familial diversity that must influence responses to family violence.<sup>3</sup> Similarly, where domestic violence generally refers to violence between intimate partners,

it is recognised that the term ‘family violence’ is preferred by Indigenous Australians,<sup>4</sup> as it recognises the broader scope and consequences of community and familial relations in Indigenous communities. Therefore, this article will distinguish the terms ‘family’ and ‘domestic’. The former will be used when discussing Indigenous understandings and implications of intimate violence, and the latter will be used when discussing traditional, or Western, understandings of intimate violence. In both instances, it is recognised that family and domestic violence is broad enough to encompass forms of offensive behaviour, sexual assault, property damage, threatened violence and economic abuse.<sup>5</sup>

## B STATISTICS & CONTEXT

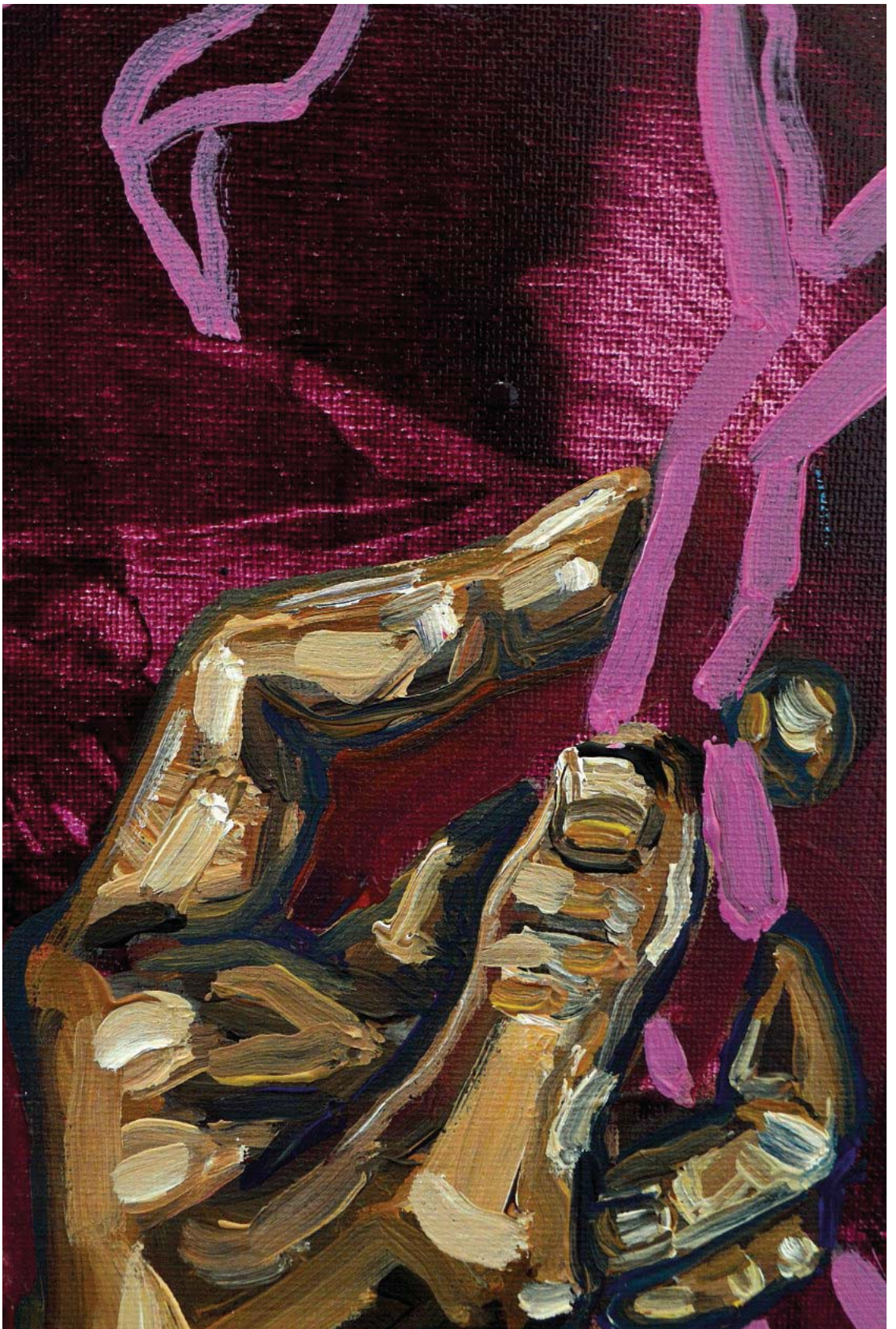
The prevalence of family violence amongst Indigenous Australians has gained both domestic and international criticism, with Indigenous women being 45 times more likely to be victims of domestic violence than their non-Indigenous counterparts.<sup>6</sup> In the 12 months prior to the 2002 National Aboriginal and Torres Strait Islander Social Survey, one in four of the participants aged 15 or older reported having been subjected to actual or threatened violence.<sup>7</sup> Although there is no singular cause of family violence, higher rates of victimisation have frequently been attributed to disability, low incomes, unemployment and intergenerational trauma including child removal, which have occurred as consequences of colonisation.<sup>8</sup> While these statistics provide an alarming demonstration of the prevalence of family violence, they may not reflect the true extent of violence as under-reporting and inappropriate research methods influence data collection.<sup>9</sup>

While the prevalence of family violence and the need to address it is recognised, Indigenous family violence is largely excluded in legislative provisions. Due to the evolving discourse relating to domestic violence, legislative definitions have broadened over the years to formally recognise that domestic violence encompasses more than simply physical violence between intimate partners.<sup>10</sup> However, these changes have been predominately influenced by traditional understandings of intimate relationships and families and have occurred to the exclusion of legislative recognition of the broad nature of Indigenous family structures.<sup>11</sup> In order for the law and government agencies to effectively respond to issues relating to family violence, there must first be formal recognition of its existence, as well as cultural challenges to the perception of traditional understandings of domestic violence.

## C CONTEMPORARY COLONIALISM

As previously stated, discussions of family violence must be placed in the context of Australia’s colonial history and the devastating experiences of Indigenous Peoples with the legal system and welfare agencies. One example of contemporary colonialism is the removal of children. Although the officially sanctioned period of child removal, known as the Stolen Generations, ended in the 1970’s, there is evidence to suggest it still persists today.<sup>12</sup> The number of Indigenous children being forcibly removed from their homes is unprecedented in Australian history with the removal of Indigenous children occurring at nearly 10 times the national average. Recent statistics reveal that 16,846 Indigenous children are in out of home care – a rate rivalling removals during the Stolen Generations.<sup>13</sup> Given the historical mistrust of welfare services, particularly in regards to considerations of children, Indigenous women may fear reporting family violence as it can result in the removal of their children.<sup>14</sup> This is despite legislative

- 4 Fadwa Al-Yaman, Mike Van Doeland and Michelle Wallis, ‘Family Violence Among Aboriginal and Torres Strait Islander Peoples’ (Report No 17, Australian Institute of Health and Welfare, November 2006) 15.
- 5 Samantha Jeffries and Christine EW Bond, ‘Taking the Problem Seriously? Sentencing Indigenous and Non-Indigenous Domestic Violence Offenders’ (2015) 48 *Australian and New Zealand Journal of Criminology* 463, 464.
- 6 Alex Newton, ‘Domestic Violence in Indigenous Communities: Competing Explanations and Criticisms’ (2002) 13(1) *Polemic* 33, 33.
- 7 Al-Yaman, Doeland and Wallis, above n 4, ix.
- 8 Ibid; Kylie Cripps and Megan Davis, ‘Communities Working to Reduce Indigenous Family Violence’ (Research Brief No 12, Indigenous Justice Clearinghouse, June 2012) 1 <[http://www.healthinfonet.edu.au/uploads/resources/23797\\_23797.pdf](http://www.healthinfonet.edu.au/uploads/resources/23797_23797.pdf)>; Day et al, above n 2, 106–7.
- 9 Day et al, above n 2, 106.
- 10 Jeffries and Bond, above n 5, 464.
- 11 Heather Nancarrow, Christine Hanley and Renette Viljoen, ‘Domestic and Family Violence: Awareness, Attitudes and Experiences – Preliminary Findings’ (Report, Queensland Centre for Domestic and Family Violence Research, December 2012) 5–7 <[https://www.cqu.edu.au/\\_data/assets/file/0017/25325/FinalDec12.pdf](https://www.cqu.edu.au/_data/assets/file/0017/25325/FinalDec12.pdf)>; See also Australian Law Reform Commission, *Family Violence – A National Legal Response*, Report No 114 (2010) ch 8 <[https://www.alrc.gov.au/sites/default/files/pdfs/publications/ALRC114\\_WholeReport.pdf](https://www.alrc.gov.au/sites/default/files/pdfs/publications/ALRC114_WholeReport.pdf)>.
- 12 Heather Douglas and Tamara Walsh, ‘Mothers, Domestic Violence, and Child Protection’ (2010) 16 *Violence Against Women* 489, 500.
- 13 Kristy Raitel, Rachel Kilo and Callin Ivanovici, ‘Child Protection Australia 2015–16’ (Report No 66, Australian Institute of Health and Welfare, 16 March 2017) 52 <<https://www.aihw.gov.au/getmedia/bce377ec-1b76-4cc5-87d9-d0541fca586c/20479.pdf.aspx?inline=true>>; Paddy Gibson, ‘Stolen Futures’ [2013] (212) *Overland* 44, 46.
- 14 Donna Coker, ‘Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review’ (2001) 4 *Buffalo Criminal Law Review* 801.
- 15 *Family Law Act 1975* (Cth) s 68R(1).



protections for children and considerations of parent-child contact when issuing family protection orders under the *Family Law Act 1975* (Cth).<sup>15</sup> However, the aforementioned rate of removal for Indigenous children demonstrates that the fears of Indigenous women are well-founded and highlight that an era of contemporary paternalism persists in Australia.

Indigenous relationships with police have been historically marked by tension and violence. Today, the same fear and distrust of police remains as Indigenous experiences with police and the criminal justice system continue to be marked by racism and violence.<sup>16</sup> This is problematic as it inhibits both Indigenous utilisation of resources, and police responses to reports of family violence. An estimated 90 per cent of non-Indigenous women already do not report domestic violence to police due to perceived delays in police action, their perceived inability to effectively address the situation and provide protection, and fear of criminal prosecution themselves.<sup>17</sup> Even when family violence matters are reported or responded to, Indigenous women assert that it is equally traumatic as the initial violence, and that police will 'either do nothing ... or rape you yourselves'.<sup>18</sup> These examples highlight the difficulty in addressing issues of domestic violence in the criminal justice system and the lack of appropriate intervention. This is compounded by the traces of colonialism and prevents Indigenous Australians from accessing an already limited number of resources when faced with family violence.

#### D BARRIERS TO ACCESS

The above considerations reflect a small portion of factors that inhibit Indigenous women from accessing the legal system and family violence services. Lucashenko recognises that Indigenous communities themselves present their own limitations.<sup>19</sup> Violence discourse within Indigenous communities has predominately centred around violence suffered by Indigenous males at the hands of the State (for example, deaths in custody).<sup>20</sup> This has to some degree limited the discussion of Indigenous women as victims of family violence, making it difficult to conceptualise.<sup>21</sup> Secondly, it has discouraged Indigenous women from speaking out against violence suffered at the hands of an Indigenous perpetrator as to do so would violate Indigenous solidarity against the criminal justice system.<sup>22</sup> Given the strong kinship within Indigenous communities, many women fear stigmatisation and isolation from their support systems, financial instability and accessing housing which makes rebuilding their lives challenging.<sup>23</sup> These issues are compounded for women in remote areas.<sup>24</sup> Even where Indigenous women do separate from the perpetrator, studies have demonstrated that the violence often gets worse.<sup>25</sup> Thirdly, the poor treatment of Indigenous males in the criminal justice system is often a consideration in women not reporting as they seek to protect the perpetrator from that system.<sup>26</sup> These considerations emphasise the need for perceptions of violence to be challenged in both Indigenous and non-Indigenous communities if effective improvements are to be provided for victims of family violence.

### III JURISDICTIONAL FRAGMENTATION: CRIMINAL VERSUS CIVIL JURISDICTION

In order to understand the nature and consequences of existing or potential remedies, it is important to understand the context in which they operate. Domestic violence in Australia operates largely under the domain of civil law (in the form of

16 Janet Phillips and Penny Vandenbroek, 'Domestic, Family and Sexual Violence in Australia: An Overview of the Issues' (Research Paper, Parliamentary Library, Department of Parliamentary Services, 14 October 2014) 10 <[http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/3447585/upload\\_binary/3447585.pdf;fileType=application/pdf](http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/3447585/upload_binary/3447585.pdf;fileType=application/pdf)>.

17 Matthew Willis, 'Non-Disclosure of Violence in Australian Indigenous Communities' (Trends & Issues in Crime and Criminal Justice No 405, Australian Institute of Criminology, January 2011) 1–2, 5 <[http://www.aic.gov.au/media\\_library/publications/tandi\\_pdf/tandi405.pdf](http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi405.pdf)>; NSW Ombudsman, 'Domestic Violence: Improving Police Practice – A Special Report to Parliament Under s 31 of the *Ombudsman Act 1974*' (Special Report, December 2006) 15 <[https://www.ombo.nsw.gov.au/\\_data/assets/pdf\\_file/0015/3480/Domestic-violence-improving-police-practice-Special-Report-to-Parliament-December-2006-.pdf](https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0015/3480/Domestic-violence-improving-police-practice-Special-Report-to-Parliament-December-2006-.pdf)>.

18 Roger Moody (ed), *The Indigenous Voice: Visions and Realities* (Zed Books, 2nd ed, 1998), cited in Larissa Behrendt, 'Aboriginal Women and the White Lies of the Feminist Movement: Implications for Aboriginal Women in Rights Discourse' [1993] 1 (August) *The Australian Feminist Law Journal* 27, 31.

19 Melissa Lucashenko, 'Violence Against Indigenous Women: Public and Private Dimensions' (1996) 2 *Violence Against Women* 378, 379–80.

20 Ibid.

21 Ibid 387.

22 Ann-Claire Larsen and Alan Petersen, 'Rethinking Responses to "Domestic Violence" in Australian Indigenous Communities' (2001) 23(2) *Journal of Social Welfare and Family Law* 121, 126.

23 Willis, above n 17, 4; Lorana Bartels, 'Emerging Issues in Domestic/Family Violence Research' (Report No 10, Criminology Research Council, April 2010) 5 <[http://www.aic.gov.au/media\\_library/publications/rip/rip10/rip10.pdf](http://www.aic.gov.au/media_library/publications/rip/rip10/rip10.pdf)>.

24 Bartels, above n 23, 5.

25 See Douglas A Brownridge, *Violence Against Women: Vulnerable Populations* (Routledge, 2009) 59.

26 Australian Law Reform Commission, above n 11, 357.

- 27 Coker, above n 14, 802; Annabel Taylor et al, 'Domestic and Family Violence Protection Orders in Australia: An Investigation of Information Sharing and Enforcement' (State of Knowledge Paper No 16, ANROWS, December 2015) 6 <[https://d2c0iokyv46o3b1.cloudfront.net/anrows.org.au/s3fs-public/16\\_4.1%20Legal%20WEB\\_FINAL\\_0.pdf](https://d2c0iokyv46o3b1.cloudfront.net/anrows.org.au/s3fs-public/16_4.1%20Legal%20WEB_FINAL_0.pdf)>; See also *Crimes (Personal and Domestic Violence) Act 2007* (NSW).
- 28 Heather Douglas, 'The Criminal Law's Response to Domestic Violence: What's Going On?' (2008) 30 *Sydney Law Review* 439, 468–9; Carol E Jordan et al, 'The Denial of Emergency Protection: Factors Associated with Court Decision Making' (2008) 23(5) *Violence and Victims* 603, 603.
- 29 Douglas, above n 28, 444.
- 30 Sarah Ailwood, Patricia Eastale and Jessica Kennedy, 'Law's Indifference to Women's Experience of Violence: Colonial and Contemporary Australia' (2012) 35 *Women's Studies International Forum* 86, 86.
- 31 Carol Thomas and Joanne Selfe, 'Aboriginal Women and the Law' (Paper presented at Aboriginal Justice Issues, Canberra, 23–25 June 1992) 173; See Loretta Kelly, 'Using Restorative Justice Principles to Address Family Violence in Aboriginal Communities' in Heather Strang and John Braithwaite (eds), *Restorative Justice and Family Violence* (Cambridge University Press, Melbourne, 2002) 206, 209–210.
- 32 Heather Douglas and Lee Godden, 'The Decriminalisation of Domestic Violence: Examining the Interaction Between the Criminal Law and Domestic Violence' (2003) 27(1) *Criminal Law Journal* 32, 33.
- 33 Jocelyne A Scutt, *Women and the Law: Commentary and Materials* (The Law Book Company Ltd, Sydney, 1990) 459.
- 34 Jane Wangmann, 'Incidents v Context: How Does the NSW Protection Order System Understand Intimate Partner Violence' (2012) 34 *Sydney Law Review* 695, 695.
- 35 Douglas, above n 28, 464.
- 36 Queensland Indigenous Family Violence Legal Service, Submission No 019 to the Legal Affairs and Community Safety Committee, *Inquiry into Strategies to Prevent and Reduce Criminal Activity*, 16 July 2014, 3.
- 37 Heather Nancarrow, 'In Search of Justice for Domestic and Family Violence' (2006) 10 *Theoretical Criminology* 87, 89.
- 38 Chris Cunneen, 'Criminology, Criminal Justice and Indigenous People: A Dysfunctional Relationship?' (2009) 20 *Current Issues in Criminal Justice* 323, 326; Phillips and Vandenbroek, above n 16, 9–10.
- 39 Nancarrow, above n 37, 87–8.
- 40 Ibid.

protection orders) as opposed to, or operating synonymously with, criminal law (in the form of arrest and prosecution) under the *Crimes (Personal and Domestic Violence) Act 2007* (NSW).<sup>27</sup> The evolution of civil responses to domestic violence occurred following recognition that criminal law processes were ineffective.<sup>28</sup> These failings included the high standards of proof, and the narrow scope of criminal offences, thus excluding certain violent behaviours.<sup>29</sup> Despite civil legislation being introduced to ameliorate deficiencies in the criminal justice approach, scholars still consider responses of police and the legal system to domestic violence as ineffective, with Ailwood, Eastale and Kennedy noting 'women's voices [continue] to be muted and domestic violence continues to be invisible, to some extent, in the eyes of the law',<sup>30</sup> especially for Indigenous women. The continuously failing responses can in part be attributed to the ineffective utilisation of concurrent civil and criminal responses by police, the judicial system, and women – who are unaware of their rights as they operate in the relevant jurisdiction.<sup>31</sup>

This fragmentation has led to debates over the most appropriate course of action in the primary stages of domestic and family violence responses. One of the most notable arguments relating to the civil law jurisdiction is that it has effectively decriminalised domestic family violence.<sup>32</sup> Instead of treating violent behaviour as criminal, perpetrators are often only given civil restraining orders known as apprehended domestic violence orders.<sup>33</sup> Generally, criminal action is only taken against perpetrators when they breach an order, which occurs frequently, and can make perpetrators behaviour increasingly aggressive.<sup>34</sup> Even still, most breaches do not result in conviction and are instead trivialised by small fines, or no conviction.<sup>35</sup> Further evidence has shown that although Indigenous women are predominately victims of family violence, they underutilise civil resources. The Queensland Indigenous Family Violence Legal Service found that in many remote communities, police are the applicants in 95 per cent of family violence matters.<sup>36</sup> This may be the result of a lack of knowledge concerning rights, or it may reflect excessive and culturally inappropriate intervention. Despite this, there are still concerns about family violence being governed by criminal law related to colonial tensions between Indigenous Australians and the criminal justice system. Specifically, victims may become apprehensive to utilise it and create further invisibility of family violence.<sup>37</sup>

## IV REMEDIES

### A EXISTING REMEDIES

The prevalence of Indigenous women and children as victims of violent crime and family violence<sup>38</sup> suggests that current measures are ineffective and do not address cultural or practical concerns surrounding family violence. This article does not seek to provide specific strategies regarding offender prosecution and rehabilitation, or victim support. Instead, it seeks to provide a theoretical framework which should influence any program and does so through assessment of the strengths and limitations of existing programs. In a study conducted by the Aboriginal and Torres Strait Islander Women's Taskforce on Violence, two taskforces of women explored justice responses to family violence.<sup>39</sup> One taskforce consisted of only Indigenous women, and the other of mostly non-Indigenous women, with the exception of two who were Indigenous. Both taskforces came to different conclusions as to appropriate and effective responses.<sup>40</sup> The opposing findings of the taskforce highlights

that perceptions of 'appropriate' responses to domestic violence are culturally informed and the need for Indigenous Australians to be involved in the process of establishing effective action.

## B ADVOCATED CHANGES

It must be recognised that any advocated changes should be proactive and address the causes of family violence. These causes find their roots in colonialism and include education and health deficiencies, substance abuse, unemployment and institutional racism. These factors further compound situational causes of crime which include financial instability, subcultural tolerance of violence and inaccessible prevention programs against family violence.<sup>41</sup> Further, the role of self-determination in allowing Indigenous males and females to be part of the process, articulate cultural needs and engage with the development of any program will likely increase the effectiveness of preventative measures.<sup>42</sup> In considering the failures of existing prevention programs, Blagg advocates for mentoring of young Indigenous fathers, healing camps that actively seek to address causes of family violence and repair inter-generational trauma.<sup>43</sup> Other approaches advocate family violence services targeted at men so they can seek help before issues escalate, as well as violence prevention education targeted at Indigenous youth to break an implicit cycle of acceptance towards family violence.<sup>44</sup> However, any programs implemented must recognise that although females dominate empirical evidence as victims, they can also be the aggressors, and proactive or reactive support services for victims and perpetrators should be accessible to both genders.

In instances where proactive measures have failed, community-centred reactive measures are more appropriate than traditional penal sentencing. For example, there are quasi-hybrid jurisdictions within the Australian legal system. Those are Indigenous Sentencing Courts ('ISCs') which operate in every Australian jurisdiction, except for Tasmania.<sup>45</sup> ISCs operate under Australian criminal law without consideration of Indigenous customary law and assist in addressing Indigenous over-representation.<sup>46</sup> Further, cultural appropriateness increases participation in the justice system.<sup>47</sup> The participation of Aboriginal Elders has contributed to increased accountability and cultural sensitivity, improving the experiences of Indigenous Australians in the criminal justice system.<sup>48</sup> As a result, ISCs have been advocated for dealing with family violence matters, however, this is problematic. Firstly, ISCs exclude hearings relating to sexual offences, and family violence offences are excluded or restricted in Victoria and the Northern Territory.<sup>49</sup> Further, they are still evolving as a legitimate means of sentencing for Indigenous people and a comparatively small number of people are being processed through ISCs, with a majority still being subjected to mainstream courts.<sup>50</sup> While ISCs have the potential to be an effective form of accountability and protection, issues of accessibility first need to be addressed.

Other potential reforms include rehabilitative mechanisms, such as restorative justice and holistic programs. Both include facilitating dialogue with parties to a crime to discuss its consequences, allowing offenders to rectify their wrongdoing and collectively finding solutions. They have been praised as the familiarity of these processes for Indigenous Australians has achieved greater success in participation rates.<sup>51</sup> Further, it provides a forum to conceptualise and denounce family violence. Although favoured for its power to rehabilitate,<sup>52</sup> criticisms of community approaches include the tendency

- 41 Cripps and Davis, above n 8, 2; Paul Memmott et al. 'Violence in Indigenous Communities: Full Report' (Crime Prevention Branch, Cth Attorney-General's Department, January 2001) 18, 24 <<http://www.aerc.uq.edu.au/filething/get/2022/violenceindigenous.pdf>>; Janet Stanley, Adam M Tomison and Julian Pocock. 'Child Abuse and Neglect in Indigenous Australian Communities' (Research Brief 19, National Child Protection Clearinghouse, Spring 2003) 16 <<https://aifs.gov.au/cfca/sites/default/files/publication-documents/issues19.pdf>>.
- 42 Chris Cunneen, 'Preventing Violence Against Indigenous Women Through Programs Which Target Men' (2002) 25 *University of New South Wales Law Journal* 242, 244.
- 43 Harry Blagg, 'Pilot Counselling Programs for Mandate and Non-Mandated Indigenous Men – Research and Program Development, Full Report' (Report, 2001) 4, cited in Chris Cunneen, 'Preventing Violence Against Indigenous Women Through Programs Which Target Men' (2002) 25 *University of New South Wales Law Journal* 242, 245.
- 44 Cunneen, 'Criminology, Criminal Justice and Indigenous People', above n 38, 246.
- 45 Elena Marchetti, 'Indigenous Sentencing Courts and Partner Violence: Perspectives of Court Practitioners and Elders on Gender Power Imbalances During the Sentencing Hearing' (2010) 43 *Australian and New Zealand Journal of Criminology* 263, 263.
- 46 Elena Marchetti, 'Indigenous Sentencing Courts' (Research Brief 5, Indigenous Justice Clearinghouse, December 2009) 1.
- 47 *Ibid* 2.
- 48 Anthony Morgan and Erin Louis, 'Evaluation of the Queensland Murri Court: Final Report' (Technical and Background Paper Series 39, Australian Institute of Criminology, Canberra, 2010) 122.
- 49 Emma Buxton-Namisyk, 'Does an Intersectional Understanding of International Human Rights Law Represent the Way Forward in the Prevention and Redress of Domestic Violence Against Indigenous Women in Australia?' (2014) 18(1) *Australian Indigenous Law Review* 119, 125.
- 50 Elena Marchetti, 'Indigenous Sentencing Courts and Partner Violence: Perspectives of Court Practitioners and Elders on Gender Power Imbalances During the Sentencing Hearing' (2010) 43 *Australian and New Zealand Journal of Criminology* 263, 265.
- 51 Paul Memmott, 'Community-Based Strategies for Combating Indigenous Violence' (2002) 25 *University of New South Wales Law Journal* 220, 227.
- 52 Tony Ward and Robyn Langlands, 'Repairing the Rupture: Restorative Justice and the Rehabilitation of Offenders' (2009) 14 *Aggression and Violent Behavior* 205, 205–6.

53 Donna Coker, 'Enhancing Autonomy for Battered Women: Lessons from Navajo Peacemaking' (1999) 47 *UCLA Law Review*, 14–15.

54 Memmott, above n 51, 222.

55 Chris Cunneen, 'Community Conferencing and the Fiction of Indigenous Control' (1997) 30 *Australian and New Zealand Journal of Criminology* 292, 295.

to 'over-emphasize the value of [an apology]'.<sup>53</sup> While both approaches have the potential to effectively address issues of family violence, their implementation must be monitored to prevent replacing the traditional justice system and ensure perpetrators are held accountable.<sup>54</sup> Further, integration of such approaches into mainstream justice cannot be assumed for Indigenous communities and necessitates proper consultation to ensure that issues are correctly identified and responses are specifically tailored.<sup>55</sup>

## V CONCLUSION

Part of the difficulty in responding to family violence is the difficulty of Indigenous Australians to recognise it within their own communities. This is problematic when attempting to integrate Indigenous responses into the mainstream legal system. This article asserts that there is no singular approach that will systematically improve responses to family violence at an individual or community level. Instead, it is recognised that the most effective approach will consist of an amalgamation of approaches, subject to extensive consultation of Indigenous communities regarding their implementation. Until issues of contemporary colonialism, police responses and access to domestic violence resources are addressed, the criminal justice system is complicit in the perpetuation of family violence.