Submission No 87

Submission

Inquiry into the high level of involvement of Indigenous youth in the criminal justice system

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Submission in response to the Terms of Reference of the Parliamentary Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system

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Internet Sites
Social Outcomes of Hearing Loss

- www.eartroubles.com
- http://www.hstac.com.au/HearThis

The painting on the cover of this report is by Valda Gaykamunga.

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EXECUTIVE SUMMARY

This submission begins by discussing the problems of hearing impaired Indigenous people in the criminal justice system. Widespread Indigenous hearing loss contributes to poor communication with police, lawyers, corrections staff and the judiciary. It discusses evidence of how hearing loss among Indigenous people increases the likelihood of these individuals being charged and arrested when they have an encounter with the police.

These communication issues associated with hearing loss can lead to:

- Difficulties in explaining themselves to the police, with the result that they are more likely to be arrested and charged;
- Difficulties when the police take statements from Indigenous defendants and witnesses;
- Problems giving instructions to solicitors or being credible witnesses in court;
- Management difficulties for corrections staff;
- Problems coping, both socially and emotionally, in correctional settings.

It is an urgent priority to train police, solicitors and judiciary in relation to communications strategies with Indigenous people with hearing loss.

The extreme disadvantage of Deaf Indigenous people is also briefly discussed. Their limited life experience and communication problems make Deaf Indigenous people highly dependent on *family*. Without family support, Indigenous Deaf people often have difficulty in knowing how to behave appropriately and are unable to develop the social skills they require to negotiate relations with people who do not know them well. These difficulties can often result in actions that bring them into contact with the criminal justice system. Similarly, their responses, in various situations, arise from the extreme frustration of their battle to cope in a hearing world. Indigenous Deaf people are also highly likely to being blamed for the criminal acts of others, as well as being victims of crime themselves.

Secondly, this submission outlines the practical outcomes of research into cross-cultural communications. This research indicates that cultural differences in communication processes result in a dynamic process that then tends to lead to Indigenous people feeling that they are being criticised excessively and unreasonably. Such criticism can slowly erode their confidence to a point where individuals may become demoralised, disempowered and disengaged; or result in upset, angry, resentful and sometimes retaliatory actions. Such 'retaliation' appears inexplicable and undeserved from the perspective of non-Indigenous people, who are not privy to the multitude of experiences to which Indigenous people are exposed.

Conversely, the reluctance of Indigenous people to 'give feedback' results in non-Indigenous people having minimal exposure to negative Indigenous feedback about their behaviour, and consequently results in them remaining unaware of the things that Indigenous people

don't like about what they say and how they behave. This ignorance can result in the stereotype of the 'rude, disinterested and racist white-fella'. This process of mutual, unclarified misunderstanding often generates real ongoing and entrenched antagonism. Therefore, what begins as culturally based misunderstanding, ends in embedded mutual antagonism that appears, to all parties, like racism.

Lastly, this submission argues that the schooling of many Indigenous students operates as a 'preschool' for prison. It does so by failing to meet the educational needs of those students and by being complicit in the development and embedding of patterns of persistent antisocial behaviour. This comes about, firstly, when schools ignore the evidence base in regard to how schools can best support their Indigenous students and, secondly, by failing to address the impact of widespread mild to moderate levels of hearing loss suffered by the Indigenous students. It has been shown that hearing loss, in this group, is associated with behaviour problems at school.

If schools were to heed the research, and implement the types of changes proposed, they have the opportunity to produce better educational outcomes for Indigenous kids and avoid establishing patterns of the types of antisocial behaviour that set children up for later involvement in the criminal justice system. This is especially true for Indigenous students with hearing loss.

INTRODUCTION

My background is that I have been an educator, psychologist and researcher/consultant in the Northern Territory for over 30 years. I first worked as a teacher in remote and urban schools and then as a school psychologist focusing on issues of Indigenous schooling. I have a particular interest in the impact of widespread hearing loss on Indigenous schooling. My doctoral studies were on the relationship between Conductive Hearing Loss and school behaviour problems among Indigenous students. Some of this work is outlined in the first section of this document.

In private practice in Darwin over the last 20 years, I have encountered many issues that impact on the over representation of Indigenous people in the criminal justice system. Work in examining the multiple issues involved in cross-cultural staffing problems in the health sector, highlighted aspects of cross-cultural communication that led to further research. Some of these research findings are outlined in the last section of this document.

Over the last 20 years I have endeavoured, unsuccessfully, to undertake work on the contribution of widespread hearing loss among Indigenous people to their over representation in the criminal justice system. In this process, I have considered issues and collected anecdotes that are outlined in this document.

TERMS OF REFERENCE

1. **How the development of social norms and behaviours for Indigenous juveniles and young adults can lead to positive social engagement.**

   This submission argues that social norms and behaviours of Indigenous youth are often influenced by the impact of hearing loss on communication and social relations. In particular, there is a compounded effect of cultural differences and hearing loss on communication with police.

   Recommendations are made as to interventions that can lead to more positive social engagement with peers, police and others in the criminal justice system.

2. **The impact that alcohol use and other substance abuse has on the level of Indigenous juvenile and young adult involvement in the criminal justice system and how health and justice authorities can work together to address this.**

   This submission does not comment on this.

3. **Any initiatives that would improve the effectiveness of the education system in contributing to reducing the levels of involvement of Indigenous juveniles and young adults with the criminal justice system.**

This submission argues that school systems are failing to take heed of evidence on 'relationship focussed' education and the importance of considering hearing loss in achieving better outcomes for Indigenous youth.

Recommendations are made on improving education outcomes and reducing the likelihood that participation in education' is a preschool for prison' for many Indigenous youth.

4. **The effectiveness of arrangements for transitioning from education to work and how the effectiveness of the 'learn or earn' concept can be maximised.**

   There are important implications of what is discussed in this submission for this issue, but they have not been directly outlined in this submission. I would refer you to the section on employment in my submission to the Senate Committee Inquiry into Hearing Health in Australia (Howard, 2009).[1]

5. **Best practice examples of programs that support diversion of Indigenous people from juvenile detention centres and crime, and provide support for those returning from such centres.**

   This submission makes comment on individual interventions that could be developed into programs.

6. **The scope for the clearer responsibilities within and between government jurisdictions to achieve better co-ordinated and targeted service provision for Indigenous juveniles and young adults in the justice system.**

   There are comments made in this submission on the consequences of the failure to coordinate targeted service provision in the hearing loss and education sectors that overlap with the justice system. Also the conclusion discusses some aspects of how the Commonwealth often does business.

7. **The extent to which current preventative programs across government jurisdictions are aligned against common goals to improve the health and emotional well-being of Indigenous adolescents, any gaps or duplication in effort, and recommendations for their modification or enhancement.**

   A rationale is outlined describing the pervasive neglect of critical issues.

   Suggestions are made for preventative programs and strategies around the issues of hearing loss, cross-cultural training and education.

[1] http://www.aph.gov.au/SENATE/COMMITTEE/CLAC_CTTE/hearing_health/submissions/sub112.pdf

CONDUCTIVE HEARING LOSS AMONGST INDIGENOUS AUSTRALIANS

As noted in other submissions, Australian Indigenous children are likely to experience hearing impairment from a younger age (Boswell, J., Leach, A., Nienhuys, T., Kemp, K., & Mathews, J., 1993) and for longer periods (OATSIH, 2001) in early childhood and decreases with age. It occurs more often among children living in remote communities, but urban Indigenous children also experience rates of Conductive Hearing Loss that are higher than their non-Indigenous urban peers.

The damage caused by persistent ear disease leaves between 40 per cent (urban) and 70 per cent (remote) of Indigenous adults with mostly Conductive Hearing Loss. Endemic Conductive Hearing Loss can also lead to a secondary listening problem - Auditory Processing Problems. There is general awareness of the relationship between ear disease and Conductive Hearing Loss and the high prevalence of both among Indigenous children, so I will not describe this further. However, I would like to highlight another listening problem related to childhood ear disease about which there is less awareness.

AUDITORY PROCESSING PROBLEMS

Research shows that early, mild Conductive Hearing Loss from middle-ear disease leads to Auditory Processing Problems that can be persistent or permanent (Hogan & Moore, 2003). It is the cumulative total, from various periods of Conductive Hearing Loss experienced by children while they are growing up, that is the critical factor that leads to the development of Auditory Processing Problems. Since Indigenous children experience middle-ear disease and associated Conductive Hearing Loss at an earlier age, more often and for longer periods than do other groups, they are therefore at a high risk of developing Auditory Processing Problems.

Auditory processing has been described as 'what we do with what we hear'. To derive meaning from words, our neurological system must process the sound that we hear. As with hearing loss, Auditory Processing Problems can contribute to problems in the perception of speech. Auditory Processing Problems are not detected by standard hearing tests, there are specific assessments used to identify auditory processing deficits (Bellis, 2002).

There are a number of ways that Auditory Processing Problems may affect speech perception (Bellis, 2002). People with Auditory Processing Problems may have a diminished ability to differentiate between sounds - auditory discrimination. This difficulty has implications for their understanding of what is said, their ability to follow directions and their capacity to learn to read and spell.

People may have difficulties with their auditory memory and find it difficult to remember information presented in spoken form. One common problem for people with auditory processing difficulties occurs when they try to listen in the presence of background noise. While people may cope with communication one-to-one in a quiet environment, they have difficulties when there is background noise and/or more than one person is speaking at the same time.

Auditory Processing Problems impact on communication in many large institutional settings. For example, in facilities such as schools or remand and detention centres that congregate people together increases the noise levels. The capacity of the individual to control their listening environment is also reduced in these settings.

Some of the signs that Auditory Processing Problems may exist are as follows (Patton, 2004). People may:

- Interpret words too literally;
- Often need remarks repeated;
- Ask many extra informational questions;
- Have difficulty following a series of directions;
- Have difficulty remembering information that has been presented verbally;
- Hear better when watching the person who is speaking;
- Have problems hearing when there is background noise present.

Between seven and ten per cent of the general population are thought to be affected by Auditory Processing Problems (Hogan & Moore, 2003; Rowe, Rowe & Pollard, 2001). In a study involving six Northern Territory Independent schools and 1050 Indigenous secondary students, 38 per cent showed indications of Auditory Processing Problems (Yonovitz & Yonovitz, 2000). Given that this study was based on secondary school students who attended school, it did not include students who had no longer attended school because of problems related to listening or who were absent for reasons that may have included hearing related problems (Couzos, 2004). It is likely, therefore, that the findings in this study underestimate the proportion of Indigenous secondary students with Auditory Processing Problems.

Hearing Loss and the Criminal Justice System

The high incidence of middle ear disease in Aboriginal communities contributes to massive levels of Conductive Hearing Loss among Aboriginal children. It has been estimated that, on average, Aboriginal children have middle ear disease for more than two and a half years during their childhood. The equivalent figure for non-Aboriginal children is three months (OATSIH, 2001). Although middle ear disease is usually considered a health problem, it also contributes to poor social and emotional outcomes. The West Australian Aboriginal Child Health Survey (WAACHS) found significantly poorer social and emotional wellbeing for children who had 'runny ears' (caused by perforation of the eardrum) than other Aboriginal children (Zubrick et al., 2005). Childhood hearing loss has also been found to contribute significantly to learning and behavioural problems at school (Howard, 2004). Aboriginal children with Conductive Hearing Loss were found to tease other children more, peers often rejected them socially and they are more disruptive in class than other students (Howard, 2005).

The behaviour problems of Indigenous students at school pave the way for their later involvement in the criminal justice system. There is evidence that a higher proportion of Indigenous prison inmates have some degree of hearing loss when compared with the

general incidence of Conductive Hearing Loss in the total Indigenous population (Bowers, 1986; Murray & La Page, 2004). This suggests that:

> *"Involvement in the criminal justice system may be the end product of a cumulative link, whereby hearing-related social problems contribute to low educational standards, unemployment, alcohol and substance abuse, these being the more obvious antecedents of contact with the criminal justice system.'* (Howard, Quinn, Blokland & Flynn, 1991, p 9).

Linguistic and cultural differences are frequently presumed to be the reason why an Indigenous witness may misinterpret a question, give an inexplicable answer, remain silent in response to a question, or ask for a question to be repeated. The potential contribution of hearing loss in this break-down of communication is generally not considered. However, it is probable that the distinctive demeanour of many Australian Indigenous people in court is related to their hearing loss. Where this is the case, there is a very real danger that the court-room demeanour of Indigenous people (not answering questions, avoiding eye contact, turning away from people who try to communicate with them) may be interpreted as indicative of guilt, defiance or contempt (Howard, 2006).

Court communication processes are largely an artefact of 'Western' culture. The social processes are structured and highly formal, and the language used is often obscure, even to native English speakers. Yet Indigenous people can be disadvantaged if they do not participate fully in court processes that involve archaic examples of 'Western' social etiquette and a specialized English vocabulary. An anthropologist made the following comment after observing Indigenous defendants in court proceedings:

> '(The) most frequent response is to withdraw from the situation, mentally, emotionally and visually. One magistrate in a country town complained to me that "Aborigines in the dock are always gazing out of the window, or looking down and either ignoring questions or mumbling inaudible answers".' (Howard et al., 1991, p 10)

The following anecdotes are indicative of ways in which communication elsewhere in the criminal justice system can also be adversely affected by Conductive Hearing Loss, with perverse consequences.

> *'A defendant with hearing loss was crash tackled when being transported from court when he did not obey a verbal order to stop, that he did not hear.'*

> *'After sentencing, a defendant with hearing loss was placed in an unfamiliar room to be told what his sentence meant. His usual lawyer was not available because of other commitments, so another unfamiliar lawyer tried to explain the sentence. However, the man became wild and 'trashed' the room when the new lawyer tried to explain the court outcome. He only calmed down when familiar staff from the detention centre arrived.'*

'A long-term feud developed between a hearing impaired prisoner and another prisoner after a hearing related misunderstanding during a game of cricket in prison.' (Howard, 2006, p 9)

There is strong evidence to suggest that Indigenous students' anti-social school behaviour is related to widespread hearing loss (Howard, 2004). Recent research (Richards, 2009) shows that police are more likely to arrest and refer to court young Indigenous individuals, compared with non-Indigenous youths. This may be seen as related to racial profiling and negative stereotypes of Indigenous people among police. It is highly probable, however, that the outcomes of police contact with Indigenous people are influenced by the effects of widespread hearing loss among Indigenous youth impacting on communication with police.

Communication with police

The issue of *police discretion* is raised in a number of other submissions to the inquiry.

"It has been argued that bias in the exercise of police discretion against Indigenous youths (e.g. in the decision to arrest rather than caution offenders) results in Indigenous people acquiring a longer criminal record at a young age, increasing their risk of detention or imprisonment when they reappear in the justice system...

It is particularly concerning that first-time Aboriginal and Torres Strait Islander offenders are more than twice as likely to be referred to a court for sentencing. Whilst this may be explained by other factors, including the greater likelihood of Indigenous offenders being charged with more than one offence or a serious violent offence and the application of guidelines in the exercise of police discretion, it presents a sufficient case for appropriate cultural awareness training for police and other measures to improve police interactions with young Indigenous offenders."
(Law Council of Australia submission, 2010)

One important but little considered 'other measure 'is addressing the effects of hearing loss on communication with police.

Hearing loss can act as an obstacle to communication with the police. The misunderstandings that arise when these *obstacles* are encountered can contribute to negative outcomes resulting from contact with the police. This was highlighted by an Indigenous client, who had a moderate hearing loss, and long history of antagonistic relations with the police.

Case Study

His involvement with the police often resulted in his arrest. He described a process whereby he had difficulty understanding what a police officer had asked him, when they raised their voices, and shouted so that he could hear what they said, he became angry, thinking they were being aggressive or trying to shame him. This often resulted in a violent altercation with police.

The author encouraged this man to borrow an inexpensive personal amplification device. With his permission, I also spoke to the police in his community, explaining about his hearing loss and suggesting how they could communicate with him more effectively and so avoid communication problems from escalating into conflict. There was a significant change in the way that he and the police related to each other.

Sometime later, I spoke to him and his family, about whether the amplification device had improved his communication. They, and he, described more engagement with family, less problem drinking and recent success in obtaining work after a long period of unemployment. They also commented on his improved relationship with police. His improved communication with the police was not confined to the times when the police stopped him, regarding some matter. His family described how his ability to hear better had enabled him to have discussions with the police on other social occasions in the community, rather than avoiding them as he had been accustomed to do.

This easier communication and greater contact meant that he developed conversational relationships with the police officers in his community, which helped to change his negative attitude towards the police in general. His more positive communication and better relationship with the police, combined with improved hearing when questioned by police on some matter, helped him not to 'blow up' as he had in the past.

In this case, improved hearing operated to diminish this man's contact with the police in three ways. Firstly, his improved hearing enhanced his family life and employment prospects, these positive changes in his life-style contributed to a reduction in his problem drinking. This meant he displayed fewer of the problematic *drinking related behaviours* that had attracted the attention of the police in the past. Secondly, his generally improved relationship with police helped to diminish his antagonistic attitude towards the police. Lastly, his improved communication caused him to be less frustrated on those occasions when he was stopped and questioned by the police.

He used the amplification device until he was fitted with a hearing aid over a year later. He had been trying to obtain a hearing aid for many years, without success. When he was a young man in his twenties, he was not eligible and even when the rules changed and people on CDEP (work for the dole) became eligible, this particular individual was still not eligible because his hearing related social problems meant he could not participate in CDEP.

A special case was argued and the Australian Hearing Service audiologist who examined him exercised some personal discretion to enable him to be fitted and provided with a hearing aid. Soon after being fitted with a hearing aid, he successfully took on a supervisory position at his workplace.

This case study highlights the fact that hearing loss may be a significant factor in problems that bring people into contact with the police and may also be one of the reasons why that contact can have poor outcomes. Poor outcomes were related to this man's hearing related communication problems. Over time, these communication problems contributed to the development of a negative attitude towards police.

There is also limited awareness among police officers of the prevalence of hearing loss among Indigenous people and how that hearing loss results in limited communication skills. This lack of awareness, on the part of the police, also contributes to poor outcomes from interactions between police officers and Indigenous individuals with hearing loss. The intervention in this case study, included provision of an amplification device and some time spent with the police to raise awareness and provide a brief training session on cross-cultural communications.

I would not like to present 'hearing aids alone' as a fix all solution. The man in the above case study was in his forties and his lifetime of listening difficulties made him ready to accept the use of an amplification device, and then a hearing aid. The acceptance of any kind of amplification is more difficult for younger people. Identifying their hearing loss and then convincing Indigenous youths with hearing problems to accept the use of amplification, as a solution to some of the issues in their lives, is usually very difficult to achieve. A long-term strategy needs to be developed and, even then, the implementation of such a strategy will take a lot of work. Communications training for police of the type that occurred with this man is likely to be easier to achieve.

The potential for ill-informed police officers to escalate problems when dealing with Indigenous youth with hearing loss can be seen in an interview carried out with Steven T.

People with hearing loss often have difficulty selecting the appropriate volume when speaking. Firstly, people with Conductive Hearing Loss may talk quietly and, they are often accused of mumbling. This is caused by their difficulty in judging the right volume when speaking, in a given situation. For someone with Conductive Hearing Loss, their voice often sounds louder to them than it actually is heard by others. This is the result of their voice being 'conducted' past their damaged middle ear through the bones in their skull. As a consequence, they may speak in a way that sounds very quiet and indistinct to others although, to the individual themself, it sounds fine.

Steven, a man in his thirties, had a longstanding hearing loss. In spite of his hearing loss, Steven held a senior position in his employment and had almost finished a law degree. Here, Steven describes his experience with the police.

> *"I've been pulled up by police when I was younger and I was sort of mumbled out a response and they say 'Quit your mumbling, you know, blah, blah, blah', start to make fun of me, you know. And I'm still so offended, made me out to be some sort of – treated me like I was a second class citizen, or a dumb person. This is the way he, this particular policeman (responded) and that gave me a negative view of him I guess. But then you do mumble sometimes, to you it doesn't sound like that to you."*

Steven described how the police officers 'offended' him by the way they spoke to him about his 'mumbling'. For many other Indigenous people with hearing loss such an encounter may have escalated into an argument and arrest.

Alternatively, people with hearing loss may speak more loudly than is needed in order for others to hear them. Their difficulty with hearing, especially in the presence of background noise, means that they need other people to speak loudly so that they can hear and understand what is being said. They often speak to others at this same high volume, but others find it too loud. Their loud speech may be seen as being aggressive.

For example, one young Indigenous man with hearing problems, with whom I worked was perceived by a group of non-Indigenous women as being aggressive when he used a loud speaking voice to communicate with them in their noisy work environment. He was then approached by management about the aggression he was displaying towards his work mates. He vehemently denied that he had been aggressive and stated that he had simply been speaking normally. Since he knew he had not been intentionally aggressive he felt that their complaint was spurious and based on racist attitudes. He responded antagonistically toward them and soon afterwards he left the job.

Communication problems associated with speaking too loudly may occasion complaint, which prompts involvement by the police. When the police enter the situation, the loudness of speech may be equated with aggression, and result in arrest. Alcohol compounds the problem, partly by further reducing hearing acuity but also by lessening people's inhibitions, in which case they are more likely to express past or current frustrations. Frustrations that are often related to their hearing loss.

The potential exists to, almost immediately, provide for better outcomes in the types of situations we have spoken of above. If training were to be put in place to enable police officers to be aware of the communication issues around hearing loss and give them the skills and knowledge base to manage these types of communication more effectively, I believe there would be immediate positive results.

When these cases are considered, and compared with the statistics relating to the use of police discretion, it suggests that one important way to diminish the number of arrests of Indigenous youths would be to train police officers about the communication issues around

Indigenous hearing loss. There would be, nevertheless, challenges to overcome when implementing this.

After the experiences with the clients, in the case studies above, I made contact with the training section of the Police Force in one of the states that has a huge Indigenous prison population. I suggested that they may wish to include, in their training schedule, information on hearing loss and its impact on communication. I received the reply that 'the issue was not relevant for their training'. This response demonstrates that the police do 'not know what they don't know'.

Clearly, there is a need for formal research to be done in the area of Indigenous hearing loss and the impact of that hearing loss on communication and interactions with the police. Such research would raise awareness of the need for police officers to be appropriately trained in this area. It would also enable the development of suitable training that would be based on the real life experiences encountered by the police and by Indigenous individuals with hearing loss. Then, having an effective training program and a police force that implements such training, we can hope for a scenario where Indigenous individuals with hearing loss are no longer so very disadvantaged in their interactions with the police force.

Communication problems contributing to having contact with police

There are also indications that hearing loss operates to interact and compound other forms of Indigenous disadvantage – for example crowded housing as illustrated in the following stories:

One woman with hearing loss accused her husband of 'mumbling' when she could not understand him at a time when there was lots of noise at home because of many visitors. She got angry with him and threw something at him, in response to which he retaliated and hit her, which led to him being arrested and jailed.

A young husband with hearing loss described how the birth of a new baby made it harder for him to hear. Communication demands on him were greater because his wife wanted more support from him to look after their new baby, but she got angry when he had trouble understanding her above the baby's crying. On one occasion, he had to go to hospital after she got angry and hit him after she asked him to get something from the shop and he misunderstood and bought the wrong thing.

Communication in court

Fair and just outcomes are more difficult within court processes not only because of the defendant's hearing loss but also because of the hearing loss among Indigenous witnesses (Howard, 2006). Hearing loss related communication difficulties often interact with cultural and linguistic issues, but to date it is only the cultural and linguistic factors that have been considered in research and practice in the justice system. One example is the greater propensity of Indigenous people to have a long silence before responding to questions.

> "Long periods of silence are generally avoided in mainstream Australian discourse except among intimate friends or relatives. Particularly in formal proceedings, there is a felt need to 'fill in' silent periods. In Aboriginal societies, on the other hand, lengthy periods of silence are the norm, and are expected during conversation, particularly during information sharing or information-seeking. (Queensland Government, p 39)

Diana Eades describes the importance of understanding this for courtrooms.

> *"an Aboriginal woman from central Queensland, who was in prison in Brisbane. She asked to give evidence at a Criminal Justice Commission hearing in Brisbane in the mid 1990s in a case investigating allegations of police wrong doing (in their investigation of a crime). This woman had been a witness to certain events she wanted to tell the commission about. I was to give evidence later that day about Aboriginal communication, and was asked to listen to evidence of a few of the witnesses including this woman.*
>
> *Although it had been she who had approached the lawyers, when she took the stand, she seemed unable to tell her story, or answer the questions. Doubtless she felt some unease in the situation, but the thing that struck me was the fast pace of questions, with no time for answers -- the old western anglo thing of feeling uncomfortable after about 1 second silence, and then going on to ask the next question.*
>
> *The lawyers and the commissioner were getting frustrated, so they asked the witness to step outside while they discussed the problem. When they asked for my opinion, I said they needed to allow longer time of silence as the first part of the answer to their questions.*
>
> *When asked exactly what they should do, I said, "ask your question and then shut up". When asked how long they should wait, I said "till after the answer". The commissioner directed the lawyers to proceed according to my advice and the witness was brought back in. To the lawyers' credit they followed my instructions, and the transformation in the witness was amazing. She did pause noticeably before answering some questions, and then proceeded to give a very articulate and coherent account of what she needed to tell the commission. The only difference between the two sessions of evidence with this woman, was the pacing of the questions – that is, the lawyers allowing for silence as the first part of her answers.*

> *Once she got going and got her story in full swing, she did not pause as often -- and the lawyers did not ask so many questions as they had first time round."* (personal communication)

The greater use of and comfort with silence by Indigenous people has deep cultural roots. It is also more evident among Indigenous people with hearing loss. I have undertaken some minor research into how hearing loss may contribute to some Indigenous people taking longer to respond. In a research project into hearing loss and employment a series of standard questions were asked of those interviewed and their responses were recorded. I had the sense that those individuals who were later found to have a hearing loss had taken longer to respond to my questions than was the case for those without hearing loss. The work placement of a trainee German psychologist (Judith Blume) provided an unexpected resource to test this impression.

A group of urban Indigenous trainees, all of whom had English as their first language, had been asked a set of standard questions and their answers were recorded. Judith measured with a stopwatch the time taken by each of the trainees, to respond to the questions. When this data was compared with results of hearing tests there was found to be a strong correlation between hearing loss and the length of time taken to respond to questions – those with hearing loss took longer to respond. This indicates that the greater silence exhibited by Indigenous people during verbal communication is not solely a result of socio-linguistic and cultural differences.

Hearing loss and auditory processing problems also play a part in the communication styles of some Indigenous people. This suggests that the use of amplification when a witness has a hearing loss, and training for judicial staff about the cultural and hearing loss related use of silence can result in improved courtroom communication.

It has been difficult to convince those in the legal profession of the importance of hearing loss. When a proposal was recently put to a state based Law Society to trial use of amplification by solicitors working with Indigenous clients the proposal was rejected on the basis that Indigenous defendants' hearing loss was 'a health issue'.

Communication in correctional institutions

There are also issues related to the management of Indigenous inmates in detention and the rehabilitation opportunities of Indigenous inmates. One particular issue raised by the Australian Hearing Service submission is access to amplification, another important potential response is surgical intervention, when this is needed.

In relation to access to amplification devices, often Indigenous people under the age of 21 who are eligible for free devices from the Australian Hearing Service do not access them because of:

- Limited and diminishing formal school age screening;
- Geographic isolation;
- Limited outreach programs;
- Fragmented, bureaucratic and often dysfunctional referral processes.

When individuals are in detention, they are close to the services they need and, as a 'captive client', are in a situation that overcomes many of the existing problems that make it difficult for Indigenous people to access health services.
However, they are not eligible for Australian Hearing Services. It is ludicrous that legislated barriers exist to prevent Indigenous detainees from obtaining hearing aids. This is a situation where disadvantage, created by context and institutional dysfunction, is compounded by legislated policy.

...legislated barriers exist to prevent Indigenous detainees from obtaining hearing aids. This is a situation where disadvantage, created by context and institutional dysfunction, is compounded by legislated policy.

Furthermore, good outcomes from surgical interventions to treat Conductive Hearing Loss can be best achieved in controlled hygienic conditions. Such conditions, it is sad to say, are more likely to occur when people are in detention than when they are living in their home community. However, it would appear rare, in the Northern Territory, at least, for the surgical repair of eardrums to occur while individuals are in detention.

The issue of a process that would both identify those inmates in need of surgical intervention and enable them to access appropriate services, was discussed with corrections staff. The comment was made that such a program would not be feasible because it would entail added costs for corrections officers to transport inmates and this would not be possible, given the fiscal restraint being imposed at that time. Indigenous inmates accessing surgery to repair eardrums is clearly a situation where 'a stitch in time' could potentially result in significant cost savings by reducing the costs that would otherwise be incurred when unrepaired hearing loss might contribute to future criminal acts which, in turn, may result in further detention.

Indigenous inmates accessing surgery to repair eardrums is clearly a situation where 'a stitch in time' ...

Training of corrections staff has the potential to improve communications in correctional facilities. Training designed to manage hearing related behaviour problems in schools was conducted in a youth detention centre, where there were many Indigenous inmates, staff identified the same processes operated in crowded noisy detention centres as happened in often noisy schools. Staff described:

- Management problems arose most often in areas and at times when there were high noise levels from congregated inmates.
- Similar management problems arose when changes to routines increased the listening demands on detainees.
- Fights were common around a telephone in a public area that was not enclosed. When the phone was enclosed, and therefore less noise intrusion on conversations, the number of fights diminished.
- There were more arguments, aggression and violence after some detainees were moved to a new residential block that had lots of modern hard polished surfaces; unlike the old one, which had carpet and soft furnishings. Fights decreased when

noise absorbing soft furnishings were introduced into the new building, thus lowering background noise levels.

RECOMMENDATIONS

1. That police and others involved in the criminal justice system include communication training around recognising the indications that an individual may have a hearing loss and training in how to minimise the communication breakdown that can result when such a hearing loss exists.

2. Criminal justice processes consider the impact of hearing loss as an issue with importance equal to the issues of linguistic and cultural differences.
   The implications of the communication issues that arise from hearing loss need to be researched but until such research is done, previous studies indicate that best practice is likely to include the following approaches -

   a. Screening for hearing loss when Indigenous people are in custody.

   b. Amplification equipment be used by police, in court and in correctional facilities when needed.

   c. Provide communication training to those who are involved at every stage of the criminal justice system.

   d. Give consideration to the acoustic environment at all stages of the criminal justice system.

3. Hearing rehabilitation be considered as an important part of the overall rehabilitation process for Indigenous prisoners with hearing loss. There are numerous anecdotal stories of people who have been with hearing aids or undergone surgery immediately changing the profile of antisocial behaviour that had contributed to their constant involvement with the criminal justice system.

I would however, add a word of caution about the introduction of this type of training. Some years ago I was asked to give a presentation on the topic of hearing loss at a university. In the audience there was a group of prison officers who saw the relevance of the subject matter to their work in corrections. They arranged for me to give a presentation on the topic to senior corrections staff. The senior corrections staff were also interested and asked me to give a regular presentation to staff. I agreed but suggested that I work with interested corrections staff to identify the times and places that hearing loss among detainees impacted on communication with staff and how the adverse outcomes of hearing loss could be minimised using appropriate communication strategies by staff.

I heard no more about this and when I contacted corrections staff they told me that the decision was made not to proceed with the plan. Later I learnt that the corrections department had asked the health department to provide an audiologist to give a talk about hearing loss to their new staff. Feedback from staff who participated in the training

revealed that it covered the nature of Conductive Hearing Loss and how it came about, and some very general advice on communication strategies. However, the training had not been tailored to the particular issues arising in the work environment of corrections officers.

I am not sure how often the once-off general lectures occurred, but in recent inquiries I learnt that the current three month, full-time training undertaken by new corrections officers contains no information on the implications of hearing loss among Indigenous prisoners. Nor has this subject matter been covered in any recent (last three years) professional development of corrections officers. This is in spite of the considerable increase in overall training offered to corrections staff in an attempt to improve retention rates.

There was a similar scenario when teachers were provided with a 'hearing program' that mainly informed them about hearing health but did not address educational implications of hearing loss or the strategies that teachers might employ to minimise the educational and behavioural implications for children with hearing loss. Teachers felt they had 'done' hearing loss and were often disinterested in further training that focused on the educational issues of hearing loss.

I outline this to highlight that I believe training about Indigenous hearing loss needs to be introduced for police and correctional staff, and it needs to be based on research/consultancy that has considered the impact of hearing loss on communication in the *communication environments* in which police and correctional staff operate.

NEEDS OF DEAF INDIGENOUS PEOPLE

The preceding information discussed the issues affecting 40-70 per cent of Indigenous people who are *hard of hearing* because of childhood ear disease. The situation is more dire for the smaller number of Indigenous people who are Deaf (i.e. those who have severe to profound levels of hearing loss.

The situation is more dire for the smaller number of Indigenous people who are Deaf (i.e. those who have severe to profound levels of hearing loss.

Deaf Indigenous people, who encounter the criminal justice system, receive minimal support of the type accessed by the non-Indigenous Deaf. These individuals have often had minimal or no schooling and can only communicate with one or a few family members. The lack of the necessary culturally appropriate support (Saxton-Barney, 2010) results in these people being extremely limited in their ability to communicate. This often means that they are deprived of social contact, have limited access to information and do not have the variety of experiences needed for normal cognitive development. As a result, many Indigenous Deaf people present with cognitive impairments when they encounter the criminal justice system.

Deaf Indigenous people are highly dependent on family support. When they are away from *family* or seeking to satisfy a need that family cannot provide (such as sexual involvements), they engage with the wider community in ways that may bring them into contact with police. Contact with the criminal justice system often begins in adolescence. Their inability

to know how to have their needs met may result in inappropriate or aggressive behaviour; or they may express their extreme frustration through property damage, aggression or violence.

Once these types of responses have resulted in Deaf Indigenous people being involved in the criminal justice system, the system has great difficulty coping with them. It is usually very difficult for police to obtain statements, for independent culturally appropriate interpreters to be found, for their lawyers to take instruction and for them to comply with court orders. Some individuals cannot be charged or go to trial because they cannot understand what is happening and it is hard for the judiciary to decide on sentencing and for corrections to manage and rehabilitate.

Deaf Indigenous people are especially helpless and isolated within the criminal justice system. They are involved in an experience whose processes are unfathomable to a degree greater than that described by Kafka[2] in his novel 'The Trial'. Detention is usually equivalent to solitary confinement because of their extremely limited ability to communicate.

Deaf Indigenous people are also highly vulnerable to being victims of crime. Non-Indigenous Deaf children are four times more likely to be victims of sexual abuse. **Jody Saxton-Barney points out that Deaf Indigenous people are particularly vulnerable to becoming victims of domestic abuse, to being unintentionally involved in crime, or being held responsible for the criminal behaviour of others.**

> " When behaviour of those they are around is anti-social or negative Indigenous Deaf people often believe that this is normal... often they are involved in family, community and societal processes with only a limited partial understanding of what is happening. Because of their intense focus on family and culture, this is especially true when they are involved in mainstream processes, such as in health, education and criminal justice...They are often at the extreme edge of family and society. They are subjected to family and community violence/abuse and have a high level of disengagement from education and other services.
>
> They often become targets of "scape-goating" (where Indigenous Deaf are set up to take the blame for other's actions) or are exploited in their work for their families doing duties around the home or sent to work for others in a way that is exploitative. Indigenous Deaf people that are targeted as scapegoats are often subjected to being left with illegal goods, believing that they are "care taking". Often their limited communication skills make them easy targets for taking the blame for other's mistakes." (Saxton-Barney, 2010)

Northern Australian Aboriginal Justice Agency (NAAJA) also points out the difficulties that the criminal justice system has in dealing with Deaf Indigenous accused. The following is an extract from their submission to the Senate Committee Inquiry into Hearing Health in Australia (2010).

[2] *The Trial* is a novel by Franz Kafka, it tells the story of a man arrested and prosecuted by a remote, inaccessible authority, with the nature of his crime never revealed to him.

Case Study from NAAJA (2010)

'The consequences of not properly addressing the hearing impairment issues facing Indigenous defendants in the criminal justice system can be devastating. The case study below demonstrates the spiralling consequences that can occur:
Case Study – N

N is charged with several serious driving offences, including driving under suspension. He is deaf, and does not know sign language. N has significant difficulties explaining himself and will often nod during conversations, which leads people to believe he is replying 'yes', when, in fact, he does not understand. He has a very limited and idiosyncratic form of sign language. Every now and then he does something that resembles signing.

N is not able to communicate with his lawyer. An AUSLAN interpreter has been utilised, but because N cannot sign, he is not able to convey instructions to his lawyer of any complexity. N's lawyer sought to arrange a Warlpiri finger talker through the Aboriginal Interpreter Service, but the interpreter concerned was not willing or able to come to court. It was also not known if N would even be able to communicate using Warlpiri finger talking.

The witness statements disclosed to defence included a statement from a police officer describing how she came upon a group of men drinking in a park. She ran a check on N, to discover that he had warrants for his arrest, at which time she arrested him. Her statement reads: "It is my belief that he understood as he looked at me and became quite distressed. I asked (N) verbally if he understood and he nodded and turned his head away from me while raising his arms in the air."

N is currently on bail, but has spent significant periods on remand at Darwin Correctional Centre. His charges are yet to be finally determined, and an application for a stay of proceedings is pending. N is effectively trapped in the criminal justice system. He cannot plead guilty or not guilty because he is not able to communicate with his lawyer and provide instructions.

He had previously been granted bail, but after failing to attend court as required, his bail was revoked. Significantly, his inability to convey information (or to understand what his lawyer was trying to tell him) in relation to his charges has also been highly problematic in relation to bail.

For example, when he was explaining to his lawyer, with the assistance of the AUSLAN interpreter, where he was to reside, both the interpreter and lawyer understood N to be referring to a particular community. It was only when the

interpreter was driving N home, with N giving directions on how to get there, that it was discovered that he was actually referring to a different community altogether. It has arguably been the case that N was not able to comply with his bail because he did not understand what his bail conditions were. As a result, N has subsequently spent a lengthy period of time remanded in custody.

Whilst in custody, N is not provided with appropriate services or assistance. He relies heavily on relatives who are also in custody. He is unable to hear bells, officers' directions and other essential sounds in the prison context. At one point, it was alleged that N was suicidal and he was moved to a psychiatric facility as a result. N denied the allegation but was unable to properly explain himself to resist his transfer.

As described in this case study, there is a failure to properly address hearing impairment issues for Indigenous defendants in the criminal justice system. The system deals with clients such as N on an ad hoc basis, without policies, guidelines or any kind of systematic approach. And yet N is not the only client in this situation. At the present time, NAAJA has another client in an almost identical predicament.

Another major issue is the way in which police respond to people with hearing impairment. The conclusion that N demonstrated understanding because he looked distressed, is of grave concern. This is a scenario that often confronts people with hearing impairment. They are unable to seek or provide information to police. They naturally become upset and distressed because they do not understand what they were doing 'wrong'. Instead of thinking that there is a problem with their communication, police jump to conclusions, such as they did with N, that the person knows they are in trouble and their distress is tantamount to an admission of guilt. Or more commonly, when faced with aggression resulting from this distress, police may respond with force. (NAAJA, 2010). With NAAJA's agreement, their submission to the parliamentary inquiry into hearing health has been attached as Appendix 1 of this submission.

In conclusion, I must comment on the unrelenting disinterest in the issue of Indigenous hearing loss within the criminal justice system. My involvement in the area began in 1990 when myself and Sue Quinn, an audiologist who had been instrumental in raising the issue of hearing loss in Indigenous education, tried to obtain funding to investigate Indigenous hearing loss in the criminal justice system. A multitude of funding agencies rejected our proposals, the health organisations saying it was a criminal justice issue, the criminal justice organisations saying it was a health issue. A shared issue easily becomes an avoided issue. We gave up trying to undertake the research but wrote about the anecdotes we had collected along the way, together with some discussion of the importance for the legal system provided by Martin Flynn and Jenny Blockland.

Aside from the odd, unfunded foray into raising awareness of the issues, of the type that are mentioned in this document, I have little involvement in this issue within the criminal justice

system. I have observed with horror over the years the continued, and in some areas increasing, involvement of Indigenous people in the criminal justice system. *I continue to believe that understanding and addressing the role that hearing loss plays in the development of antisocial behaviour and as an obstacle to communication, especially cross-cultural communication with police, judicial officers and corrections staff, can help reduce the over representation of Indigenous people within the criminal justice system.*

CROSS-CULTURAL COMMUNICATION, BREAKDOWN - ALIENATION AND ARROGANCE

The preceding sections have raised issues around hearing loss that contribute to the over representation of Indigenous people in the criminal justice system. This section describes in some detail important cross-cultural communication processes that interact with and compounded by hearing loss.

The distinctive cultural heritage brought to cross-cultural communication by different parties results in predictably different communication experiences for those from each culture. While Indigenous people often experience a barrage of unfamiliar and demoralising direct criticism, non-Indigenous people usually encounter very little direct criticism and this can foster unrealistic confidence, even arrogance, about the way they are working.

The following section describes the dynamic processes that contribute to such different experiential outcomes arising from shared experiences in cross-cultural communication.

Two key cultural differences between Indigenous and non-Indigenous communication styles are the relative importance of the non-verbal elements of communication and the use of indirect communication. The *non-verbal elements of communication* include gestures, facial expressions and body language. *Indirect communication* happens when people seek additional information and clarification through a third party who may be known to both of the people involved in direct communication, instead of directly from the other person.

With indirect communication, people must watch for and recognise the signals that indicate that someone is conveying an indirect message, and be able to evaluate and understand the nature of that message. To do so, they often seek information from third parties to draw out the thoughts and feelings of others. Misunderstandings can arise if non-Indigenous people do not realise that these kinds of indirect communication may be also be expected of them.

With the more direct styles of Western communication, supervisors, colleagues and clients expect others to come to them and to raise any concerns 'directly'. However, with Indigenous communication styles, others are expected to seek clarification in the case of any indirect messages expressed.

Non-verbal messages can be of great importance in

> Often subtle non-verbal cues are easily missed by non-Indigenous observers. Looks and gestures that from a western perspective may seem insignificant can, in an Indigenous context, convey significant meaning and be as effective as the spoken word in doing so.

Indigenous communication styles, and sometimes these are of even greater importance than the verbal communication (Lyn, Thorpe, Miles, Cutts, Butuke & Ford, 1998, p 46).

Often the subtle, non-verbal cues that are a part of Indigenous communication are easily missed by non-Indigenous observers. Looks and gestures that, from a Western perspective, may seem insignificant can, in an Indigenous context, convey significant meaning and be as important and effective as the spoken word.

> "I knew that they (Indigenous people being addressed at a meeting) were all responding, they were nodding their heads. I could tell by their eyes and the way they looked at me all through the meeting that they were taking in these ideas." (Nirrpuranydji, 1991, p 92)

> "Some Balanda (term for non-Indigenous people in Arnhem Land) kept coming up to me and asking what we were talking about in Yolngu staff meetings. They were worried we were talking about them. They were getting mean and had nasty expressions on their faces that told me they were threatened and worried." (Rulinimy, 1991, p 78)

The reading and response to these non-verbal aspects of communication by Indigenous people is far greater than in Western cultures where words themselves carry most of the meaning in communication.

Indeed, Western socio-linguistic expectations are that non-verbal communications are most often treated as a less important medium of communication, except in specialist areas such as counselling or some television programs[3]. Western people often exercise far less control over their non-verbal expression, such as facial expression, expecting others to ignore them or see them as insignificant. It is 'what is said' that is important and 'how things' are said is much less important than it is in Indigenous communication. 'How something is said' is far more important, in Indigenous communication. Uncontrolled obvious facial expressions may be seen by Indigenous people as 'angry shouting' or a 'dismissive verbal put down'.

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Western people are less likely to 'send' information by this means and are less skilled at 'reading' messages expressed non-verbally. In addition, communicative etiquette dictates that most non-verbal communications are ignored and not openly referred to. Indigenous people 'send' more information non-verbally and expect others will do so. They also read non-verbal information more and may refer to 'how' something was said in discussing communication.

Indigenous people are often vigilant in their search for non-verbal cues and indirect messages from non-Indigenous people, because they have been culturally conditioned to

[3] *The Mentalist, Lie to Me*

the proactive use of such cues, as part of communication. They may scrutinise the words and actions of non-Indigenous people for evidence of indirect messages where there were none intended.

Being blind to the greater importance of non-verbal communication, especially facial expression, non-Indigenous people can easily give unintentional offence.

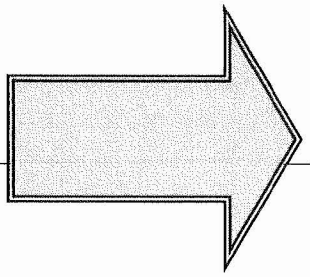
An Indigenous man was accused of 'harassment' when he consistently referred to 'how' he was spoken to by his non-Indigenous female supervisor. He believed that she spoke to him in ways that were different from the ways in which she spoke to other staff. He saw the content of her discussions with him as being the same as with other staff but saw marked differences in 'how' he was spoken to. This was assessed by other non-Indigenous staff but dismissed because they could not see any substance to his complaints.

In another situation an Indigenous worker told a non-Indigenous co-worker she 'would hit him back" after he criticised her. She described that the expression on his face when he criticised her made her think he was close to assaulting her. She had been the victim of domestic violence that had only stopped when she retaliated in kind. What she meant to convey was that she would not be passive if he hit her. The non-Indigenous staff member complained about her 'threat', saying he had said nothing about hitting her.

Conversely there are social outcomes when non-Indigenous people fail to read the important messages inherent in the non-verbal and indirect communications if Indigenous people. The non-Indigenous person may send the unintended message that they are ignoring the Indigenous communication that has been carefully crafted to inform without giving direct criticism. When a non-Indigenous person does not respond to the non-verbal or indirect communication, Indigenous people will often assume this comes from a conscious decision to ignore it, rather than to a lack of awareness and skill.

When Indigenous individuals consistently experience uncontrolled and excessive non-verbal expression in their communications with non-Indigenous people, and the non-Indigenous person fails to respond to their politely expressed non-verbal communication, these experiences contribute to the stereotype of *'the rude, arrogant white person'*. In fact, these responses often ***reflect limited cross-cultural competencies*** rather than deliberate rudeness and lack of consideration. This lack of cross-cultural competence can result in unintended insult being given to Indigenous people who, in turn, can result in arguments and anger. This may then escalate into retaliatory property destruction or violence that results in people's involvement in the criminal justice system.

Cross-cultural experience by Indigenous people in comfortable social situations can help them realise the unintentional nature of non-Indigenous people's responses. Indigenous workers often comment that it takes them some time to realise there was seldom 'anything personal' in responses by non-Indigenous people, and that they need not have worried so much about the possibility of non-verbal cues or indirect messages.



With more transitory relationships, for example with police, where there is already a tension, there is rarely the opportunity

to develop these understandings. This means that unfamiliar and uncomfortable reactions are more often seen as personal antagonism or racism. The retaliatory antagonism of Indigenous people may then provoke personal antagonism by police – the culturally based 'misperceptions' acting to create an interpersonal reality. Alternatively, those accused of racism may then be offended themselves, knowing they were 'just doing their job', not understanding that, despite their intent they nevertheless had given offence. ***This process of mutual, unclarified misunderstanding can then generate real ongoing and embedded antagonism. Thus, what began as culturally based misunderstanding ends in entrenched mutual antagonism that seems, to all parties, like racism.***

VERBAL COMMUNICATION STYLES

There are also important cultural differences in styles of verbal communication. Two examples of this are the use of 'spotlighting' and 'broadcasting'.

Western cultures favour an individual verbal communication strategy called **'spotlighting'.** 'Spotlighting' happens when someone asks a specific person, or a series of people, a question in front of others. The technique is commonly used in Western education systems as well as by police. It can be used to foster competition or to exert social control by threatening to expose individuals to public shame.

Spotlighting as a communication strategy, is aligned with a social style based on individual responsibility and achievement, and competitive relationships. However, in collective cultures exposing people to public shame in this way can be intimidating, and cause resentment. When confronted by *spotlighting*, Indigenous people often choose silence or avoidance. *Spotlighting* is evident in the communication of teachers, police and within the criminal justice system. Indigenous people often respond to *spotlighting* with confused or angry silence, or resentment and retaliation. These responses are confusing in the eyes of those doing the *spotlighting* since they, in their minds, are only exercising appropriate speaking rights for their official role.

Indigenous cultures, with their greater focus on collective rather than individual responsibility, tend to favour communication that promotes shared discussion and creating consensus. These styles shun putting individuals in situations where they could be shamed. **'Broadcasting'** (Walsh, 1997) is one of these strategies.

Broadcasting involves commenting on a subject in a public way, and other people can choose to respond or remain silent. *Broadcasting* can be used to raise concerns about an issue in a gathering where collective discussion and decision-making can take place. Someone else may *broadcast* similar concerns, or amplify what has already been said. *Broadcasting* can be used to apply social pressure, by bringing the acts of individuals to the attention of others, although these individuals are often not mentioned by name.

Broadcasting by calling out loudly in a public space is commonly misunderstood as verbal aggression by non-Indigenous people who are unaware of its cultural legitimacy in the eyes of Indigenous people. To Western people it can feel intrusive, frightening and threatening.

It is seen as out of social control verbal behaviour that signifies imminent out of social control physical responses. When Indigenous people use *broadcasting* in a space shared by non-Indigenous people, what can often result is that the police are called to manage this *out of control* behaviour. When the police arrive and step in to exert physical control or verbally admonish the Indigenous person who is *broadcasting,* the actions of the police may be seen by the speaker as an unwarranted imposition on their legitimate speaking rights. This may result in retaliatory escalation and overt conflict.

OUTCOMES OF CROSS-CULTURAL COMMUNICATION EXPERIENCES

Important and different outcomes result from the different communication styles described above. What is experienced as a barrage of negative or critical comment from non-Indigenous people, especially those with hearing loss, can undermine the confidence of Indigenous people, or give unintended offence and sometimes precipitate conflict.

Interviews with Indigenous workers indicate that an essential cross-cultural competency for them is to find ways of

a. avoiding the demoralising effect of regular negative feedback and negative attitudes on the part of non-Indigenous people and
b. managing the anger they may feel as a consequence of how they are treated by non-Indigenous people with whom they come into contact.

Negative attitudes are communicated in a multitude of individual incremental interactions that:

a. slowly erode the confidence of Indigenous people, to a point where they may become demoralised, disempowered and disengaged or
b. result in upset, angry resentful and sometimes retaliatory reactions;

such 'retaliation' appears as inexplicable and undeserved from the perspective of non-Indigenous people.

For non-Indigenous people, one element of cross-cultural competency is being aware that there may be no, or little, direct verbal feedback of the type to which they are accustomed.

Becoming *cross-culturally competent* involves learning to look for non-verbal and indirect cues, and to seek out Indigenous opinions on their actions.

In contrast, with minimal exposure to negative Indigenous feedback, many non-Indigenous people remain unaware of the things that Indigenous people do not like about what they do and the way they behave. This can easily lead to over confidence, even arrogance. If they are working in an Indigenous community they may not know of the dissatisfaction with their behaviour until a crisis point is reached and they are asked to leave. Because they have not received any forewarning, the dissatisfaction with their behaviour may seem sudden and recent, yet the concerns had, invariably, built up slowly, over time. For non-Indigenous people, one element of cross-cultural competency is being aware that there may be no, or little, direct verbal feedback of the type to which they are accustomed. Becoming *cross-culturally competent* involves learning to look for non-verbal and indirect cues, and to seek out Indigenous opinions on their actions.

This analysis is based on generalisations, and all generalisations have limitations. In situations where there is no established relationship, where someone is offended by the behaviour of someone else, or when alcohol is involved, Indigenous people can be very verbally and even physically direct in expressing their dissatisfaction. *Often this is related to heightened offence having been perceived which is related to the dynamics described above, or when alcohol contributes to the dis-inhibited expression of resentments that have built up over time.*
In addition, the generalisations do not apply when people become cross-culturally competent. For example, when non-Indigenous people learn to read non-verbal communication cues and give indirect feedback, and when Indigenous people learn to give direct verbal feedback.

Otherwise, these generalisations remain valid in many cross-cultural situations and should be addressed by organisations that employ, provide services to, or engage with Indigenous people. They are especially important in the interactions between Indigenous people and police/corrections staff. Understanding these processes can help them to manage more effectively these interactions, thereby reducing conflict and lessening the distress experienced by Indigenous people in cross-cultural institutions.

This information is important for agencies that wish to recruit and retain Indigenous staff and well as improve the retention of non-Indigenous staff working with Indigenous clients.

RECOMMENDATIONS

Cross-cultural organisations/agencies can undertake the following to become more effective.

1. Provide cultural orientation and mentoring to non-Indigenous staff to enable them to understand the issues arising in cross-cultural communication (e.g. around *spotlighting* and *broadcasting*) to help restrict excessive critical feedback to Indigenous people during cross-cultural contact.

2. Offset the effects of, the often unrelenting, verbal and non-verbal criticism that can come from non-Indigenous staff, by providing regular compensatory positive feedback to Indigenous staff on their performance.

3. Work to build the resilience of Indigenous staff to cope with direct negative feedback.

4. Develop ways of encouraging the expression of constructive criticism from Indigenous staff and clients about non-Indigenous staff.

The following table outlines some of the related, but quite different, cross-cultural competencies for Indigenous and non-Indigenous cross-cultural staff in cross-cultural communication processes.

Cross-cultural challenges and essential competencies for staff working in cross-cultural contexts

Non-Indigenous staff	***Indigenous staff***
Become proactive and seek feedback from Indigenous people about what they think and how they feel.	Become comfortable with less consultative and more directive ways of working with non-Indigenous staff.
Learn to recognise and understand indirect messages such as the use of humour to make a point indirectly.	Learn not to look for indirect meaning in the behaviour of non-Indigenous staff and to ignore, minimise the effect of, or filter out some of the direct critical feedback from non-Indigenous people.
Learn to become more aware of non-verbal messages.	Learn to become less sensitive and less responsive to non-verbal critical responses of non-Indigenous staff.
Work closely with Indigenous people who can provide advice on Indigenous styles of communication.	Work closely with non-Indigenous people who can provide advice on non-Indigenous styles of communication.
Realise that direct feedback may upset Indigenous people.	Understand and evaluate the variable nature of critical feedback; is it associated with administrative compliance issues, or is it a challenge to impress someone else, or is it a serious attack?
Try to minimise negative feedback and be careful about how it is given.	Try to become more comfortable with the use of direct negative feedback.
Avoid confrontation where someone may feel 'shamed'.	Become more comfortable with confrontation when this is needed and the use of direct positive and negative feedback.

TRAINING AND MENTORING NEEDS

It is essential that the training of teachers, police and corrections staff include a component about the conceptual frameworks that can encourage respect for other cultures and their culture based communications strategies. When cross-cultural training is provided, it usually does not integrate a general 'cultural awareness' with specific training on how culture intrudes on social interaction, in the ways that have been outlined above. The above analysis, although applicable to many sectors, was developed from research in the health and education sectors, and has not been used in the criminal justice sector.

INDIGENOUS EDUCATION

When the evidence in the body of research into Indigenous education is examined, there are themes that emerge. These themes have not been taken into account by Education systems. These themes include the critical importance of social relationships and consideration of how culture shapes social relationships around learning. Indigenous students' educational outcomes are formed by the way schools either enable or obstruct the development of positive social relationships. Certain school and classroom structures can enable suitably skilled teachers to create educational success for Indigenous students. Unfortunately, there is little formal training that equips teachers with these skills and there is Institutional resistance to schools changing any of their methods of operation to assist Indigenous students to succeed. The existing methods result in many Indigenous children with hearing loss being especially disadvantaged through poor relationships with peers and teachers and the unfamiliar, verbally focused schooling.

RELATIONSHIP FOCUSED EDUCATION

Schools and teachers can either enable or obstruct the development of the positive social relationships that are the platform upon which Indigenous students' learning takes place. Malin (1997) described the educational exclusion that could result when cultural differences undermine Indigenous students' relationships with their teachers. The culturally based incompatibilities between the social expectations of the Indigenous child, and their non-Indigenous teacher, undermined the teacher-student relationship. The Nunga students, living in urban Adelaide, came to school with sophisticated social skills, but these skills were seen as a threat rather than an asset. These skills included:

- Monitoring the whole classroom social context rather than simply focusing on the teacher;
- Engaging collaboratively with other students rather than being individually focused;
- Seeing themselves as achieving collectively, even when the class had not been organised that way;
- Sending positive, often non-verbal messages to fellow students;
- Acting as interpreters to problem solve misinterpretations involving other students.

These social behaviours were not necessarily appreciated by teachers, whose teacher-centred notion of classroom life resulted in an expectation that students would focus their attention primarily on the teacher. They often censured Indigenous students who were not sufficiently 'teacher focussed' because it acted 'against their planned curriculum' (Malin, 1990).

In contrast, middle-class non-Indigenous children came to school with expectations consonant with their middle class teachers' teacher-centred expectations. Malin reported that the non-Indigenous children 'expect that the teacher will monitor them closely, will direct, persuade, reprimand and question them constantly. They have learned that in turn they will have to closely monitor the teacher, and that they will be expected to learn primarily from her' (Malin, 1990).

Malin also described how some teachers believed that many Indigenous students did not appreciate them and they, in turn, provided minimal educational support to these students. In the cross-cultural classroom, these differences in social expectations led to reduced educational opportunities for Indigenous students.

However, difficulties between non-Indigenous teachers and Indigenous students are not inevitable. When Harris and Malin (1994) explored the attitudes of a select group of teachers, who had an interest in working in Indigenous Education, they discovered the distinctive relationship Indigenous students had with these teachers. In these classrooms, social interaction was more personal and less constrained by the formalities of roles.

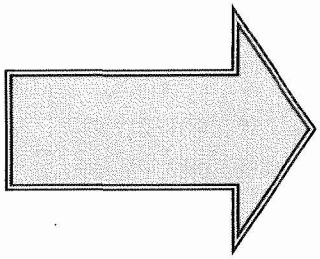
Harris and Malin (1994) highlighted that positive social relationships are a prerequisite for Indigenous students' success at school.
They suggested the following strategies:

Strategies	***Influence on relationships***
Create groups of Indigenous students within the class	Enables Indigenous students to interact with, and be supported by, Indigenous students rather than being isolated among mainly non-Indigenous students
Family class groupings	Enables multi-age congregation similar to home context. Fosters culturally derived skills in peer support.
Teachers involve themselves with the family and community	Supports the inclusion of positive family influences into school life — students experience integration of social and school values.
Involve qualified Indigenous teachers	Supports interactions with Indigenous adults who are familiar with culturally based values and communication styles
Have a lower teacher:pupil ratio	Enables more time for a personal relationship between teacher and student
Encourage and instigate greater parental involvement in schools	Fosters the motivation of students in school though their social obligation to family

Harris and Malin (1994) found that positive social relationships are the building blocks of better educational outcomes for Indigenous students. Other research also highlights the importance of positive social relationships and culturally responsive approaches, together with high expectations of students (Hudspith, 1996; McRae, 2000).

Based on her work in Adelaide, Malin (1990) outlined the type of training and experience needed to develop this type of culturally attuned, exceptionally successful non-Indigenous teacher. The teacher needs to get to know their students by 'observing, by listening deeply to the students' and reflecting on this as well as learning from talking to parents and

relatives and the community in general, Indigenous educators and through reading' (Malin, 1990, p. 253). Most Indigenous teachers come already equipped with this cultural knowledge, insight and involvement.



One important strategy to create success for Indigenous students is to have more Indigenous teachers. *For this to occur, schools need to be places in which Indigenous teachers are comfortable to work - see the section on cross-cultural communication for a discussion of this.*

In their studies, which were conducted in Western Australia, Partington, Richer, Godfrey, Harslett and Harrison (1999) and Harslett (1998), looked at the successful teaching of Indigenous students. They focused on relationship and culture as being important in Indigenous education. In their conclusions, they describe what they term a 'relationship-based pedagogy' with high expectations of students.

Aspects of a relationship-based pedagogy include:

- respect afforded to Indigenous students' cultural expectations such as autonomy;
- teachers developing relationships with students; and
- involving families in schooling to activate the students' sense that school is part of their network of social obligation.

Important components of *relationship focussed pedagogy* include awareness of; Indigenous history, the students' home backgrounds and of the students' sense of autonomy and shame.

In their research, Partington et al. (1999) and Harslett (1998) identified key aspects of relationship-based, student-centred pedagogy: this pedagogy understands, empathises with, and is sensitive towards students. While this approach is important for all students, it is especially important for Indigenous students' success to have positive relationships with peers and teachers. Teachers can build these by rejecting the habit of thinking of their Indigenous students as having individual or culturally based deficits, and recognising individual and cultural strengths.

Over the past thirty years, I have worked with Indigenous children in the Northern Territory, as a teacher and psychologist. Over that time, my observations and research have supported what has been found in the South Australian and Western Australian studies. In spite of this consistent evidence base, I do not see school systems getting better at 'relationship focused education'. Indeed, the trend is often towards more *curriculum focussed education*. There are risks that the current national focus on *testing* and a *single national curriculum* will detract from the capacity of teachers to develop the *relationship focussed education* from which Indigenous students would benefit.

In spite of this consistent evidence, I do not see school systems getting better at 'relationship focused education'. Indeed the trend is often to more curriculum focussed education.

I remember the comments of a teacher when I was asked to review a high school Indigenous program. The teacher commented that 'as the school day became more and more filled with 'content' that had to be covered, the capacity of teachers to develop relationships with students diminished'. She said that when teachers had less capacity to develop relationships, this impacted on all students to some extent, but it had the most impact on Indigenous students.

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RECOMMENDATIONS

1. There is a need for pre-service and post-service training around relationship focussed pedagogy to be provided to those teachers who work with Indigenous students.

2. Part of the accountability of schools should include regular measurement of the satisfaction of students with the relationship teachers have with them. Positive relationships will help attendance and educational engagement. Measurement of this key factor will help to select teachers who have the capacity to work with Indigenous students in ways that will achieve the best outcomes.

It is critical that positive relationships are combined with high expectations.

It is critical that positive relationships are combined with high expectations. Positive social relationships cannot be at the expense of high educational expectations. The research is clear that both positive relationships and high expectations are needed (Sarra, 2010).

The importance of relationships pervades all areas of Indigenous life, including education. Coombs (1983) wrote: *'Who a person is, in an Indigenous cultural context, is a nexus of relationships, a set of bounded expectations, obligations and human connections'* (Coombs, 1983, p. 257). This is the reality that practitioners and programs must address if successful educational outcomes are to be achieved for Indigenous students. This is also highlighted in a report that evaluated what 'worked' in Indigenous education around Australia (McRae, 2000).

McRae (2000) described and evaluated eighty-three Commonwealth Government funded projects designed to quickly improve Indigenous children's achievement at school. The report gives an overview of the approaches and experiences of a wide variety of educators of 'what works' with Indigenous students. As with other researchers, their work stressed the importance of culture and relationships. They identified common key strategies as important in improving Indigenous children's school performance. These are described below.

Cultural Inclusion – This involves establishing quality and in depth cross-cultural relationships. Cultural factors were important in parents sending children to pre-school, cultural acknowledgment and support were central in attempts to improve secondary school retention of Indigenous students (McRae, 2000, p. 39), and positive teacher attitudes towards Indigenous students were facilitated by awareness of the cultural issues of Indigenous students (p. 66). Cultural inclusion seems to include many aspects of cultural responsiveness.

Flexibility - Being flexible enough to be willing to do things in different ways in order to achieve the same outcomes, was identified as important. This was particularly the case in urban environments where Indigenous students comprised a minority of the school population.

Localisation – That is, the importance of responding to differing local contexts. The authors note that the majority of Indigenous people live in urban areas but that the educational contexts of remote communities often dominate discussions of Indigenous education.

Indigenous Staff – The involvement of strong and authoritative Indigenous staff, who are accepted by their community, were seen as crucial to positive outcomes for Indigenous students. A feature of successful projects was that they often had key figures, usually Indigenous, who acted as 'translational figures' and were effective in operating in both cultures and interpreting each to the other (p. 168).

Community of Peers - The ability to build a community of peers, through grouping practices and activities that enable Indigenous students to spend time together, fostered Indigenous students' success at school.

Indigenous Languages - *The* recognition of, and respect for, the varieties of non-Standard English spoken by Indigenous people as well as promoting learning of Indigenous languages was identified as an important feature.

Expression of Culture - Finally, returning to the importance of culture, it was considered essential that schools be willing to make overt reference to Indigenous culture, as well as creating opportunities for the expression of that culture within the school.

The success of programs that focused on relationships and culture was notable. Some examples are:

- Students spending time in Indigenous-only learning groups or being able to network extensively with other Indigenous students within the school;
- More positive interactions between Indigenous students and non-Indigenous teachers being facilitated by teacher cultural awareness;
- Teaching Indigenous students pro-social skills to improve school retention;
- Indigenous students having access to support by Indigenous adults in school to improve achievement and reduce behaviour problems.

INSTITUTIONAL RESPONSIVENESS

While the research highlights what can work, there remain many problems in developing and implementing such programs. As Partington et al. (1999) describe, there are powerful institutional pressures that inhibit the intent of individual teachers to adapt classrooms so that the overall classroom environment is more responsive to the needs of Indigenous students.

The *Quality Schools for Indigenous Students Project* (Partington et al, 1999) identified several institutional obstacles to schools being responsive to the special needs of Indigenous students, and their review of the literature found that schools and teachers can be at the forefront of problems in Indigenous education (Harrison, Partington, Harslett, Godfrey & Richer, 2000). Factors identified include:

- Problems in teacher pedagogy;
- Low teacher expectations of Indigenous students;
- Negative attitudes among teachers arising from stereotyping Indigenous students as deficient and/or disinterested;
- Stereotyping, by teachers, of Indigenous students as being obstructive;
- Inadequate communication and public relations between the school administration and the home.

Partington et al. (1999) concluded that without a cohesive school approach, individual teachers were unable to change things. Institutional factors also contributed to poor use of Indigenous staff in schools. Partington et al. (1999) found the subordinate role expected of Indigenous staff, engendered conservatism in educational practice, and the authors indicated that non-Indigenous teachers need to gain perspectives that empower Indigenous staff.

Indigenous teachers suffer from an institutionalised disempowerment, which is often clothed in ethnocentric assumptions about teacher professionalism. This results in Indigenous teachers becoming frustrated because they are prevented from teaching and interacting with Indigenous students in the way they wish. Too often Indigenous staff are recruited to schools only to be marginalised within the school, have their expertise ignored or be used as an aid to ensuring student compliance (Buckskin & Hignett, 1994; Harslett, Harrison, Godfrey, Partington & Richer 1998; Harris & Malin, 1994).

One example of this is the experience of two Indigenous teachers in Darwin. One described how she was criticised for being 'too friendly' with Indigenous students on the playground, because it created the expectation that other teachers should be equally friendly. The other Indigenous teacher reported that she was criticised for establishing what she considered a comfortable setting for interviews with Indigenous parents. It was suggested that if she was too friendly, then parents would not respect her (personal communication).

Heslop (1998) outlined how assimilationist assumptions also limit the ability of the parents of Indigenous students to effectively exert any control in their children's schools. Because school administrations operate in a Western style, a Western style of interaction is required when dealing them. Thus, Indigenous parents are effectively prevented from exerting any real control in their children's education (Ngarritjan-Kessaris, 1994). The ways parents are

excluded from exercising power in schools is the counterpart to the way unfamiliar and uncomfortable classroom participation styles exclude Indigenous students from educational opportunity. The Indigenous students who suffer the worst consequences in culturally unresponsive schools are those with a Conductive Hearing Loss.

The ways parents are excluded from exercising power in schools is the counterpart to the way unfamiliar and uncomfortable classroom participation styles exclude Indigenous students from educational opportunity.

HEARING LOSS AND SCHOOLING

A key concept in meeting the educational needs of Indigenous children with hearing loss is the child's 'familiarity' with people, content and communicative processes. Indigenous students' have better educational outcomes when they have a high level of familiarity with the people who teach them and they are taught in ways that are familiar to them. The first implication of this is that local Indigenous people should provide classroom support (Howard, 2004). It also means that non-Indigenous teachers should operate, as far as is possible, in ways that are both culturally familiar to students and use culturally responsive pedagogy (Howard, 1994).

It is important to note that the hearing loss of Indigenous children is often invisible because the focus on cultural differences acts to mask awareness of the hearing loss. Certain behaviours tend to be explained as cultural differences rather than being identified as being related to hearing loss. This was highlighted in a comment made by a teacher after a group of students in her class who found it difficult to learn from 'teacher talk' were found to have impaired hearing. Her explanation for their learning difficulties was that she thought they were 'just *more Indigenous* than other students' (Howard, 1992). Her focus on cultural differences as the reason for certain behaviours masked her ability to look for the presence and effect of hearing loss.

...She thought they were 'just more Indigenous than the other students'. Her focus on cultural differences masked the presence and effect of hearing loss.

An understanding of the combined effects of cultural difference and listening problems (Conductive Hearing Loss and/or Auditory Proceeding Problems) is an important component in providing effective educational services to Indigenous students. Addressing the educational disadvantage of Indigenous students with hearing loss, demands culturally responsive practice as well as the use of amplification, the improvement of school acoustics, and the use of more visually oriented teaching styles.

Just as hearing related behaviours are misinterpreted as 'culturally based' behaviours, there is also a tendency to view school behaviour problems within a socio-political context, rather than linking the behaviours to the effects of hearing loss. While there are many real components to the socio-political dimensions of Indigenous disadvantage, Indigenous listening problems add to the overall complexity of the problem by interacting with some of these components in ways that are often not recognised.

Some work (Stehbens et al, 1999) on school exclusions, identified a complex interplay of power relationships based around social, economic, gender and racial elements that all work together to disadvantage Indigenous students. The authors reported that Aboriginal and Torres Strait Islander (ATSI) students comprised only 3 per cent of the total NSW student population, but they were the subject of 18 per cent of all suspensions in 1995.

A number of factors that contributed to school exclusions were discussed. The factor most commonly mentioned by the Indigenous students, as being a catalyst to exclusion, was their frustration at not being able to understand what was happening in the classroom and their difficulties in understanding the teachers' spoken instructions. It is Indigenous students with hearing loss who are most likely to have difficulty understanding teachers' verbal instructions and have behaviour problems at school (Howard, 2004). It seems probable that hearing loss contributed to the 'difficulties in understanding instructions' that led to many of the school exclusions in the Stehbens et al (1999) research.

Research that I have conducted, shows that school behaviour problems among Indigenous students is strongly associated with Conductive Hearing Loss (Howard, 2004). The following section describes research that helps explain this association.

UNDERSTANDING SCHOOL BEHAVIOUR PROBLEMS

My doctoral research (Howard, 2005) examined how the behaviour problems of Indigenous students' were related to current Conductive Hearing Loss and to the levels of background noise in their environment.

There is a strong professional expectation upon teachers to maintain control in the classroom. Teaching requires the compliance of students in remaining quiet and following the teacher's directions. Student responses that contravene these expectations quickly come to the attention of teachers. I found certain behaviours, which were exhibited by children with Conductive Hearing Loss, whilst attempting to cope in noisy classrooms were seen as behaviour problems. These behaviours are outlined below.

1) Talking when the classroom was quiet

The majority of Indigenous students with current Conductive Hearing Loss were observed to 'talk when it is quiet' more than Indigenous students with no current Conductive Hearing Loss. Talking when the classroom is quiet enables the child to take the opportunity to verbally communicate during the best 'listening' conditions available in a classroom. However, these quiet times are generally when the teacher is teaching, or other students are working silently. Students seeking to speak at these times therefore contravene classroom rules and so are likely to be seen by teachers as exhibiting 'behaviour problems'.

2) Teasing when noisy

The majority of Indigenous students with current Conductive Hearing Loss were observed to talk less when it was noisy but to engage in verbal and non-verbal teasing as noise levels rose. These responses appeared to be related to disguising their listening difficulties, attempting to entertain themselves in the face of listening

difficulties, or attempting to overcome the exclusion experienced because of listening difficulties. While these responses prompt social contact, they do not generate positive social interaction. These responses are seen by teachers and peers as behaviour problems.

3) Calling out

Some students with Conductive Hearing Loss were observed to *call out* in response to the loud comments of teachers or other students. Students responded to loud classroom talk but did not participate in quiet small group talk. Quiet classroom talk was too hard for children to hear clearly because of the interplay of their Conductive Hearing Loss with the background noise generated by *small group work*. *Calling out,* enabled these students to utilise the opportunity, available in class, for verbal engagement when they could easily hear. These opportunities were usually when the teacher was talking to the whole class. As with 'talking when quiet', calling out may involve students grasping the opportunity available to them for verbal participation in class, even though their participation was unwelcome, from the perspective of teachers and peers.

4) Using visual observation strategies in class

Visual observation strategies help to compensate for difficulties in accessing auditory input because of Conductive Hearing Loss and background noise. Visual observation strategies used included standing up to see over those who were sitting; pushing in front of peers; moving around to get a better view; and looking around the class more than their peers did, to watch what was happening. These responses were seen by teachers as 'pushing in' and 'moving around without permission'. Students making these responses often stood out to teachers, who were intent on maintaining uniformity of student behaviour.

5) Seeking help from peers

Students were observed to seek help from their peers to enable them to deal with the difficulties they experienced in knowing what to do in class. However, this could lead to them being disciplined for talking when the teacher was talking, or for being distracted from the task at hand.

Collectively these responses contribute to students with Conductive Hearing Loss being seen by teachers as 'having behaviour problems at school'.

Collectively these responses contribute to students with Conductive Hearing Loss being seen by teachers as 'having behaviour problems at school'.

The influence of the combined effects of Conductive Hearing Loss and background noise on children's classroom behaviour was outside of the awareness of teachers. These behaviours are often viewed as *purposeful defiance* and may be met with sanctions and, if the behaviour continues, students may even be excluded from school.

The above information, when converted into a training program, provides information that can help give teachers a new perspective when viewing the behaviour in their classroom.

The training program can also create an understanding about the origin of some of those behaviours and an ability to implement an appropriate *behaviour management plan*. Changing the attitudes of teachers involves challenging their views about various behaviours being an exhibition of defiance of classroom rules and of the teacher's authority. The alternative interpretation is that they represent, for some students, attempts to cope with difficulties listening in noisy classrooms. The way changed perspectives can result in different responses is described in the following case study of Alex.

Case Study: Alex

Alex was a student referred by his parents to a psychologist because teachers were concerned about his behaviour. His teacher was concerned that he was often disruptive in class, bullied other students and completed little work. He was often in trouble for talking in class and for teasing others, as well as for wandering around in class. Standard behaviour management strategies of 'time out' (being sent out of the class for a time after unacceptable behaviour) and a communication book (a book that his teacher filled in each day and that he took home to inform his parents of his behaviour at school) were not working. His school suggested he be taken to see a psychologist - the author.

While discussing Alex's health his parents said that Alex had experienced persistent middle ear disease since early childhood. He regularly visited an Ear, Nose and Throat specialist, often experienced hearing loss and had an unhealed perforation in one ear drum.

It was suggested that instead of counselling Alex about his behaviour at school a training program could be offered to his teacher. The program was based around the research results from this study and explained how some students with Conductive Hearing Loss exhibited the same behaviour as Alex, especially in the presence of background noise. The program suggested some strategies to provide visual cues to supplement verbal instructions and to limit his wandering as he tried to observe how others were doing their work. After one month the teacher was contacted again and asked if this different management regime had worked.

She firstly reported a change in her attitude to Alex. She had reached the stage where she actively disliked Alex and felt he was purposely

and maliciously defiant in class. However, understanding his behaviour problems and their association with Conductive Hearing Loss had helped to change how she felt about him - the 'meaning-perspective' she held about his behaviour. She liked him more as a person.

She was asked to rate several variables in terms of before and after the training she had received. An examination of her ratings indicated that, in her view, Alex's behavioural problems had dropped by two thirds. The degree that he was engaged in learning had doubled and her stress levels had halved. The strategies she described consciously employing were providing extra one-to-one instruction and managing noise levels more actively, especially when giving instructions. She also allowed Alex a limited amount of 'wandering time' to observe others before he was expected to get down to work.

Alex was also asked how things were for him before and after the training. He said that before the training he used to get into 'heaps' of trouble for bullying and teasing in class and being arrogant. When asked how he had been arrogant, he said that his teacher had said he was arrogant for not listening to her. He said he also got into trouble for talking and for interrupting others. He said school was often boring and he often thought he knew what to do but then found out he didn't. He also said he would get into trouble for asking for things to be repeated too much.

He said that after his teacher did the training 'he got to play outside'. He said that before he was often in detention at break times and not allowed to play outside. Now he did not get detentions and was able to play outside. He also said he had made more friends after he stopped getting into trouble in class. He said he was able to finish his work more often and could concentrate more easily. He also said he was not so worried now. Before he used to worry a lot that he would not know what to do; now he did not worry so much about that.

Alex's teacher described a change of her 'perspective' about Alex and his behaviour. This change was instrumental in changing the dynamics of the social interaction that was taking place between Alex and her in a mutually beneficial way. There have been similar responses by other teachers in other schools.

RECOMMENDATION

The Ear Troubles training, described above, needs to be made available to schools with a high Indigenous enrolment as well to corrections staff, in an adapted form.

It was not only in classrooms that listening problems related to Conductive Hearing Loss and background noise were evident. Student interviews highlighted the problems that resulted from background noise on playgrounds. It is generally assumed that students have the opportunity to freely socialise in the playground during break times. The comments of targeted students suggest that, for children with Conductive Hearing Loss, this is often not the case.

The reality that was revealed, was one in which Conductive Hearing Loss and high levels of background noise combined to restrict verbal communication opportunities on the playground, in the same way as it did in classrooms. The high levels of background noise, especially around play equipment and in group games, inhibited verbal communication for many children with Conductive Hearing Loss. Restricted verbal communication opportunities in noisy playgrounds prompted social involvement through teasing, as it did in classrooms. In the less teacher-controlled playground, this was more likely to result in physical fights.

When classroom peers of children with hearing loss were asked about their experiences in relation to these children, they spoke of being teased by the children with hearing loss, having their possessions taken, their access to classroom materials was denied and they were often pushed, prodded and poked. Further, their comments in conversation were often ignored or misunderstood by the children with hearing loss; they were bossed and told what they should be doing, as well as told on to the teacher. It was not surprising that these students with Conductive Hearing Loss were often not liked by their peers.

Social problems in childhood are likely to result in problems in later social and psychological adjustment. Levine (1966) found the quality of the interpersonal relations that children establish with their peers during their school years, is linked to later success outside of school. Furthermore, problems in relating to peers in childhood have been found to be associated with psychological difficulties during adolescence (Brown, Bhrolchain & Harris, 1975; Miller & Ingham, 1976; Parker & Asher, 1987).

It is suggested that the single best childhood predictor of adult adaptation is the adequacy with which the child gets along with other children. Children who are generally disliked, who are aggressive and disruptive, who are unable to sustain close relationships with other children, or who cannot establish a place for themselves in the peer culture, are seriously at risk of problems in adulthood (Hartup, 1992). Children who are rejected by peers report loneliness and social dissatisfaction (Asher & Wheeler, 1985), have more difficulties learning (Amidon and Hoffman, 1965), and are at risk of adjustment problems such as dropping out of high school, juvenile delinquency, and mental health problems in adulthood (Parker & Asher, 1987).

HEARING PROBLEMS AND INDIGENOUS EDUCATION

This area is most often marginalised as a special education issue rather than being treated as a mainstream Indigenous education issue.

Indigenous education has not adequately considered the endemic Conductive Hearing Loss among Indigenous students, or the presence of Auditory Processing Problems (listening problems), as factors that affect Indigenous children's school behaviour and educational outcomes. Consequently, this area is most often marginalised as a Special Education issue rather than being treated as a mainstream Indigenous education issue. Special Education, where service delivery usually assumes individual support to a small number of students, is not a model that can cope with the implications of the widespread prevalence of Conductive Hearing Loss among Indigenous people.

School learning is based on a high level of verbal input from the teacher, and the amount and complexity of this verbal input increases as a child progresses though the grades. Harris (1990) pointed out that, as an Indigenous child moves through school, there are increasing demands on their ability to learn through verbal interaction. Conductive Hearing Loss may have less impact on progression through early grades, but may act to limit achievement in, and beyond, upper primary levels when visual compensation becomes less effective. This is supported by work (Howard, 2004) which found a significant relationship between Conductive Hearing Loss and lower achievement amongst Indigenous children in upper primary grades, but not in early childhood classes.

English language and literacy is central in educational achievement in upper primary grades and beyond. There are indications that hearing loss impacts on the acquisition of literacy skills and consequently, on educational outcomes. Difficulties with the acquisition of literacy skills may be linked to difficulty in discriminating, blending and sequencing sounds, resulting in problems with the phonic aspects of reading, a limited understanding and use of grammar, misinterpretation of questions, and difficulty with verbal expression (Webster, 1983). Limited awareness of the rules of oral language may, in turn, be detrimental to the development of written language (Menyuk, 1980). The impact of ear disease on literacy was demonstrated in a longitudinal study by Silva, Chalmers and Stewart (1986) which found that, when compared with a control group, Indigenous children who experienced bi-lateral otitis media, had reading scores that were significantly and consistently depressed .

Diminished educational opportunities result for non-hearing impaired children when a high proportion of their class peers are affected by Conductive Hearing Loss ... the demands on teacher time, either in providing individualised help or managing disruptive behaviour, limited the ability of other students to access support from the teacher.

A further concern in Indigenous classrooms is the possible combined effect of having a high proportion of the class group who are affected by Conductive Hearing Loss. The only formal research in this area suggested that diminished educational opportunities result for non-hearing impaired children when a high proportion of their class peers are affected by Conductive Hearing Loss (Howard, 1990). This study described how the demands on teacher time, either in providing individualised help or managing disruptive behaviour, limited the ability of other students to access support from the teacher.

WHY THE ADVERSE OUTCOMES OF CONDUCTIVE HEARING LOSS REMAINS AN INVISIBLE, NEGLECTED ISSUE

Current services for hearing impaired children generally ignore the needs of the many children with mild to moderate hearing loss. The reasons for this are diverse. The difficulties of those with more severe levels of permanent Conductive Hearing Loss (those who are deaf/Deaf) are obvious. In contrast, those who have less hearing impairment, who are hard-of-hearing, often attempt to simply 'get by' in a hearing world, or are even unaware of their disability. It is common for adults with mild to moderate Conductive Hearing Loss to not disclose to others that they have a loss, despite often experiencing significant communication problems (Stika, 2000).

The vast majority of children with hearing loss that teachers will encounter are those with a mild to moderate Conductive Hearing Loss, although usually the teachers will be unaware which children have such a hearing loss. This fluctuating Conductive Hearing Loss among children is often not identified unless there are school screening programs, which, all around Australia, are being carried out less often. The invisibility of the problem makes it difficult to gain the attention of policy makers. The current vogue of *market driven educational policy making* also compounds this.

Connell (1993) makes an important point about educational policy being driven by a market ideology. That is, influential sectors of the community drive the policy agenda of governments. Market driven policy empowers the advantaged. It acts to consolidate the marginalisation of those who have low 'market power' because of low numbers or low resources which limit the opportunity to self-advocate. This means that Indigenous people, who in the past have been dispossessed and oppressed at the hands of an interventionist state bent on assimilation, are now abandoned, by a newly regretful state, to the untender mercies of market driven policy.

Indigenous people who in the past have been dispossessed and oppressed at the hands of an interventionist state bent on assimilation, are now abandoned by a newly regretful state to the untender mercies of market driven policy.

Indigenous Conductive Hearing Loss is vulnerable to being neglected as a policy priority as it is often an invisible impairment that most affects those sections of the community with the least power to advocate on their own behalf.

Multiple other areas of disadvantage ... exacerbate the adverse outcomes from hearing loss.

The multiple other areas of disadvantage that are experienced by Indigenous people and are known to exacerbate the adverse outcomes from Conductive Hearing Loss, act together to create a cocktail of disadvantage.

The training undergone by audiologists and those who specialise in teaching the hearing impaired, provides very little information on, or support strategies for, the many children who experience inconsistent mild to moderate Conductive Hearing Loss during their school years. This results in difficulties in developing effective educational programs for children with this type of hearing loss.

When programs have been developed, notably for Indigenous students, they have had a health rather than an *educational* focus and have promoted approaches modelled on services for the smaller number of children with Sensori-neural Hearing Loss. (That is, they have promoted amplification and individual support around language focussed teaching strategies) It is my experience that the scale of the problem, and the different needs of Indigenous children with Conductive Hearing Loss, means that programs based on a Special Education model of service delivery have often had limited success.

The manner in which educational special needs are identified also serves to disadvantage children with learning and behavioural issues that are related to Conductive Hearing Loss. Children with school learning or behavioural difficulties are usually referred for psycho-educational assessment, which is carried out one-to-one in quiet surroundings. The results of this testing determines the ability of the child to access resources. Given the important role that background noise plays for children with these types of listening difficulties and the prevalence of background noise in the classroom context, the results of tests that were conducted in a quiet environment, may often have poor ecological validity - they do not fully reflect the difficulties experienced by children in the classroom.

The manner in which educational special needs are identified also serves to disadvantage children with learning and behavioural issues that are related to Conductive Hearing Loss.

The learning and social capacity of a child with listening difficulties, as evidenced during one-on-one testing in a quiet environment, are likely to be significantly different to that demonstrated by the same child when in a noisy, crowded classroom. The result of the focus on *out-of-class assessment* to determine 'educational need', is that children with listening problems will have their needs consistently underestimated. Consequently, they are also disadvantaged when special educational resources are allocated. This creates a situation where special education resource allocation unintentionally discriminates against children with listening problems. The children who are the victims of this 'discrimination' are usually from disadvantaged and Indigenous backgrounds.

... educational discrimination experienced by Indigenous students with Conductive Hearing Loss are multi-staged ... a chain of neglect ...

The origins of educational discrimination experienced by Indigenous students with Conductive Hearing Loss are multi-staged. The end point of Indigenous children with Conductive Hearing Loss being poorly supported is derived from a chain of neglect that includes:

- Classroom teachers having almost no training in the educational issues around Indigenous Conductive Hearing Loss;
- There being few Indigenous educators or tutors available to support Indigenous children with Conductive Hearing Loss;

- Conductive Hearing Loss not being considered in school resource allocation;
- The classroom needs of children with Conductive Hearing Loss being underestimated by the out-of-class special needs assessments;
- Poor, and in some areas deteriorating, Conductive Hearing Loss identification processes;
- Limited availability of Conductive Hearing Loss advisory support;
- Limited training of advisory teachers in the educational issues around Conductive Hearing Loss;
- Educational policy being based on research that has limited relevance to this population group;
- An absence of research into policy and practise in the area of Indigenous Conductive Hearing Loss.

Hearing loss and the dynamics of cross-cultural communication are often invisible factors that are interacting with other more visible aspects of Indigenous disadvantage.

CONCLUSION

In conclusion, I would like to emphasise that Indigenous over representation in, and disadvantage with, the criminal justice system is complex and multifaceted. Many of the submissions I have seen highlight the various factors involved in that over representation and disadvantage.

This submission seeks to highlight factors that I have observed to be missing, or not fully outlined, in other submissions. It is very important that we get schooling right, and that we 'take note of' and address hearing loss as an important issue when considering the dynamics of cross-cultural communication. Hearing loss and the dynamics of cross-cultural communication are often invisible factors that are interacting with other more visible aspects of Indigenous disadvantage. Substantive solutions to Indigenous disadvantage and the over representation of Indigenous people in the criminal justice system must address the impacts of hearing loss and include ways of increasing understanding about the dynamics of cross-cultural communication.

I would also like to comment on the ways that different commonwealth programs often do business around Indigenous issues. This relates to the following terms of reference.

- The extent to which current preventative programs across government jurisdictions are aligned against common goals to improve the health and emotional well-being of Indigenous adolescents, any gaps or duplication in effort, and recommendations for their modification or enhancement.

In this document I have outlined the neglect of some key issues. However, even in those areas that the Commonwealth does prioritise, the picture from the service delivery level looks like this:

- Commonwealth funded programs increasingly involve cumbersome application processes where concerns over probity in some sectors have led to application documents that are incomprehensible, so that those who can access insider knowledge, in relation to priorities and expected information, are unduly favoured.

- There is a cavalcade of pilot programs where success often creates too many problems.
- Time limited funding often results in programs where the funding is for such a short period of time that programs are not given the chance to prove themselves.
- After the lengthy application and selection process, the funding is often late, and the period of funding may be shortened further when a new priority or policy emerges.
- These practices pressure organisations funded by the Commonwealth to be opportunistic and funds focused, rather than being able to be client focused and develop truly effective programs that can be sustained over a sufficient length of time to produce worthwhile outcomes. Some organisations' core values appear to be eroding and their strategic directions being compromised through this process.
- There is asymmetric accountability, where stringent evidence based data is demanded of those receiving funding while the funder is largely unaccountable and appears self preoccupied and unresponsive to external influences.
- There are often mysterious policy review processes, inevitably delayed, often with capricious outcomes.
- There is a constant process of human resource musical chairs in Canberra where people constantly and quickly move positions, resulting in restricted knowledge and limited commitment to programs.
- The funding processes cultivate a private sector and NGOs that 'selects naturally' for those who tolerate programs that are structured to deliver poor outcomes as long as they are profitable.
- The funding processes and the types of programs they engender alienate, and often burn out, committed individuals, especially indigenous people, who are working on the ground to produce the types of outcomes the Commonwealth wants.

I have no recommendations about these but hope wiser minds may be able to address these issues.

Finally, to return to my area of expertise I would like to quote Alison Wunungmurra, who I am working with on a project to help Indigenous families and workers identify Conductive Hearing Loss among children in childcare. My experiences have led me to conclude that it is informed and committed Indigenous people like her, supported by systems that are directed from a community level, that can make a difference.

> *When I started talking about ear project, I started learning what Conductive Hearing Loss was and what happens if you have Conductive Hearing Loss. Conductive Hearing Loss is when sound can't get through properly. It makes it really hard for children to understand and learn.*
>
> *I learnt how important it is for Indigenous children to have the support, resources and education so it will help families understand issues around Conductive Hearing Loss.*

I was affected by Conductive Hearing Loss while I was growing up, it was really hard, but I managed to learn different skills to help me achieve through my education.

I was lucky that I had a mother that was a health worker and she knew the bigger picture. My mother set stepping stones for me to take towards my future, and that's why I am here today. I specially thank my mother and all the supports that I had through my school years.

This leads me to the second part of my speech. Indigenous children are struggling every day with this problem and not achieving the norms of education.

Conductive Hearing Loss was hidden in the shadows for nearly 30 years.

There have been a number of research studies done on Conductive Hearing Loss that shows children that were affected by it had some kind of problem coping in this world both as an adult and a child.

Children with hearing loss:

- *Don't have self-esteem.*
- *Don't have self-confident.*
- *Don't have self-respect.*
- *Their anti-social behaviours increase throughout their entire lives.*

This becomes a major problem in our society.

Now I really want you to imagine, I want you to put yourself in that classroom you're the little kid that can't hear properly what the teacher are saying.
Imagine the child in the classroom without hearing.
Without good hearing the child is ignored.
Without good hearing the child is scared, frustrated and angry.
And without good hearing everyday would be full of noise with no chance to listen.

The picture that I just painted for you is really a scary world and this is happening to our children all around the country.

That's enough in world without good hearing: now let's imagine the world with good hearing.
Imagine the world with good hearing.
In a world with good hearing people would be able to better themselves.
In a world with good hearing there would be nobody left embarrassed and shame in the classroom, a community would be full of pride and respect.
In a world with good hearing there would be only a few black people in jail.

In a world with good hearing there would be understanding.

Alison's words demonstrate how understanding about the issues around hearing loss can empower and motivate. Minimising adverse outcomes from hearing loss among Indigenous

people is possible if the motivation and leadership of Indigenous people is matched with a holistic, integrated appropriately resourced service delivery.

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