

Aboriginal Offender Rehabilitation Programs

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OVERVIEW

This chapter highlights the ongoing over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system and emphasises an urgent need for the development of appropriate responses to this problem. A key response to this issue is through the provision of culturally secure, relevant and effective rehabilitation programs for Aboriginal people within the criminal justice system. This chapter proposes an Aboriginal psychological approach to the development, implementation and delivery of culture-specific rehabilitation programs to reduce re-offending and Aboriginal people's contact with the criminal justice system. It will outline how such an approach, that is grounded in Aboriginal Law and culture, can also accommodate standard therapeutic techniques and approaches based on the 'what works' literature and the key principles for effective intervention outlined in the Risk, Needs and Responsivity Model.

INTRODUCTION

Since the landmark inquiry, the Royal Commission into Aboriginal Deaths in Custody (RCIADIC),¹ which provided the first comprehensive national audit of Aboriginal people's over-representation in the justice system, Aboriginal people have continued to experience disproportionately high levels of contact with the criminal justice system throughout Australia.¹ This is largely due to the impact of several key factors in influencing community and social and emotional wellbeing (SEWB) outcomes. These include factors such as:

- colonisation and ongoing oppression – Chapter 1 (Dudgeon and colleagues);
- the pervasive role of transgenerational trauma – Chapter 17 (Atkinson and colleagues) and socioeconomic circumstances – Chapter 6 (Zubrick and colleagues); and
- the impact of substance misuse on health and wellbeing in Aboriginal communities – Chapter 8 (Wilkes and colleagues).

These factors interact in complex ways and contribute to the over-representation of Aboriginal people in the criminal justice system.¹ Consequently, addressing over-representation requires systemic, community, family and individually focused responses.

Over-representation varies between each state and territory, with numbers ranging in some states from just under 40 per cent (Department of Corrective Services (DCS) 2012)² to 84 per cent (ABS, 2012).³ We intend to focus on the development of culture-specific offender rehabilitation programs which have been relatively neglected, largely due to a lack of recognition of Aboriginal knowledge bases as legitimate and valuable sources of information in this area, and a lack of commensurate resource allocation aimed at improving these circumstances.

RECOGNISING ABORIGINAL LAW AND CULTURE

Aboriginal people as Australia's First Nations Peoples have lived, experimented with different ways of living, made amendments based on the findings of these experiments, survived and thrived in this country for tens of thousands of years. As a result, they have developed sophisticated systems of community, family and kinship, Lawⁱ and relational systems. Aboriginal cultures already have a comprehensive and legitimate evidence-base of knowledge that may be used to inform prevention, early intervention, diversion and programmatic intervention with those who come into contact with the criminal justice system.

Unfortunately, there is a lack of recognition by the broader society of the value of Aboriginal Law and culture, and the critical importance of working within this framework in order to respond effectively to the rehabilitation needs of Aboriginal people within the criminal justice system. This oversight has led to a failure to appreciate the power of such an approach to support positive transformations within families and communities that reflects an Aboriginal way of life in which pro-social behaviour and being a contributing member of society is a fundamental part. Creating such pro-social and culturally strong environments is essential for supporting and reinforcing not only positive gains made by Aboriginal people through engaging in offender rehabilitation programs once they return to the families and communities, but also for changing the environments which have given rise to offending behaviour in the first instance—for reducing recidivism.

Secondly, we recognise that Aboriginal Law and culture has faced considerable pressures as a result of the processes of colonisation and ongoing oppression, and from rapid social and technological changes in contemporary society. These pressures have adversely impacted on the observance of Law and culture in a number of communities and families. Consequently, there is an urgent need for a re-statement and reinforcement of the important values, principles and guidelines for living that are a fundamental part of Aboriginal Law and culture. Adopting this approach provides cultural permission for Aboriginal people to challenge the status quo of chronic disadvantage and ongoing over-representation with the criminal justice system. It provides cultural permission for Aboriginal people to be all that they can be, and for the creation of culturally strong and secure families and communities.

Finally, we recognise that the existing criminal justice systems reflect the prevailing dominant western ideology and perspectives on crime, justice and community safety; it is not designed to meet the needs of Aboriginal Australians thereby reinforcing systemic inequalities within such systems.⁴ Addressing such systemic inequities remains a priority because, as noted previously, Aboriginal Australians continue to experience high and disproportionate rates of contact with criminal justice systems throughout Australia.^{5,6} This publication provides a comprehensive description of the over-representation of Aboriginal Australians in the criminal justice system and particularly those experiencing mental health issues, as further outlined in Chapter 10 (Heffernan and colleagues).

As a result, this chapter proposes that an Aboriginal psychological perspective which is grounded in Aboriginal and Torres Strait Islander Law and culture, and which incorporates an understanding of the processes of colonisation and oppression, and how these processes have impacted on observance of Law and culture, is critical for responding effectively to the rehabilitation needs of Aboriginal and Torres Strait Islander peoples within the criminal justice system.

i Law as opposed to Lore is in accord with the recommendations of Law Men and Women during the WA Customary Law Project; asserting the legitimacy and equivalence of Aboriginal Law.

COLONISATION, OPPRESSION AND OVER-REPRESENTATION

There are a number of key mechanisms involved in the process of colonisation that have been identified as having a negative impact on Aboriginal and Torres Strait Islander peoples.

Colonising Processes

Key mechanisms involved in the colonisation process:

- violence involving force, conquest invasion and occupation of territory;
- political exclusion;
- economic exploitation, sexual exploitation ;
- control of culture, including language, art, stereotyping, othering and denial of voice; and
- fragmentation of community and division.⁷

Arguably, a number of these mechanisms have continued into contemporary times and continue to characterise the ongoing relationship between Aboriginal and other Australians. It is only recently that governments and other controlling agents such as universities have begun to include Aboriginal voices in developing policies and programs and to incorporate culturally responsive initiatives in programs as outlined in Chapter 25 (Dudgeon and colleagues).

The pervasive legacy of colonisation and oppression characterised by the significant efforts to put pressure on Aboriginal people and their cultures, reinforces the critical need for self-determination within psychology and other governing disciplines that have key roles in addressing offending behaviour. This is critical in the establishment of culture-specific rehabilitation programs for Aboriginal Australians who have been incarcerated. Indeed, as noted by the RCIADIC and described in Chapter 1 (Dudgeon and colleagues) and Chapter 6 (Zubrick and colleagues):

Racism permeates and operates through expectations, through everyday behaviour and practices which, while they may not be intentionally racist, are racist in their effects.^{1(p156)}

Further, whilst significant resources continue to be invested in identifying what is going wrong in Aboriginal and Torres Strait Islander families and communities, little is being done to identify what is going right and why some individuals, families and communities are resilient in the face of ongoing oppression.^{8,9}

Indeed, Homel and colleagues noted that it was important to improve existing knowledge and understanding of risk in Aboriginal communities beyond identification of static risk or protective factors.⁹ Key elements which resonate with an Aboriginal perspective include developing an understanding of the importance of:

- time and timing, points of transition and change, and the ongoing interactions between individuals and their environments;
- the cumulative total and timing of adverse factors, their interactions (over time) with each other and with positive features of the environment and the life phases involved^{9(p5-6)}

This reflects the multiple, cumulative and intergenerational effects of Aboriginal people's negative historical experiences with the dominant culture, whilst also acknowledging that some individuals are more resilient than others despite those negative experiences. Many of these elements are discussed in Chapter 6 (Zubrick and colleagues). Identification of existing risks, strengths and resiliencies has a key role to play in the prevention of offending and rehabilitation in the criminal justice system.

CURRENT APPROACHES IN PSYCHOLOGICALLY-BASED OFFENDER REHABILITATION PROGRAMS

Criminal justice and correctional systems in Australia are based on the priority of ensuring community safety through the rehabilitation of offenders. A key focus is on helping people convicted of crimes to stop offending behaviours, to reduce the resultant harm caused within communities. In relation to offender rehabilitation programs, the principal approach is based on:

- western psychological explanations of offending,^{10, 11} and
- the ‘*what works*’ literature (e.g. Geandreau,¹² Lipsey,¹³ Losel¹⁴) that developed in response to Martinson’s¹⁵ controversial articles that *nothing works* and resulted in common principles for effective intervention identified and captured in the Risks Needs Responsivity (RNR) Model.¹⁶

Notably, there have been early attempts at investigating the applicability of such approaches for use with Indigenous populations.^{17, 18} Research in Australia highlights some key issues for practitioners around offending and re-offending amongst Aboriginal and Torres Strait Islander peoples in the criminal justice system¹⁹⁻²¹. These are risk assessment,²² needs assessment,²³ and establishing Aboriginal specific norms.²⁴

Aboriginal Offender Programs

The unacceptably high over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system suggests that there is an urgent need to review current approaches to psychologically-based offender rehabilitation programs based on Aboriginalising mainstream approaches and programs. Such ongoing over-representation raises pressing questions about the efficacy and cultural transferability of such approaches and programs based on the *what works* literature and the RNR Model.²⁵ This is because existing psychological theories ‘... are inherently linked to the cultural context in which they are developed’.^{26(p64)} Indigenous peoples around the world have challenged the western psychological evidence-base as being ethnocentric, raising questions about its applicability to Indigenous peoples.

What is required is the development of culture-specific psychological theories and theories of offending, to inform the development of suitable, culturally relevant offender rehabilitation programs. Hodgetts and colleagues have noted that the effectiveness of responses to the needs of Aboriginal Australians:

... has been limited, in part, because we have assumed certain things, such as a common understanding of the self, and that this common understanding is shared between psychologists and the people with whom we work. Sometimes it is, but more often than not understandings diverge across our own interpretive communities ... (d)ifferent cultures have different perspectives on the nature of individuals and groups and on the extent to which people and environments influence us. In fact, the very notion of a separation of individuals and environments is a particularly Western and historically recent one.^{7(p115)}

SOME PRELIMINARY ISSUES IN WORKING WITH ABORIGINAL OFFENDERS

It is important for those working with Aboriginal people within the criminal justice system to refrain from making judgements about the cultural identity of individuals by applying labels such as traditional or non-traditional to them. Such labelling serves to undermine the identity of individuals to whom the labels are applied and promotes making a number of assumptions about the cultural authenticity of those individuals. As a result, there is a significant risk of misunderstandings developing which may affect a worker’s ability to appropriately meet the needs of Aboriginal offenders in order to reduce their offending behaviour.

It is more appropriate and instructive to adopt a more holistic/ecological approach to support offender rehabilitation. This involves exploring the different areas of an individual's life and functioning such as where they grew up; what was their early life experiences; what is their level of literacy; what are their strengths and abilities; is there anything preventing them from participating in programs; and what is important to them culturally (key cultural learnings, obligations and responsibilities, values and principles).

Such an approach may assist mental health practitioners and others working within the criminal justice system to make an informed assessment about the criminogenic/non-criminogenic needs of the person, as well as their cultural strengths. Identification of the cultural strengths of a person may be used therapeutically in supporting a reduction in offending behaviour whilst also promoting the positive elements of Law and culture that promote ongoing desistance from such behaviour. These are just some of the areas of functioning that may need to be assessed. Further research will also assist in developing and validating a comprehensive culturally appropriate assessment package.

Aboriginal Psychology: Some Introductory Ideas

Aboriginal psychology is an emerging field in psychology which has grown considerably over the past 30 years.²⁷ There are possible lessons from this early work for the Aboriginal psychology field.²⁸ It is suggested that psychological knowledge should:

- be derived from within the culture;
- reflect local behaviours;
- be interpreted within a local frame of reference; and
- yield results that are locally relevant.²⁹

The need for such reorienting of psychology is something that is recognised amongst Aboriginal psychologists in Australia in the context of the experiences of colonisation and the imposition of a foreign culture and way of life on Aboriginal peoples.

Adopting an Aboriginal psychological approach to offender rehabilitation programs is a means of legitimising Aboriginal cultural knowledge so that new culturally grounded perspectives, concepts, theories and ideas may be included in this space.⁷

Indigenous psychologies may be described as an approach to psychology that emphasises content (i.e. meaning, values, and beliefs) and contexts (i.e. family, social, cultural, and ecological).³⁰ Importantly, culturally-based resources such as content and contexts ought to be explicitly incorporated into psychological research design, to improve the relevance of research findings with Aboriginal and Torres Strait Islander populations.^{27, 30}

Similarly, in Australia, there is a common call amongst Aboriginal and Torres Strait Islander peoples and practitioners for the use of cultural resources and frames of reference which includes:

- the evidence-base of knowledge developed over thousands of years of existence;
- the story of colonisation and oppression and its impact on observance of Law and culture; and
- Aboriginal theories and ways of knowing and understanding people's behaviour, so that more effective responses may be developed to address issues such as over-representation within the criminal justice system.³¹

Moreover, such an approach shifts the emphasis from identification of psychological deficits which are typically framed within western psychological perspectives, to emphasising cultural strengths and positive cultural perspectives.

A final issue is that problems such as offending behaviour within families and communities, is often linked to perceptions of breakdowns in observance of Law and culture.^{32,33} In order to address such offending behaviour, it is critical to identify where such perceived breakdowns are thought to occur so that these may be addressed. In other words, as we engage with the dominant society, in addressing Aboriginal contact with the criminal justice system, it is important to make explicit the implicit cultural knowledge held by Aboriginal and Torres Strait Islander peoples and practitioners. In her doctoral research on child sexual abuse (CSA) in Aboriginal communities, Hovane used an approach of peeling back the layers of the outward expressions of culture (e.g. customs, practices and traditions), to identify core cultural values and a set of principles that support the retention of those values that may be used in developing primary prevention, early intervention and tertiary responses to a range of issues in communities³⁴. This has important significant implications for what should be included in the development and implementation of offender rehabilitation.

Some Concepts: Culture, Practices, Customs and Traditions

The concept of culture broadly refers to the system of information that must be learnt by members, which sets out the way in which individuals within a particular group, society or country, interact with their social, physical and spiritual environment, using a particular frame of reference that is comprised of rules, regulations, mores and customs.³⁵ It involves core values, beliefs, assumptions and norms in defining a group's culture which are mutually interactive and ... *constitute the directional force behind human behaviour.*^{36(p89)} Importantly, the core values of a culture underpin the ideological system of a group.²⁹

The rehabilitation of Aboriginal offenders must begin from a sound understanding of Aboriginal and Torres Strait Islander Law and cultures and how they work (i.e. the dynamics within families and communities). In this context, communities may be described as being characterised by sets of shared values, practices and emotional ties or schemas. Such schemas have evolved over thousands of years of Aboriginal and Torres Strait Islander experimentation and despite the various pressures they have faced in the context of colonisation and oppression, core elements of these schemas remain today.³¹ There have however been some changes that are referred to in terms of the breakdowns in observance of Law and culture noted previously, and workers must possess a sound understanding of what these are and how they may be responded to in a culturally relevant and culturally safe way in correctional settings.

Practitioners need to have a clear understanding of terms such as practices, customs and traditions which are often used interchangeably. We separate practices and customs, from traditions for the purposes of clarity. Practices are described as '... the customary, habitual, or expected procedure or way of doing something'.³⁷ Customs are practices common to many or to a particular place or group of people.³⁵ Thus, practices and customs are conceptualised as reflecting everyday mundane activities, such as Aboriginal and Torres Strait Islander forms of greeting that seek to establish who a person is by asking questions such as: *Where are you from* (your country)? *Who's your mob* (your family)? Another key example is observance of family and kinship obligations to care for family/kin members.

A tradition is '... an inherited, established or customary pattern of thought, action or behaviour, such as a religious practice or a social custom ... which are usually representative of a person's culture'³⁷ ... which '... may be widely practiced and is usually passed down through generations'.³⁵ An Aboriginal tradition is conceptualised as operating at a higher-order from everyday practices. A key example is observance of and adherence to Aboriginal Law and ceremony.

A key reason for seeking such clarity is to address the problem of engaging inadequate and superficial or *cosmetic* attempts to *indigenise* western psychological theories and offender rehabilitation programs.²⁹ The development of Australian psychologies provides an appropriate space in which to address issues associated with the rehabilitation of Aboriginal offenders in a comprehensive, culturally secure, culturally relevant and effective manner.

An Aboriginal Psychological Approach

An Aboriginal psychological approach to the rehabilitation of Aboriginal offenders is grounded in Law and culture which provides the foundations on which to build offence-specific modules. In this context, Aboriginal Law was and continues to be viewed as providing the overarching guidelines for living in Aboriginal societies.³⁸ Aboriginal Law sets out the standards for behaviour that are expected of Aboriginal people and outlines how these may be expressed and regulated.

From this perspective, communities, families and individuals may be considered to have cultural schemas which provide localised frameworks or guidelines for living, and for undertaking other tasks such as interpreting various situations, and for solving problems. Such schemas have developed over time as a result of people's experiences and interpretations of those experiences. They are based on a set of shared values and beliefs, which provide legitimacy to cultural activities such as ceremonies, the behaviour of Law men and Law women, and patterns of functioning within the community that are consistent with those values. Over time they become self-imposed, stable and enduring.³⁹ These schemas are described below.

Community, Family and Individual Cultural Schemas (adapted from Hovane, 2011)³¹

1. Community cultural schemas may be viewed as being underpinned by a set of values and associated principles and practices. Some of the values that underpin Aboriginal community cultural schemas included a value for land, language, Law, Spirituality, community, and family and kinship. In Chapter 4, Gee and colleagues have emphasised similar values in terms of connectedness to land, culture, spirituality and ancestors, community, family, and physical and mental health and social and emotional wellbeing.

Key beliefs are associated with:

- spirituality and the presence of a higher power;
- that the ancestors are all-seeing and one has to be accountable for one's behaviour;
- that maintaining a balanced and harmonious life is important; and
- that if family, community and cultural obligations are fulfilled, then it is possible for one to live a good life and enjoy a sense of social and emotional wellbeing.

Associated with such values and beliefs are a set of core principles that assist in reinforcing and maintaining them. These are described in the 4Rs Cultural Principles Model of Respect, Reciprocity, Relationships and Responsibilities, and underpinning practices of work, rules, learning and training. In this model, the principles include being respectful, observing reciprocal obligations and responsibilities, observing and maintaining important relationships to land, culture family, kin and community, and being accountable and taking responsibility for one's behaviour.

Continued

Community, Family and Individual Cultural Schemas *(continued)*

The reinforcing practices are that:

- everyone works and helps out;
- everyone follows the rules and behaves themselves;
- everyone learns the lessons; and
- everyone is open to receiving the training that they need in order to survive and thrive physically, culturally and spiritually.

2. Family cultural schemas include a value for:

- family and kinship structures;
- observance of roles, obligations, responsibilities and relationships;
- for preserving the standing or reputation of the family within the community;
- respect; reciprocity; and
- for Elders and children.

Key beliefs are that each person has a role to play within the family and kinship system, for observing reciprocal obligations and responsibilities which are essential for preserving the health of the family and kinship system, and that family and kinships systems provide not only an enduring and fundamental source of support, nurturance and sites for learning, but they also provide a setting that is important for the regulation of the behaviour of family/kin members. The key principles outlined in the 4Rs Model and reinforcing practices help support the healthy functioning of the family schema.

In this approach, it is suggested that there are some fundamental universals in understanding human behaviour that translate across cultures, including that Aboriginal people have cognitions, emotions, behaviours, and are capable of personal agency. For instance, one has to be sufficiently motivated to engage with behavioural change strategies; and that building distress tolerance skills are a useful treatment target with Aboriginal offenders to support them to better deal with daily challenges, including high levels of stress, unresolved trauma, and loss and grief, which are common experiences in this population.⁴⁰ In other words, there are some useful points of connection between Aboriginal and non-Aboriginal psychologies. Similarly to standard offender treatment programs, treatment targets for rehabilitating Aboriginal offenders should include promoting:

- motivation to change offending behaviour and ability to tolerate strong uncomfortable feelings (distress tolerance) as noted above;
- emotional management skills;
- cognitive skills;
- communication skills;
- responsibility-taking;
- victim empathy;

- an understanding of individual pathways into offending;
- an understanding of offence-specific factors such as general violence, family violence, sexual violence, and CSA; and
- an understanding of the role of substance use in offending where appropriate.

This is not an exhaustive list and it is likely that additional treatment targets will be identified by others. Cultural and psychological knowledge, concepts, and strategies have been successfully incorporated into an *Aboriginal Men's Family Violence Program* developed by Hovane³¹ and offered to the WA Department of Corrective Services.

Care needs to be exercised in relation to including sessions on colonisation in rehabilitation programs. Rather, application of our understanding of these issues should inform what needs to be included in such programs, such as inclusion of a foundational cultural maintenance module; this should inform about how to work in a way that promotes self-determination—for example, where inmates are offered the opportunity to make pro-social choices about their behaviour.³¹

AN ABORIGINAL OFFENDER REHABILITATION MODEL

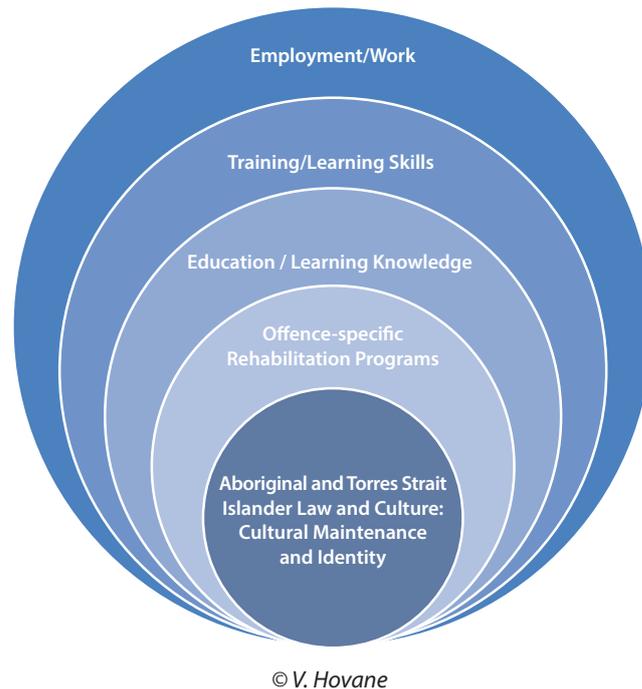
The following describes a model for the rehabilitation of Aboriginal offenders. It is based on a holistic worldview that recognises the interconnectedness of all living and inanimate things; and that each level is dynamically related which may involve interactions across a number of levels at the same time. This dynamic space of interactional potential is captured at the common point where all circles connect in the model.

This model has at its core Aboriginal Law and culture and the values, principles, practices and schemas outlined previously. This provides the space for a re-statement and reinforcement of appropriate standards of behaviour against which current offending behaviours may be examined, and through which opportunities for pro-social, culturally relevant behavioural change strategies may be identified.

In other words, this model is based on a broad set of Aboriginal cultural foundations which may be contextualised to suit specific local cultures, but importantly, it also makes explicit the behavioural standards expected under Aboriginal Law and culture. The re-orienting of offender rehabilitation programs necessitates identifying culturally appropriate ways of using standard therapeutic such as:

- art projects such as painting
- music, song, poetry
- storytelling and narrative approaches
- talking circles
- drama projects
- dance and movement
- traditional rituals and ceremonies
- meditation, prayer and other spiritual elements
- use of native language.⁴¹

Figure 30.1: Aboriginal Offender Rehabilitation: A Preliminary Model



Caution needs to be exercised when using some techniques such as ritual and ceremony in a culturally appropriate way, to ensure this use is not breaching the cultural protocols of participants. For example, meditation used for promoting distress tolerance via techniques such as progressive muscle relaxation needs to be re-framed into a cultural context, which assists with engagement, rapport-building, retention in rehabilitation, and arguably, the efficacy of programs. Hovane³¹ has reframed a number of standard treatment techniques, which are culturally and experientially relevant to Aboriginal offenders. This approach is strengths-based and promotes cultural appropriateness of such techniques.

In addition, the reframed standard treatment techniques are an intrinsic part of Aboriginal psychologies crucial to the rehabilitation of offenders. In this regard, it is critical that other practitioners have appropriate training in order to appropriately and effectively apply this model to Aboriginal offender rehabilitation and associated therapeutic techniques.

REFLECTIVE EXERCISES

1. Please discuss how the lived experience of Aboriginal people may impact on their contact with the criminal justice system?
2. What ways do you currently apply your knowledge and understanding of these relationships, as in question 1, to your everyday practice and, if applicable, to policy and program development?
3. Do you feel confident in applying this knowledge in your practice? How can you improve your confidence, if need be?
4. What can you do in your workplace to improve the cultural appropriateness and efficacy of the programs and services that are provided to Aboriginal and Torres Strait Islander peoples?

CONCLUSION

This chapter has suggested some preliminary ideas to support an Aboriginal psychological approach to the development of diversionary and rehabilitation programs for Aboriginal people. The model outlines how Aboriginal Law and culture and psychological concepts and techniques can be incorporated to more effectively respond to the rehabilitation needs of Aboriginal Australians within correctional settings. Importantly, it articulates a legitimate place for existing Aboriginal-led approaches to be included in the offender rehabilitation space. These include the Getting Back on Track: Aboriginal Men's Family Violence Program³¹ which has provided the foundations for this chapter, and other models showcased in this book such as the *Strong Spirit Strong Mind* Model by Casey (Chapter 26); the *Red Dust Healing* Program by Powell and colleagues (Chapter 27); and the Marumali Program by Peeters and colleagues (Chapter 29). Importantly these existing programs reflect many of the concepts outlined in this chapter relating to Aboriginal Law and culture, its principles articulated through the 4Rs model, and associated reinforcing practices. Adopting such an approach has the capacity to significantly reduce offending in the first instance by supporting pro-social transformations in families and communities, and subsequent rates of re-offending amongst Aboriginal people.

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