

## Addressing the offending-related needs of non-violent Indigenous offenders

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### **Introduction**

Indigenous people frequently come into contact with the criminal justice system as a result of non-violent offending. Ways to address the needs of violent Indigenous offenders were documented in Indigenous Justice Clearinghouse Research Brief No. 11 (Macklin & Gilbert 2011); however, less attention has been paid to the needs of non-violent Indigenous offenders.

This research brief examines published literature from Australia, New Zealand, Canada and the USA, and reports on the effectiveness of measures that aim to reduce non-violent offending by Indigenous people. In particular, it focuses on the evidence about culturally-specific measures of relevance to non-violent Indigenous offenders.

Drawing on the literature available, the brief identifies principles for program development and delivery that have shown potential to reduce Indigenous non-violent offending, by ensuring that mainstream programs are culturally safe, respectful and relevant for Indigenous participants.

### **Indigenous people's contact with the criminal justice system in relation to non-violent offending**

It has been well-documented that Indigenous people are over-represented at all stages of the criminal justice system. For example, in 2014 Indigenous people comprised nearly 38 percent of Australian prisoners (Australian Bureau of Statistics (ABS) 2014a), despite making up approximately two percent of the adult population. Statistics indicate that substantial proportions of both Indigenous and non-Indigenous prisoners are incarcerated (either remanded or sentenced) as a result of a non-violent most serious offence (or charge). At 30 June 2014, 38 percent of all Indigenous prisoners in Australia (n = 9,264) and 49 percent of non-Indigenous prisoners (n = 24,454) were incarcerated following a charge or conviction for a non-violent offence (ABS 2014a; 'miscellaneous offences' and instances in which the most serious offence or charge is unknown have been excluded from these calculations).

For Indigenous male prisoners in Australia, the most common non-violent offences were unlawful entry with intent (16% of all Indigenous male prisoners), offences against justice procedures, government security and operations (11%), and theft and related offences and traffic and vehicle regulatory offences (both 3%). A similar pattern exists for Indigenous female prisoners, with unlawful entry with intent the most common non-violent offence/charge (14% of all Indigenous female prisoners), followed by offences against justice procedures, government security and operations (13%), and theft and related offences (6%) (ABS 2014a). It is important to note that offences against justice procedures may not always be non-violent and may include, for example, breaches of domestic violence orders.

Similarly, a substantial proportion of court matters for Indigenous defendants relate to non-violent charges. Although data are not available for all states and territories, in New South Wales during 2013-14, 54 percent of all Indigenous finalised criminal court defendants appeared in relation to non-violent offences (compared with 58% for non-Indigenous defendants; ABS 2014b). The main non-violent offences for

which Indigenous defendants appeared were: theft and related offences (12% of all Indigenous defendants); illicit drug offences, unlawful entry with intent/burglary, break and enter, and public order offences (8% each); property damage and environmental pollution, and offences against justice procedures, government security and operations (both 7%).

This pattern varies across states and territories - for example, the Northern Territory's criminal courts finalised a far higher proportion of Indigenous defendants in relation to offences against justice procedures than other non-violent offences (see also MacGillivray & Baldry (2015) on Indigenous women specifically). Furthermore, within a state or territory, the offences for which Indigenous people come to the attention of the criminal justice system appear to vary across communities. For example, concerns have been raised about high levels of driving offences occurring in regional and remote communities (Anthony & Blagg 2012). Of course, the rate at which any population group comes into contact with the justice system, and the offences for which they do so, are shaped by policing priorities and practices. This should be taken into consideration when interpreting these statistics.

## Comparing violent and non-violent offending

While the above discussion provides some insight into the contact of Indigenous people with the criminal justice system for non-violent offences, it should be recognised that many offenders have contact with the criminal justice system in relation to both violent and non-violent offences, and/or report involvement in both violent and non-violent offending. Mazerolle and Legosz (2007) found high levels of self-reported involvement in violent, property and drug offending among a sample of Indigenous (n = 98) and non-Indigenous (n = 382) offenders on

non-custodial orders in Queensland. Furthermore, while drug-related offences are not often the most serious offence for which Indigenous people are convicted or incarcerated, alcohol and other drugs often play a role in other types of non-violent offending, such as theft; indeed as Day (2003) claims, issues related to substance abuse are relevant to most offenders. These points are important to consider in any discussion of the needs of non-violent Indigenous offenders.

## Offending-related needs

The risk – needs – responsivity (RNR) model has been the dominant approach to offender rehabilitation in Western countries over the last three decades (Looman & Abracen 2013). In summary, under the RNR model, interventions with offenders are to focus on:

- risk (interventions should be reserved for offenders who present the highest risk);
- needs (the factors most closely associated with recidivism should be addressed); and
- responsivity (interventions should be matched to the individual offender and their learning style and ability) (Gideon 2013; Looman & Abracen 2013).

'Criminogenic needs' are those that research has shown are directly related to offending behaviour. According to the RNR model, if criminogenic needs are appropriately treated, an offender's likelihood of reoffending will decrease (Rugge 2006). Non-criminogenic needs are areas that also require treatment, but that research has shown are not typically directly related to offending (Rugge 2006). This research brief uses the term 'offending-related needs' to discuss those risk/need factors relevant to non-violent Indigenous offenders.

Offenders' risk/need factors are typically determined by the application

of a risk assessment tool. An emerging body of research suggests that many risk/need factors are common to Indigenous and non-Indigenous offenders (see Rugge 2006; Hsu et al. 2010; Macklin & Gilbert 2011). Less is known, however, about the applicability of risk assessment instruments to Australian Indigenous offenders, and there has been much debate about the usefulness of this approach for understanding Indigenous offending (Day 2003; Hsu et al. 2010; Macklin & Gilbert 2011), with more research needed particularly in relation to the applicability of risk assessment tools to female Indigenous offender populations both in Australia and elsewhere. Another key area for future research is whether there are culturally-specific risk/need factors among Indigenous offending populations that might be taken into account when assessing the offending-related needs of Indigenous offenders (Rugge 2006).

## Offending-related needs of non-violent Indigenous offenders

Macklin and Gilbert's (2011) review of the research literature identified the offending-related needs of violent Indigenous offenders as including: low self-esteem; frustration; deculturation; separation from family; discrimination; identity issues; trauma; anger and loss. Heseltine, Day and Sarre's (2011) review of research on culturally-specific offending-related needs (of both violent and non-violent Indigenous offenders) similarly found that these were diverse, and included: substance abuse; personal and emotional functioning; factors related to acculturation and deculturation; the impact of separation from family, community and land; physical and mental health; identity confusion; family violence; discrimination; literacy and numeracy; unemployment; life skills; and transitional and post-release needs.

Determining the needs of non-violent Indigenous offenders is more difficult, as most studies have focused specifically on violent Indigenous offenders (Macklin & Gilbert 2011), do not differentiate between violent and non-violent offenders, and/or do not differentiate between Indigenous and non-Indigenous offenders. This section outlines the findings of research that involves Indigenous non-violent offenders or mixed populations of violent and non-violent Indigenous offenders to provide an insight into the needs of this group.

Yetta Stein's (2001) research documented the psychosocial needs of Hawaiian women incarcerated for drug-related crimes (n = 31: 19 Native Hawaiian and 12 non-Native Hawaiian). The women had been incarcerated for drug offences and other non-violent offences relating to their drug abuse, such as theft and prostitution offences. Study participants completed a questionnaire that was designed to 'elicit from each participant a ranked and prioritised list of needs and circumstances occurring in their lives at the time of their most recent arrest' (Yetta Stein 2001: 52). The women in the study (whose responses were not disaggregated by Indigenous status) perceived their psychosocial needs as: drug treatment; employment, financial aid, educational and vocational skills; housing; needs related to their children (eg regaining custody of their children); and psychological interventions relating to domestic violence and/or sexual abuse.

In the Australian context, the *Speak Out Speak Strong* research project surveyed Aboriginal women in prison in NSW (n = 50) and conducted follow-up interviews with a small number of these women, to explore their offending-related needs and experiences (Lawrie 2003). The research identified substance abuse and histories of violent victimisation as key drivers of the women's offending, as well as low levels of educational attainment.

Salomone (2005) similarly identified employment and vocational skills as key needs of Aboriginal women leaving prison in Western Australia. It should be noted in relation to the above studies that offenders who have been incarcerated may be different from those who have not, and the needs of this group may not accurately reflect those of the broader non-violent offending population.

Mazerolle and Legosz (2007) examined the perceived treatment needs of a sample of Indigenous (n = 98) and non-Indigenous (n = 382) offenders on non-custodial orders in Queensland. Although participants self-reported high levels of involvement in both violent and non-violent offending, levels of involvement were higher for property than violent offending. Eighty-five percent of females and 89 percent of males reported involvement in property offending, compared with 72 percent of females and 84 percent of males reporting involvement in violent offending. Levels of involvement in crime were not significantly different for Indigenous and non-Indigenous offenders in the sample. As offenders in this sample were serving non-custodial orders, it might reasonably be assumed that their most recent convictions were for non-violent offending in the main, although Mazerolle and Legosz do not provide this information.

In addition to histories of childhood and family trauma, abuse and neglect, parental drug and alcohol use, and subsequent adult victimisation, offenders in this Queensland study were asked to identify their treatment needs. Most commonly, they identified: assistance with financial management (54%); relationships (40%); anger management (31%); behaviour management (29%); parenting (29%); education and literacy (27%); and gambling (13%). Mazerolle and Legosz found that significantly more Indigenous (41%) than non-Indigenous (24%) respondents reported needing some form of educational program.

Other comparisons of these identified needs were not significantly different for Indigenous and non-Indigenous participants.

Hsu et al. (2010) used the Level of Service Inventory – Revised risk assessment tool to determine the needs of Indigenous and non-Indigenous offenders (n = 13,911 for both groups) (the sample contained both violent and non-violent offenders). They concluded that the needs of Indigenous and non-Indigenous offenders are different. Diverse needs were found among the Indigenous offenders, including lower education/employment status, more issues with living arrangements, and more issues with anti-social companions than their non-Indigenous sample. Offending-related needs also varied by sex, with Indigenous males having needs associated with education, employment and antisocial companions, and Indigenous women having needs relating to living arrangements, family discord and leisure time.

## Programs that address the offending-related needs of non-violent Indigenous offenders

There are few programs that specifically address the offending-related needs of non-violent Indigenous offenders in Australia. Further, there is a lack of research into offending-related programs for Indigenous offenders in Australia generally (Burgoyne & Tyson 2013), and into offending-related programs for non-violent Indigenous offenders specifically. Examples of promising programs that target violent offenders are discussed in other Indigenous Justice Clearinghouse Research Briefs (see for example Macklin & Gilbert 2011; Cripps & Davis 2012). This section outlines the limited existing research on programs that seek to meet the offending-related needs of non-violent Indigenous offenders.

The mutuka project (Andrews 2011) in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands was developed in response to high levels of driving-related offending by Indigenous people. The project (mutuka is Pitjantjatjara for motor car) seeks to train young members of the community in vehicle maintenance and driving skills to enable them to obtain drivers' licenses and employment as drivers (Andrews 2011). The project is supported by legislation passed in South Australia in 2014 that reduces the number of hours that members of remote Indigenous communities must spend in supervised driving practice if they already have driving experience (Ashford 2014). The Mutuka project is ongoing but has not yet been the subject of a published evaluation.

Two residential programs were established under the New Zealand Government's Habilitation Centre's Pilot Program to 'identify and address the causes of individuals' offending, contribute to the successful reintegration of offenders into the community ... and assist with reducing reoffending' (Yeboah 2000: 229). The programs included group discussion, counselling, anger management, relapse prevention and life skills training. Not all of the offenders in these programs were Māori; however, they incorporated a significant Māori component, including linking offenders with their ancestry, and encouraging them to participate in the local Marae [meeting place] and engage with Māori volunteers (Yeboah 2000). A majority of offenders who participated in the programs and evaluation had a most recent conviction relating to a non-violent offence. The evaluation found strong support by Māori participants for the Māori cultural components of the program (this issue is discussed further below). While recidivism remained high, it was lower (at 61% for men; the rate could not be calculated for female participants) than for the general population of offenders leaving prison (77%).

The New Life Akoranga program, established under the New Zealand Department of Corrections' Tikanga Maori programs strategy (see Byers 2002; Nakhid & Shorter 2014) aims to address offending from within a Māori cultural worldview by aiming to (re)connect Māori offenders with traditional values. An evaluation found high rates of recidivism among both program participants and a control group. Those who had been imprisoned in relation to a property offence were more likely to be reconvicted than those who had been imprisoned for a violent offence. This was the case in both the treatment group and control group. Although property offenders in the treatment group were slightly less likely than property offenders in the control group to be reconvicted, this was not found to be statistically significant (Wehipeihana et al. 2003).

## Principles for addressing the offending-related needs of non-violent Indigenous offenders

Burgoyne and Tyson (2013) argue that the research has indicated four primary ways in which Indigenous offenders differ from other offenders, and that may influence the effectiveness of treatment programs. First, Indigenous offenders' definitions of and explanations for crime may differ from mainstream understandings and explanations. For example, while many offender treatment programs are heavily influenced by individualistic understandings of crime, Indigenous offenders' understandings may focus more on environmental and communal factors. Second, research has suggested that Indigenous people have learning styles that are different from those of non-Indigenous offenders. For example, Indigenous learning styles are considered more intuitive and holistic than non-Indigenous styles, which are typically linear. Third, research

suggests that styles of interpersonal interaction among Indigenous Australians are different from those of their non-Indigenous counterparts, with a greater focus on non-verbal cues and the use of silence. This is important given the focus on group discussion that is characteristic of many treatment programs for offenders. Finally, research consistently demonstrates a higher level of offending-related needs among Indigenous offenders than non-Indigenous offenders (Burgoyne & Tyson 2013). It is important to note in the context of the following that Indigenous communities are highly diverse, and that this diversity should be recognised in any measures that seek to address Indigenous offending.

Although there are few documented programs that aim to address the offending-related needs of non-violent Indigenous offenders, the literature suggests that a number of principles may be relevant for meeting this aim. Building on the work of Burgoyne and Tyson (2013), this section considers the ways in which mainstream treatment programs could be amended to be culturally safe, respectful and relevant for Indigenous participants.

## Incorporating Indigenous culture(s) into offending-related treatment

There has been much debate about in the literature about whether treatment programs for Indigenous offenders ought to incorporate Indigenous culture and/or spirituality (Burgoyne & Tyson 2013). Marie (2010) argues against this approach in New Zealand, citing a lack of evidence that it can reduce (re)offending by Māori people (see also Morris and Wood 2010).

Limited research has, however, identified that such an approach can assist Indigenous offenders to aspire to positive behaviours. Nakhid and Shorter (2014: 714) found that for the Māori male prisoners interviewed for their

research (n = 4), 'acknowledging their identity as Māori and being engaged in kaupapa Māori [Māori philosophy] instilled a sense of pride in their culture and made them want to aspire to the positive characteristics of what it meant to be Māori'. Hodgson and Heckbert (cited in Howell & Yuille 2004) found that 19 of the 20 Canadian Aboriginal prisoners in their research believed that the use of Elders in correctional programming had contributed to their pathways to desistance (see also Howell 2014). Heckbert and Turkington's (2001) follow-up study of 68 Canadian Aboriginal offenders who had desisted from crime found that contact with Elders (72%), Aboriginal spirituality and ceremonies (71%), and Aboriginal programs delivered in a correctional centre (65%) were considered by a majority of participants to have helped them desist (see also Gideon 2013; Howell & Yuille 2004). Pridemore's (2004) review of the research literature relating to risk and protective factors for offending among Native Americans similarly found that strong cultural identification has been found to be a protective factor against substance abuse and related risky behaviours (see further Angell & Jones 2003; Monchalin 2010).

Howell and Yuille (2004) argue that such findings reflect the difference between Indigenous and non-Indigenous worldviews, and in particular the difference between Aboriginal people's concepts of 'healing' and health – which are holistic and encompass 'physical, mental, emotional and spiritual wellbeing' (Howell & Yuille 2004: 61) – and the Western concept of offender treatment. McCormick's (cited in Howell & Yuille 2004) research with Aboriginal people (non-offenders) from British Columbia, Canada, found that ceremony, emotion, connection with nature, learning from a role model, and spirituality, among other measures, were effective in facilitating 'healing' among this group. This suggests that if a broader concept such as 'healing' is more acceptable to Indigenous

people than the more narrowly-focused Western concept of offender treatment, then incorporating elements of culture and spirituality could make a contribution towards behavioural change.

While the arguments of researchers such as Marie (2010) and Morris and Wood (2010) about the limited effectiveness of cultural content on reducing recidivism should be taken into consideration, it is important to note that such content may have an indirect rather than direct effect on recidivism. For example, Pridemore (2004: 58) argues that 'the impact of tribal culture is not usually direct, but instead appears to operate indirectly by strengthening families and communities and transmitting tribal values'.

### **Combining cultural content with Western approaches**

Combining culturally-specific content with Western treatment approaches has been suggested as one way to enhance the relevance of Western approaches for Indigenous participants. For example, Nathan et al. (2008) argue that given there is a high level of desire for Māori cultural content in rehabilitation programs, but a lack of evidence that such cultural content on its own is effective in reducing recidivism, combining cultural content and Western approaches such as Cognitive Behavioural Therapy (CBT) may be effective.

A recent audit of the New Zealand Department of Corrections' strategies to manage offenders and reduce reoffending found that 'Māori offenders benefit by improving their sense of cultural identity and values. The Department now uses tikanga Māori programmes as short motivational programmes to encourage further participation in proven rehabilitation programmes' (Controller and Auditor-General 2013: 73; see also Anstiss 2003; Pridemore 2004).

Howell's (2014) study of 40 male Canadian Aboriginal offenders (approximately one-third of whom had been incarcerated in relation to non-violent offending) found that these offenders perceived both Aboriginal and non-Aboriginal programs to have a moderate to high chance of reducing their reoffending. The participants reported that elements relating to spirituality and culture were most effective in the Aboriginal programs, and that elements relating to knowledge and awareness were most effective in the mainstream programs. This suggests that combining Indigenous and mainstream approaches may enhance the effectiveness of offender treatment programs for Indigenous participants. Combining cultural content with CBT and similar Western approaches has been used in other areas such as group counselling (for offenders and non-offenders) and substance abuse treatment (see Howell & Yuille 2004; Monchalin 2010).

### **Incorporating families and communities into offender treatment programs**

Incorporating families and communities into treatment programs for non-violent offenders may enhance their relevance to Indigenous populations, given that many Indigenous cultures are more communitarian and less focused on the individual than Western cultures (Burgoyne & Tyson 2013; Gideon 2013; National Indigenous Drug and Alcohol Committee (NIDAC) 2014). As Calabria et al. (2013) claim, the influential role of family and community factors in reducing risky health behaviours (such as problem drinking) among Aboriginal people has been widely acknowledged (see also NIDAC 2014). Furthermore, treatment approaches such as Multisystemic Therapy that utilise a 'wraparound' approach by incorporating families, communities, and other domains in an offender's life (such as education and health) have been found to be promising for (young) Indigenous offenders in Australia (New

South Wales Department of Police and Justice 2014).

Programs that aim to address health risk behaviours among Indigenous populations have been found to benefit from the inclusion of family and community elements rather than a singular focus on the individual (Calabria et al. 2013; see generally NIDAC 2014, 2009). Calabria et al.'s study of two cognitive behavioural interventions for problem drinkers found that both were highly acceptable to Aboriginal Australians (n = 116: 110 Aboriginal Australians and 6 non-Aboriginal Australians with an Aboriginal spouse or child). Their research found that the use of health workers known and trusted by the Aboriginal community, rather than the detached and neutral clinicians preferred under the Western model, were more acceptable to Aboriginal people, providing 'an alternative for those Aboriginal Australians whose preference for a known counsellor outweighs their confidentiality concerns' (Calabria et al. 2013: 331; see also Macklin & Gilbert 2012; Howell 2014; Howell & Yuille 2004).

## Addressing substance abuse

Given that substance abuse is a key driver of both violent and non-violent Indigenous offending (Jones et al. 2002), this issue should be given consideration in programs that aim to reduce Indigenous offending. Bowes et al.'s (2009) research on the alcohol treatment needs of violent and non-violent male prisoners in the United Kingdom found that there were only subtle differences between the needs of those whose index offence was violent and those whose was non-violent.

There have been few rigorous evaluations of substance abuse treatment programs for Indigenous Australians, and mainstream programs have been found to be less effective for Indigenous than non-Indigenous

substance abusers (NIDAC 2014). Some promising approaches have, however, been identified, including providing 'connection to culture through meaning, family, spirituality and identity' (NIDAC 2014: 9) (see discussion above) and involving and supporting families and communities of substance abusers (see further NIDAC 2014).

Although it is beyond the scope of this research brief to examine the evidence about substance abuse treatment for Indigenous offenders in more detail, this is an important area for future consideration, given the close links between substance abuse and other types of non-violent offending such as property offending.

## Addressing trauma

Macklin and Gilbert (2011) found that the resolution of trauma is important for addressing the offending-related needs of violent Indigenous offenders. The literature similarly suggests that addressing trauma is important for addressing the needs and reducing the reoffending of non-violent Indigenous offenders. Histories of trauma are common among Indigenous people (see eg Yetta Stein 2001; Jones et al. 2002), and often underpin drug offending and other non-violent offending such as theft and prostitution (Victorian Equal Opportunity and Human Rights Commission 2013; Yetta Stein 2001). Addressing histories of trauma and substance misuse are therefore key to reducing the (re) offending of Indigenous non-violent offenders, perhaps particularly for women, given their common histories of gendered violence and abuse (Victorian Equal Opportunity and Human Rights Commission 2013; Yetta Stein 2001).

## Addressing historical and social context

Research suggests that incorporating a social justice component into treatment

programs for Indigenous offenders is vital. Such a component would address Indigenous offenders' risk/need factors in the context of colonisation, deculturation and discrimination rather than focusing on offenders' individual needs devoid of this context (Day et al. 2008; Jones et al. 2002; Monchalin 2010). As Jones et al. (2002: 190) argue, Indigenous offenders' needs 'do not necessarily or easily fit the criminogenic/non-criminogenic distinction. These needs will often... operate at multiple levels (eg individual and community, historical and present, internal and external)' (see also Day et al. 2003).

Burgoyne and Tyson (2013: 91) argue that in Australia, being Indigenous should 'be viewed as a responsivity factor, such that programs take into account the historical, social, cultural and learning style frameworks' of Indigenous offenders. Researchers have posited that while focusing solely on criminogenic needs is typical when addressing non-Indigenous offending, addressing Indigenous offending would be better achieved through addressing both criminogenic and non-criminogenic needs (Day 2003; Jones et al. 2002).

## Conclusion

This research brief has identified that little is known about the offending-related needs of non-violent Indigenous offenders specifically. In general terms, however, incorporating Indigenous culture(s) into treatment, combining cultural content with Western treatment approaches, incorporating families and communities into treatment, addressing substance abuse and trauma, and addressing the broader historical and social context in which Indigenous offending occurs, have been suggested in the literature as promising approaches.

A final point of note is that while Indigenous offenders clearly have

different offending-related needs from non-Indigenous offenders, it is important that the diversity of Indigenous groups and communities be recognised within measures that address these related needs (Burgoyne & Tyson 2013; Howell & Yuille 2004; NIDAC 2009).

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