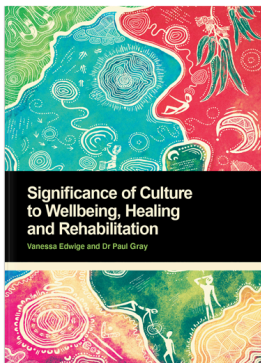


# JUDICIAL OFFICERS' BULLETIN

Published by the Judicial Commission of NSW

October 2021 | Volume 33 | No 9



## The significance of culture to wellbeing, healing and rehabilitation

Her Honour Judge Sophie Beckett\*

The following judicial note discusses an expert report of relevance to the sentencing of First Nations offenders before the criminal courts. The report, *Significance of culture to wellbeing, healing and rehabilitation*, was published in August 2021 by the *Bugmy Bar Book*, with the support of the Australian Bar Association.<sup>1</sup>

The report's authors are Vanessa Edwige, senior psychologist, and Dr Paul Gray, Associate Professor, UTS Jumbunna Institute for Indigenous Education and Research. Both have extensive experience as clinical psychologists and in policy roles. Both experts are directors of the Australian Indigenous Psychologists Association. The report is a combination of expert opinion and review of various national and international reports and inquiries, academic studies and literature relevant to the impact of prison and community programs and services on the recidivism rates of First Nations offenders within the criminal justice system. The report examines in part whether (and if so, how) connection to culture and involvement in cultural activities have the capacity to promote resilience and healing and thereby reduce recidivism. Additionally, the report considers the effectiveness of prison programs and identifies adverse outcomes associated with programs that lack cultural competence in treatment and assessment.

The report concludes that, for First Nations offenders, rehabilitation approaches that are culturally appropriate, trauma-informed and connected to family and community are more effective in building both individual and community resilience and, over time, can reduce recidivism. The report indicates that Indigenous-controlled, community-based rehabilitation programs, delivered by those who understand and acknowledge the experience of First Nations communities and the intergenerational transmission of trauma, are more effective in addressing the causes of criminal behaviour. In particular, programs and services that promote a strong Indigenous Australian cultural identity were found to build self-esteem in participants and encourage the development of pro-social relationships within community. Such programs and services were

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held to be better suited to assist an offender develop protective factors against re-offending by encouraging offenders to address their social and emotional wellbeing, recognise destructive behaviour, develop coping skills and emotional regulation, in addition to the formation of supportive relationships they could draw upon from within their own community. The report refers to evidence that indicates systems and programs that lack cultural competence and grounding may exacerbate existing challenges to individuals and perpetuate cycles of harm.

The report builds upon the resources provided by the *Bugmy* Bar Book intended to inform practitioners and the court about background matters relevant to the sentencing of a particular individual with reference to the application of the principles derived from the High Court case of *Bugmy v The Queen*.<sup>2</sup> The report is likely to be of assistance to the court when tendered in combination with the presentation of evidence relevant to the individual, most particularly as to the availability of culturally appropriate rehabilitation services or opportunities to participate in cultural activities and learning. Such evidence may assist a court to assess an individual offender's prospects of rehabilitation and their likelihood of re-offending in addition to determining the type and structure of the sentence to be imposed, including the shaping of effective conditions to optimise prospects of rehabilitation and the safety of the community.

Most recently, the report has been cited in the ACT Supreme Court decision of *R v BS-X*,<sup>3</sup> in respect to sentencing proceedings concerning a 15-year-old Wiradjuri male who had a diagnosis of complex developmental trauma. The Honourable Justice Loukas-Karlsson summarised a number of key aspects of the report relevant to sentencing determinations.<sup>4</sup>

The report examines rehabilitation and wellbeing for Aboriginal and Torres Strait Islander people. Further, the report examines the relationship between Aboriginal culture, healing, rehabilitation, and the impact of imprisonment. The report highlights the importance of culture to Aboriginal and Torres Strait Islander peoples and therefore the importance of culturally appropriate treatments to facilitate rehabilitation. The operation of culturally appropriate treatments are explored in relation to the criminal justice system. The report underlines that cultural identity is an important protective factor that promotes self-worth and therefore rehabilitation.

The report and an executive summary of its contents are readily accessible to all members of the legal profession and the judiciary directly on the Public Defenders website<sup>5</sup> or via the Judicial Information Research System (JIRS) and the Judicial Commission of NSW website.<sup>6</sup>

### Endnotes

- \* Judge of the District Court of NSW
- 1 V Edwige and P Gray, *Significance of culture to wellbeing, healing and rehabilitation*, *Bugmy* Bar Book Project Committee Expert Report, 2021 at [www.publicdefenders.nsw.gov.au/barbook](http://www.publicdefenders.nsw.gov.au/barbook), accessed 5/10/2021. The cover artwork, pictured, "Returning to Lore", is by Jeremy Worrall. Jeremy is a Ngarabal and Gomerai young man from Emmaville, NSW currently living on Gadigal land.
  - 2 (2013) 249 CLR 571.
  - 3 *R v BS-X* [2021] ACTSC 160.
  - 4 *Ibid* at [82].
  - 5 At [www.publicdefenders.nsw.gov.au/barbook](http://www.publicdefenders.nsw.gov.au/barbook), accessed 5/10/2021.
  - 6 At [www.judcom.nsw.gov.au/the-bar-book-project/](http://www.judcom.nsw.gov.au/the-bar-book-project/), accessed 5/10/2021.

## COVID-19 chapter updated in *Bugmy* Bar Book

The "COVID-19 Risks and Impacts for Prisoners and Communities" chapter of the *Bugmy* Bar Book was updated on 1 September 2021 and is now available on the Public Defenders website. This chapter collates published research, government and Parliamentary committee reports and academic commentary in relation to COVID-19 which may be relevant to sentence and bail proceedings, law reform and policy decisions.

The key updates to the chapter are:

- updating reported confirmed case numbers in NSW correctional centres, replacing previous references to media sources with published data from NSW Health — see pp 3–4
- inclusion of information from Justice Health regarding vaccination rates in NSW correctional centres — see p 4, para [19] and associated footnote
- inclusion of a reference to Dr Ellis' further psychiatric report to Legal Aid NSW dated 29 August 2021 — see p 7, para [34]
- inclusion of information from Youth Justice regarding a quarantine process and restrictions implemented in centres with identified positive COVID-19 cases — see p 8, para [40].