

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



**Victorian Aboriginal Legal Service Co-operative Ltd
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Foreword:

In recent years family violence has become more widely recognized as a serious problem. We know that approximately 30% of women experience family violence at some stage during their life. Research also tells us that a large proportion of women who experience family violence do not tell police, other services or even members of their family. There is much that we need to learn about how to respond to family violence and how to reduce the frequency of family violence.

This research report brings a detailed overview of policy responses to family violence and adds further to our knowledge of how Koorie women believe family violence should be dealt with. The research highlights that family violence is seen as unacceptable violence and this is similar to the non Koorie community.

However the Koorie women interviewed often recognised the continuing effects of history on their community today. Family violence is seen as a consequence of post occupation damage to Koorie community, a threat to future community well being and a challenge for the community to work together to change. The need for prevention, listening to women, rehabilitation of perpetrators and healing the damage to community are strong themes.

There are comments made which indicate the criminal justice system needs to improve but it is not the main focus of attention. The non Indigenous community by comparison appears to place much greater emphasis on the police, courts and punishment as a vehicle for change. The continued reliance on criminal justice responses to family violence occurs in spite of solid evidence that pro arrest and pro prosecution policies are ineffective.

The data gathered paints a picture of family violence where history is recognized as a factor. This does not excuse violence but it helps explain the context of that violence. Reducing Family violence is linked to attitude, relationship and behavior change. The frame is wider than the couple, it s the extended family and the community. The findings are similar to those of a research study in Queensland by Nancarrow (2003)

This research adds further support to the argument that Indigenous Australian people often conceptualise, describe and solve problems differently to non-Indigenous Australians.

I hope this research encourages Koorie people and organisations to build on their knowledge of culture and community and make changes along the lines recommended by the women interviewed in this research.

I hope the research is also read by non-Koorie organisations and recognised as being part of a work in progress for Koorie communities. The research findings also should prompt us to question how we better respond to this problem as a community; Are the ideas of the Koorie community about family violence something that non-Koories could also benefit from?

This research has been conducted by Nicole Bluett-Boyd as part of her Bachelor of Arts (Honours) Degree in the Department of Criminology, the Melbourne University. I would like to acknowledge the sensitivity, professionalism, hard work and enthusiasm that she has brought to this project.

Accordingly, I recommend this report to you.

With compliments,

Frank E. Guivarra,
Chief Executive Officer
Victorian Aboriginal Legal Service Co-operative Limited

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.¹ 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.² In light of this, the present research aimed to explore the potential of using alternative

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

² In the 2002-3003 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.

justice practices to address family violence in the Indigenous Australian community.

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 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.

Acknowledgements:

First and foremost, thanks go to every person who participated in this research, recognizing that Indigenous people have been researched extensively and specifically on the topic of family violence in recent years. Also thanks go to all the women who were willing to contribute their time, professional views, experiences and observations and who shared their personal stories in the hope of devising practicable solutions to ending family violence in the community. Thanks especially go to the many Elders who contributed to this research for their unparalleled wisdom and perspectives.

Thanks also go to Robin Inglis of the Victorian Aboriginal Legal Service Co-operative Ltd (VALS), for the development of the research concept and continual contributions to this research. To Greta Jubb and Frank Guivarra of VALS for assistance, ideas and recommendations throughout the research process.

I would also like to acknowledge Heather Nancarrow, whose thesis entitled 'In Search of Justice in Domestic and Family Violence' (2003), was the inspiration and methodological guide to this research.

Finally and importantly, thanks go to all professionals working to address family violence in the Indigenous Australian community, whose passion and tireless commitment to eradicating all forms of family violence is paving the way to achieving the unachievable.

Thank you,

Nicole Maree Bluett-Boyd

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Introduction

In writing this report, I have drawn on a rich body of literature outlining many of the critical considerations in addressing family violence in the Indigenous Australian community.³ However, we recognize that this paper will ultimately fall short of conveying the complexity of the issues and the contribution of women and men who continue to raise community and political awareness of family violence. It is hoped that this report will be able to provide an overview of the key concerns currently driving social and political agendas in the context of family violence with particular reference to the Victorian Indigenous Australian Community.

Defining Family Violence

The Victorian Indigenous Family Violence Task Force (VIFVTF) provides the following definition of family violence:

'An issue focused around a wide range of physical, emotional, sexual, social, spiritual, psychological and economic abuses that occur within families, intimate relationships, extended families, kinship networks and communities. It extends to one-on-one fighting, abuse of Indigenous Australian Community workers as well as self-harm, injury and suicide' (2003, p. 123)⁴

Importantly, this definition operates outside the traditional conceptualization of 'family' by non-Indigenous Australians. Blagg (2000) suggests that the concept of "family violence" provides Indigenous people with "a story of family violence" that allows for "retelling of the story of 'settlement' in ways which foreground its devastating impact on their culture", rather than "being simply a term defining a discrete social problem or a specific set of power relationships" (p. 2-3).

Statistical data suggests that Indigenous peoples experience significantly higher rates of violence as victims, witnesses and perpetrators, than the non-Indigenous population (Memmott et al: 2001). In recent years numerous reports, Government enquiries and anti-violence campaigns have emerged describing alarming levels of family violence and destruction in many Indigenous communities (Atkinson: 1990, Ferrente, Morgan, Indermaur and Harding: 1996,

³ Although the term 'domestic violence' is still utilized in academic literature, the term 'family violence' is used throughout this paper given that many Indigenous people have indicated their preference for using this term to distinguish the nature of such violence in a post-colonial society (Domestic Violence and Incest Resource Center: 1998, Blagg: 2000)

⁴ This is also the working definition adopted by the Victorian Government in implementing the Indigenous Family Violence Strategy

Blagg: 2000, Weeks: 2002).⁵ The Women's Safety Strategy (1996) reported that 6.2% of the Australian female population experienced violence at the hands of a male.⁶ Indigenous women are over 45 times more likely to experience family violence than non-Indigenous women, and ten times more likely to become a victim of domestic homicide (Government Response, 2004).⁷ Additionally, a study by the Australian Law Reform Commission identified Indigenous women, women from non-English speaking backgrounds and women with disabilities as particularly at risk of structural and personal discrimination and disadvantage before the law.⁸

Historical and Contemporary Responses to Family Violence in Australia

Initial responses to the issue of family violence in Australia involved State and Federal Governments, non-Government organizations and feminist collectives. The latter has historically played the major role in addressing the issue of family violence, centering mainly upon the establishment of safe houses and refuges⁹ for women and children attempting to escape violent relationships.¹⁰ Building largely upon a radical feminist theorization of family violence,¹¹ and reflecting the liberal feminist focus on 1) changing community attitudes toward family violence; 2) supporting women and children to leave violent relationships and 3) reforming the legal system to attend to the specific needs of women affected by family violence, the reforms and campaigns that emerged were

⁵ According to Atkinson (1990), there have been more deaths of Aboriginal women through assault than there have been deaths of Aboriginal people in custody.

⁶ It should be noted that most estimates of the incidence of violence are under estimates. This is particularly true of domestic or family violence situations (Domestic Violence and Incest Resource Centre: 2005)

⁷ The VIFVTF (2003) notes that 'Indigenous men have identified themselves as being labeled more generally as the perpetrators of violence, breaking down this conception has been difficult... men too are victims of violence' (p. 97). However this paper will typically refer to situation of violence involving a male offender and female victim. This assumption is reflected overwhelmingly in official statistics. For instance in the 2000-2001 period Victoria Police received 21,622 reports of family violence incidents. Of victims, 77% were women, while men comprised 89% of perpetrators (Victoria Police Data: 2002 cited in VIFVTF (2003))

⁸ Australian Law Reform Commission (1994) *Equality Before the Law: Justice for Women*

⁹ Nancarrow (2003) contends 'Though not all women's refuges were radical feminist collectives, they were the most prominent, and visible in the media, in advocating for radical change to end violence against women. Therefore, public perception associated women's movement with rejection of men, generally, and women's separation from their male partners and (often) their male children specifically' (p. 5)

¹⁰ Thus, when reviewing the range of services funded by government for women and children escaping family violence, the impetus for such efforts which came from various women activists over a significant period of time must be acknowledged.

¹¹ In this view, family violence is understood as a consequence of patriarchal power and the assertion of male privilege within the family. The term 'domestic violence' is categorized as a set of behaviours designed to dominate and control one's partner. For further information on this model see Pence and Paymar (1986). Refer to **Appendix A** for an explanation of different feminist approaches to family violence and contributions to reform in the Australian context.

initially invested in attempts to alter the existing Criminal Justice System. The late 1980's witnessed an increase in Government inquiries into the nature and extent of family violence and the appropriateness of existing services. As a result major legislative changes occurred in most States and Territories, specifically aimed at addressing violence in the home.¹²

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.¹³ Indeed, many current feminist critiques advocate the use of such policies. However, national and international research into the effectiveness of 'pro-arrest' policies is conflicting and often contradictory. For instance, research by Coker (2001) and Smith (2001) indicates that reduced recidivism is often short term and dependent on offender characteristics including race, employment status and socio-economic status.

The responses to working with male perpetrators of family violence have had a quite similar history. A number of working models, based on differential explanations of family violence, emerged and varied in popularity over time.¹⁴ In recent years a Pro-feminist Model has been favored in most States (Pease & Grace: 1996). Both national and international research into the effectiveness of these programs indicate that effectiveness is often reliant upon socio-economic and employment status,¹⁵ however trials continue.¹⁶

While the value of such advancements cannot be denied, commentators air the concern that many of the gains of the women's movement with respect to family violence can be seen to benefit some women more than others. Stubbs (1994) and Coker (2001) among others, assert that access to considerable improvements regarding legal protection for women subjected to family violence are not equally available. Stubbs (1994) in particular states that white, urban women from the dominant culture are most able to mobilize protection while Indigenous women, women from non-English speaking backgrounds and rural women remain the least protected by contemporary reforms (p. 4). In light of this critique, Stubbs throws out the challenge of re-thinking differences in experience that allows policy to be responsive to those differences (p. 5).

¹² In Victoria, family violence is governed by the *Crimes (Family Violence) Act 1987*. This Act is discussed in detail in **Section 2** of this report (p. X).

¹³ '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.

¹⁴ Adams (1988) classifies therapeutic group programs for working with men into five categories: Insight Models; Ventilation Models; Interactive Models; Cognitive Behavioural Models; and Pro-feminist Models.

¹⁵ See Keys Young (1998) for an overview of program evaluations.

¹⁶ In Victoria, a mandatory program is currently being trialed at the Family Violence division of the Magistrates Court, involving the participation of 212 men in Behaviour Change Programs over 2 years.

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).¹⁷ The VIFVTF discusses alternative and Restorative Justice practices in broad terms, highlighting the need for solutions to family violence issues to be

¹⁷ 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.

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).

Alternative Justice Responses

Emerging alternatives to criminal justice responses such as Restorative Justice practices,¹⁸ and the re-development of theoretical frameworks,¹⁹ became an area of intense discussion in academic research during the early 1990's. Increasingly Restorative Justice is being presented as an answer to the failings of the Criminal Justice System (Stubbs: 2004). However, the term 'Restorative Justice' is a rather capacious concept, encompassing a wide range of ideologies and practices (Daly & Immarigeon, 1998).

According to Strang and Braithwaite, Restorative Justice has two important aspects: firstly, it brings together stakeholders affected by some harm that has been done; secondly it denotes restorative values that distinguish it from the traditional, punitive justice system (2002: 1). Restorative Justice has also been characterized as a social movement that has a 'new idealistic conception of justice', 'sets itself against traditional justice practices' and includes proponents who have 'varied ideological components and strategies' (Daly & Immarigeon, 1998:30 cited in Stubbs: 2004). In Australia, the practice of Restorative Justice has been influenced significantly by various models used in juvenile justice, especially Family Group Conferencing (FGC) which developed in New Zealand in the 1980's (Daly & Immarigeon, 1998).

Restorative Justice literature indicates the benefit of this approach in contrast to the Criminal Justice System for victims, offenders and the wider community. These include but are not limited to:

- **For Victims:** reparation of harm; the chance to have their voices heard; the opportunity for an apology; participation in the decision making process.
- **For Offenders:** increased understanding of the victim and/or crime, a chance to be heard and reduce recidivism.
- **For Community:** participation in the process, development of shared perspectives, cost reduction.²⁰

¹⁸ In Australia, the early 1990s saw the introduction of a number of restorative justice practices including; Conflict Resolution, Victim-Offender Mediation, Family Group Conferencing and Victim Advocacy, although each of these practices is predominantly found in the juvenile justice system (Daly & Immarigeon: 1998).

¹⁹ As outlined by Daly and Immarigeon (1998), these included Abolitionism, Reintegrative Shaming, Feminist Theories of Justice, Peacemaking Criminology, Philosophical Theories and Religious and Spiritual Theories.

²⁰ For an extended discussion refer to Stubbs, 2004 p 3-4

Evaluative research has typically provided evidence of high levels of both victim participation and victim satisfaction in Restorative Justice practices.²¹

Critiques of Restorative Justice

However, the use of restorative practices to address family violence, or indeed any form of violence against women, is highly contentious. Many promote its use in light of the benefits outlined above (Braithwaite: 1989/1996, Morris & Young: 2000, Strang & Braithwaite: 2002). However, there exist numerous criticisms, particularly that:

- Restorative Justice views crime as a discrete, past event which is not reflective of the reality of family violence (Stubbs, 2004: 6);
- the theorization of crime as a conflict between individuals fails to engage with structural disadvantage and with raced, classed and gendered patterns of crime (Stubbs: 2002);
- restorative practices fail to address the power dynamic inherent in situations of family violence (Stubbs, 2004);
- meanings conveyed through restorative practices may reflect the values of a micro-community rather than the community at large (Coker, 2002:129); This is viewed as especially harmful given that popular discourses tend to construct women as complicit in the incidence of violence, and subsequently trivialize the offence and challenge the credibility of the victims;
- the emphasis placed on the offenders apology is damaging given that this act often forms a part of the cycle of violence (Nancarrow: 2003)

Additionally, Nancarrow (2003) identifies three main objections to the use of Restorative Justice practices when addressing family violence:

- **The Coercion Problem**; which involves both coercion into participation in restorative proceedings, and coercive tactics during the proceeding through control and manipulation by the offender.²²
- **The Cheap Justice Problem**; which refers to the potential of Restorative Justice practices to over-emphasise the offender apology and pressure the victim into acceptance.²³
- **The Normative Problem**: which refers to the potential for the norms of a micro-community to be pressed upon the process, resulting in for instance, blame being placed on the victim or the minimization of the violence by others involved in the mediation.²⁴

²¹ For instance see Palk et al: 1998, Trimboli: 2000

²² For further explanation of this concept refer to Coker (1999: 13-14)

²³ Daly (2002), Stubbs (2002) and Busch (2002) also highlight the use of the apology as part of the controlling system within some family violence situations.

²⁴ Refer to Nancarrow (2003) pp. 15-17. See also Braithwaite and Daly (1994).

Summarily, these critiques assert that restorative responses have the potential to collude with perpetrators of family violence by trivialising and minimizing the violence. In addition, many contend that a Restorative Justice approach will ultimately fall short of addressing dominant paradigms, particularly the power imbalance intrinsic in situations of family violence (Stubbs: 1994).

While the application of Restorative Justice to instances of family violence remains relatively unexplored in practice, there exist numerous international examples of its application in cases of other gendered harms.²⁵ Available empirical data concerning these programs is promising particularly in terms of victim support and validation.

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).

²⁵ For instance the Mediation and Restorative Justice Centre in Edmonton, Canada; Family Group Decision Making Project, Newfoundland, Canada; North Carolina Family Group Conferencing Project, USA; Victim Offender Mediation in Domestic Violence Cases, Austria. For a detailed description of these programs refer to Stubbs, 2004:9-12.

The Present Research

The above debates highlight the 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.

Methodology

Research Statement

In developing the research project, I was aware of the strengths and limitations arising from the inherent subjectivity embedded in the research process. As such I would like to take this opportunity to state that I am not an Indigenous woman and I have no right to speak for, or on behalf of, Indigenous women. For the purposes of this project, I am a researcher committed to the prevention of violence against women. Within this context, and due to the opportunities available to me, I would envision this research as an opportunity to give due attention to Indigenous Australian opinions. Thus, this research is viewed as a vehicle for the expression of voices from the Indigenous Australian community.²⁶ I can only hope that I am able to do justice to the women who contributed so willingly to this project.

Research Aims

This research aimed to engage with relevant factors and concerns raised by members of the Indigenous Australian community and advocates, in order to aid the process of theorizing and developing policy around family violence. From a theoretical perspective, it sought to investigate alternatives to the contemporary pro-arrest and pro-prosecution approach in light of power structures that operate to make such an approach inappropriate. Thus, the ultimate aim of this research is to produce knowledge that assists in the development of policies and programs that are responsive to difference.

Essentially, this involves 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.²⁷

²⁶ Although situated in broader literature my analysis is limited to the Victorian Indigenous Australian context. This focus is necessary in terms of the relatively small scale of the research and the differential nature of policy and reform across jurisdictions.

²⁷ 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.

Research Methodology

The use of qualitative research methods in particular is viewed as integral in providing depth to a given study (Denzin and Lincoln: 1998; Fossey et al: 2002).²⁸ The qualitative tradition requires as little presupposition as possible when entering 'the field' and tends to take the form of relatively broad and exploratory questions. For this reason, a semi-structured interview guide was developed, informed by the reading of the aforementioned literature, concerning responses to family violence.²⁹ The flexible nature of the semi-structured interview process is reflective of a feminist/constructionist approach, which is seen as having two key elements: increased visibility of the participant's subjective experience; and increased involvement of the participants in the research process. The interview process relied upon a themed interview structure that importantly allowed for reactive exploration of comments and story-telling opportunities.³⁰ This reflexive structure is viewed as integral for gaining contextual insights that may not otherwise have arisen.

During the interviewing process participants were also required to complete an Objectives Survey.³¹ 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.³² Secondly, it facilitated a comprehension of participants ratings concerning the effectiveness of both the Criminal Justice System and Restorative Justice practices in achieving identified objectives.³³

The interview/survey process typically took between 45 minutes and an hour, although two interviews were conducted that ran for over two hours each. Three general themes were 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

²⁸ It is acknowledged that this perspective is quite different from most accounts that rely on official court ledgers, law enforcement agencies or community agency statistics. However, a qualitative analysis that allows for the emergence of themes is seen as appropriate in light of the aims identified above.

²⁹ Please find Interview Schedule attached as **Appendix C**

³⁰ 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.

³¹ 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 B**

³² These priorities, listed in **Section 1** of this report, were derived from both policy documents and contemporary feminist discourse concerning family violence.

³³ It should be noted that two of the participants were unable to complete the section of the survey regarding the use of restorative justice practices due to lack of familiarity with the practice.

was limited and many aspects of the practice could only be discussed in hypothetical terms.³⁴

Sampling

Fossey et al (2002) assert that qualitative sampling is concerned with information richness. In light of this, participants were sought for their professional proximity to family violence services and involvement with the wider debate concerning the appropriateness of responses to family violence. Professionals involved in addressing family violence in the Indigenous Australian community at all levels were considered. The sample ultimately comprised of professionals either currently involved in family violence-related agencies,³⁵ individuals previously involved in Family Violence Taskforce, and those involved in justice practices in the Indigenous Australian Community.³⁶ All but one participant identified as Indigenous and all were women.³⁷

Another factor taken into consideration was the geographical location of the participants. 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.

All participants were initially approached through a letter containing information about the research. This was followed up by a phone call in which interest in participation was extracted and (if appropriate) an interview time was arranged. Altogether, 24 women were approached for interview. Of these, 18 women were able to participate in the research.³⁸ Interviews typically took place at the participant's place of work. However, two were conducted at the participant's residence and one in a public café in Melbourne City. It should also be noted that, although the research process was developed on the basis of a one-on-one encounter, in three cases interviews were conducted in pairs. This occurred for reasons of convenience and time constraints.

³⁴ Where understanding regarding restorative practices was minimal, participants were provided with a description of practices as described in **Section 3** of this report (p.X)

³⁵ 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.

³⁶ For instance, Elders currently sitting on the Indigenous Australian Courts.

³⁷ 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.

³⁸ The non-participation of 6 women was due to practical reasons (such as inability to contact/arrange an appropriate time).

Data Analysis

The analytic approach of this research developed from the premise that a positivist, social scientific method is not the most appropriate way to approach policy evaluation. A multi-method qualitative inquiry such as this has a necessarily interpretive approach to its subjects (Fossey et al: 2002). In analysing both the surveys and interview transcripts, I initially sought to identify and code themes that emerged from the data (Silverman: 2001). These themes were then utilized to develop an overview of three key areas:

- The Nature and Extent of Family Violence in the Indigenous Australian Community
- The Effectiveness of Contemporary Criminal Justice Responses
- The Potential for the Use of Alternative Justice Practices (Restorative Justice)

The surveys were analyzed quantitatively. **Section 1** – pertaining to priorities – was translated into percentages to ascertain an average ranking of each priority. **Section 2** – pertaining to the effectiveness of both the criminal justice and Restorative Justice practices – was similarly analysed to provide the average effectiveness rating in terms of each priority. This data is represented in graph form in the following analysis.

Ethical Considerations

The ethical considerations in this case were relatively minimal as the sample was comprised of agency workers speaking in a formal capacity. Consent regarding participation and the use of a recording device was gained through a plain language statement and consent form package prior to the interview commencing.³⁹ Issues of confidentiality were dealt with in the form of anonymity of participants, whereby the individual is de-identified and only the type of agency was recorded in any direct quote that appears in the subsequent analysis.

³⁹ Please find Plain Language Statement and Consent Form attached as **Appendices D** and **E** respectively.

Section 1 – Family Violence in the Indigenous Australian Community

Overview

The first section of this analysis aims to highlight what remains a dire situation posed by family violence on Indigenous Australian communities and the increased demand that flows to a handful of workers who are resourced specifically to respond to its incidence and effects. An associated aim of this section is to provide an analysis of features and problems specific to family violence in the Indigenous Australian community that remains unattended to by contemporary policy.

1.1. 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:

OBJECTIVE 1: Putting an end to the violence
OBJECTIVE 2: Preventing further violence for an individual victim through changing the offenders behaviour
OBJECTIVE 3: Punishing and holding the offender accountable for their violence
OBJECTIVE 4: 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
OBJECTIVE 5: Supporting the victims by validating their stories and experiences
OBJECTIVE 6: Repairing the relationship between the victim and offender
OBJECTIVE 7: Repairing the relationship between the offender and the community
OBJECTIVE 8: Compensation to the victim

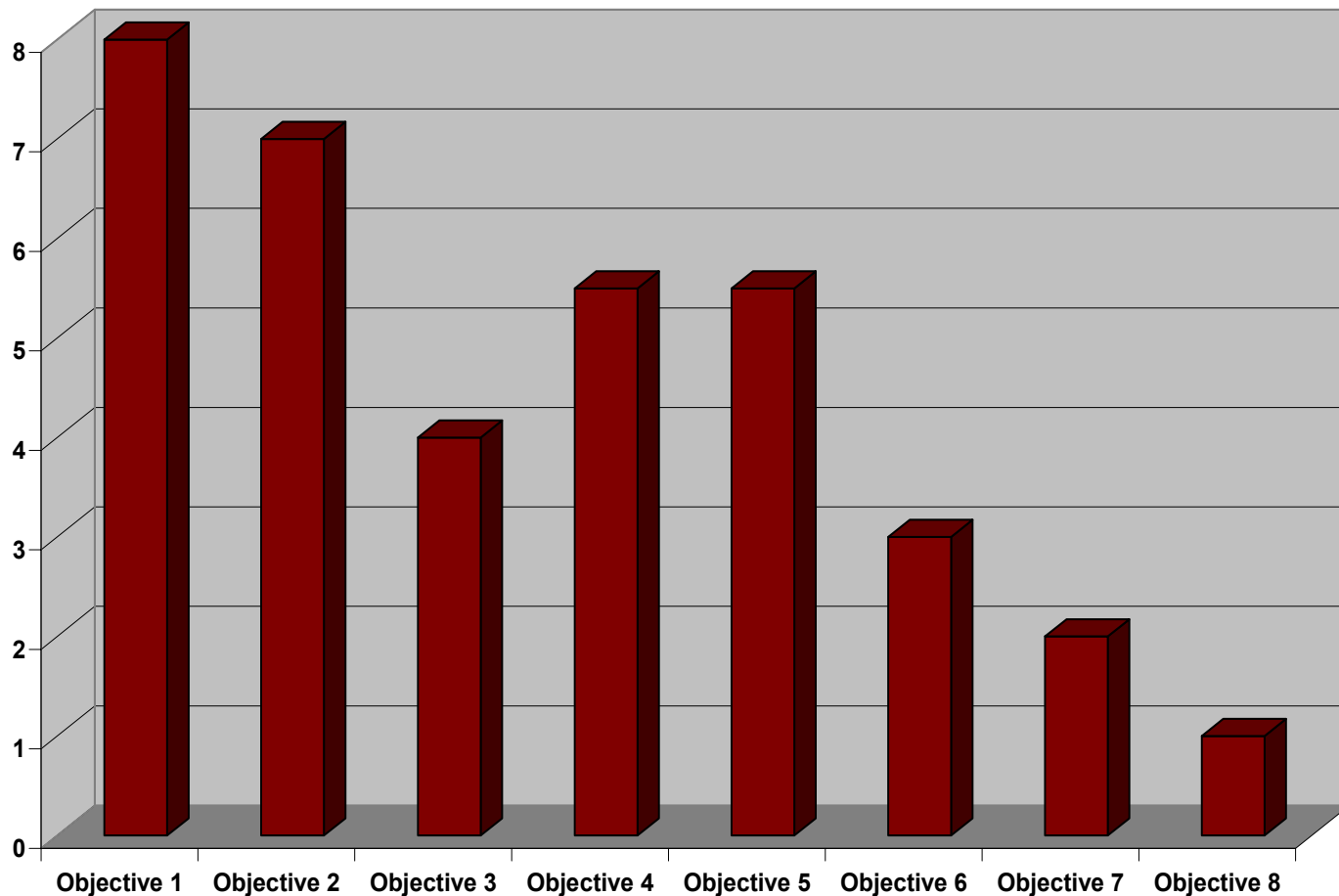
Each priority was assigned a ranking between 1 and 8, with 1 indicating the top priority. The following table provides the average rank assigned to each objective:

Table 1: Average Rank Assigned to Each Objective

Objective 1	Objective 2	Objective 3	Objective 4	Objective 5	Objective 6	Objective 7	Objective 8
2.21	3.28	4.52	3.57	3.57	5.14	6.07	6.87

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.

1.2. Forms of Violence

Currently, dominant and popular definitions of violence indicate that violence against women in the home can be characterized by physical sexual, and psychological damage to women that cause them to fear for their safety (Cook & Bessant, 1997:11). However, there are many forms of violence other than those that produce physical destruction of one's life, body or property. As one woman stated:

"We term violence as physical harm, but in the community it's the mental abuse. It affects the way a person interacts with the community. If they're not able to function in the community – that's violence."(Department of Justice Worker 1).

Throughout the interviews the women identified various forms of violence, many not included in contemporary literature. Of particular interest were:

- Financial Abuse;
- Spiritual Abuse;
- Religious Abuse/Racial Abuse;
- Community Abuse;
- Generational Abuse.

Spiritual and Religious abuse were identified as denying a victim the right to practice and indulge in religious practices and events. Community abuse was identified as violence (often a secondary form) targeted at Elders and community workers, particularly family violence workers. Community abuse was said to be a major and frequent problem in cases of family violence, and of the most damaging to the community and relationships, causing whole communities to be held at bay by the beliefs of a stronger body of people within it. Generational abuse was identified as abuse by children towards Elders. This included both physical and verbal abuse and specifically abuse with the aim of gaining money.

The potential of such violence to injure and cause pain to women is great and should not be underestimated. Importantly, the inclusion of these forms of family violence tend to suggest causes operating both outside the gendered critique offered by contemporary feminist analyses, and beyond an overly simplistic 'cause and effect' explanation of violence. Indeed, the presence and recognition of spiritual and community abuse in particular appear to implicate a clear historical element that underlies family violence in the community, and a connectivity within the community that potentially operates as a barrier to justice.

1.3. 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 overcrowding, 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)

These issues were consistent throughout the interviews and heavily informed subsequent discussions regarding appropriate responses.

Rural Specificities

Many of the women interviewed in greater Victoria identified specific issues relating to physical and socio-cultural isolation including:

- Geographical isolation of rural living (with particular reference to access to services)
- Communication difficulties; these include telephone access as well as access to transport
- Longer police response time given geographical location
- The comparatively lower wages of women working in rural areas
- The dominance of patriarchal ideology and attitudes of rural police officers
- Complete lack of Indigenous specific shelters coupled with reluctance of hotel/motel staff to assist Indigenous Australian women

Above all, participants identified the lack of support services and the relocation of women to other communities as particularly damaging in rural communities:

“Your talking about women who have lived in the country all their lives and you’re moving them to a world they don’t know, to an alien environment. Their world has just crumbled around them and you force them to be with people they don’t know. If she has a 15 year old child, he cannot go with her. What is wrong here?” (Action Group Worker 1)

1.4. Identified Issues and Challenges

Throughout the interviews, many specific instances of family violence were identified and explored by the women. These discussions (and dialogue around the nature of family violence generally), provided many challenges to and highlighted gaps in, contemporary academic and policy oriented literature.

The Gender Dynamic

Firstly, the gendered nature of family violence, theorised around in academic literature, was noticeably absent from most constructions by the participants. While the women typically identified the female/victim, male/offender dynamic of family violence, the violence was not seen as a direct result of patriarchy. Indeed, comparative research and revisionist anthropology conducted by female scholars suggests that traditional Indigenous society was far from a simple patriarchy (Lucashenko, 1997: 150). Typically, discussions involving the gender dynamic revolved around the loss of traditional men's role in the community:

“Historically, since invasion, because the British society is such a male dominated (society), you know, that really when invasion occurred it was the men who were more dramatically affected, in terms of the loss of their role in society...all of that was eroded. So women took on a more protective role, and they still carry that. If you're raised in a family where you have a father or a brother that has been taken to jail, the Criminal Justice System becomes your enemy.” (Community Services Worker 1)

Additionally, women were identified as holding higher positions within the community:

‘(Breaking families up isn't the answer), especially where Indigenous Australian men are concerned because of, they've lost their role in the community. Once upon a time they were very important people whereas now women are the forerunners in the communities. They have the top jobs and everything like that. Men are losing their stance in the communities. Of course a lot of our cultural ways have been taken from us and that's still impacting today.’ (Koori Court Elder 1)

The Public/Private Distinction

Many of the participants' were quick to point out that family violence is often a 'public' issue within the community:

‘You know, with domestic violence in mainstream, they say it's all done behind closed doors. Whereas with us, they'll do it in front of anyone. They'll be in the street. They'll be at the railway station. They'll be down at the shops and it just happens. That's why people have this image of us being a violent mob.’ (Action Group Worker 2)

Coker (2002) suggests that feminists have paid too little attention to the possible detrimental effects of constructing domestic violence as a public issue, suggesting that such an analysis does not adequately reflect the nature of the relationship between a victim and the State, particularly in relation to increased State control over women (p. 132). This point is particularly relevant given

Indigenous women's historical experience with the Criminal Justice System.⁴⁰ This was raised by a number of women who noted the possible repercussions involved in making the family violence public to the justice system in particular:

"Once you step in there's a whole dynamic to deal with. There's a community dynamic, there's a family dynamic. There's all this that you have to contend with. Unlike non-Aboriginal people, who can go home at the end of the day, and have nothing to do with people outside the home. We can't do that. They're our family. We don't have the luxury of going home and closing our doors." (Action Group Worker 2).

The Issue of Conflicting Loyalties

Commentators such as Daly (1997), Lucashenko (1997) and Moreton-Robinson (2000), take issue with the conflicting loyalties experienced by Indigenous women when dealing with family violence. Huggins (1994) suggests that the requirement of the feminist movement that Indigenous women stand alone from their men fails to acknowledge the unique 'double-disadvantage' that Indigenous women find themselves in. In particular, Coker (1999) highlights the failure to recognize the conflicting loyalties experienced by many women and the impact of this on their vulnerability to family violence, especially when disclosure may result in rejection by the community, as particularly detrimental to Indigenous Australians. This problem was identified by the majority of participants:

"It's a by-product of involvement with the Criminal Justice System, that ostracism from your family - from your community. It's the 'us versus them' mentality. Are you with your mob or are you with them?" (Action Group Worker 3).

In addition, many participants aired the concern that engaging in hypercriminalisation will ultimately result in the over-incarceration of minority men.⁴¹

'These women don't want to see their men in jail, especially because they've probably seen all that before, with a father or brother or uncle. They're scared of what might happen to them if they go in.' (Action Group Worker 4)

⁴⁰ It is not possible within this paper to focus comprehensive attention to Indigenous women's experiences of the criminal justice system. However, there exist a number of reports that detail statistics and discussion on this issue. See Women's Services Network: 2000, Loh & Ferrante, 2003.

⁴¹ Since the Royal Commission into Aboriginal Deaths in Custody (1987-1991), there have been a number of criminal justice initiatives aimed at keeping Indigenous men out of prison. Unfortunately, although the Commission discussed family violence within the report as a major reason for men being in prison, it made no recommendations about strategies for reducing or addressing family violence (Atkinson: 2002).

Spirituality

The emphasis given to the loss of spirituality and the importance of healing as a response to family violence is a key feature of many previous research and taskforce reports and one that many non-Indigenous people have difficulty understanding and accepting. As one woman stated:

“You touch their heart and you break their spirit and when you break their spirit you need to fix that. If we want kids to grow up and be okay, we need to go back and mend that. I don’t want to let that fracture, I don’t want to break that anymore.” (Department of Justice Worker 1)

Children

The intergenerational transmission of family violence referred to above was a major concern for all participants.⁴² As one woman stated:

“Physical violence is all that’s covered by the Courts. From what I’ve seen, growing up as a kid, there’s so much verbal abuse. A lot of people don’t realise the impact that has on a kid, with their confidence and stuff. That’s where it starts, you know, that cycle happens all over again.” (Legal Service Worker 1)

The children were often identified as the most affected by violence in the home. A number of women noted that the traditional conceptualisation of ‘domestic violence’ viewed the children as secondary to the situation. However this was identified as a major contributing cause of violence in younger men in particular.

Summary:

These challenges highlight the important role of culture usually omitted from dominant analyses. In particular it highlights cultural concerns connected to:

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

⁴² A survey conducted by the ABS revealed that 61% of women who experienced violence by a current partner reported that they had children in their care at some time during the relationship and 38% indicated that their children had witnessed the violence (ABS, Women’s Safety Australia: 1996).

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

Section 2 – Contemporary Criminal Justice Responses to Family Violence

Overview

This section of the analysis concerns the current criminal and Civil responses to family violence. It is the intention of this section to explore the effectiveness of the current responses and highlight barriers to justice specific to the Indigenous Australian community. The following details issues and barriers raised by participant's concerning all levels of the justice framework from police to Civil Intervention Orders, Court to incarceration. This is followed by recommendations for improvement of the system that would allow a more tailored and reflexive approach.

2.1. The Victorian Justice Framework

The Victorian criminal justice framework for addressing family violence is defined by the *Crimes (Family Violence) Act 1987*, which was developed to address the limitations of existing legal responses to family violence.⁴³ Prior to this Act there existed no specific legislature addressing family violence. At present the Victorian Framework includes both a Civil (the use of Intervention Orders) and criminal (incarceration/fines etc) response to family violence, each existing to address the failings of the other.

It must be stated that the Criminal Justice System represents symbolic condemnation of societal acts such as family violence.⁴⁴ This sentiment is echoed in the VLRC Consultation Paper which states ' In additions to its symbolic value, the Criminal Justice System can lead to the punishment of people who use violence and arguably, has a deterrent effect.' (p. 31). While the value of the Criminal Justice System in this capacity cannot be denied, numerous reports have detailed the failing of this system with specific reference to family violence in the Indigenous Australian community

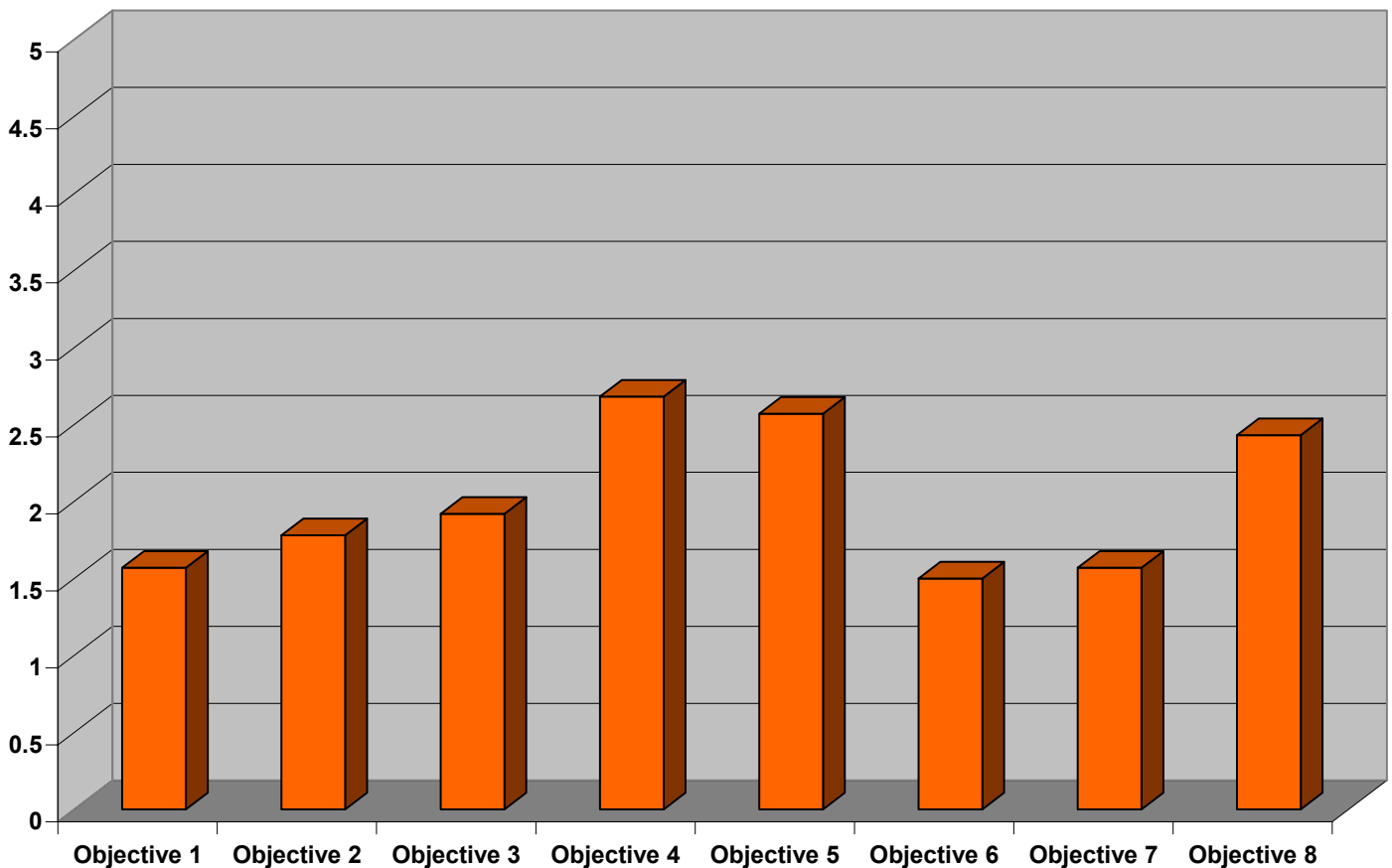
⁴³ The key feature of this Act, and similar interstate legislature, was the extension of magistrate's power to make intervention orders in cases of family violence where the civil standard of proof has been met. Additionally, interim orders could be made covering the duration until the final order is decided upon.

⁴⁴ Stubbs (1995; 2002), Lewis (2001) and Busch (2002) express concerns that domestic violence in particular requires strong overt sanctioning, due largely to its historic trivialization.

2.2. 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.'

2.3. 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.

Police: The First Point of Contact

In their consultation paper the VLRC acknowledge that the reliance upon the police and prosecutors in enforcing the criminal law is problematic (p. 32). This observation was prevalent in the data, with many women suggesting that the positioning of the police as 'gatekeepers' to the Criminal Justice System creates systematic disadvantage for the Indigenous Australian community. In particular, it was asserted:

“The cultural issues for any Indigenous person to report family violence – it's huge. It's that kinship structure – and I think it's what I was explaining before – there are so many repercussions that that person in their own thinking would be focused on. Our kinship structure is tight. We are all connected. So there's that fear of being ostracised. Our social make up is that we want to be accepted. So if we want to take action against somebody else we have to think about what it means for us. That's very specific to the Indigenous Australian Community.” (Department of Justice Worker 1)

In light of this, many women expressed concern toward the current trend toward 'pro-arrest' and 'pro-prosecution policies'⁴⁵:

"It's certainly not going to work in our community. All it is going to do is make the problem go further underground. Look, when women call police or take out an Intervention Order, they just want respite...." (Community Services Worker 1).

Police Attitudes

There were also specific issues identified in relation to police response, particularly in the rural context. Lucashenko (1997) states 'in keeping with an ethnocentric image of Aboriginal society as "savage", many Australians subscribe to the unqualified belief that the bashing of women was a typical feature of Indigenous culture prior to colonisation (p. 151). Indeed, this misconception fails to recognise the structured and controlled nature of many of the violent sanctions contained in customary Aboriginal Law.'⁴⁶ Throughout the interview process this view was specifically identified as being held by members of the police force:

'...the police just stood on the side with there arms crossed. It's this attitude of 'They'll sort themselves out. That's their way.' This is 2005, not the 1930's. I mean, if there was a physical fight in the mainstream, everyone would stop and watch and the police would be right in there. A hundred metres up the road...' (Action Group Worker 3)

Importantly, this view was seen as impacting on both the police/victim interaction and the police response rate:

'Every policeman is different. Some are amazing. Some are just plain stupid. They need to be educated on why women keep going back. They don't know how to communicate effectively. Just a change of manner when talking to a victim would not make her feel like the perpetrator – because she is the victim.' (Community Services Worker 2)

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

⁴⁵ It should be noted that objections made to these policies do not advocate a de-criminalisation of family violence but simply suggest the possibility of using alternative justice systems.

⁴⁶ The idea that Aboriginal life equates to violent life is not new in Australian sociological thinking. What is new is that the focus of violence is slowly shifting from the unquestionable violence of the invading State to that which is internal to the Indigenous Australian Community. See Lucashenko (1997)

Options Available to Women

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

"...women don't want to end the relationship, you know. They just want that respite to get out of that situation at that particular time. And I think that service systems don't handle that extremely well..." (Community Services Worker 1).

While it was stated that services were improving, this was viewed as sporadic and inconsistent. For instance:

"Access to mainstream is better than before. They know they are there and there's 1800 numbers everywhere. Equity of access is a problem. There's the attitude that 'if it's a Indigenous Australian problem they should be sent off to a Indigenous Australian service'" (Community Services Worker 1).

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:

'The mainstream safe houses don't work. There are all those restrictions. Going into a safe house, you can't see your family and Indigenous people don't want that. They need their community there.'
(Co-operative Worker 1)

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

Extensive research indicates that many barriers to accessing Intervention Orders exist on individual, community and social levels, subsequently causing

low rates of application in the Indigenous Australian Community.⁴⁷ Summarily, these include:

- Inability for the victim to identify the behaviour as family violence;
- Lack of knowledge regarding available legal options;
- Fear of trivialisation of family violence within the legal system (Easteal, 2001);
- Previous negative experience with the Criminal Justice System;
- Fear of retaliation by the offender;
- Fear of having to speak publicly about the violence;
- Fear of removal of children from the home (Nancarrow 2004: 42);
- Skepticism toward the practical effects of an Intervention Order.⁴⁸

Many of these themes emerged during the interviews. Of particular note was the time consuming and complicated nature of the Intervention Order application process:

“The time factor is a really big barrier. A lot of people go to the Court because they think you go to the Court and you get one and it’s not as simple as that. You have to fill out all the forms, make a statement. Sometimes the registrars will help you out and sometimes they’ll tell you to sit in the corner and fill it out. Then there’s a wait of a week before it gets served and the process isn’t immediate. And what people want is immediate protection” (Solicitor 1).

Perhaps most importantly, nearly all participants identified the irrelevance of the Intervention Order system in relation to the ‘typical case’ of family violence in which women do not seek to end the relationship with their partners.

Effectiveness

This situation was also seen as implicit in the effectiveness of the Intervention Orders:

“It’s not about the Intervention Order in particular, it’s about the woman making the determination to end the relationship...” (Community Services Worker 1).

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

⁴⁷ Police statistical data for the period 1 July 2002 to 30 June 2004 indicates that only 14.2% of Indigenous victims who reported family violence sought an Intervention Order (Cited in VIFVTF, 2003: 153).

⁴⁸ For a more detailed discussion of these factors refer to Victorian Law Reform Commission: Consultation Paper pp. 115-118.

“Intervention Orders are frustrating because they’re ignored. Ignored by the perpetrators – they laugh at them. You know that they’ll come and harass the women, give them just enough time to call the police and then run off. The cops will leave. He’ll come back. Blah Blah Blah... It’s a piece of paper. How’s a piece of paper going to stop a gun?” (Community Services Worker 2).

The police were also viewed as ineffective in responding to breaches of Intervention Orders:

“If somebody has an order that says ‘no contact and do not approach’ - the police are more likely to get involved if there’s blood involved in the breach than the ex driving past the house or making phone calls. It’s like something “serious” has to happen. But those things are serious in the context of the family violence dynamic because they hint at the broader issues around it – control and what will happen to you if you step out of line. But, the police seem to need some sort of physical injury.” (Solicitor 1)

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

Situations of family violence can make it into Court once charges have been laid by the victim or an Intervention Order has been breached. 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:

“I think it’s to do with the Courts. The police just tell you ‘Be here on this day at this time’ and when you get to Court someone may or may not speak to you, someone may or may not tell you what’s going on. Otherwise you just mill around and whatever” (Solicitor 1).

An additional element highlighted by a number of the women concerned the almost superfluous role of the victim in the Court situation:

“There’s not enough support of the victim’s voice in the Courts. There is no space available for their story. That’s what needs to happen. If their story isn’t heard it’s almost like it’s not real, like it doesn’t exist or like it never happened” (Koori Court Elder 1).

Imprisonment

As previously mentioned, 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.⁴⁹ Aside from concerns about the impact of prison on an individual, many of the women stated that prison achieved little in terms of addressing family violence:

“How can you restore that in a person if you throw them in jail? Prison just gives them a whole new set of problems that adds to the ones that are there when they went in and will still be there when they get out” (Action Group Worker 1).

2.4. Summary and 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;⁵⁰
- 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.

⁴⁹ 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).

⁵⁰ 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.

Section 3 – Potential for the Use of Alternative Justice Responses

Overview

This section explores the potential of Restorative Justice practices in addressing family violence in the Indigenous Australian community. A discussion of the potential benefits of such an approach is followed by recommendations regarding implementation. The potential for Restorative Justice to provide a culturally appropriate response to family violence is also discussed.

3.1. Restorative Justice Practices

As stated in the introductory chapter of this report, 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. 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.

Important aspects of this model included:

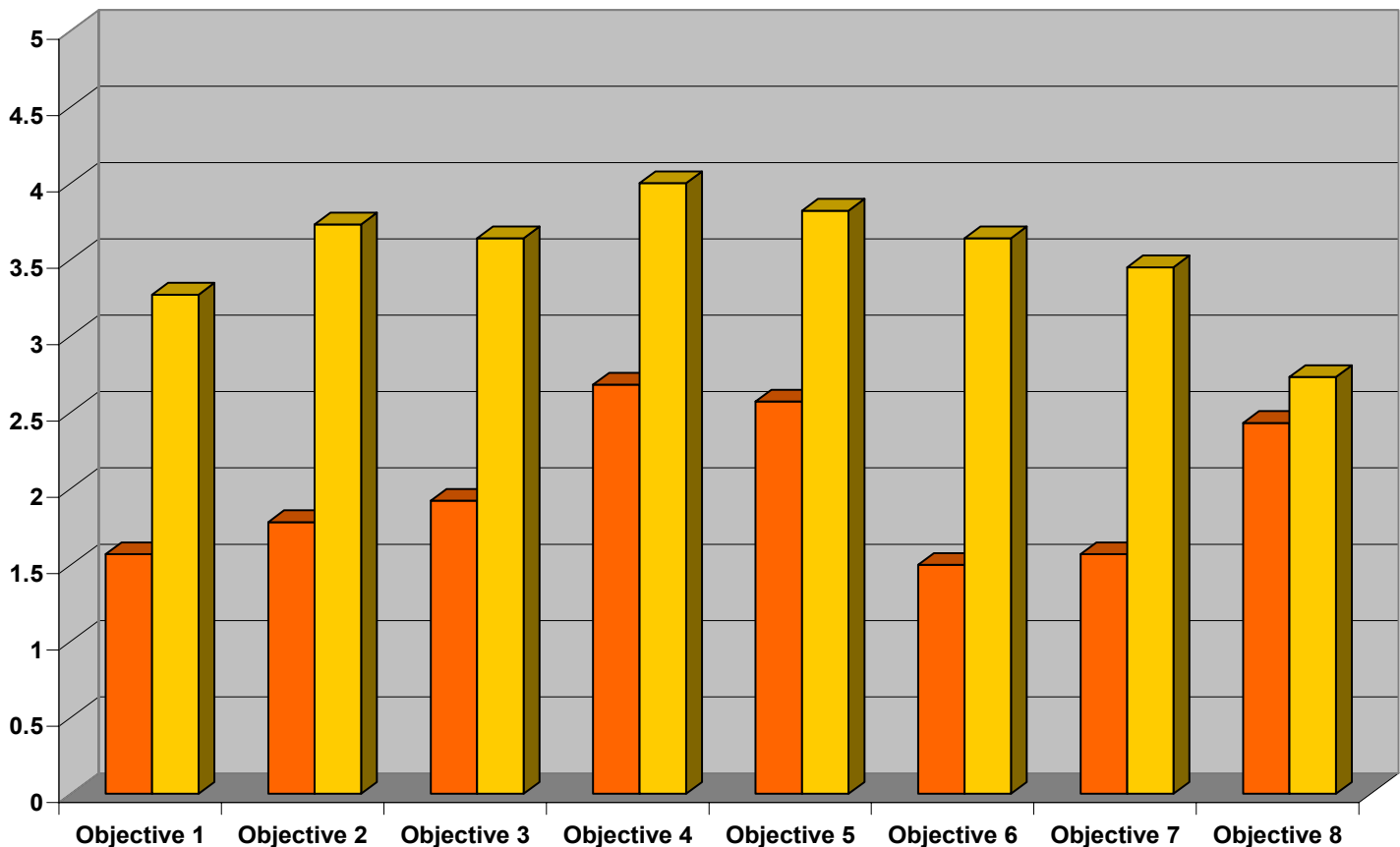
- The process took place in a room around a table, with all concerned seated at the same level;
- The presence of both the victim and offender;
- The presence of a support network on both sides (family, friends etc);
- An appointed and arbitrary mediator to govern and direct discussion;
- The presence 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.

3.2. The Effectiveness of Restorative Justice in Addressing Family Violence in the Indigenous Australian Community

In **Section 2** of the survey participant's 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 comparison between the average score assigned to each objective regarding both the Civil and Criminal Justice System (Column 1) and Restorative Justice practices (Column 2) :

Figure 3: Comparative Analysis



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.

3.3. Potential Benefits in the Use 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.⁵¹

Many commentators advocate Restorative Justice as a false practice built upon a misreading of traditional customary lore.⁵² 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:

Healing

Many participants saw Restorative Justice as having great potential for healing, not only the victim and the offender but the relationship between them. Confrontation of the issue and an admission in front of peers was seen as essential in this process:

⁵¹ 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.

⁵² 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).

“The Koori Court works in our community because there is an opportunity for the offender to say I behaved in that way because of X, Y and Z and it’s also about admitting to what you’ve done, which is the first step to healing yourself” (Department of Justice Worker 1).

Shame and Visibility

As previously mentioned, the visible punishment by the law is emphasized as one of its most important functions. This has remained a primary objection to the use of Restorative Justice, which is viewed as both not visible and not punitive. However, throughout the interviews, it became clear that the visible nature of the punishment need only be seen by the Indigenous Australian community. When questioned about the importance of visibility and punishment many of the women stated that:

“It is a shame thing, to come before the community. It makes it out there, visible” (Co-Op Worker 1).

This was not seen as achievable by the Criminal Justice System:

‘It’s not like the revolving door of the Criminal Justice System where nobody really knows that you’ve been through it. Nobody cares about what you did or didn’t do. Whether or not you pled guilty. If you are guilty, you know you are, yet you’ve got someone talking on your behalf saying you didn’t do it. That does nothing for healing a person. It does nothing for their conscience.’ (Department of Justice Worker 1)

Validation of the Victim

Importantly, the chance for the victim to tell their story was viewed as integral to the healing process:

“Restorative Justice is primarily about the victim. They need to be validated. Their feelings about what the offender has done to them needs to be validated. I don’t think that happens in mainstream. There’s an opportunity through the Koori Court and you can see it impacting of the offender. Validation is such a big part of the healing process. The healing doesn’t start without validation” (Department of Justice Worker 1).

Many of the women identified benefits to victims, especially in terms of acknowledging that the family violence was wrong:

“I think that women, their emotional well-being has been stripped. They think that they’re going crazy. So if they can talk to somebody who identifies that what they’re going through is wrong, um, it gives them a sense of...often it’s like ‘I’m not going crazy’. They’re being heard and understood” (Community Services Worker 2).

The Involvement of Elders and Respected Persons

The greatest strength of the process was purported to be the presence of Elders and Respected Persons in instilling morals and values and lending legitimacy and authority to the process. Many participants highlighted the success of Koori Court and the important role of the Elders and Respected Persons in this:

'In terms of the Koori community and with the Koori Court, victim's are able to make a statement before the Court and there is a sense of making the offender aware of the impact of the crime. 'If you do this, you shame up your family, you shame up your community' and that is what works. I think that has a lot to do with the presence of the Elders. Anyone, in your family or whatever, can tell you that what you are doing is wrong, and you don't have to listen. But when it comes from your Elders – it's like you've got no choice. We still have that respect. They are the reason why the Court works.' (Community Services Worker 1)

3.4. Summary and Recommendations

While participant 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 is 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 in **Section 1** of this report. 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.⁵³ 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.

⁵³ At present Victoria, rehabilitative programs may be ordered as part of formal sentencing options, such as community-based orders and intensive correctional orders.

Conclusions:

Summary of Findings

This research began with the intention of exploring responses to family violence in the Indigenous Australian Community. From this research develops the confirmation that theoretical limitations exist in reference to dominant feminist analyses of the issue. In particular, it is clear that Indigenous women perceive family violence as both gendered and racialised, with specific reference to the colonial based causes of family violence.

The analysis concerning current criminal and Civil justice responses highlights a number of concerns and problematises the increased criminal sanctions in light of the relationship between marginalised peoples and the State. In particular, the role of police as the 'gatekeepers' to the Criminal Justice System is seen as detrimental to the Indigenous Australian Community.

Although not fully developed, the notion of Restorative Justice as a community-based mediation process appealed to the majority of the participants. This model was seen to be responsive to cultural needs, particularly in reference to the 'healing focus' and capacity to address Indigenous Australian-specific 'causes' of family violence. The opportunity for victim participation and the involvement of the wider community was viewed as an integral aspect in addressing family violence.

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.⁵⁴
- 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.
- **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.

⁵⁴ 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.

As a final note, this research reflects and confirms the findings of numerous recent reports. In particular, it compliments similar research conducted in Queensland,⁵⁵ 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.

⁵⁵ Nancarrow, H (2003) 'In Search of Justice in Domestic and Family Violence'

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Appendices:

Appendix A: Traditional/Feminist Approaches to Family and Domestic Violence

Radical Feminism

Radical feminism emerged in the late 1960's, confronting the prevailing mores in Western society and challenging the nature of women's conventional roles and stereotypes. Radical feminism provides its own unique critique of society based upon the universal dominance of men over women (Barnett: 1998). As a result, methods of radical feminist engagement are aimed at changing the core patriarchal structure of society. It should be noted that radical feminism has been seen to be challenging, not only to men, but to women of colour. The universalizing nature of radical feminism, and its close alignment with sexuality, has led to the theoretical exclusion of women with different sexual orientation and those with more complex forms of oppression (See Smart: 1989).

Liberal Feminism

Liberal feminism is concerned with equal rights and opportunities between the sexes. Unlike a radical critique, liberal feminism works within the dominant political ideology, attempting to improve and equalize the status of women through changes to the existing system. Concerned primarily with equal access to employment, education and other aspects of social life, the liberal feminist movement has typically engaged with the legal system in order to alter existing legislature. Claims to equality by the liberal feminist movement are based on a biologically determinant position that acknowledges difference in physiology but not in capability.

Socialist/Cultural Feminism

An alternative approach to women's equality is that which espouses the recognition of women's difference from men – physical, psychological and social – and demands that law adapt to included women on the basis of their differing characteristics and also their innate right to equality with men. This approach, termed socialist or cultural feminism provides a direct challenge to both radical and liberal feminism by refusing to see women as an essential, universal entity (See Daly & Mayer: 1998).

Appendix B: 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.

OBJECTIVE	PRIORITY RATING
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**

OBJECTIVE	CRIMINAL JUSTICE SYSTEM	RESTORATIVE JUSTICE PRACTICES
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 C: 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

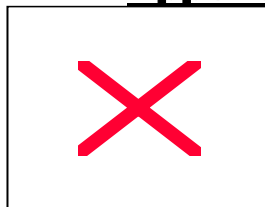
7.1 While (chosen response) is identified as being the most effective approach for responding to Family and domestic violence, can you think of any situations or kinds of cases where (other response) would be acceptable?

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?

Appendix D: Plain Language Statement



Victorian Aboriginal Legal Service Co-operative Ltd.

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P.O. Box 218
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Ms Nicole Maree Bluett-Boyd
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Supervisor: Robin Inglis
Research Officer
Victorian Aboriginal Legal Service
Email: ringles@vals.org

PLAIN LANGUAGE STATEMENT

I am undertaking research to better understand different views regarding appropriate responses to Family and Domestic Violence in Victoria. This research forms part of the requirements for me to be awarded a Bachelor of Arts (Honours) degree from the University of Melbourne. As an employee of an agency or organization working within the context of Family and Domestic Violence you have been approached to contribute your professional views to the research.

The current project emerges out of contemporary debate surrounding appropriate legal responses to Family and Domestic Violence. At present the Victorian Law Reform Commission is preparing a Review of Family Violence Laws in this state. A number of debates surround appropriate responses to family violence. In particular, contemporary 'pro-arrest' and 'pro-prosecution' (criminal justice) approaches stand in stark contrast to community-based (Restorative Justice) approaches.

The current research aims to gain an understanding of different views regarding appropriate responses to Family and Domestic Violence. Specifically, I aim to explore views regarding the effectiveness of both the Criminal Justice System and Restorative Justice practices. For this reason the research will involve the identification of professional understandings regarding Family and Domestic Violence, the Criminal Justice System, Restorative Justice practices as well as participants evaluations of the appropriateness of the various responses. Ultimately, this research aims to identify points of convergence and divergence in the understanding of issues and policies of various advocates working in the area of Family and Domestic Violence.

The research project involves a review of relevant literature and semi-structured interviews with key members of agencies and organizations. A comparative survey comprises a section of this interview structure. It is expected that the interviews will be between half an hour and one hour in duration. The interview schedule includes some demographic information of the participant, particularly concerning the role of the agency and the individuals' professional background in order to provide context for the responses during interviewing. The interviews will be tape recorded, if agreed to by the participant, and fully transcribed. The recorded responses will only be available to the researcher and research supervisor.

Participation in the research is voluntary and the interview can be ceased at any time. Additionally, participants have the right to withdraw any unprocessed data after the initial interview. All information gathered through the research process is completely confidential. When the research is complete, responses to the research question will be grouped and any direct quote reported will use a pseudonym to protect the identity of participants. Other information that may identify individuals, such as specific location and professional role will not be used for the same reason.

In order to conduct ethically sound research participants are encouraged to report any concerns that arise through the research process. If any participant has a complaint about the manner in which a research study has been conducted, the complaint can be directed to the University of Melbourne Executive Officer. Contact details are as follows:

The Executive Officer
Human Research Ethics
The University of Melbourne,
Ph- 8344 2073, Fax- 9347 6739

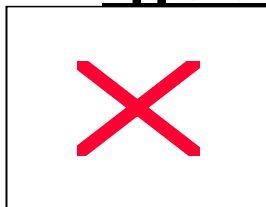
Once finalized, a copy of the research report will be made available to the each participant. The report will be sent to the address ascertained at the time of the interview. Participants will receive a copy of the research results even in the event that the interview was not completed.

If you understand the conditions of the research outlined above and agree to participate in the research process, please complete the Consent Form attached to this paper.

Thank you for your time,

Nicole Maree Bluett-Boyd

Appendix E: Consent Form



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Ms Nicole Maree Bluett-Boyd
BA (Honours) Student
Department of Criminology
Faculty of Arts
The University of Melbourne
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RESEARCH PARTICIPANT CONSENT FORM

I give consent to participate in the research project as described in the Plain Language Statement provided, which I have read in its entirety and understood.

I understand that my involvement in this research is entirely voluntary and that I may withdraw from the research at any time. Additionally, I have the right to withdraw any unprocessed data that I have supplied.

My involvement in this research will take the form of an audio recorded interview and completion of a comparative survey. I understand that for the purposes of the research I will be de-identified by way of a pseudonym, however the name of the agency or organization of my employment will be recorded with the data. I understand that the researcher and research supervisor will protect the confidentiality and privacy of the information I give.

Signature: _____

Name (please print): _____

Date: _____

Address for final paper to be sent to (if required):
