



Submission to

House of Representatives Standing Committee on Indigenous Affairs

**The Parliamentary Committee Inquiry into the harmful use of alcohol in
Aboriginal and Torres Strait Islander communities**

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Summary

There is a strong association between alcohol and drug abuse and Indigenous criminalisation. This submission articulates how governments can tackle the problem of substance abuse from a post-conviction perspective. Australian Indigenous Sentencing Courts (and comparatively, the USA's Tribal Healing to Wellness Courts) are relevant to this inquiry, as they present a proven framework for addressing the problem of substance abuse for Indigenous Australians who find it difficult to desist from continuing to engage in criminal behaviour.

This submission begins with an overview of alcohol abuse in Indigenous communities, and then reviews the strong association between alcohol abuse and crime in these communities. It is understood that by reducing alcohol abuse the likely response will be to significantly reduce levels of Indigenous violence, crime and injury, while concurrently improving the overall health and wellbeing of Indigenous people and their communities.

Indigenous Sentencing Courts as a post-conviction prevention strategy are then presented. Indigenous Sentencing Courts are specialised courts that are relevant to the inquiry since they use culturally appropriate or site-specific alcohol and drug rehabilitation programs, to address the underlying issues that can lead an offender to commit crimes.

At an individual case level, Indigenous Sentencing Courts take a therapeutic jurisprudence approach in sentencing - by bringing more information about the offender to the sentencing, Indigenous Sentencing Courts apply tailored penalties that are better suited to an offender's needs, in terms of reducing their criminal behaviour and improving their life-choices, such as being able to reduce their alcohol and drug consumption. However, Indigenous Sentencing Courts have a broader political and transformative component. Historically, collaboration and coordination between Indigenous communities and courts has been lacking. By investing in meaningful engagement between both the Indigenous and non-Indigenous parties, Indigenous Sentencing Courts have the potential to transform the racialised relationships and communities. Thereby, Indigenous Sentencing Courts work to address many of the problems caused by colonisation, which have contributed to the over-representation of Indigenous Australians in the criminal justice system.

Indigenous Sentencing Courts also engender many localised positive effects in communities. Some of the reported strengths of Indigenous Sentencing Courts include:

- Strengthening informal community controls, and re-establishing authority of community Elders and respected persons through the sentencing process.
- Improving offender's behaviour by encouraging a strengthening of their cultural identity and pride, which may lead to a reduction in alcohol abuse and other destructive behaviours.
- Improving court appearance rates and thus lessening the need for warrants of arrest.
- Encouraging Indigenous empowerment and reconciliation between Indigenous and non-Indigenous Australians.

Lessons can also be learned from the Tribal Healing to Wellness Courts that operate in the USA. These courts provide a useful example of how Native American communities combat the incidence of crime as a result of drug and alcohol abuse. Tribal Healing to Wellness Courts are localised programs tailored to the prioritised needs that are identified by each Indigenous community. A Tribal Healing to Wellness Court is a coordinated community-based team of people who work with an offender to promote recovery from alcohol and drug dependence. The team works with an offender in a cooperative (rather than adversarial) fashion. Tribal Healing to Wellness Courts are similar to the goals and aspirations of Indigenous Sentencing Courts, both use innovative or specialised court processes to promote the health and safety of local Indigenous communities.

Via this submission, we argue that the continued support for court-related Indigenous-focused crime and justice programs, such as Indigenous Sentencing Courts and their associated rehabilitation treatment programs, is imperative. As is the development of more culturally appropriate research methodologies used to assess such programs, if governments are indeed serious about tackling the over-whelming problem of over-representation of Indigenous people in the criminal justice system.

This submission addresses a selection of the points outlined in the Inquiry's Terms of Reference:

Best practice treatments and support for minimising alcohol misuse and alcohol-related harm

Best practice strategies to minimise alcohol misuse and alcohol-related harm

Best practice identification to include international and domestic comparisons

Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander communities

The House of Representatives Standing Committee on Indigenous Affairs is conducting an inquiry into the harmful effects of alcohol in Indigenous communities. The impact alcohol has on Indigenous communities is severe. The Aboriginal and Torres Strait Islander Health Performance Framework 2012 (from hereon referred to as AHMAC 2012) reported Indigenous people are four to five times more likely to be hospitalised from alcohol related incidents, and five to eight times more likely to die from alcohol related incidents (AHMAC 2012, p. 105). Indigenous people who consume alcohol do so at riskier levels than other Australians; and thus the affects to their health is greater. This inquiry looks to improve the wellbeing of Indigenous people, as it understands that alcohol abuse has severe detrimental and wide-ranging effects in these communities. With this being the case, the inquiry needs to address alcohol abuse with a comprehensive and coordinated response. This inquiry looks to hear from specialists and communities to: identify the social and other determinants of high-risk alcohol consumption; and to identify the strategies and programs, which have had beneficial outcomes for Indigenous people.

Alcohol abuse in Indigenous communities

'Alcohol-related harm to health is not limited to drinkers but also affects families, bystanders and the broader community' (NHMRC 2009, p. 1). Alcohol abuse significantly contributes to societal problems such as illness and disease, accident and injury, violence and crime, family and social disruption, and workplace problems. A conservative \$15.3 billion was the estimated cost of alcohol abuse in Australia in 2004-05 taking into account workplace absenteeism, 'crime and violence, treatment costs, loss of

productivity and premature death' (NHMRC 2009, p. 29).

Indigenous Australians are less likely to consume alcohol than non-Indigenous Australians, however Indigenous people who drink alcohol do so at more hazardous levels (Wundersitz 2010, p. 42). In 2008, around 17% of Indigenous Australians aged 15 years and over drank at chronic risky/high risk levels, which is similar to the rate reported in 2002 (15%) (AHMAC 2012, p. 3). Alcohol is associated with burden of disease and injury for Indigenous Australians (Vos et al. 2007). The Australian Bureau of Statistics claims that alcohol harm accounts for 6% of the total burden of disease and injury for Indigenous people (ABS, 2013). Additionally, '[e]xcessive alcohol consumption also account[s] for the greatest proportion of injury for young Indigenous males (aged 15-34 years) and the second highest (after intimate partner violence) for young Indigenous females' (ABS & AIHW 2008, p. 140). Indigenous Australians are hospitalised for alcoholic liver disease at six times the rate of non-Indigenous Australians (AHMAC 2012, p. 105). In 2008 21% of Indigenous people reported an alcohol related incident as a source of stress in their lives within the last 12 months (AHMAC 2012, p. 53).

The Australian Government invests large amounts of funding and resources in response to alcohol abuse and related incidents in Indigenous communities (AIHW & AIFS 2013, p. 3). In 2010-11 funding included '\$20 Million over three years to assist Indigenous Communities implement Alcohol And Substance Abuse Management Plans' (AHMAC 2012, p. 98). A formal national response to alcohol abuse and related incidents, tabled in The Indigenous Family Safety Agenda (July, 2010) called for funding for 'innovative Indigenous family safety initiatives focused on addressing alcohol problems' (AHMAC 2012, p. 97). The Australian Government identifies alcohol as being 'the primary drug problem faced' by Indigenous Australians with binge drinking statistics being particularly significant across all age groups. Alcohol abuse is the major risk factor affecting Indigenous people's longevity. Additionally, alcohol is the cause of physiological (health) and social problems (crime and violence) (DHA 2009, p.8).

Alcohol abuse in Indigenous communities is a single component of larger complex interlinked issues. Alcohol abuse must be understood in the context of the wide-ranging issues that surround its consumption. These issues relate to the life experiences and living conditions of Indigenous people, which more often than not are significantly more problematic and deficient than that of non-Indigenous Australians. Indigenous Australians are more likely to be below the national average in socio-economic rates, education rates, housing and living conditions, health indicators, and employment statistics, and above the national average in mortality rates, and subsequent stress associated with loss of loved ones, grief and displacement, incarceration rates, rates of

substance abuse and misuse (ABS & AIHW 2008; AHMAC 2012, pp. 53 & 95). Additionally, alcohol abuse by Indigenous Australians needs to be understood within the

historical contexts of colonialism and dispossession, and the contemporary contexts of social factors such as institutional racism and poverty. Indigenous peoples' feelings of despair and helplessness, and their use of alcohol to alleviate these feelings, are a consequence of the marginalisation experienced in the past and present (DHA 2007, p. 1.7).

Memmott et al. 2001, discuss alcohol abuse in relation to: the harmful experiences had by Indigenous Australians since the arrival of Europeans; the ongoing impacts of colonisation (inter-generational trauma) (Memmott et al. 2001, pp. 12, 13, & 26); contemporary community dysfunction where people use alcohol as an avoidance mechanism or coping strategy (Memmott et al. 2001, pp. 20, 22, 26, 27, & 28); or where alcohol exacerbates violence (Memmott et al. 2001, p. 2). Indigenous commentator Noel Pearson articulates the significant impact substance abuse (including alcohol) has in Indigenous communities in saying that substance abuse is a 'prominent causal chain in indigenous criminal justice overrepresentation' (Pearson 2001, p. 19). He argues generally that substance abuse is more likely to lead to incarceration than an Indigenous person's experience of economic and social disadvantage.

Alcohol abuse in Indigenous communities has been an issue for many years. The National Report of the Royal Commission Into Aboriginal Deaths in Custody (RCIADIC), makes 16 recommendations relating to alcohol and drug abuse including recommending changes to liquor licencing and policing of liquor laws; tackling the [over]availability of alcohol in high Indigenous populated areas; implementing liquor bans and restrictions, and other governance measures in Indigenous communities; and training relevant service providers. To combat the problems associated with alcohol abuse some Indigenous communities have identified and established measures that can be broadly categorised as community safety programs. These community safety programs are diverse in nature, and respond to the challenges of alcohol abuse using varying approaches. Social and economic Indigenous community safety measures may include: 'employment, training, mentoring, culture and recreation programs and youth centres' (AIHW & AIFS 2013, p. 5), as well as targeted support programs such as parenting support groups (AIHW & AIFS 2013, p. 6). Policing and justice safety measures may include: Indigenous justice groups, community patrols and policing, restorative justice practices (AIHW & AIFS 2013, p. 5), shelter and protection, and behavioural reform programs (AIHW & AIFS 2013, p. 6). Capacity building safety measures may include: developing leadership, improving Indigenous governance (AIHW & AIFS 2013, p. 5), and introducing educational and

identity/cultural strengthening programs (AIHW & AIFS 2013, p. 6). Indigenous communities have identified measures aimed to reduce crime, which may include a permanent police presence (Pilkington 2009). Some communities have worked to ban or restrict alcohol. Where these restrictions are in place, the community has found a reduction in public violence, however, not necessarily a reduction of alcohol consumption. Rather alcohol bans or restrictions have been found to push the problem of alcoholism and violence into people's homes (McCausland & Vivian 2009, p. 8), or forced Indigenous drinkers to drink 'on the outskirts of town in improvised, hidden, unsupervised, unserviced, and, most importantly, unsafe locations' (Goldflam 2010, p. 25). Memmott et al. (2001) argue that removing alcohol will not end violence in Indigenous communities (Memmott et al. 2001 p. 28) because there are many places where alcohol is banned (albeit alcohol could be present – 'sly grog') and violence still occurs, and there are many Indigenous people who drink alcohol whom are not violent (Memmott et al. 2001 p. 26). To encourage program success, any decision to restrict or ban or change alcohol availability should be community led and driven, not imposed (Memmott et al. 2001 pp. 31 & 80; AHMAC 2012, p. 94; Gray & Wilkes 2011, p. 508). Such programs should include

a whole of community approach, be grounded in cultural respect and cultural strengthening, promote non-violent social norms, strengthen protective factors, improve access to resources and systems of support, and include timelines, accountability and evaluation (DHS 2012, p. 11).

As Gray and Wilkes note, 'Indigenous Australians need support to control their own way out of poverty — including addressing harmful alcohol and other drug use, which are consequences of that poverty.' (Gray & Wilkes 2011, p. 508)

Alcohol abuse and its connection with crime in Indigenous communities

Weatherburn, Snowball and Hunter (2006) note that drug and alcohol abuse increase the risk of Indigenous people's involvement in crime (Weatherburn, Snowball & Hunter 2006, p.1). Goldsmith and Halsey (2013) identify alcohol as one of four¹ central components to Indigenous criminal activity. Putt, Payne and Milner (2005) found that compared to non-Indigenous offenders, Indigenous offenders self reported higher rates of use and dependency on alcohol (&/or other substances) in general day-to-day life, and that Indigenous offenders reported higher instances (compared to non-Indigenous offenders) of using alcohol prior to arrest or committing an offence (Putt, Payne & Milner

¹ The four components listed by Goldsmith and Halsey (2013) were: mobility, place, belonging and alcohol.

2005, p. 4). Indigenous offenders identify alcohol as a direct cause of their most recent crime (Putt, Payne & Milner 2005, p. 1).

Mouzos (2001) claim alcohol was a significant factor in homicides involving both Indigenous victims and Indigenous offenders with four out of five homicides involving alcohol (Mouzos 2001, p. 5). Indigenous homicides most likely occur within the family environment as opposed to involving strangers, and domestic altercations usually precede the homicide (Mouzos 2001, p. 5). Due to the domestic nature of Indigenous homicides it is not surprising that females are highly impacted as either victims or offenders (Mouzos 2001, p. 4). 'Alcohol misuse is now widely regarded as one of, if not the, main risk factor for Indigenous violence' (Wundersitz 2010, p. 43). The Australian Government identified the link between alcohol (and drug) abuse and domestic violence in Indigenous communities, with '70 to 90 per cent of assaults being committed under the influence of alcohol and other drugs' (DHA 2007, p. 1.8) & (SCRGSP 2007, p. 8.26).

Considering the impacts of violence alone, Indigenous Australians are far more likely to be victims of violence (AHMAC 2006, pp. 2 & 604), and to be hospitalized for injuries arising from assault compared to other Australians (AHMAC 2006, p. 49). The prevalence of violence, crime and injury in Indigenous communities contributes to continuing disadvantage. The impact and trauma from violence, crime, death and injury extend beyond the immediate victim (and offender). 'Families and communities are severely affected, and the impact may be felt from one generation to another.' (SCRGSP 2007, p. 21). Beyond the direct physical impacts of violence, victims and witnesses of violent acts often suffer stress and trauma (ABS & AIHW 2008, p. 147). Experiencing violence either as victims or witnesses can also cause people to feel unsafe in their neighbourhood. This may increase the risk of people experiencing isolation and displacement, they may retract from accessing local services and facilities, and they may experience social detachment, which is connected to poor individual and social wellbeing (ABS & AIHW 2008, p.147; AIHW & AIFS 2013, p. 1). Reducing alcohol abuse has the potential to significantly reduce levels of Indigenous violence, crime and injury, while concurrently improving the overall health and wellbeing of Indigenous communities (AHMAC 2012, p. 105).

It has been noted, however, that alcohol abuse is not the direct cause of violence in Indigenous communities, rather, alcohol itself is a 'situation factor' that exacerbates violence (Memmott et al. 2001, pp. 2 & 10). Other situational factors associated with family and domestic violence are financial problems, unemployment, death of a loved one, anger and peer pressure (Memmott et al. 2001, p. 18).

Prevention strategies and programs

A prevention strategy, which the inquiry needs to consider is supporting Indigenous-focused crime and justice programs such as Indigenous Sentencing Courts. These specialised courts are relevant to the inquiry since they use culturally appropriate or site-specific alcohol and drug rehabilitation programs to address the underlying issues that can lead an offender to commit crimes.

Background - Indigenous Sentencing Courts and their associated rehabilitation programs

Indigenous Sentencing Courts and their associated rehabilitation programs operate in various locations across Australia as a collaborative effort between formal legal systems and Indigenous communities to increase the effectiveness of court processes in changing an offender's behaviour. Indigenous Sentencing Courts were first established in South Australia in 1999 to 'use Indigenous community representatives to talk to a defendant about their offending and to assist a judicial officer in sentencing' (Marchetti & Daly 2007, p. 415). Historically, there has been little collaboration and coordination between Indigenous communities and courts. Indigenous Sentencing Courts are a vehicle in which Indigenous and non-Indigenous Australians are brought together to try and address many of the problems caused by colonisation, which have contributed to the over-representation of Indigenous Australians in the criminal justice system.

Rehabilitation programs that specifically target Indigenous offenders often operate in conjunction with the Indigenous Sentencing Courts, as part of a bail program or part of the sentence. Broadly, Indigenous Sentencing Courts and their associated rehabilitation programs aim to provide a more culturally appropriate sentencing forum that can tailor sentences and penalties imposed to better suit Indigenous offenders. In particular Indigenous Sentencing Courts take a therapeutic jurisprudence approach in sentencing but at the same time a political and transformative component is evident. Indigenous Sentencing Courts work to 'change the relationship between 'white (non-Indigenous) justice' and Indigenous people, including the offender' (Marchetti & Daly 2007, p. 441). This relationship has been 'grounded in distrust and conflict' (Marchetti & Daly 2007, p. 443) since colonisation. By investing in meaningful engagement between both the Indigenous and non-Indigenous parties, Indigenous Sentencing Courts have the potential to transform the racialised relationships and communities. 'Thus, they are operating according to a transformative, culturally appropriate and politically charged participatory jurisprudence' (Marchetti & Daly 2007, p. 443).

Indigenous sentencing courts are established and operated at a local level, thus their design and operational procedures vary. Although diverse in nature, the common goal of the Indigenous sentencing courts is 'to make court processes more culturally appropriate and to increase the involvement of Indigenous people (including the offender, support persons and the local community) in the court process' (Marchetti & Daly 2007, p. 415). To encourage a culturally appropriate sentencing forum Indigenous Sentencing Courts may involve the following characteristics:

- The hearing is sometimes held in a location/venue that has a level of local Indigenous cultural significance rather than in a mainstream court room.
- Rather than sitting at a Bar table or normal courtroom seating, the participants may sit in a circle or at a modified Bar table.
- Levels of communication and interaction are increased, with the offender being encouraged to contribute to the discussion and Indigenous community participants encouraged to respond.
- The Indigenous community participants also have 'a greater degree of participation in the framing of the penalty imposed on an offender' (Marchetti & Daly 2007, p. 430).

This structure encourages inclusivity and participation for both the offender and the Indigenous community representatives and creates a court forum where the application of 'white law' is inflected by Indigenous knowledge and cultural respect' (Marchetti & Daly 2007, pp. 436-37). The result is a process that is 'informal but [in which] the atmosphere is serious and respectful' (Marchetti & Daly 2007, p. 436).

The benefits Indigenous Sentencing Courts and rehabilitation programs produce in dealing with the problems of alcohol abuse

Indigenous Sentencing Courts have the potential to engender collateral, longer-term positive 'effects such as strengthening Indigenous communities by re-establishing the authority of Elders' (Marchetti & Daly 2007 p. 423). This may have an impact on the offender's behaviour, encourage strengthening of their cultural identity and cultural pride, and lead to reduction in alcohol abuse and other destructive behaviours (Potas et al. 2003, p. 55). Where the Elder is respected, cultural shaming during and following the sentencing 'can be more confronting (and also more constructive and positive) for a defendant' thus having an impact on an offender's behaviour, which encourages the offender to realign their behaviour to meet 'obligations to family and kin,' (Marchetti & Daly 2007, p. 437; Potas et al. 2003, p. 55). Indigenous Sentencing Courts will be most effective when there exists accessible appropriate services or programs that would benefit an offender's rehabilitative needs (Marchetti & Daly 2007, p. 437; Potas et al. 2003, p. 55). Advocates call for greater recognition, understanding and support from government for the Indigenous

Sentencing Courts and rehabilitation programs so that programs are adequately funded and to support programs that encourage offenders to work collaboratively (Potas et al. 2003, p. 55).

Evaluations of Indigenous Sentencing Courts

The earliest evaluation of an Indigenous Sentencing Court occurred in 2003. Since then various evaluations have been undertaken. Although the functioning and processes of the courts are not necessarily comparable, a review of the evaluations presents some similarities.

Many of the evaluations claim that Indigenous Sentencing Courts increase the culturally appropriateness of the sentencing process (Aquilina et al. 2009; Borowski 2010; CIRCA 2008; Harris 2006; Morgan & Louis 2010; Parker & Pathe 2006; Potas et al. 2003; Tomaino 2004). This cultural appropriateness is either through the courts considering the circumstances of the offender's and the victim's lives beyond the criminal activity that brought them to sentencing (Aquilina et al. 2009; Borowski 2010; CIRCA 2008; Harris 2006; Morgan & Louis 2010; Parker & Pathe 2006; Potas et al. 2003; Tomaino 2004). Also in that the presence and input of respected Indigenous Elders and community members 'helps to improve perceptions of the legitimacy of the court in the eyes of Indigenous offenders' (Morgan & Louis 2010, p. 122). Some evaluations noted that Indigenous Sentencing Courts act as a conduit to facilitate increased participation of Indigenous communities (including offenders) in the sentencing process. Increased participation and subsequent increased dialogue is associated with empowerment of Indigenous communities, and increased reconciliation and accountability between all participants of the sentencing process (including Indigenous and non-Indigenous participants) (Aquilina et al. 2009; Marchetti 2009; Morgan & Louis 2010). Some evaluations found that offenders (and victims) perceive Indigenous Sentencing Courts to be procedurally fair (CIRCA 2008; Harris 2004; Potas et al. 2003). Evaluations noted that Indigenous Sentencing Courts improve the participants' understanding of the criminal justice system (Aquilina et al. 2009; CIRCA 2008; Dawkins et al. 2011; Morgan & Louis 2010). Also because the Indigenous community members and Elders are involved there is a sense of respect for and trust in the process from the offenders (Aquilina et al. 2009, p. 48).

Many of the evaluations have tried to establish if/how Indigenous Sentencing Courts reduce recidivism. Generally the evaluations report that the courts have not had a significant impact on recidivism (Borowski 2010; Fitzgerald 2008; Morgan & Louis 2010). Fitzgerald points to entrenched risk factors as an explanation for this result rather than a deficiency of the Indigenous Sentencing Court (Fitzgerald 2008, p. 7). Indeed, a WA evaluation found that

a higher proportion of Indigenous Sentencing Court participants had reoffended compared to mainstream court participants (Aquilina et al. 2009). However, statistical comparisons of the impact of Indigenous Sentencing Court and mainstream court processes on re-offending rates are difficult and more often than not, are fraught with problems relating to the availability of suitable comparative data.

Instead of directly reducing reoffending, the strengths of Indigenous Sentencing Courts may be one or many of the following points as identified by the evaluation literature:

- The way that they work to strengthen informal social controls within Indigenous communities by including Elders and community representatives in the sentencing process (Beranger, Weatherburn & Moffatt 2010; CIRCA 2008; Marchetti & Daly 2004).
- By bringing more information about the offender to the sentencing process penalties are better suited to an offender's needs in terms of reducing their criminal behaviour and improving their life-choices, such as being able to reduce their alcohol and drug consumption (Aquilina et al. 2009; CIRCA 2008; Harris 2006; Sentencing Advisory Council 2010).
- Some studies have found that court appearance rates improve for offenders who are sentenced through the Indigenous Sentencing Court rather than mainstream court lessening the need for warrants of arrest (Morgan & Louis 2010; Tomaino 2004).
- It has been identified that Indigenous Sentencing Courts have contributed to an occurrence of 'two way learning' in some jurisdictions, where Indigenous empowerment, takes place, both inside and outside the courtroom. (Marchetti & Daly 2007 pp. 437-38).
- Examining Indigenous Sentencing Courts qualitatively rather than quantitatively can improve our understanding of how the process can help an offender move away and desist from a life of crime (Daly & Proietti-Scifoni 2009).

Tribal Healing to Wellness Courts

Lessons can also be learned from the Tribal Healing to Wellness Courts that operate in the USA. These courts operate to combat the incidence of crime as a result of drug and alcohol abuse in Native American communities. The Native American drug court movement in the USA became active in the 1980s. The U.S. Department of Justice initially funded 22 Indian Nations drug court grants in the late 1990s. From this initiative Tribal Healing to Wellness Courts were developed. From reviewing the Tribal Law & Policy Institute website it is estimated that there are around 70 Tribal Healing to Wellness

Courts in operation across many states. Tribal Healing to Wellness Courts deliver adult or juvenile programs, or both. A Tribal Healing to Wellness Court is a component of the tribal justice system that aspires to reduce alcohol and substance abuse and drug related criminal activity in individual Indigenous communities. Tribal Healing to Wellness Courts offer the opportunity for individual communities to address the issues that are most relevant to their community needs as they are a localised program tailored to the needs of each Indigenous community (TLPI 2003, pp. vii-viii). These courts 'promote recovery through a coordinated community based response to an individual offender's dependence on alcohol and other drugs' (TLPI 2003, p. 1). A Tribal Healing to Wellness Court is a team of people who work with an offender in a cooperative (rather than adversarial) fashion to support the offender towards healing, as well as promoting local community wellness. A typical Tribal Healing to Wellness Court team 'may include, but is not limited to, the judge, a case manager, an alcohol and other drug treatment provider, a human services provider, and probation or other law enforcement officer' (TLPI 2003, p. 1).

These courts also may engage community Elders or respected community persons to reinforce 'local traditional restorative, reparative, or peacemaking concepts of justice to promote individual and community wellness' (TLPI 2003, p. 1). The Elders or respected community persons may participate in the judicial role, as part of a judicial panel, or as a team member (TLPI 2003, p. 1). Prosecutors or defense counsel may or may not participate on the team depending on the strengths and needs of individual teams (TLPI 2003, p. 1).

Specifically, a Tribal Healing to Wellness Court operates
to address the devastation of alcohol or other drug abuse by establishing more structure and higher level of accountability for these cases and offenders through a system of comprehensive supervision, drug testing, treatment services, immediate sanctions and incentives, team-based case management, and community support (TLPI 2003, p. viii).

In this way they are similar to the goals and aspirations of Indigenous Sentencing Courts. Both use innovative or specialised court processes 'that fight for the health and safety of [First Nations] people' (TLPI 1999, p. 7).

In an evaluation of Tribal Healing to Wellness Courts, Gottlieb (2005) found that Tribal Healing to Wellness Court graduates from the adult program were as likely 'to have a post-program alcohol or drug arrest' as non-graduates, however, participants had fewer post-program charges compared to their pre-program criminal histories (3-year time period) (Gottlieb 2005, p. x).

Conclusion

Tackling alcohol abuse across Indigenous communities will not be achieved with a one-size-fits-all approach. The high association between alcohol and drug abuse and Indigenous criminalisation requires governments to think carefully about how to tackle the problem of substance abuse, not solely from an early-prevention, but also from a post-conviction perspective. Australian Indigenous Sentencing Courts and the US Tribal Healing to Wellness Courts are relevant to this inquiry as they present a proven framework for tackling the problem of substance abuse for Indigenous Australians who find it difficult to desist from continuing to engage in criminal behaviour. Continued support for court-related Indigenous-focused crime and justice programs is imperative, as is the development of more culturally appropriate research methodologies used to assess such programs, if governments are indeed serious about tackling the over-whelming problem of over-representation of Indigenous people in the criminal justice system.

Bibliography

Australian Bureau of Statistics (ABS) 2013, 'Australian Aboriginal and Torres Strait Islander Health Survey: First Results, Australia, 2012-13' Cat No. 4727.0.55.001 Canberra ACT

Australian Bureau of Statistics and Australian Institute of Health and Welfare (ABS & AIHW) 2008, 'The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples, 2008' Cat No. 4704.0 Canberra ACT

Australian Health Ministers Advisory Council (AHMAC) 2006, 'Aboriginal and Torres Strait Islander Health Performance Framework Report 2006' Australian Health Ministers' Council Commonwealth of Australia, Canberra ACT

Australian Health Ministers' Advisory Council (AHMAC) 2012, 'Aboriginal and Torres Strait Islander Health Performance Framework 2012 Report' Australian Health Ministers' Council Commonwealth of Australia Canberra ACT

Australian Institute of Criminology (AIC) 2013 'Indigenous Justice' http://www.aic.gov.au/crime_types/in_focus/indigenousjustice.html Accessed online 14/4/14

Australian Institute of Health and Welfare, and Australian Institute of Family Studies (AIHW & AIFS) 2013, 'The role of community patrols in improving safety in Indigenous communities' Resource sheet no. 20 produced by the Closing the Gap Clearinghouse, July 2013

Bureau of Justice Assistance (BJA) Drug Court Clearinghouse 2009, 'Recidivism and Other Findings Reported in Selected Evaluations of Tribal Drug Court Programs Published 2000 – present' Justice Programs Office, School of Public Affairs. American University, Washington DC

Commonwealth of Australia 2006, 'National Drug Strategy: Aboriginal and Torres Strait Islander Peoples Complementary Action Plan 2003–2009' Ministerial Council on Drug Strategy, Canberra ACT

Department of Health and Ageing (DHA) 2009, 'Evaluation of the National Drug Strategy Aboriginal and Torres Strait Islander Peoples Complementary Action Plan 2003-2009 Background Paper' Commonwealth of Australia, Canberra, ACT

Department of Health and Ageing (DHA) 2007, 'Alcohol Treatment Guidelines

for Indigenous Australians' Commonwealth of Australia, Canberra. accessed online: 31/3/14 available at www.alcohol.gov.au

Department of Human Services (DHS) 2012, 'Indigenous Family Violence Primary Prevention Framework' Victorian Government, Melbourne VIC

Fitzgerald, J. 2008, 'Does circle sentencing reduce Aboriginal offending?' Crime and Justice Bulletin: Contemporary Issues in Crime and Justice, Number 115 NSW Bureau of Crime Statistics and Research, Sydney NSW

Goldflam, R. 2010, 'Damming the Rivers of Grog: Taking the Hard Decisions to Stop the Violence' Conference Presentation at the National Indigenous Drug and Alcohol Conference, June 2010, Adelaide SA

Goldsmith, A., and Halsey, M. 2013, 'Cousins in Crime: Mobility, Place and Belonging in Indigenous Youth Co-Offending' *The British Journal of Criminology: An International Review of Crime and Society*. Vol. 53, pp. 1157–1177

Gottlieb, K. 2005, 'Process and Outcome Evaluations in Four Tribal Wellness Courts' Department of Justice, National Institute of Justice, Washington, DC

Gray, D. A., and Wilkes E. T. 2011, 'Alcohol restrictions in Indigenous communities: an effective strategy if Indigenous-led' *The Medical Journal of Australia*. Vol. 194 Num. 10, p. 508

Green, R. G. 1998, 'Justice in Aboriginal Communities: Sentencing Alternatives' Purich Publishing, Canada

McCausland, R. and Vivian, A. 2009, 'A Tale of Two Towns: A Comparative Study of Wilcannia and Menindee' *Indigenous Law Bulletin*. Vol. 7, Iss. 13 pp. 7-11

McNamara, L. 2000, 'The Locus of Decision-Making Authority in Circle Sentencing: The Significance of Criteria and Guidelines' 18 *Windsor Yearbook of Access to Justice* 60

Memmott, P., Stacy, R., Chambers, C., and Keys, C. 2001, 'Violence in Indigenous Communities' Attorney-General's Department, Canberra ACT

Mouzos, J. 2001, 'Indigenous and Non-Indigenous Homicides in Australia: A Comparative Analysis' *Trends & Issues in crime and criminal justice* No. 210. Canberra, Australian Institute of Criminology

National Health and Medical Research Council (NHMRC) 2009, 'Australian guidelines to reduce health risks from drinking alcohol' Commonwealth of Australia, Canberra

Pearson, N. 2001, 'On the Human Right to Misery, Mass Incarceration and Early Death' the Charles Perkins Memorial Oration, MacLaurin Hall, University of Sydney, 25th of October, 2001. Accessed online: sydney.edu.au/koori/news/pearson.pdf 14/4/14

Pilkington, J. 2009, 'Aboriginal Communities and the Police's Taskforce Themis: case studies in remote Aboriginal community policing in the Northern Territory' North Australian Aboriginal Justice Agency Darwin, NT

Potas, I., Smart, J., Brignell, G., Thomas, B., and Lawrie, R. 2003, 'Circle Sentencing in New South Wales: A review and evaluation' Judicial Commission of New South Wales and NSW Aboriginal Justice Advisory Council

Putt, J., Payne J. and Milner, L. 2005, 'Indigenous Male Offending and Substance Abuse' *Trends & Issues in crime and criminal justice* No. 293. Australian Institute of Criminology, Canberra ACT

Steering Committee for the Review of Government Service Provision (SCRGSP) 2007, 'Overcoming Indigenous Disadvantage: Key Indicators 2007' Productivity Commission, Canberra ACT

Tribal Law & Policy Institute (TLPI) 2003, 'Tribal Healing to Wellness Courts: The Key Components' Office of Justice Programs, U.S. Department of Justice

Tribal Law & Policy Institute (TLPI) 1999, 'Healing to Wellness Courts: A Preliminary Overview of Tribal Drug Courts' Office of Justice Programs, U.S. Department of Justice

Vos, T., Barker, B., Stanley, L. & Lopez, A. 2007, 'The Burden of Disease and Injury in Aboriginal and Torres Strait Islander Peoples, 2003' School of Population Health, Brisbane QLD

Weatherburn, D., Snowball, L. and Hunter, B. 2006, 'The economic and social factors underpinning Indigenous contact with the justice system: Results from the 2002 NATSISS survey' Crime and Justice Bulletin No. 104, NSW Bureau of Crime Statistics and Research, Sydney NSW

Royal Commission into Aboriginal Deaths in Custody (RCIADIC) 1991, 'Royal Commission into Aboriginal Deaths in Custody: National Report Vol. 1-5'
Australian Government Publishing Service. Canberra ACT