

Section 6

Not just court – additional measures

*What other initiatives could help families to stop violence?
Do you think informal justice, mediation or conferencing could help?*

The final discussion themes emerged from the 1998 consultations for *User's Views* (Moore 1999). Participants in that review expressed lack of confidence in the effectiveness of the AVO scheme in responding to family violence and volunteered mediation as an alternative. Their proposal was counter to the prevailing wisdom of feminists and proponents of mediation, who regard conflicts or disputes involving violence as inappropriate for mediation.

Mediation was one of several themes discussed in a wider ranging discussion of violence reduction strategies. Discussion themes encouraged ideas at primary, secondary and tertiary levels of intervention, a typology used in health and social service planning. In this context primary level interventions refer to those that aim to prevent family violence, and are not focused on individual perpetrators or victims of family violence, but on changing the physical or social conditions identified as conducive to family violence. Secondary level interventions focus on those with experience of family violence, and aim to divert or deter them from further intervention. At the tertiary level are formal justice interventions, through which identified offenders are subject to court orders that restrict their activity or impose criminal sanctions that can include punitive and rehabilitative elements. Tertiary level interventions were the subject of the previous Section of this report that addressed formal justice responses. Suggestions for additional preventive measures covered all three levels of intervention. Violence prevention measures are considered here as primary interventions. Facilitated decision-making processes and therapeutic intervention could be positioned as both secondary and tertiary interventions.

Brief descriptions of the principles involved and exemplars of approaches introduced elsewhere prompted discussions of these themes. Brief descriptions were provided to assist participants' exploration of ideas about anti-violence interventions that might potentially be introduced in their communities.

This Section describes some principles identified by participants in the light of those espoused by Aboriginal advocates and policy makers. It summarises participants' ideas about violence reduction measures of prevention, facilitation processes and therapeutic intervention.

6.1 Key principles

Participants identified some key principles that should underpin the introduction of any reforms or new initiatives for preventing and responding to family violence within their communities. These were consistent with those adopted by the New South Wales AJAC:

The principles outlined in the Aboriginal Family Health Strategy (AFHS) do not decriminalise violence or decrease the level of responsibility (and criminal prosecutions) for offenders of

violence, but ensures a framework in which family violence can be holistically dealt with. It argues, consistently with the principles outlined by the Ministerial Council on Aboriginal and Torres Strait Islander Affairs (MCATSIA) that family violence responses should be guided by:

- Leadership provided by local Aboriginal communities;
- Victims and their families rights and safety are paramount;
- That offenders accept full responsibility for their violence;
- That communities unique and diverse needs are respected and that responses are flexible enough to deal with local and emerging needs of communities; and
- That responses are holistic and uphold spirituality and cultural application.

(Aboriginal Justice Advisory Council undated:4)

Participants also articulated some ideas that are similar to those subsequently described by Cunneen (2001) as common themes in evaluations of crime prevention programs in Indigenous communities, in Australia, New Zealand and Canada:

The common themes in evaluations of family violence programs include the need for holistic approaches, the utilisation of community development models which emphasise self-determination and community ownership, the provision of culturally sensitive treatment which respects traditional law and customs and involves existing structures of authority such as elders, including women. (Cunneen 2001:9)

i) Additional measures, not alternatives to formal justice responses

Discontents about current justice responses are not based in a desire to replace them, but to strengthen them and to provide additional preventive and remedial measures that could reduce the reliance on tertiary level justice responses that can result in criminal sanctions. Such measures could include the potential for early intervention in incidents of non-criminal family violence, and provide perpetrators with access to responses such as cultural healing and rehabilitation.

ii) Whole of community approaches

Just as participants viewed family violence as having negative impacts on all community members, they regarded it as important that efforts to confront family violence adopt a whole of community approach. This was particularly evident in discussions about prevention through public education that identified potential participants as women, men, children, adolescents and elders. Other approaches involved increasing the roles of community members, including men, who were respected elders or leaders in violence reduction efforts.

iii) Finding solutions in partnership with Aboriginal men

Men are a critical aspect of our community and women are out there leading the charge in all sorts of indigenous programs, and there are not enough men - they haven't yet found their place in modern society. ... The men in our community need to ... be a valued part of the community. (Wagga Wagga participant P1767-1790)

While this principle follows from whole of community approaches, its importance was repeatedly emphasised. A recurring theme was the need for additional responses to family violence that enable women to achieve safety without being required to end their relationship. They expressed a desire for partnerships with male leaders in

planning and implementing change at the community level and with male community and family members at the levels of the family and individual. The lack of confidence in current justice responses, and the leadership shown by Aboriginal women in exposing family violence and striving for better solutions is underpinned by a desire to unite and strengthen communities. This was apparent in many statements about women's reluctance to contribute to justice responses that could criminalise men and exclude them from their communities.

iv) Community owned and driven initiatives

And I think another important thing about programs - is that obviously they have to be owned and supported by people in the community. (Bourke participant P1497-1520)

In every discussion reference was made to the impacts of colonisation, dislocation, loss of culture and disempowerment.

... we've got about seven indigenous groups there.
Yes, I think there are the people who actually belonged, the original inhabitants of the land, and there are other people who have come in, settled. (Dubbo participant P3095-3103)

Contrasts between the cultures of these communities and those that have maintained elements of traditional culture make it important that the community leads, owns and drives approaches to change.

...it's got to come from within this community itself - - - so everybody agrees with it, and what can happen, but ... we're so white over this way - they call us "yellowfellas" from over that way (Western Australia) - that it's got to be done different, because there's no law here among the Kooris because everyone is different. (Wagga Wagga participant I1062-1150)

v) Government to consult, follow up and fund community initiatives

Because the social problems within the problems have emerged in the two hundred years of colonisation, participants argued for a long-term commitment from governments, with responses decided through a process of local consultation. This is in contrast to many past government efforts that have been marked by token consultation, if any, and by short-term political imperatives and pilot program funding.

6.2 Violence prevention

In their discussion of violence prevention approaches participants qualified suggestions with the view that any approach must address the complex contributions to family violence of underlying and situational factors. The preventive measures discussed here are proposed as elements of a multi-faceted approach that includes efforts to redress economic and social disadvantage within the communities. The contribution of alcohol abuse was considered by some to warrant particular efforts to redress this, and suggestions covered a range of interventions, including alcohol bans, night patrols and drying out centres. Similarly, discussions of gambling included the idea of eliminating gaming machines.

The main focus of discussions was primary level social prevention approaches.

There's a lot of services to deal with crisis, reactive services. But to be able to break that cycle, we really have to start looking beyond what we're doing and start to think of preventative stuff.

...We've done a lot of community education, and... more AVOs being taken out and more women are reporting violence than previously. People have said, "Oh, the figures have increased." In some ways that's a good sign, because it means that the community education - - - is actually resulting in people taking action. (Bourke participant P1403-1431)

Social prevention focuses on the family, cultural and social context of family violence, and is underpinned by ideas of community empowerment and cultural self-determination. The ideas discussed here focused on reducing the level of community tolerance of violence through community education, and redressing the underlying contributing factors of dispossession and loss of culture, through cultural healing.

Education – audience and approaches

Some believed that more education was needed to increase awareness of the harm done to individuals, families and the community. Children, women experiencing violence and male perpetrators were identified as the potential focus.

School education was one focus, with different views evident about the adequacy of the school curriculum in addressing children's educational needs through curriculum content that covers healthy lifestyles and relationships:

...peer support programs that are run out at the Uni, that the year 5s do. That's a 13-week program. ... it goes through bullying and how to socialise and all that sort of stuff. They've also got life ed, which I think is very good for the kids. They do that from kindergarten and it goes over a range of different subject areas. They go from child protection, healthy food, how to protect your body, all different sorts of programs that the kids do in kinder to year 6. (Wagga Wagga participant P74-83)

Others identified gaps in the curriculum or its failures to deliver it to children considered to be most at risk of becoming perpetrators or victims of family violence, including children supervising younger siblings and girls and young women.

.. it's not consistent. In some schools and some districts you'll find - they're very accepting of the information and they want to give information, but they're targeting the teenagers, and it needs to start with some of the younger kids. There are younger kids up at the primary school who are taking on a semi-adult role in the fact they're disciplining younger children than themselves, and ... they're doing the parenting by taking on the role that they visualize should be happening with them. - a 10-year-old looking after little Johnny that's two and a half, and if mum smacks him when he does the wrong thing, (he thinks) "I'll give him a slap when he does the wrong thing." ... these are kids that are left supervising children - nine-year-olds looking after two-year-old, (Bourke participant P1468-1495)

...some of this stuff should be talked about in the parenting – (education) for young girls or ones that are married and having kids? There should be something in there with that, as far as their legal rights: (Wagga Wagga participant P1394-1410)

Others expressed concern over the lack of reinforcement of the children's learning by adults in their families and communities.

It's the kids that get up in the morning and have to cope with (the consequences of family violence) and then go to school and be told anti-drug and anti-alcohol campaigns. (They) are going there, getting all the good information to help them, but they're going home to a

situation that they can't possibly change. The only people that can change that are the adults in that house. (Wagga Wagga participant P160-166)

A brief description of a program implemented in Derby in Western Australia (Blagg 1999) was offered to provide a focus for discussion about the need for reinforcement of school learning. The description included the program focus of adolescents and their families; being based on understandings of the intergenerational nature of the cycle of violence, violence and aggression as learned behaviour and cultures of masculinity being able to generate and sustain violence; and incorporating both school curriculum and community focused activities, the latter involving youth and family in culturally respectful and validating camps and workshops. Additional suggestions for reinforcing school curriculum included recruiting and training Aboriginal males who could be positive role models, acting as mentors to adolescent males identified as at risk of victimisation or becoming perpetrators of violence.

Adults were identified as being largely neglected in education about family violence:

You talk a lot about school children and young kids. That's fine, but ... I think we're putting too much emphasis on educating the young kids to do the right thing, which they're already doing now, but we've got to really start to target the older people. (Wagga Wagga participant P425-434)

Educational strategies that were canvassed as having the potential to reach the whole community were letter box drops of plain English information brochures and media campaigns.

.. to do something on television, they need to show the consequences, - it needs to be hard-hitting. Like that one the police put out a few years ago ... you see that about once every two or three years ... (Dubbo participant P1865-1881)

...the TV commercials they show about women being bashed and knocked around. I noticed that men that (are violent) don't look at those commercials. ... they should have more advertising on TV about that and what - what can be done. More advertising, that will help. (Wagga Wagga participant I692-698).

One strategy implemented at Bourke involved social service agencies obtaining the consent of a sporting club to place on the playing field billboards with slogans that oppose the use of violence. The club is also said to support this initiative by encouraging team members to identify and exclude male players they know to have perpetrated family violence.

Women's groups were identified as having the potential to break down social isolation and low self-esteem that often prevents women from initiating protective action. Participants can access information and support needed to seek protection.

I think you also need to educate the women, to let them know that - you don't have to put up with that kind of behaviour. It's not your fault. Women need to - to have that self-esteem put back into them, (Bourke participant I 1232-1245)

... you get that low that you think, "Oh, well, that's all I can get - like I deserve that man." (Wagga Wagga participant P1627-1628)

You need that support from each other to say, "Well, I did; I left that situation. You can do it too." (Wagga Wagga participant I1554-1557)

... the women's group gives them that strength to stand up and say, "Well, I don't have to put up with this." (Wagga Wagga participant I1573-1577)

The more women you talk to, that ripple effect will go out. (Wagga Wagga participant P1168-1174)

There was a range of ideas and experience amongst participants that might usefully inform the development of women's groups that provide support or afford opportunities to comment on current responses to family violence and potential improvements.

Give them a bit of empowerment.

Why don't you do that through Riverina Medical? Or the Legal Aid service. (Wagga Wagga participant P1207-1223)

And ... if you were looking at setting up ... a group or something you'd be ... calling it Women's and Children's Wellbeing or something, - if you put domestic violence on it, the partner's not going to let them go. ... And even just to go to a wellbeing day, because she's going to a woman's group - she's facing the abuse when she gets home, (Dubbo participant P1633-1664)

.. a program run by South-West Sydney started four years ago a - Violence Against Women initiative. On a yearly basis they take women from the community, to large camps (where) they have workshops about their lives and can choose what to get involved in.

It's called Biyani. The Aboriginal Corporation are a sponsor as well. That's a La Perouse word. It essentially means "women healing women". ... They are using that for women in their community who are, amongst other things, in domestic violence situations. They get together and they talk about it. (Wagga Wagga participant P1465-1492)

... another good thing that's coming up is an Aboriginal women's group (in Dubbo) on the 31st on Saturday night, - we're going to be discussing those issues and how to help - It's just anybody, not just workers. (Dubbo participant P444-450)

We're having one in our region as well, in Narromine.

...looking at community responses to solving family violence. - it's a community initiative, where the community looks at what they have, what they don't have, and how within their existing structures they can cover what they don't have. Empowering the community. (Dubbo participant P2915-2930)

Educational groups that included men and women are also considered important in forming partnerships between men and women to increase awareness of the impact of family violence on children and the intergenerational cycle of violence:

But, we have women's workshops, they have men's workshops. Why can't they have a joint workshop to focus on that issue about family violence and how it's inherited by the kids that can see it, they're growing up and they're going to keep doing it and keep passing it on down the line. Why can't something - be joint - together, so the men and the women are both there. (Bourke participant P1191-1201)

Cultural healing

Suggestions for mixed groups and male-specific groups typically focused on the loss of culture and the violence prevention potential of strategies that rebuild positive and shared cultural identity, values, practices, and leadership through cultural healing.

... we're becoming so white we've forgotten how important the family is, and maybe we should be taught that again. Why is it that you need to have a family? You have to have respect first. If you don't have respect then you can't support one another, even in a family situation. (Wagga Wagga participant P1714-1718)

In (tribal) times, if you had a problem you always went to the elders and you - you sat around in a circle with the women's business or the men's business and discussed your problems, and they would help solve it. That sort of thing doesn't happen any more, so communication has gone too. (Wagga Wagga participant P1733-1739)

... there needs to be a whole range of healing programs for indigenous communities. You look at the post-traumatic stress in communities and (it's) absolutely amazing, and ... - "Oh, yeah, you know, we can all be colonised and stolen and taken away, and then we can just all get on with it after that."

Yeah, you can be on the bottom rung of the ladder in the social structure and you (are expected to) still just get on with it, and still just go and get a job, We're not to have feelings; ... That's what it boils down to. (Wagga Wagga participant P1430-1464)

6.3 Court connected facilitated decision making

Since the 1970's there has emerged a number of additional approaches to formal court proceedings for resolving disputes and conflicts that come within civil or criminal proceedings. Those that emerged in the 1970s within civil jurisdictions are typically referred to as 'alternative dispute resolution' processes, and those that emerged in the late 1980s within criminal jurisdictions are increasingly being referred to as 'restorative justice' models. The two paradigms are informed by unique theories, principles and practices, and each is reflected in several different models. What they share is an appreciation that the formal justice response to legal disputes and conflicts can have high costs for the parties in terms of time, money, emotions and ongoing relationships. In contrast to formal court proceedings, both paradigms restore ownership of the conflict to the parties by increasing their participation in the process and decisions about the outcome. For the purposes of these discussions the term 'facilitation' is used to describe this body of approaches that is increasingly being drawn upon to provide additional ways to formal court proceedings for resolving legal conflicts.

In this discussion, the aim was to revisit ideas about the potential for mediation to be used as an additional mechanism to court in resolving family violence, and to extend the discussion to incorporate a wider range of processes. The models discussed were mediation and restorative justice, the latter including both conferencing and circle sentencing. The short and exploratory nature of the discussion is again emphasised.

Mediation

The New South Wales Attorney-General's Department administers Community Justice Centres (CJC) that provide a referral mechanism for Magistrates of the Local Court who believe that the parties to a dispute could do better through an alternative process to adversarial court proceedings. CJsCs operate from administrative centres in several metropolitan and densely populated rural locations, providing services to rural and remote towns on a needs basis. A sign on the door of the tearoom at Bourke Court House reflected its past life as a CJC office. Some participants were familiar with mediation through experience of its use in legal disputes and other contexts, such as school conflicts.

Given the many and varied definitions and models of mediation that have been adopted in legal and non legal contexts, the facilitator opened discussion with the following description of the mediation process:

Facilitator: Mediation involves the people who are in conflict coming together, face to face, at a meeting with a third person who is not involved, a neutral facilitator. The facilitator helps them to talk about why they are in conflict and reach an agreement about how to resolve that conflict now and in the future. For example, they do that in the Family Law Court over property settlements. Then they go back to court having agreed, through mediation, on an outcome.

In some groups, there was also the opportunity to describe an example from Western Australia in the following terms:

Facilitator: The idea of using mediation to resolve disputes between individuals, families and organizations was taken up by the Nyungar community in Western Australia, which started an alternative dispute resolution service. They experienced a lot of feuding between families and within families, and wanted a dispute resolution service that enabled them to resolve it out of court. After it was successful in that community they introduced it for the whole of Western Australia, and now it's located in the Attorney-General's Department. Descriptions of the approach say they try to empower families to take responsibility for the agreement. They have developed a way of doing mediation and making agreements that fit within their culture, and that don't impose solutions but aim to get the participants to identify ways to stop the fighting. (Mugford & Nelson 1996)

Participants raised the following issues around the use of mediation in family violence matters:

- i) Not appropriate for use in family conflicts that have resulted in physical and criminal violence.

...I always compare an alcoholic with domestic violence, ... to me it's like just saying to an alcoholic, "Don't drink that," or to this person ... who bashes his wife ... it's very difficult and you'd have to really look at the target group and actually get (the perpetrator) to come along, because they won't admit. They'll sort of deny it. (Wagga Wagga participant P1302-1320)

- ii) There is a risk that perpetrators will reach agreement around the table and continue the abusive/violent behaviour.

... domestic violence is actually excluded from mediation but personal violence will go for mediation. The problem with domestic violence is that you'll get undertakings and agreements made between the parties, and if they breach them they've really got to start the whole process all over again. In the meantime, of course, there's no actual protection for the parties. (Wagga Wagga participant P1325-1335)

- iii) It should only be considered upon request of women victims of family violence.

I think if a woman is requesting it, yes, but she would need a lot of support ... to remain an equal partner in that mediation. (Dubbo participant P2542-2559)

- iv) The process would have to include specific measures to strive for an equal balance of power for participation by perpetrators and victims of family

violence, such as a neutral setting, victim support and risk of reprisal from perpetrator supporters.

And, don't forget, it's an uneven field already because she's down, she's battered - and he's got control, (Dubbo participant P2560-2568)

And - say, if it happened in Timbuktu, then they'd need to go to the next major town and have it there, because - -if he's taken out, away from his territory, he hasn't got his family and his mates and all the other support system there - because she's already down there and she's taken there, ... we need to be somewhere where she can put her head up and say, "This is what I want." (Dubbo participant P2590-2608)

- v) The process might only be capable of addressing the precipitating factors and leave unaddressed the wider situational factors that contribute to family violence.

... you can't deal with one problem without dealing with the other issues like unemployment, alcohol and substance, health and housing. Because - all those sort of things - they're linked (Wagga Wagga participant P1352-1360)

- vi) There is potential for it to be used in selected cases of say, non-criminal violence and early intervention for conduct that is not repeated or entrenched.

Yes, it's something that's got to be worked towards.
And it might not be something you use in every situation, only in some situations?
(Dubbo participant P2569-2570)

- a mediation would probably be a good one to start for first offenders, before they're chronic, they've been in that situation type - for years and years, but I think - and especially with the young ones ... - I mean, I think they've probably still got a lot of other issues as well, but mediation might at least be an alternative, rather than say, "Well, this is your first offence. I'll put you on a bond." (Bourke participant P1010-1078)

- vii) Referrals from the court could provide an alternative to criminalisation.

... that mediation process should be put in place with the courts to refer the victim and the defendant - back into mediation, to solve their problems.
That would save him going to gaol.
Just that long-term problem of - deaths in custody - - (Bourke participant P1010-1015)

Restorative justice – conferencing and circle sentencing

Facilitation approaches introduced within juvenile and adult criminal jurisdictions include victim offender mediation and restorative justice conferencing. Restorative justice has been broadly defined as:

... a process where stakeholders affected by an injustice have an opportunity to communicate about the consequences of the injustice and what is to be done to right the wrong (Strang & Braithwaite 2002:4)

Restorative justice models differ from mediation in their focus on offender accountability and the participation in the process of the communities of concern. The emphasis on offender accountability involves allowing the victim to explain the harm done by the act in the presence of supporters of both parties and others within their community of concern. Together, participants devise an outcome that takes into account the restoration of the victim's sense of safety. Central to the approach is the

objective of sanctioning the offender's act, not the person, and devising an outcome through which the offender can demonstrate that they have accepted responsibility for their harmful conduct. Two significant differences between restorative approaches and criminal proceedings at court are the opportunity it affords victims to participate and offenders to be reintegrated into their community rather than stigmatised and cast out. Braithwaite laid the theoretical foundations (1989) and the application of restorative justice to family violence is the subject of published conference proceedings (Strang & Braithwaite 2002).

The scope of these discussions limited the information that could be exchanged and discussed. Brief and necessarily incomplete descriptions of youth justice conferencing and sentencing circles were used as discussion prompts. The limited time precluded a full discussion of the paradigm and models, which were introduced as follows:

Facilitator: Another new approach in the justice system is restorative justice. They are structured differently to victim offender mediation where you have a victim, an offender and a neutral facilitator who helps them to reach an agreement. Restorative justice conferences also have a neutral facilitator, but the victim and the offender both have supporters who are concerned about those people as well as community people who have been affected or have something to contribute, or widely respected people such as community leaders or elders. At the conference they show the offender the harm that they've done, by having them listen to the story of what it was like for that victim. Then, as a group, they all decide what needs to happen as an outcome. An example is youth justice conferencing that provides an opportunity for the young person to come face to face with their victim. The neutral person, together with the two people in conflict, the victim and the offender, come to a meeting or conference. At the conference are the offender with support people; the victim with support people; and other people who were affected by whatever happened that caused the problem.

At one group a participant with recent experience of youth justice conferencing described it as follows:

.. last week I went to my first (youth justice conference).
The offender and his mother turned up, and the victim - because he had nine separate charges on three different (properties), but only one victim turned up, the other victims were from out of town. I was the support person - or the monitor - (of) the process.
And the offender makes a verbal apology to the victim, and the victim says whether they accept it or not - or they can say, "Right, well, because you stole --" - just say you stole something from me, and it was worth so much money. "--you could come and mow my lawn for a month". That could happen, or - the kid was referred back to school, on a school program for Aboriginal kids, and counselling was involved. And because the mother didn't know about any of the offences, she was so shocked and ashamed of what he did to the victim that she nearly broke down and cried, - - -
The outcome plan is the decision made by the victim and the convenor and with agreement of the offender, because there's also a police officer there that reads out the charges and the facts as well, to say what they did wrong.
And that the outcome plan, it goes back to the court and if they approve they tick and say, "Yes, well, he can" - you know, "he or she can go and do this." (Bourke participant I1688-1797)

Circle sentencing was described as follows:

Facilitator: Circle sentencing is used in Canadian Indigenous communities, and is also based on the idea of restorative justice. It is used in sentencing for offenders found guilty of serious and even violent offences. After a finding of guilt the Judge conducts what is called a sentencing circle, in which the offender and victim, their supporters and other community members participate. The Judge goes around the circle and asks, "Well, how has this affected

you?" and "What do you think should happen?" In circle sentencing the person is made accountable for their behaviour to the people directly and indirectly affected, who contribute to the sentencing process and suggest outcomes. The process makes it possible for the community to contribute to the sentencing process and to consider alternatives to removing people from the community through imprisonment.

One participant embraced the idea on the grounds that it allowed all parties to participate and an outcome that could address the situational factors identified as contributing to family violence.

I think it'd be good, like the victim and the complainant - like for the people to get together and that the victim - - -

You never know, maybe it will work with some people. It's always good, for the person to know what they've done wrong, and maybe like that could change that person.

An (outcome could be that) they should go to a drying-out centre, somewhere they can't drink for so long. I think that should be done because they usually turn around and say, "Oh, I'm sorry, babe. I was drunk. I don't remember."

They should be sent to one of those places where they can stop drinking.

It would be good to give it a try - I think. (Wagga Wagga participant I1180-1222)

Cultural and community issues

Descriptions by the facilitator or participants, of approaches used by Indigenous communities in Western Australia, Northern Territory and Canada generated discussion about their cultural relevance and implications for race relations.

Some features of facilitation approaches were regarded as in keeping with traditional cultural practices. Two such features were said to be the increased participation of the parties to a conflict, their supporters and other community members, and the potential to have respected leaders or elders facilitate the processes. However, participants identified differences between their communities and others that they regarded as maintaining some traditional practices:

Is that done by the elders of the community or select people in the community? I think those sorts of ideas are ... where elders have the power in their own communities to come together and resolve some family issues, and domestic violence crimes is one of them.

...there is not a great gathering of elders in this area, and a lot of people come from a lot of different areas where they don't... I think over in Western Australia, they do respect their people, their older people, or they'll get a spear in them anyhow. But with the Wagga mob I think it would be different, unless we get some very strong people together and get this community going. (Wagga Wagga participant I1062-1142)

That would be like similar to the Aboriginal law way back, you know, when the elders were really ruling the tribes and the people, but now it's - I don't know whether it would work among the Kooris here now. We're too different. All of us people are from different places. (Wagga Wagga participant I1164-1180)

I would like to think that it would (work here), but there's too much family - opposing families - like there's too many factions. (Bourke participant P1306-1316)

The following comment was also made on the potential negative impact on race relations of establishing a separate system of justice for the Aboriginal community:

I believe that if that form of justice for serious crime was (introduced) for the Aboriginal community in Bourke, you're going to have backlash. You know, - "Oh, here they go, now they can murder people and they're judged by their own." And, "Oh, they can get away with"

- I mean, a lot of the white community believe that Aboriginals get it soft in the justice system. - and I think something like that would just cause that much division - - - I mean, there is already division in that they see that there's a law for them and a law for us, type of thing. (Bourke participant P1350-1378)

Court connected processes, agreements and outcomes

Discussions about facilitated decision making approaches revealed that an incentive for its introduction was the opportunity it might afford women to inform a male partner about the harm they have caused, and to obtain their commitment to rehabilitation.

We have women who have been in relationships, got out of those relationships and grown, but what we need as well is some women who have been in those relationships and seen the man change to show that – Well, I'm one of them. (Bourke participant BI 1806-1803)

Facilitation approaches are sometimes designed with the intention of diverting and deterring perpetrators of family violence from legal processes that directly or indirectly result in criminalisation. There was scepticism regarding the ability of facilitation processes, agreements and outcomes to provide future protection from violence. Supporters regarded their potential as lying in their selective use, and the opportunity they might afford for agreements and outcomes to include additional interventions that could be included in a court order. Criteria for selecting appropriate cases would include those in which the harmful conduct is not repeated or entrenched, no criminal offence has occurred, and the victim seeks mediation. Agreements or outcomes might commit both parties to participate in counselling, or the perpetrator in rehabilitation. The potential value of these processes was considered to be their removal from the formal adversarial court process and connection with court by way of court referral and endorsement of agreements or outcomes. The legal status of orders made in this way can provide for monitoring and breach action through the court.

One idea was to extend this approach to civil AVO proceedings as a secondary level intervention that aims to divert or deter perpetrators of non-criminal violence from future violence and criminalisation.

The ideas discussed here were not about rejecting formal justice responses to family violence, but adding informal justice processes to existing responses. In this sense they accorded with the similarly cautious views of restorative justice proponents and academics:

...it might be a better world if we could have enough impact on the conditions of domination to make both the healing of the circle and the justice of the courthouse choices family violence victims are realistically able to make more often than now. (Strang & Braithwaite 2002:22)

6.4 Anti-violence interventions

The introduction of facilitated decision making could provide a mechanism to negotiate conditions that might be included in court orders that commit both parties to counselling, or the perpetrator to rehabilitation. The implications for both are the provision of culturally relevant services.

Counselling

I spoke to a few women over the past, and they said - when they go the refuge, all (the workers) want to do is take (the women) out of town, you know, to get away from the bloke, but I don't find that as a solution - if we had a DV counsellor here it could be ordered by the court with AVOs that - both of them, and the kids go to sessions and get help.

... you take your partner along with you to a counsellor so, yes, they could discuss all the problems with your partner, because you're there together. (Bourke participant I561-572)

... we have to find a DV person that'll come from Dubbo here on a regular basis, like - two days a month, and once the Magistrate knows that someone is available, well, yeah, he said he'll refer them, no problems at all.

- part of the AVO process.

But we need that counsellor here in place before (the Magistrate) will start referring.

(The Magistrate) said - they agree with that, they'd rather see (alternatives) to sending the bloke to gaol, sending him to anger management, drug and alcohol (rehabilitation), whereas if it's a family thing, they should see a counsellor together. (Bourke participant P1640-1641)

Perpetrator rehabilitation

Participants wanted more opportunities for violent males to participate in anti-violence programs. The discussion focused on accessing those programs through judicial decisions made in formal justice proceedings. The main focus was on anti-violence programs as tertiary level interventions, being the outcome of sentencing decisions that result from findings of guilt in criminal prosecutions of family violence. They also raised the potential for anti-violence programs to be positioned as secondary level interventions, with the aim of diverting or deterring men summonsed in civil AVO proceedings.

i) Voluntary or mandatory participation

Participants discussed their mistrust of the motivations of perpetrators who agreed to participate in anti-violence programs when before court on a family violence matter. There was concern that perpetrators who use the programs as a strategy to obtain lenience by a magistrate might not participate or complete the program.

...when it goes beyond that first (AVO) to the criminal offence, and the (courts) start referring (the perpetrators) for counselling and anger management, the guys will turn up once or twice to suss it out because they've been told they've got to go, then you never see them any more, so the woman's at risk again. (Dubbo participant P1884-1891)

They've got to be ordered by the court, and "If you don't turn up we're going to come down and pick up the body." That's the only way because they'll say, "No, I'm not going there. I'm too strong. I don't need to go there." See, they've got a lot of pride too, black men. (Wagga Wagga participant I1524-158)

There was also scepticism about the likelihood of a court mandated requirement to participate in an anti-violence program resulting in change in the perpetrator's behaviour.

I think it depends on the person, if they really want to change or not. If you want to change you will change. If you don't want to, well, that's part of you. (Wagga Wagga participant I1534-1545)

...if you want to change your behaviour, you should be able to change it yourself, rather than the court telling you to do it.

The decision should come from the perpetrator.

But there's not many people about like that, there's not many - - -

And that's why Duluth and Hamilton and all those (overseas programs) have less than a five per cent success rate in reducing violent behaviour – it's because they're mandated, whereas - I mean, I've been working in this job now for nearly four years, and three men have been genuinely horrified at what they've done, and they've wanted to find somewhere to go. That's only three. (Dubbo participant P2681-2724)

When the violence has resulted in a finding of guilt in criminal proceedings the sentencing magistrate has discretion to make an order that requires the offender to participate in an anti-violence program. This could be a condition of a long remand, a good behaviour bond, a probation order or a suspended sentence. The following practitioner contribution describes this process and the role of the probation officer employed with the New South Wales Department of Corrective Services in delivering programs and notifying the court of breaches of such orders:

(The Magistrate) said when they come up for assault he will sentence them and say, "I sentence you to six months - - but I will suspend that sentence on the condition that you report to Probation and Parole, that you do the 10-week domestic violence awareness course." And, "If you fail to do that course, you are automatically going to gaol for six months". If they do not turn up, Probation and Parole breaches them. ...the women will report breaches of AVO if they think that he's going to have to go and get some help, and made to go. And also because she no longer then breaches him, Probation and Parole do - so she is then one step removed from - from the problem. If he gets sent to gaol she can turn around and say, "No, I never sent you to gaol. You had a choice. You could change your behaviour, or you could go to gaol. And you wouldn't go to the course, so you went to gaol, and that's your problem." ...I know what's going to happen when it first comes up. They're all going to say, "Oh, yeah, I'll go and do the DV course" and then go one day, and not turn up (after that), but once a couple of them are breached for not turning up and automatically they're given that six-month sentence - - the word will get out to the community and then they'll choose ... (Bourke participant P1224-1292)

ii) Mandatory orders and civil AVO proceedings

A practitioner also canvassed the idea of new legal provisions to allow magistrates to order mandatory participation in anti-violence programs as a condition of an ADVO.

...part of the AVO for the man ... should be a program set up where they go for two or three weeks and after that they go to gaol - part of the AVO. ...you do this course...and if they don't do it they go to gaol, first time. (Wagga Wagga participant P1180-1207)

Another practitioner was more equivocal:

I think it could be court-connected. I'm not sure. But I mean, whilst I think they're a good thing, and that's what Aboriginal women have been asking for I worry about people – voluntarily setting them up, and the need to monitor them and evaluate them and all that.... ...in some ways communities are moving forward, because that's what they want, but in other ways they're moving - they could be setting themselves up, too. (Dubbo participant P2662-2674)

iii) Program design

Few participants had knowledge or experience of anti-violence programs provided to male perpetrators. Practitioner contributions cautioned against programs described as teaching 'anger management'. One concern was the use of the term 'anger' instead of 'violence', as it allows the perpetrator to displace responsibility to the victim by viewing themselves as reacting to anger-causing behaviour of the victim. Another concern was that such programs assumed that the perpetrator simply needed to learn techniques for controlling their anger, when in fact they most likely have a high degree of control over their behaviour. It was also said that anger management programs could increase a participant's repertoire of violent behaviours.

It was argued that anti-violence programs must challenge the attitudes and beliefs that allow perpetrators to use violence, and that this requires programs to incorporate 'domestic violence awareness' training. Some women survivors of male violence believe that perpetrators lack an appreciation of the harmfulness of their conduct to their female partner or children.

... that (driver safety awareness class) - anyone that goes (to court for) PCA or speeding ... the Magistrate orders them to go to that ... as a mandatory program. Show (perpetrators of violence) graphic pictures: women dead, women abused, children - the results of all of this. Don't go light, and have it as a mandatory program. Have women come there and tell their stories." (Dubbo participant P762-777)

I think they've got to see what they're doing to their children, see, because they love their kids. They've got to say like, "It was me that did it. You didn't do it." (Wagga Wagga participant I1529-1532)

- what tells with most men is the effect it has on the children. And that's how you get a lot of men thinking about what they're doing. (Dubbo participant P2750-2756)

I think one of the big issues is for the male to accept that he's violent towards his kids and towards his spouse. I know of families who have violent husbands and at night-time taped them, and played it back to him the next day and he couldn't believe it. ... I honestly believe that they actually don't know how they behave when - at that alcoholic blackout point. They don't remember, they don't know. (Wagga Wagga participant P1411-1429)

In a recent review of crime prevention programs and evaluations in Indigenous communities in Australia, New Zealand and Canada, Cunneen (2001) provided the following summary of the key features of successful anti-violence programs aimed at Indigenous men:

- A structured program should be delivered to groups within an empowering and innovative learning framework that combines cognitive, behavioural and re-socialisation approaches.
- Programs for offenders should not be based on models of support or therapy, but must have results that focus on complete behavioural and attitudinal changes in the offenders.
- Program topics for Indigenous offenders need to be culturally sensitive. Program topics were developed to include information on the cultural context of Indigenous family violence, change motivators relevant to Indigenous offenders and an exploration of spiritual healing.
- Programs should have the flexibility to be undertaken in a range of settings for Indigenous groups and be facilitated by elders within Indigenous communities.
- Education sessions should be included for offenders on the problems of excessive alcohol consumption.

- Offering support to children exposed to domestic violence is a crucial component of the program. (Cunneen 2001:10)

A comparison of the features identified in this review with the issues raised in focus groups discussion demonstrates the collective wisdom of participants in their identification of the need for preventive and treatment measures that focus on cognitive/behavioural change, healing, substance abuse and to have a child focus.

6.5 Summary

The idea of mediation being introduced to the AVO scheme, raised in a previous project, was discussed as one of several ideas related to primary, secondary and tertiary level anti-violence measures.

In keeping with principles identified by Indigenous policy makers and advocates, participants emphasised several issues. They stressed the need for preventive measures to augment, not replace, existing criminal and civil justice measures. Access to formal justice measures, as an early intervention strategy is considered important in preventing harmful and intimidating non-criminal conduct from escalating to criminal violence. Whole of community approaches were considered important to include all potential perpetrators and victims of violence, including men and women, children and elders. Community owned and driven approaches are regarded as essential in empowering the communities. A consultative and long-term approach by government is considered essential to developing and funding local initiatives.

Confronting the high level of tolerance of violence in communities requires public education initiatives that change attitudes and provide information that can empower those experiencing or witnessing family violence to confront it. While many children access such information at school, there is a concern that parents, elders and other men and women in the community do not have access to this information. Culturally appropriate strategies are needed to educate the Aboriginal community about stopping and reporting all forms of family violence. This should include information about protective services and justice mechanisms. Outreach and group discussion were considered important, as is the need to include men and women and to adopt positive terminology reflecting mutual support and cultural healing.

Discussions about decision-making forums that could augment formal court proceedings focused on court connected facilitation processes of mediation and restorative conferencing. The discussion provided an opportunity to obtain fuller detail of the ideas that lay behind an earlier suggestion of mediation. Mediation was considered inappropriate for use in family conflicts that have resulted in criminal violence, and without the informed consent of the protected person. There was concern that the process must provide a mechanism to overcome the power imbalance between the parties. Another concern was that perpetrators might enter into an agreement as a short-term response to their situation, having no intention to adhere to it after leaving the mediation. A key limitation is that it might only be capable of addressing precipitating factors and leave unaddressed more entrenched situational factors such as unemployment or deeper underlying factors such as loss of culture. The positive side of such processes is said to lie in their potential to provide a

response to non-criminal forms of family violence that, while not repeated or entrenched, are harmful to the well-being of victims and which, if unaddressed, could escalate into more serious and criminal behaviour. Time constraints limited the discussion of restorative conferencing. However, it can be assumed that the issues raised in relation to mediation would also apply. The obvious additional benefit of restorative conferencing was identified as its potential to expand the participants of the discussion to include informal supports of the parties and a wider group of affected community members and cultural leaders. Thus, there is an inbuilt mechanism to overcome the power imbalance between the parties and to involve the wider community in responding to the particular instance and also strengthen community effort in preventing future instances of family violence.

Optimism around facilitated decision making forums lay in their potential to provide an alternative to the criminalisation of non-criminal forms of family violence, and for a negotiated outcome that might include referral to counselling or rehabilitative anti-violence interventions. In ADVO matters court referrals could aim for negotiated anti-violence agreements that can be registered, monitored and breached through the court.

While opinions differed as to the potential value of mandatory interventions, some desirable features of anti-violence interventions were identified. The focus was on the creation of a range of perpetrator programs that would include cognitive-behavioural anti-violence programs. A child focus was considered important, as was the aim of changing both attitudes and behaviours conducive to family violence. In view of the frequent contribution of cultural loss and substance abuse to family violence, cultural healing and breaking dependence were also identified as important components of a set of anti-violence interventions.

