

**‘In Search of Justice in  
Family Violence’:  
Exploring Alternative  
Justice Responses  
in the Victorian  
Indigenous  
Australian  
Community**

**SUMMARY REPORT**



**Victorian Aboriginal Legal Service Co-operative Ltd  
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## **Executive Summary**

The issue of family violence is at a crisis point, particularly within the Indigenous Australian community, with many communities experiencing an escalation of family violence. In December 2003, the Victorian Indigenous Family Violence Taskforce (VIFVTF) released a report suggesting that many of the current formal criminal and Civil justice responses to family violence were of little benefit to Indigenous Australian women, especially those living in remote communities.<sup>1</sup> Many commentators suggest that non-Indigenous Australian or 'mainstream' approaches have relied more heavily on feminist analyses of violence which seek responses to the "crime" of family violence that advance the rights of women to be socially, legally and economically supported only should they decide to leave their violent partners (Keel: 2004). Stubbs (1994) notes that while family violence must be primarily understood as gendered violence, such an analysis 'need not preclude an examination of the specific contexts in which the violence occurs, nor the manner in which race, class or sexual identity (or indeed other social categories) might intersect with gender'(p.4). Recent reports have highlighted the varying needs of minority and marginal groups in relation to family violence. Importantly, this has issued a challenge to current services in relation to both their understanding of family violence and the responsiveness of orthodox interventions (Partnership Against Domestic Violence: 1999).

This report recognises many of the tensions that exist between non-Indigenous Australian approaches to understanding and responding to violence, and those of Indigenous women and communities. In particular, it recognizes that Indigenous approaches reveal the damaging effects imposed by colonisation and dispossession on the relationships Indigenous Australian peoples have held with their kin, their lands, and their communities. The Victorian Aboriginal Legal Service Co-operative Ltd has long advocated that an approach that responds to the calls of the Indigenous Australian community for a response to family violence that does not break up families and meets safety and healing needs is appropriate (VALS, September: 2004, p.3).

Recent years have seen an increase in the acceptance of "whole of Government/whole of community" responses to family violence. However, the outcomes of policy amendments are often difficult to distinguish and monitor. This is true also of the distribution of funding to address the issue.<sup>2</sup> In light of this, the present research aimed to explore the potential of using alternative justice practices to address family violence in the Indigenous Australian community.

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<sup>1</sup> Aboriginal Affairs Victoria – Department for Victorian Communities (2003) *Victorian Indigenous Family Violence Task Force Final Report*

<sup>2</sup> In the 2002-2003 Budget the Victorian Government announced that it would fund a \$10.2 million dollar Indigenous Family Violence Strategy to help prevent, reduce and respond to family violence in the Indigenous Australian Community (Department of Community Services Aboriginal Affairs Victoria, Media Release 11/10/2004). In reality, a total of \$4.1 million over four years was received.

The aims of this research included:

- An exploration of issues specific to the Indigenous Australian community when responding to family violence;
- An evaluation of the current Criminal and Civil Justice frameworks operating in Victoria that attempt to address family violence;
- An investigation of the potential for using alternative justice models, particularly Restorative Justice, to address family violence in the Indigenous Australian community.

This research combines a detailed literature review with both quantitative and qualitative data derived from surveys and interviews conducted with 18 female Indigenous professionals working in the area of family violence.

The results of this research challenge a number of the assumptions underpinning current mainstream policy. In particular, the data reveals the need for an analysis that is attentive to the damaging effects of colonialism and the complex nature of the Indigenous Australian Community if an appropriate response to family violence is to be formulated. Criminal and Civil responses to family violence need to be not only culturally sensitive but responsive to the unique dynamics of family violence in the Indigenous Australian Community.

The data suggests that the Criminal Justice System, in its present form, does not have the capacity to adequately respond to incidents of family violence. Aside from the historically strained relationship between the Criminal Justice System and the Indigenous Australian community, there exists a very real fear that involvement with the existing justice system will result in the separation of families and have repercussions within the community.

Conversely, alternative justice practices, and Restorative Justice in particular, is viewed as having very real potential, being seen as an avenue for community involvement, and capable of providing a 'healing' approach to family violence. It is acknowledged within this research report that Restorative Justice would form part of a wider holistic response to family violence involving the use of rehabilitative programs, greater resources for victims and community education.

This summary report details a number of recommendations concerning philosophy underpinning responses to family violence, improvement of the current Criminal and Civil Justice systems and implementation of alternative responses. Ultimately, it advocates a coordinated approach that is holistic and responsive to the unique nature of family violence in the Indigenous Australian community.

**Please note** - The complete version of this report can be found at:

<http://www.vals.org.au/news/submissions/51%20Alternative%20family%20violence.pdf>

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## **Introduction**

### **Issues Specific to the Indigenous Australian Community**

Many commentators contend that family violence within the Indigenous Australian Community needs to be understood within its specific historical and cultural context. The VIFVTF speaks of the inherited grief and trauma resulting from the violence of colonization. Recent national research reflects a number of issues specific to the Indigenous Australian Community that potentially render contemporary responses inappropriate. Summarily, these include:

- The tension between the Indigenous Australian Community and the Criminal Justice System, with specific reference to the police as agents of that system, given the nature of colonial and contemporary practices (Kelly: 2002);
- The unique nature of familial relationships within the Indigenous Australian community (Blagg: 2002);
- The fact that current, even mainstream feminist approaches, can be seen to essentialise women in general, and Indigenous women in particular (Lucashenko: 1994, See also Pettman: 1992);
- The Indigenous need for individual ownership of responses, as opposed to the mainstream and current 'state ownership' approach which views the Criminal Justice System as the pinnacle of social organization (Stang & Braithwaite: 2002);
- The desire within the Indigenous Australian Community to deal with issues at a community level as well as the need for the individuals to be involved in the process as a way of validating experience (Blagg: 2000).

A review of the literature reveals a greater emphasis on working with violent men and on strategies for intervention that maintain family relationships and focus on "healing" the offender. Such a perspective views violence in terms of men's compensation for lack of status, esteem and value, and stresses the impact of violence on the whole family or community, rather than solely on women and children (Blagg: 2000).

The VIFVTF notes that '(During community consultations)...it was identified that communities do not wish to see members of their family incarcerated as a consequence of formal prosecution. However, communities have also identified that there still needs to be consequences for perpetrators and the healing process needs to take place involving both the victim and the perpetrator as a culturally appropriate family therapy approach' (VIFVTF, 2003: 147).<sup>3</sup> The VIFVTF discusses alternative and Restorative Justice practices in broad terms, highlighting the need for solutions to family violence issues to be based on a 'family healing approach' which reunifies families and communities and focuses on the prevention of factors that cause violence within families and communities (p. 113).

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<sup>3</sup> In stating this, we acknowledge that there are many Indigenous Australians who consider family violence to be no different to other forms of serious offences, and that treatment of family violence as something distinct, requiring a distinct response, is too lenient a stance.

## **Restorative Justice and the Indigenous Australian Community**

There currently exists a large range of alternative justice practices in use within the Indigenous Australian Community. While the complexities of these practices deserve attention not able to be provided in this paper, there remains the suggestion that Restorative Justice has specific relevance to the Indigenous Australian Community. In particular, claims exist that Restorative Justice:

- provides greater ground for self-determination practices
- demonstrates a greater capacity to deal with the effects of colonization
- better reflects an Indigenous view of justice
- incorporates cultural elements not usually found in a gender based analysis of family violence.

Importantly, there remains a strong agreement within the literature that responses need to be crafted from and by the Indigenous Australian community and reflect the needs and capacities of each Indigenous Australian community (Behrendt: 2002, Blagg: 2002, Kelly: 2002).

## **The Present Research**

As such, there remains a need for research into an alternative approach that can attend to the needs of minority women without increasing their contact with the Criminal Justice System. Hudson (2002) suggests that this involves balancing expressive and instrumental functions of the law, and the competing criminological aims of retribution and restoration (p. 629). While international debates surround the application of Restorative Justice practices in cases of family violence, no real model of application has been developed in Australia to date. This situation is implicit to the present research which seeks to evaluate the understanding and applicability of Restorative Justice practices through Indigenous Australian females professional's perspectives.

## **Research Method**

Essentially, this research aimed to conduct an exploration of the different underlying issues facing the Indigenous Australian Community that render contemporary responses to family violence inappropriate and the investigation of the perceived effectiveness of both the Criminal and Civil Justice Systems and Community-Based/Restorative Justice practices by key informants within Indigenous Australian Community agencies. As such, the following research integrates data gained from the research process with contemporary research and philosophy pertaining to responses to family violence in the Indigenous Australian Community.<sup>4</sup> This was achieved through interviewing female professionals working in the area of family violence in the Indigenous Australian Community.<sup>5</sup> Altogether, 24 women were approached for interview. Of these, 18 women were able to participate in the research. All but one participant identified as Indigenous and all were women.<sup>6</sup>

A semi-structured interview guide was utilized, informed by the reading of relevant literature, concerning responses to family violence.<sup>7</sup> The interview process relied upon a themed interview structure that importantly allowed for reactive exploration of comments and story-telling opportunities.<sup>8</sup> During the interviewing process participants were also required to complete an Objectives Survey.<sup>9</sup> The purpose of the survey was two-fold. Firstly, it allowed for an understanding of each participant's perception of the main objectives of responses to family violence through a ranking of Priorities.<sup>10</sup> Secondly, it facilitated a comprehension of participant's ratings concerning the effectiveness of both the Criminal Justice System and Restorative Justice practices in achieving identified objectives.

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<sup>4</sup> It should be noted that, although based on justice policy, this research proceeds with recognition that any justice system comprises only one part of an effective response to family violence.

<sup>5</sup> The sample ultimately comprised of professionals either currently involved in family violence-related agencies, (for instance, Department of Human Services, Regional Aboriginal Justice Advisory Committees (RAJAC), Indigenous Family Violence Local Action Groups, Community Health Centres, Victorian Aboriginal Legal Service Co-Op, individuals previously involved in Family Violence Taskforce, and those involved in justice practices in the Indigenous Australian Community (For instance, Elders currently sitting on the Koori Courts). The majority of participants (eight in total) were sourced from agencies operating in and around Metropolitan Melbourne. However, due to the differential nature of responses available in rural and remote communities, it was important for this research to include the views of professionals working in Greater Victoria. For this reason, interviews were conducted in the Northern (Mildura, three participants and Shepparton, three participants), Western (Heywood, three participants) and Eastern (Morwell, one participant) regions of Victoria.

<sup>6</sup> The one participant who did not identify as Indigenous worked at an Indigenous-specific agency and had many years experience with addressing family violence in remote communities.

<sup>7</sup> Three general themes we covered in each of the interviews: 1) the nature of family violence in the Indigenous Australian community, 2) Criminal and Civil justice responses and 3) the potential for using Restorative Justice, however discussion regarding Restorative Justice typically comprised less discussion time. This was due to the fact that most participants' understanding on this topic was limited and many aspects of the practice could only be discussed in hypothetical terms. Please find Interview Schedule attached as **Appendix B**

<sup>8</sup> Historically, this method has generated considerable useful data regarding individual's experiences with family violence and available services systems (Partnership Against Domestic Violence: 1999). See also Nancarrow (2004:30) on the importance of the semi-structured, themed interview with particular reference to the Indigenous Australian Community.

<sup>9</sup> This survey was closely based on research conducted by Heather Nancarrow (2003) in a thesis entitled 'In search of Justice in Domestic and Family Violence'. Please find Objectives Survey attached as **Appendix A**

<sup>10</sup> These priorities, were derived from both policy documents and contemporary feminist discourse concerning family violence.

## **Overview of Results**

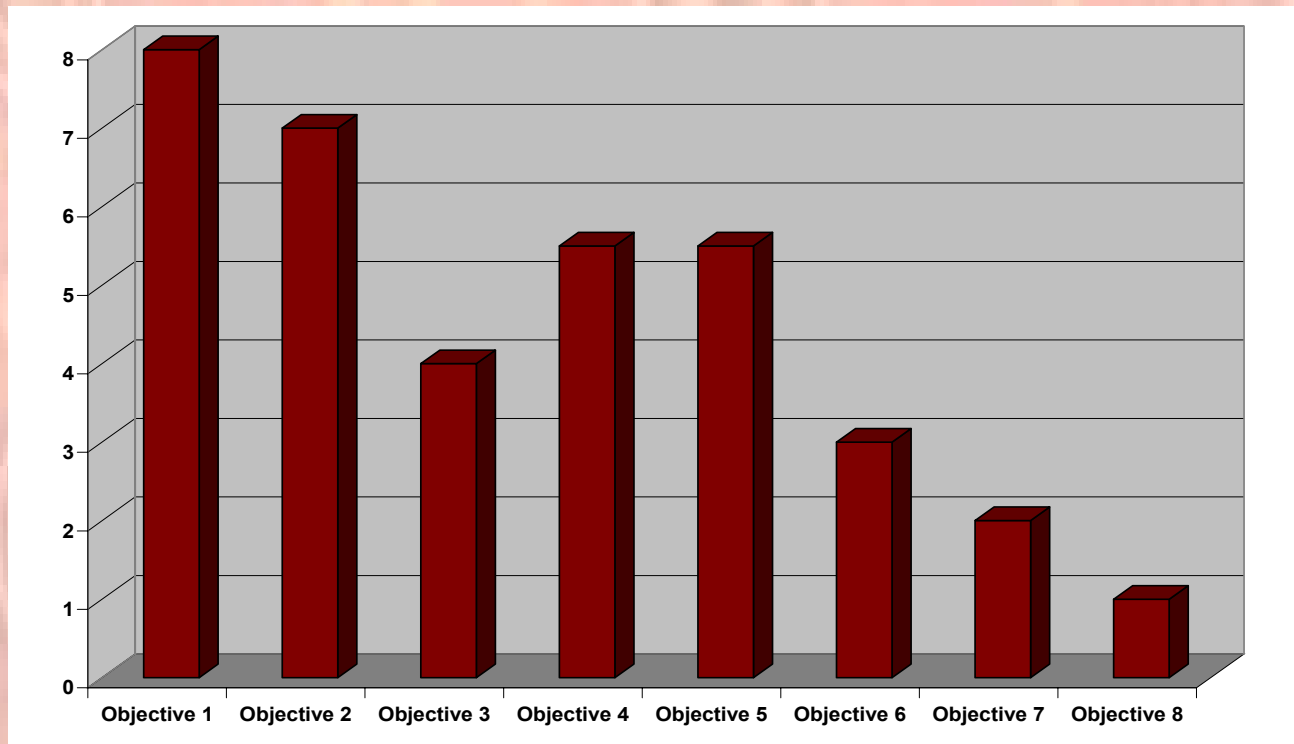
### **Priorities in Addressing Family Violence**

In **Section 1** of the survey the women were asked to rank the following list of objectives in addressing family violence from least to most important:

<b>OBJECTIVE 1:</b> Putting an end to the violence
<b>OBJECTIVE 2:</b> Preventing further violence for an individual victim through changing the offenders behaviour
<b>OBJECTIVE 3:</b> Punishing and holding the offender accountable for their violence
<b>OBJECTIVE 4:</b> Sending a message to the community that domestic and family violence is wrong in the hope of altering the attitudes and behaviour of community members
<b>OBJECTIVE 5:</b> Supporting the victims by validating their stories and experiences
<b>OBJECTIVE 6:</b> Repairing the relationship between the victim and offender
<b>OBJECTIVE 7:</b> Repairing the relationship between the offender and the community
<b>OBJECTIVE 8:</b> Compensation to the victim

Each priority was assigned a ranking between 1 and 8, with 1 indicating the top priority. This data was then inverted and translated in to a graph indicating the relative importance of each objective:

**Figure 1: Priorities in Addressing Family Violence in the Indigenous Australian Community**



## **Discussion**

Of greatest importance to the women was putting an end to further violence. However, 14 of the 18 women followed this selection with a suggestion that this was an idealistic goal. This was followed by 'putting an end to the violence by changing an individual offender's behaviour', and 'sending a message to the community that violence was wrong'. When asked why these objectives in particular were of importance the women variously identified the intergenerational nature of violence, the need for the offender to realise that their behaviour was wrong and the need to address the causes of the violence as of the greatest importance. Another interesting feature of this data is the relatively high ranking of 'validating victims' experience'. This was an aim that was identified by many of the women as of great importance in the healing process.

## **Contextualization: Issues Specific to the Indigenous Australian Community**

As previously asserted, any discussion of violence in contemporary Indigenous communities must be located within an historical context. Similarly, any discussion of "causes" of violence within the community must recognise and reflect the impact of colonialism and the indelible bearing of the violence perpetrated by white colonialists against Indigenous peoples. Blagg's (1999) meta-analysis of literature identifies many "causes" of family violence in the Indigenous Australian Community including:

- marginalisation and dispossession;
- loss of land and traditional culture;
- breakdown of community kinship systems and Aboriginal Law;
- entrenched poverty;
- racism;
- alcohol and drug abuse;
- the effects of institutionalisation and removal policies; and
- the "redundancy" of the traditional Aboriginal male role and status, compensated for by an aggressive assertion of male rights over women and children (cited in Blagg: 2000, p. 4-5).

The influence of these factors forms a complex historical picture of disadvantage and oppression, rather than as individual, isolated causes of family violence (Keel: 2004). No singular aspect can be identified as the "cause" of family violence in the Indigenous Australian Community. This causal nexus was identified differentially by the women throughout the interview process. For instance:

**"I think it's everything to do with being Aboriginal. I think it's the low socio-economic status, low employment rate, low education, probably over-crowding, the frustration that's felt, you know, racism. If you're feeling hard done by and you have no outlet its usually with people you love."** (Community Services Worker 1)

**"I think the contributing factors are different (in the Indigenous Australian Community). It's the social factors that impact, that don't impact the non-Indigenous Australian Community – the loss of land, all cultural issues. Anything that has made us feel disadvantaged. If someone is told that they're not worthy then they start to behave in the manner that they're portrayed. That's unique to the Indigenous Australian Community. I don't see mainstream being told that they are disadvantaged."** (Department of Justice Worker 1)

In particular, the loss of traditional culture was seen to effect individual engagement with, and connection to, the community:

**"We're losing our culture and we're losing that rapidly. That's got a heck of a lot to do with it. Stolen generation still impacts. These men don't know who they are anymore. They are taught that they're nothing and they're being discriminated against too. Those sorts of issues are really playing havoc on them."** (Koori Court Elder 1)

### **Summary**

These issues were consistent throughout the interviews and heavily informed subsequent discussions regarding appropriate responses. In addition, many of the interviews served to emphasize the important role of culture usually omitted from dominant analyses. In particular the interview data highlighted cultural concerns connected to:

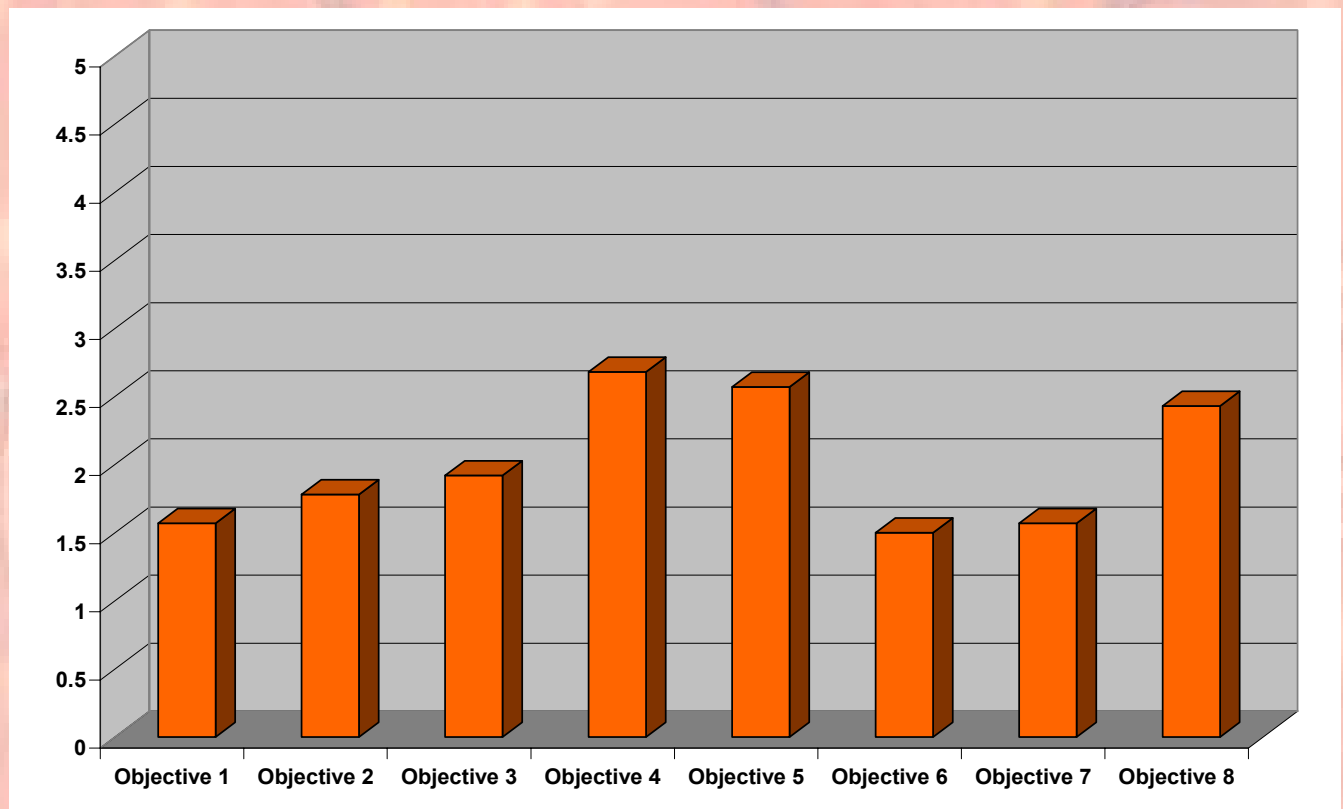
- The loss of the traditional male role in the community;
- The often public nature of family violence;
- Conflicting loyalties experienced by victims;
- The role of spirituality and the need for healing;

Essentially, this data indicates the presence of cultural factors unique to the Indigenous Australian Community that inform objectives and appropriate responses to family violence.

## **The Effectiveness of the Criminal Justice System**

In **Section 2** of the survey participants were asked to rate the effectiveness of both the Criminal Justice System (including Civil responses) and Restorative Justice Practices in addressing each of the eight identified objectives. The ranking ranged from 1 (Highly Ineffective) to 5 (Highly Effective). The following graph depicts the average score assigned to each objective in reference to the Criminal Justice System.

**Figure 2: Perceived Effectiveness of the Criminal Justice System in Responding to Family Violence**



## **Discussion**

The Criminal Justice System was seen as generally ineffective in responding to each of the eight objectives particularly in terms of 'stopping the violence' and 'repairing the relationship' between both the 'victim and the offender' and the 'offender and the community'. Interestingly, the Criminal Justice System was not viewed as effective 'in punishing and holding the offender accountable for their actions.'

## **Identified Limitations of the Criminal Justice System**

Among the limitations of the Criminal Justice System in responding to family violence, the Victorian Law Reform Commission (VLRC) has identified that:

- some family violence, such as verbal harassment or excessive social or financial control does not constitute a criminal offence;
- the prosecution of criminal offences requires that the behaviour be proved beyond reasonable doubt. This can be more difficult in family violence situation because the victim is often the only witness to the offence;
- the criminal law cannot play an effective preventative role, because it operates retrospectively to punish criminal behaviour after it has occurred; and;
- the criminal law is not flexible enough to suit the variety of problems arising from family violence.

*(VLRC: Consultation Paper, 2003:32)*

Not one of the women interviewed felt that the Criminal Justice System was appropriate in responding to family violence in its current form. While the main issue identified concerned the irrelevance of the system to Indigenous women's lives and contexts, particular issues were identified at every level of the Criminal Justice Systems response.

## **Summary of Factors:**

### **Police: The First Point of Contact:**

- Many women suggested that the positioning of the police as 'gatekeepers' to the Criminal Justice System creates systematic disadvantage for the Indigenous Australian community.
- As such, many women expressed concern toward the current trend toward 'pro-arrest' and 'pro-prosecution policies'.<sup>11</sup>

### **Police Attitudes**

- There were also specific issues identified in relation to police response, particularly in the rural context.
- It was also stated that police are reluctant to attend residences where multiple incidents of family violence had taken place. The overarching sentiment expressed by the participants was one of inadequacy, both in

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<sup>11</sup> Contemporarily, the criminalisation of family violence has led to policies that are encouraging of mandatory arrest, charge and prosecution in certain incidents of family violence 'Pro-arrest' or 'Pro-charge' policies require that charges are laid whenever the available evidence discloses an offence. This occurs irrespective of the victims wishes. In the same way, 'Pro-prosecution' policies generally require prosecution whenever there is a reasonable prospect of conviction and where it is the public's interest to prosecute. It should be noted that objections made to these policies do not advocate a decriminalisation of family violence but simply suggest the possibility of using alternative justice systems.

terms of initial response rate and the appropriateness of the response provided.

### **Options Available to Women**

- The significant problem identified was the lack of complimentary support services for female victims. This was seen as particularly true for rural communities.

### **Accommodation**

- The problem of women and children being forced to leave the family home and live in temporary and often sub-standard accommodation, whilst the perpetrator remains in the home was also identified as a cause for concern.
- Many of the women identified the isolation of the refuges as a problem, highlighting that women, and rural women in particular, should not need to travel hundreds of kilometres and be denied contact with their support structure, in order to 'be safe'.

### **Civil Responses: Intervention Order System**

- Civil responses were also identified as ineffectual, with Intervention Orders being identified as largely inaccessible and ineffectual.

### **Access**

- Of particular note was the time consuming and complicated nature of the Intervention Order application process.

### **Effectiveness**

- Additionally, the Intervention Orders themselves were identified as having little impact on the behaviour of the offender.

Overall, access and implementation of Intervention Orders were seen as ineffective in responding to the reality of family violence in the Indigenous Australian specific context.

### **Court Environment**

- At this level, many of the participants provided details of further barriers for victims. Many of these related specifically to the environment of the Court itself.
- An additional element highlighted by a number of the women concerned the almost superfluous role of the victim in the Court situation.

### **Imprisonment**

- The potential for increased criminal sanctions as having the potential to incarcerate more minority men was a very real concern to a number of the participants, especially given Indigenous men's historical over-representation in the Criminal Justice System.<sup>12</sup> Aside from concerns about the impact of prison on an individual, many of the women stated that prison achieved little in terms of addressing the "causes" family violence and highlight the lack of adequate programs (such as Behaviour Change Programs and Drug and Alcohol Counselling) within the prison system.

## **Recommendations:**

This analysis reflects cultural barriers to justice specific to the Indigenous Australian Community. Not surprisingly therefore, suggestions concerned the improvement of the current criminal justice response centered upon increased cultural sensitivity. In particular, many women advocated:

- Consistent police response;
- cultural awareness training for Criminal Justice System officials including police;<sup>13</sup>
- The establishment of safe houses, especially in rural communities;
- An establishment of 'time out' centres for men, specifically for family violence situations;
- a simplification of the Intervention Order process;
- immediate follow up on breaches by police regardless of physical harm caused;
- the opportunity for the victim to speak in Court;
- treatment programs be made available men both in prison and at the post-release stage to address such underlying causal elements as drugs and alcohol and violent behaviour.

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<sup>12</sup> Nationally, in 1991 Indigenous Australians constituted 13% of the prison population despite comprising only 2% of the Australian population. Since 1999 the proportion has been approximately 20% (Human Rights and Equal opportunity Commission: 2004 cited in Guivarra: 2004).

<sup>13</sup> The revision of the Police Code of Conduct (August: 2004) includes a claim to 'cultural sensitivity' when dealing with instances of family violence. However, when asked about the impact of this amendment, many participants indicated that this had so far been ineffectual in practice and questioned the meaning of the term.

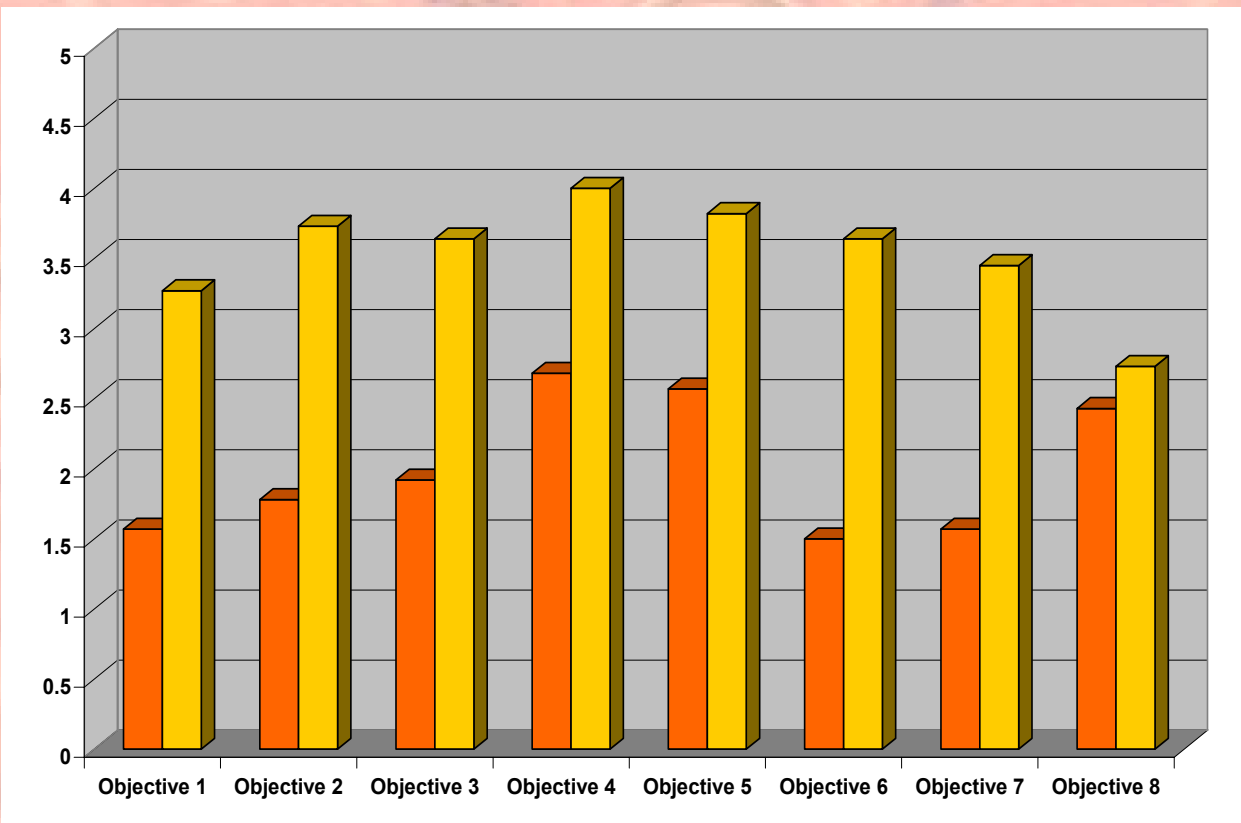
## **Alternative Justice Practices (Restorative Justice)**

The term 'Restorative Justice' encapsulates a myriad of practices. For the purposes of this report, it was necessary to provide participants with a loose model of Restorative Justice that allowed for suggestions and modification. The model suggested to participants was centered upon a mediation process similar to that found in Family Group Conferencing.<sup>14</sup> Essentially, this process involved a gathering of all concerned parties for a discussion of the harm committed and the determination of a mutually satisfactory punishment/response.

### **The Effectiveness of Restorative Justice Responses**

In **Section 2** of the survey participants were asked to rate the effectiveness of both the Criminal Justice System (including Civil responses) and Restorative Justice Practices in addressing each of the eight identified objectives.

**Figure 3: Comparative Analysis**



<sup>14</sup> Important aspects of this model included: The process took place in a room around a table, with all concerned seated at the same level; The presence of both the victim and offender; The presence of a support network on both sides (family, friends etc); An appointed and arbitrary mediator to govern and direct discussion; The presence of Elders and Respected Persons from within the community in which the harm occurred; An admission of guilt by the offender; The chance for both the victim and offender to speak about the violence; The absence of a criminal conviction. All subsequent discussion regarding the effectiveness of Restorative Justice was based upon the inclusion of these aspects.

## **Discussion**

Restorative Justice Practices were seen as more effective in addressing each of the eight objectives. In particular, restorative practices were viewed as very effective in repairing the relationship between both the 'victim and offender' and the 'offender and the community'. Additionally, Restorative Justice was viewed as a more effective way to send a message to the community that violence was wrong. Validation of victims experience was also viewed as more easily achieved through Restorative Justice practices. 13 out of the 18 women strongly felt that Restorative Justice was an appropriate response to family violence. The reasons provided were strongly embedded in the women's concept of what constituted a Restorative Justice response.

## **Potential Benefits of a Restorative Justice Response**

Summarily, the benefits identified that would be afforded by a Restorative Justice approach included:

- restoration of the relationship between the victim and offender;
- restoration between the offender and the community;
- an opportunity for the victim to 'tell their story';
- the presence of a support network for the victim and gains made through victim input to the Restorative Justice response.<sup>15</sup>

Many commentators advocate Restorative Justice as a false practice built upon a misreading of traditional customary lore.<sup>16</sup> While the connection between Restorative Justice and traditional law did not arise during interviews, many of the women drew parallels between Restorative Justice and the current Koori Court. Additionally, important aspects of the practice were identified as being culturally appropriate and a number of underlying themes were identified within Restorative Justice response that appealed to many of the participants, including:

- Healing element – identified in light of colonial causes of family violence
- Shame – for the offender due to the exposure to the wider community
- Visibility of the issue
- Validation of the victim's story
- Involvement of Elders and Respected Persons

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<sup>15</sup> Coker (2001; 2002) argues that restorative justice practices have greater potential than the formal justice system to fundamentally alter women's material positions and reduce their vulnerability to abuse through involving the greater community.

<sup>16</sup> In the Indigenous specific context, commentators such as Cunneen (1997), Blagg (2002) and Kelly (2002) highlight the potential of a restorative justice program to in fact 're-colonize' Indigenous peoples through romanticizing the practice as an extension of cultural values. All argue that unless the program is based in self determination it will remain merely an extension of a dominant legal system, which is based on an inherent bias and discrimination. See also Daly (2000/2002) and Behrendt (2002).

## **Recommendations:**

While participants advocated the use of Restorative Justice over the Criminal Justice System, suggestions for implementation centered on the structure of the process and the use of complimentary services.

### **Koori Court**

Many of the participants raised the issue of expanding the jurisdiction of the Koori Court to include the offence of family violence as was originally envisioned, pointing to the success of the Koori Court in addressing other forms of crime:

**"The figures speak for themselves in terms of recidivism...I think it really is the role of the Elders. I think it's about the informal way that the Court operates, it's about the person rather than the crime. The Koori Court is trying to address the causes"** (Community Services Worker 1).

**"We have proven that we can take care of ourselves. Look at the Koori Court. They say domestic violence is different, that it's too serious. Well, what does that say to us? Violence is violence no matter which way you cut it. We know how to deal with that. We can cope"**(Koori Court Elder 1).

Implementation in the Koori Court was also seen to as a way of giving ownership of the issue back to the community:

**"I think with the Koori community, I think that family violence should be brought into the Koori Courts, (but its not). I think that those men should be held responsible in front of their Elders for their actions, until that happens, it's hidden – nobody knows. If it comes up in Koori Court, everyone is going to know. They're going to be embarrassed when they have to answer to the community"** (Community Services Worker 2).

All of the participants were quick to state that the use of Restorative Justice would need to provide a basis for a whole range of services. Many of these recommendations were made in light of the analysis of causal factors. Recommendations were made with the aim of addressing the issue for victims, offenders and the wider community and represent primary, secondary and tertiary intervention strategies:

**"You need the support services. It's holistic. Domestic violence isn't just domestic violence. It's poverty. It's drugs and alcohol. Domestic violence is the symptom. The Criminal Justice System sees it as the disease. That's the problem"** (Koori Court Elder 1)

### **Education**

Education was highlighted as the first point of response. Education of the community, especially children was seen as integral in braking the cycle of violence. Education programs for offenders were also seen as important, however many of the women recognised the need to educate victims:

**"It should be about empowering women and giving them knowledge"**  
(Community Services Worker 1)

**"It's the blame. They blame themselves for causing the argument, for getting hit. The whole way through and then the police come and they blame them too. Our only defence is education, but when you've got a woman who has this embedded belief – that's a lot for education to contend with"** (Action Group Worker 1).

In addition to this, the need for a greater involvement of men in addressing family violence was noted. In particular, the involvement of men on committees and action groups was seen as important to the aims of community education.

### **Healing Centres**

The need for the implementation of men's healing centres was raised consistently by participants. This was a provision of the Government's funding provided at the end of 2004. However, since that time only healing *services* have been committed to. As one woman stated:

**"The (men's healing) centre would have provided therapeutic responses. That's not going to be able to be done in a service. Now it's not about behaviour change. Its about 'It's not my problem' it's yours, you know, pass it along..."** (Community Services Worker 1).

The development of these centres is seen as necessary in providing men a space to deal with family violence. A related suggestion concerned the development of 'Time-Out' centres for men, similar to those used in cases of intoxication. This was identified as providing the respite sought for by the victim:

**"You know how people who are intoxicated can be locked up for four hours? These men (perpetrators) should be locked up over night, to calm down and take them away from the situation instead of the women. Give the women time to do what they need to do"** (Community Services Worker 2).

### **Rehabilitative programs**

The majority of the participants spontaneously mentioned the need for rehabilitative programs to be an integral part of the Restorative Justice process.<sup>17</sup> Importantly, the programs would be utilised during the mediation process on an individual basis. The use of such programs was viewed as a process of addressing the 'real causes' of family violence. These included the use of:

- Behaviour Change programs;
- Drug and Alcohol Counseling;
- Anger Management;
- Grief Counseling;

These suggestions reflect a culturally based and culturally sensitive response to family violence. In particular, the recommendations above are seen to address the short comings of the current criminal justice approach.

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<sup>17</sup> At present Victoria, rehabilitative programs may be ordered as part of formal sentencing options, such as community-based orders and intensive correctional orders.

## **Conclusions:**

### **Recommendations:**

- **“Indigenous issues in whole of Government need to be a part of all the procedures and protocols. Not just ad hoc”** (Action Group Worker 1).

As many of the women identified, the dialogue between Indigenous and non-Indigenous communities that is currently concentrated on implementing initiatives and strategies aimed at providing a future for women, children and men in rural, remote and urban communities free from family violence, must now be matched by a genuine commitment to act – by all levels of Government, non-Indigenous services and the wider community (Keel: 2004). Practically, this involves the increased provision of funding and the development of tangible structures and programs.

- **The development of a holistic and tailored approach within the current framework that addresses issues specific to the Indigenous Australian community**

In addition to the recommendations made in the previous sections of this report, all women advocated a holistic approach to family violence in the Indigenous Australian community that involves:

- The need for adequate funding and solid protocols for appropriate intervention in family violence by agencies external to the Criminal Justice System.
- An acknowledgement that community led approaches have the potential to work in a complimentary capacity with the non-Indigenous justice system.<sup>18</sup>
- The development of community education campaigns beginning in schools, but also wider campaigns aimed at the whole community in order to address intergenerational cycles of violence.
- The inclusion of more Indigenous men in the process of addressing family violence, especially the appointment of men to the steering committees and action groups.
- The education of police in terms consistency of response and cultural sensitivity.
- The development of ‘Healing Centres’, ‘Time-Out’ houses and safe houses with particular attention to establishing *properties* in rural communities.
- The increased provision of behavioural change programs, including anger management programs and drug and alcohol programs, and the introduction of skills oriented employment programs. The implementation of support and confidence building programs for victims as a compliment to offender programs.

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<sup>18</sup> Examples of community led approaches include; Education Programs, Indigenous Australian Community Centres, Indigenous Mediation Centres, Family Decision Making Models. For further discussion refer to ‘Responses to Family Violence and Sexual Assault’ VALS, September 2004.

- **Further research into alternative justice practices and alternative models of dispute resolution**

It is clear from this report that there is a need to strike a balance between criminalising family violence, minimising the use of the Criminal Justice System, and maximising the use of Indigenous Australian community led approaches. Given the relatively small scale of the research in this report, no definitive model of Restorative Justice can be recommended, however the desire for a community based mediation response to family violence is clear. The strongest appeal of such an approach is the sense of community ownership afforded. In addition, the need for a diversionary and tailored approach that addresses the specific underlying causes of family violence in the Indigenous Australian community is paramount to the process of eradicating violence. For this reason, this report recommends further investigation into practices such as Restorative Justice with an aim to develop an adequate working model.

As a final note, this research reflects and confirms the findings of numerous recent reports. In particular, it compliments similar research conducted in Queensland,<sup>19</sup> and reflects many of the initial concerns raised by the Victorian Indigenous Family Violence Task Force. While we acknowledge the existence of many organizational and funding barriers, it is hoped that this report has provided an overview of what continues to be a very drastic situation within the Australian Indigenous Community. Above all, it is hoped that this report will provide a basis for discussion within the Indigenous Community concerning the use of alternative justice practices in order to address the unique factors identified.

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<sup>19</sup> Nancarrow, H (2003) 'In Search of Justice in Domestic and Family Violence'

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**Appendix A: Victorian Aboriginal Legal Service: Responses to Family and Domestic Violence**

**Objectives Survey**

**Section 1: Priority Ranking**

Please consider the following objectives in addressing Family and Domestic Violence and prioritize them by assigning a ranking from 1 to 8, with Priority 1 being the most important objective.

<b>OBJECTIVE</b>	<b>PRIORITY RATING</b>
Putting an end to the violence	.
Preventing further violence for an individual victim through changing the offenders behaviour	.
Punishing and holding the offender accountable for their violence	.
Sending a message to the community that domestic and family violence is wrong in the hope of altering the attitudes and behaviour of community members	.
Supporting the victims by validating their stories and experiences	.
Repairing the relationship between the victim and offender	.
Repairing the relationship between the offender and the community	.
Compensation to the victim	.
Other (Please Specify):	.

**Section 2: Effectiveness of Responses**

Please consider the effectiveness of both the Criminal Justice System and Restorative Justice Practices in addressing each of the objectives outlined below. Rate the effectiveness by assigning it a number between 1 and 5 according to the following scale:

1 = Highly Ineffective 2 = Ineffective 3 = Neither Ineffective or Effective  
4 = Effective 5 = Highly Effective

<b>OBJECTIVE</b>	<b>CRIMINAL JUSTICE SYSTEM</b>	<b>RESTORATIVE JUSTICE PRACTICES</b>
Putting an end to the violence	1 2 3 4 5	1 2 3 4 5
Preventing further violence for an individual victim through changing the offenders behaviour	1 2 3 4 5	1 2 3 4 5
Punishing and holding the offender accountable for their violence	1 2 3 4 5	1 2 3 4 5
Sending a message to the community that domestic and family violence is wrong in the hope of altering the attitudes and behaviour of community members	1 2 3 4 5	1 2 3 4 5
Supporting the victims by validating their stories and experiences	1 2 3 4 5	1 2 3 4 5
Repairing the relationship between the victim and offender	1 2 3 4 5	1 2 3 4 5
Repairing the relationship between the offender and the community	1 2 3 4 5	1 2 3 4 5
Compensation to the victim	1 2 3 4 5	1 2 3 4 5
Other (Please Specify):	1 2 3 4 5	1 2 3 4 5

## **Appendix B: Interview Guide**

### **Section 1: Demographics**

- 1.1 In order to put into context the discussion to follow I would like to get a sense of your professional background and experience. Could you tell me about your professional training and present work?
- 1.2 Your current place of work: What is the role of that agency/organization in terms of dealing with Family and Domestic Violence?

### **Section 2: Clarifying Meanings**

- 2.1 In terms of Family and Domestic Violence: What kind of actions or behaviours do you associate with that term?

Common incidents (Typical case scenario?)

Extent within community to which it is an issue in the community

### **Section 3: Priorities and Objectives – Refer to Survey**

- 3.1 In terms of responding to Family and Domestic violence, you have identified ----- as the main objectives
- 3.2 Why do you feel these are most important objectives in responding to family and domestic violence?
- 3.3 In your professional work, are these views shared
  - (a) by your peers?
  - (b) by members of the community that you have come into contact with?

Are there objectives/issues specific to the Indigenous Australian Community when responding to Family and Domestic Violence? What are they?

- 3.4 In light of these priorities:
  - (a) At present what kind of issues do you identify as being problematic in achieving these objectives?
  - (b) In what way could the current approaches be more responsive to these objectives?

#### **Section 4: Views on Criminal Justice System Responses**

I am interested in your views on both the Criminal Justice System and Restorative Justice practices in responding to Family and Domestic Violence.

##### **4.1 In relation to the Criminal Justice System:**

- (a) What do you understand the current Criminal Justice System's response to Family and Domestic Violence to be?
- (b) Does this include the Intervention Order system? Why/Why not?
- (c) Do you feel that the current the Criminal Justice System is appropriate and/or effective in responding to family and domestic violence? Explore.
- (d) Ideally, what should criminal justice responses achieve in cases of domestic violence? (ie: in terms of changing behaviour, punishment, validation of victims experience etc)

#### **Section 5: Views on Civil/Restorative Justice Responses**

##### **5.1 In relation to Restorative Justice Practices**

- (a) What do you understand the response of Restorative Justice practices to Family and domestic violence to be?
- (b) Do you feel that Restorative Justice practices are an appropriate and/or effective in responding to family and domestic violence? Explore.
- (c) Ideally, what should Restorative Justice practices achieve in cases of domestic violence? (ie: in terms of changing behaviour, punishment, validation of victims experience etc)

#### **Section 6: Victim/Offender Analysis (Contextualization)**

**6.1** So, considering your understanding of the two types of approaches we have spoken about, is there an approach that you feel is more effective in responding to Family and Domestic Violence? Which one? Why?

**6.2** In terms of the offender, what benefits does this approach have over (other approach)?

**6.2** In terms of the victim, what benefits does this approach have over (other approach)?

#### **Section 7: Exploration of Preferred Response**

**7.1** While (chosen response) is identified as being the most effective approach for responding to Family and domestic violence, can you think of any situations or kinds of cases where (other response) would be acceptable?

**Section 8: Additional Concerns**

**8.1** Are there any additional factors that you feel need to be kept in mind when addressing domestic violence in the Indigenous Australian Community? (Other than the ones we have spoken about)

**8.2** Are there additional measures/actions that you feel need to be taken in order to address domestic and family violence in the Indigenous Australian Community?