

The *Bugmy* Bar Book Project Panel Discussion

Judge Sophia Beckett, Vanessa Edwige, Sophie
Anderson, Lauren Stefanou & Crystal Triggs
Public Defenders Conference 2023

Web address:

publicdefenders.nsw.gov.au/barbook

- **Reliable source material**
- **Rigorous review process**
 - independent experts > committee > independent advisory panel
- **Stakeholders and endorsement**
 - ‘whole-of-justice’ support in NSW: PDs, DPP, ALS, Legal Aid, Judicial Commission, private profession, academics, judicial nominees from NSWSC, NSWDC, NSWLC, NTLC and ACTMC
 - Link to Bugmy Bar Book on the JIRS website for judicial officers

**Supports
presentation of
'material tending to
establish the relevant
background'**

**Provides an
evidence base about
known potential
impacts of having
such a background**

Resources

[Sentencing Tables](#)

The Bugmy Bar Book

[EAGP Resources](#)

[Sentencing Reform Resources](#)

The *Bugmy Bar Book*

The 'chapters' below summarise key research about the impacts of experiences of disadvantage, and strengths-based rehabilitation. While a key function of this project is to assist legal practitioners in the preparation and presentation of evidence to establish the application of the sentencing principles in *Bugmy v The Queen* (2013) 249 CLR 571, these materials may also have relevance in other contexts, including bail, mental health diversionary applications, civil practice areas, coronial inquests and other inquisitorial jurisdictions.

Index of Chapters

Fetal Alcohol Spectrum Disorders (FASD)	Exposure to Domestic and Family Violence
Incarceration of Parents and Caregivers	Interrupted School Attendance and Suspension
Out-of-Home Care	Childhood Sexual Abuse
Early Exposure to Alcohol and Other Drug Abuse	Stolen Generations and Descendants
Acquired Brain Injury	Hearing Impairment
Homelessness	Unemployment

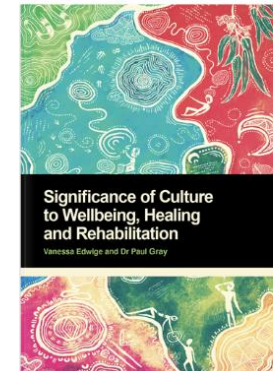
Upcoming Training & Development

Click [here](#) to view and register for upcoming presentations, training and CPD events.

New Article: Law Society Journal

An article by Legal and Program Managers, Lauren Stefanou and Crystal Triggs, has been published in the August issue of *LSJ* (online): [link](#).

Expert Report (2021)



The *Bugmy Bar Book* Project Committee is pleased to announce the publication of **Significance of Culture to Wellbeing, Healing and Rehabilitation (2021)**, a report by Vanessa Edwige, registered psychologist, and Dr Paul Gray, Associate Professor,

 [Download Chapter](#)

 [Executive Summary](#)

 [Case Commentary](#)

Note: This is one of three Bar Book chapters considering the specific impacts of different forms of child abuse and neglect. This chapter should be read in conjunction with:

- > [Childhood Sexual Abuse](#)
- > [Child Abuse and Neglect](#) (forthcoming)

Childhood Exposure to Domestic & Family Violence

Executive Summary

(Use links at left to download full chapter)

Domestic and family violence occurs across all age, socioeconomic and demographic groups, but predominantly affects women and children.¹

There is mounting empirical evidence of the effects of exposure to domestic and family violence on children's development, and a growing recognition of the ways these harms can manifest in intergenerational cycles of trauma, violence and disadvantage.²

Impacts on children's behaviour, schooling, cognitive development and physical and mental well-being include:

- impaired cognitive functioning;
- poorer academic outcomes;
- increased aggression;
- lack of emotional control;
- destructive behaviours;
- learning difficulties;
- depression and poor mental well-being;
- low self-esteem;
- low school attendance; and
- bullying.³

The cumulative effects of long-term exposure to violence might result in an inability to regulate emotion, and cognitive and behavioural developmental delays.⁴

There is evidence of a link between exposure to family violence in childhood and the intergenerational transmission of violence,⁵ as well as alcohol and drug abuse.⁶ Children whose formative years are

Childhood Exposure to Domestic and Family Violence

The purpose of this document is to inform the court of published research, government reports and inquiries, and academic commentary with respect to childhood exposure to domestic and family violence, and the effects this may have on a person's behaviour, development, and physical and mental well-being.

Introduction

- 1 Various bodies of research suggest that domestic and family violence is a major health and welfare issue in Australia and around the world. Studies indicate it occurs across all age, socioeconomic and demographic groups, but predominantly affects women and children.¹ It appears that women experiencing multiple forms of intersecting disadvantage, such as women with disabilities, Aboriginal and Torres Strait Islander women and women experiencing financial hardship are particularly at risk.²
- 2 Over the past two decades there has been mounting empirical evidence of the effects of exposure to domestic and family violence on children's development, and a growing recognition of the ways these harms can manifest in intergenerational cycles of trauma, violence and disadvantage.³ This is reflected in the recognition of exposure to domestic and family violence as a form of child abuse in state and territory statutory child protection frameworks,⁴ the *Family Law Act 1975* (Cth),⁵ the Australian Government's National Framework for Protecting Australia's Children 2009–2020,⁶ Recommendation Nine of The National Council's Plan for Australia to Reduce Violence against Women

¹ Council of Australian Governments, 'National Plan to End Violence against Women and Their Children' (Report, 2011) 1 ('National Plan').

² See, eg, National Plan 1; Australian Institute of Family Studies, 'Children's Exposure to Domestic and Family Violence: Key Issues and Responses' (2015) 1; Australian Institute of Health and Welfare, *Family, Domestic and Sexual Violence in Australia 2018* (2018) x, 86; Australian Institute of Criminology, 'Emerging Issues in Domestic Family Violence Research' (Research in Practice Report No 10, April 2010) 6.

³ Australian Institute of Family Studies, above n 2, 2.

⁴ See, eg, *Children and Young People Act 2008* (ACT) s 342; *Care and Protection of Children Act 2007* (NT) s 15(2)(c); *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 23(1)(d); *Family Violence Protection Act 2008* (Vic) s 5(1)(b).

⁵ Section 4(1) (definition of 'abuse' para (c)).

⁶ Council of Australian Governments, 'National Framework for Protecting Australia's Children 2009–2020' (April 2009). See also Australian Human Rights Commission, *Children's Rights Report 2015* (2015) 103 [4.2].

Chapter
(approx. 10 pages)

Childhood Exposure to Domestic and Family Violence

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The cumulative effects of long-term exposure to violence might result in an inability to regulate emotion, and cognitive and behavioural developmental delays.⁴

There is evidence of a link between exposure to family violence in childhood and the intergenerational transmission of violence,⁵ as well as alcohol and drug abuse.⁶ Children whose formative years are affected are vulnerable to developing long term mental health issues, which is itself a risk factor for both experiencing and perpetrating family violence.⁷

The potential relevance of evidence of childhood exposure to domestic and family violence in sentencing proceedings includes an assessment of *moral culpability*; moderating the weight to be given to *general deterrence*, and determining the weight to be given to *specific deterrence and protection of the community*.

¹ Council of Australian Governments, 'National Plan to End Violence against Women and Their Children' (2011) 1.

² Australian Institute of Family Studies, *Children's Exposure to Domestic and Family Violence: Key Issues and Responses* (December 2015) 2.

³ *Ibid*.

⁴ See Janet Phillips and Penny Vanderbroek, 'Domestic, Family and Sexual Violence in Australia: An Overview of the Issues' (Research Paper, Parliamentary Library, Parliament of Australia, 14 October 2014) 18, *Royal Commission into Family Violence (Final Report, March 2016)* vol 2, 111.

⁵ *Royal Commission into Family Violence (Final Report, March 2016)* vol 1, 37.

⁶ Janet Phillips and Penny Vanderbroek, 'Domestic, Family and Sexual Violence in Australia: An Overview of the Issues' (Research Paper, Parliamentary Library, Parliament of Australia, 14 October 2014) 7.

⁷ Royal Australian and New Zealand College of Psychiatrists, *Submission No 137 to Australian Human Rights Commission, Examination of Children Affected by Family Violence* (June 2015) 11.

Executive Summary
(1 page)

Northern Territory:

***The Queen v AT* (unreported, Supreme Court, NT, 26 October 1992, Thomas J)**

Property damage, arson – male, aged 16 – Aboriginal – hearing impairment

- Relatively severe hearing problem from age 3 with no access to services or treatment. Linguistic competence limited; trouble communicating and understanding what others say: at [47].
- Expert report: communication difficulties a major contributor to development of serious social and physiological problems; negative self-concept, low tolerance of frustration, high degree impulsiveness and limited social intelligence: at [48].
- Action to be taken to ensure whatever can be done in respect of hearing impairment. Substantial period of supervision proposed: at [50].

Victoria:

***Director of Public Prosecutions (DPP) (Cth) v Ramos* [2018] VSCA 290** (Whelan, Beach and Niall JJA)

Sexual offences by use of carriage service – hearing impairment – custody more difficult

- Severe hearing impediment, low IQ and learning difficulties from which he suffered as a result: at [11].
- Sentencing judge accepted that intellectual defects and hearing impediment are likely to make custody more difficult; that cognitive impairment and personality traits meant limited or no understanding of ramifications of offending conduct or insight into effect of conduct on victims. These factors provided 'insight or some explanation' for offending conduct: at [16].

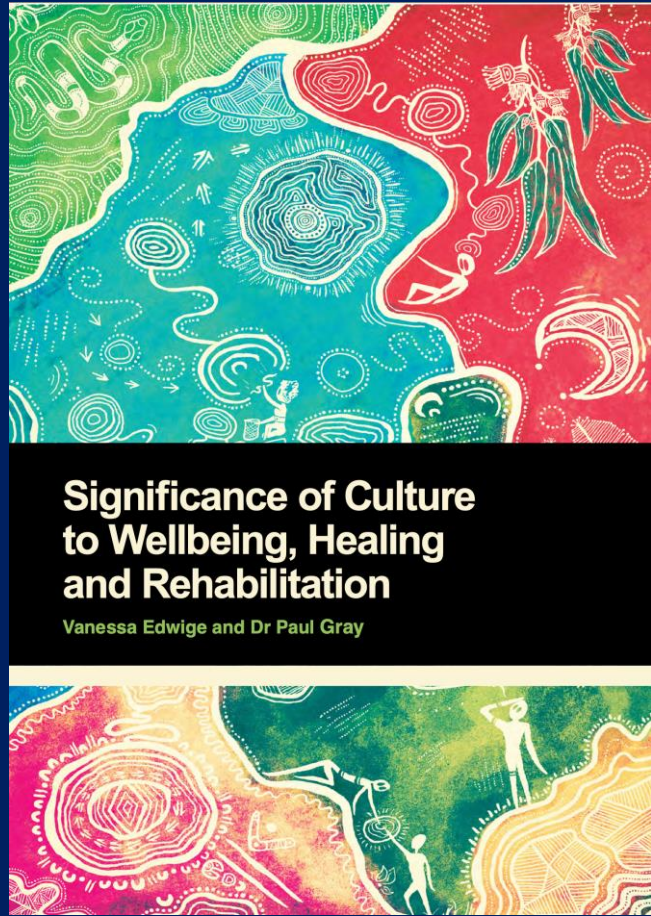
Western Australia:

***Hine v State of Western Australia* [2010] WASCA 216** (Mazza J; Pullin JA and Newnes J agreeing)

Child sexual offences – hearing impairment – impact on social development

- Hearing disability had resulted in a quite profound effect on offender's development with particular reference to his ability to engage socially; immature for age (aged 20-22): at [54], [70].

Case Summaries
(all jurisdictions)



**Significance of Culture
to Wellbeing, Healing
and Rehabilitation**

Vanessa Edwige and Dr Paul Gray

Vanessa Edwige and Dr Paul Gray

Significance of Culture to Wellbeing, Healing and Rehabilitation (Report, 2021)

Public Defenders

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[< back to the Bar Book](#)

Summary of Judgments Referring to the *Bugmy Bar Book*

Last updated: 23 November 2022

The table below presents a complete summary of all known published judgments of Australian courts referring to the *Bugmy Bar Book*.

[Click here to download in PDF format](#)

NSW Court of Criminal Appeal	
<p>Wood [2022] NSWCCA 84</p> <p>(Dhanji J, Macfarlan JA and Adamson J agreeing)</p>	<p>The Court below received Bugmy Bar Book material in relation to the co-accused on sentence:</p> <p>[27] The defence ... also relied on two chapters of the Bugmy Bar Book prepared by the Bugmy Bar Book Committee, titled "Childhood, Crime and Mental Health: Evidence from Australia"</p>

ACT Supreme Court

[BS-X \[2021\] ACTSC 160](#)

(Loukas-Karlsson J)

Motor vehicle and burglary offences – juvenile Aboriginal offender with severe childhood trauma – individual report supported by references to Bugmy Bar Book chapters and Significance of Culture to Wellbeing, Healing and Rehabilitation Report – application of Bugmy principles

- Psychological report described 15y old Wiradjuri man with complex developmental trauma – born to drug addicted 15y mother and removed into non-indigenous foster care at 12 months – exposed to mother’s drug use throughout life – experienced younger brother’s removal from mother’s care and placement with different carer due to mother’s drug use – early substance abuse – difficult schooling period – disconnection with cultural identity - multiple significant losses and grief – externalised grief, loss and anger through maladaptive techniques – profound trauma resulting in mental health and behavioural issues
- Psychological report supported by references to multiple **Bugmy Bar Book** chapters: t [56], [58], [62], [63]
- Further reference to **Significance of Culture to Wellbeing, Healing and Rehabilitation Report** with emphasis on importance of culturally appropriate treatment to facilitate rehabilitation – importance of individual rehabilitation to both individual and community protection: [81]-[85]
- Application of **Bugmy** principles; reference to comment in **Hoskins [2021] NSWCCA 165** that childhood deprivation does not need to be profound [81]-[85]

[Bennett \[2022\]](#)
[NSWDC 321](#)

(Beckett DCJ)

Sentencing for property offences – consideration of Wellbeing Report on importance of indigenous controlled organisations for rehabilitation – referenced chapter from Bugmy Bar Book on hearing impairment

- Aboriginal offender with significantly disadvantaged upbringing
- Referred to ***Significance of Culture to Wellbeing, Healing and Rehabilitation report*** and importance of culturally appropriate services in rehabilitation of indigenous offenders:

[34] What is of particular significance is that the offender has apparently only recently had the dual support of two Indigenous controlled organisations, apparently working closely in cooperation with Community Corrections. He has clear motivation to not reoffend or return to drugs for the purposes of maintaining a positive relationship with his daughter, with the assistance of Kari Corporation. Recently, *The Significance of Culture to Wellbeing, Healing and Rehabilitation report*, commissioned by the Bugmy Bar Book, has established the important role to be played by culturally appropriate services in the exercise of rehabilitating Indigenous offenders. The Report presents expert opinions, collates the findings of major reports, and draws from leading Indigenous scholarship to demonstrate the significance of culture for Aboriginal and Torres Strait Islander people in promoting healing and rehabilitation. With respect to sentencing proceedings in criminal matters, the Report outlines the significant benefits of culturally appropriate treatment and care that provides for a connection to culture, family and community, in achieving those outcomes. The report relevantly states as follows [emphasis added]:

[E]xisting data regarding the ongoing over-incarceration of Aboriginal and Torres Strait children and adults clearly demonstrates that ... current approaches are not adequate ... There are long-standing community concerns regarding ... [the] disproportionate impact on Aboriginal and Torres Strait Islander peoples and communities, including deaths in custody. The current evidence demonstrates that the 'status quo' approach is not effective or sustainable. ... this report highlights the significance of culture to Aboriginal and Torres Strait Islander peoples, and the importance of connecting to culture and culturally appropriate treatments to facilitate healing, including in a criminal justice setting. It highlights the importance of the social and emotional wellbeing framework for Aboriginal and Torres Strait Islander people, the need to understand this holistic world view, and the need to

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