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**Forensic Experts' Perspectives on Australian Indigenous Sexual Offenders and Factors  
Important in Evaluating the Risk of Recidivism**

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**Abstract**

Law and ethics require that risk assessment should be cross-culturally valid and fair, but Australian research in this regard is underdeveloped. A logical first step in progressing the work required to build a strong evidence base on culturally sensitive risk assessment in Australia is to determine the expert views of those in the field. We interviewed 13 Australian evaluators who assess Indigenous sexual offenders' recidivism risk to determine their perceptions of the risk assessment instruments they use and the attributes they believe evaluators doing cross-cultural assessments should have. Our central findings are that evaluators use the available instruments because they believe that the same factors predict sexual recidivism for Indigenous and non-Indigenous offenders, but that they do so cautiously knowing the limitations of the instruments. Evaluators nevertheless want more research data to guide them when they use the available instruments to assess people from cultures that differ from those of people in the normative sample. Participants acknowledge that the unique challenges of assessing Indigenous sexual offenders require non-Indigenous evaluators to be culturally competent and confident. These findings should be valuable to evaluators and those who train or supervise evaluators and/or intend to establish or improve the validity of risk instruments in Australia.

**Key words**

Ancestry, culture, Indigenous, recidivism, risk assessment, sexual offenders

**Evaluators' Perspectives on Australian Indigenous Sexual Offenders and Factors****Important in Evaluating the Risk of Recidivism**

Decision-makers in the justice system routinely make sentencing, intervention and discharge decisions in respect of sexual offenders (Allan, Dawson, & Allan, 2006). These decisions impact on offenders' interests and legal rights and, indirectly, the interests of members of the community, especially those in the communities where the relevant offences took place (Allan et al., 2018). Decision-makers must in all these cases consider the likelihood that offenders will reoffend, and they frequently rely on mental health evaluators' assessments of offenders' risk of reoffending. Evaluators and the methods they use are therefore pivotal to the justice system's ability to manage sexual offenders, but they are controversial (e.g., Keyzer & McSherry, 2015), especially when they use non-validated instruments and evaluate people whose culture differs from their own (S M Shepherd & Anthony, 2018).

Allan et al. (2018) found that Australian evaluators who assess sexual offenders from Aboriginal and Torres Strait Island or Indigenous communities use a range of available assessment instruments. The development of these risk assessment instruments can be traced back to the finding in *Baxstrom v Herold* (1966) that *clinical judgments* of the risk of reoffending were not better than chance (Hunt & Wiley, 1968; Steadman, 1973, 1980). Researchers working mostly in North America responded to this finding by identifying variables that predicted reoffending such as Andrews and Bonta's (1994) eight central risk factors (i.e., criminal history, pro-criminal attitudes, pro-criminal associates, antisocial personality pattern, employment and education deficits, family and marital issues, substance abuse, and leisure and recreation deficits). They further developed atheoretical *actuarial risk assessment instruments* using mostly historical variables that do not allow evaluators to consider dynamic predictors of recidivism (Bonta & Andrews, 2017). To allow evaluators to use their professional judgments in a systematic way and consider dynamic risk factors

researchers later developed *structured professional judgment assessment instruments* with a theoretical and actuarial basis (Bonta & Andrews, 2017). Researchers expanded these structured professional judgment instruments to allow evaluators to consider how offenders who are found to be at a high risk of reoffending could be managed from intake until the end of their involvement with the criminal justice system (Andrews, Bonta, & Wormith, 2006).

Modern evaluators have a variety of instruments to choose from (see Kelley, Ambroziak, Thornton, & Barahal, 2020; Neal & Grisso, 2014) and Allan et al. (2018) identified 11 instruments Australian evaluators use, including actuarial (e.g., the STATIC-99; Hanson & Thornton, 1999) and structured professional judgment assessment (e.g., The Risk for Sexual Violence Protocol [(RSVP); Hart et al., 2003] instruments. Researchers nevertheless consistently find that ancestry (i.e., line of descent) and/or culture influence the predictive accuracy of these instruments (e.g., Allan et al., 2006; Babchishin, Blais, & Helmus, 2012; Gutierrez, Maaik-Helmus, & Hanson, 2016; Gutierrez, Wilson, Rugge, & Bonta, 2013; Långström, 2004; Lee, Hanson, & Blais, 2020; McCuish, Mathesius, Lussier, & Corrado, 2018; Perley-Robertson, Helmus, & Forth, 2018; Smallbone & Rallings, 2013; Spiranovic, 2012; Wormith, Hogg, & Guzzo, 2015). These findings have significant practical, ethical and legal implications for evaluators who work in countries with notable Indigenous populations (e.g., Allan, 2018, 2020; Allan et al., 2006; Hart, 2016; Olver, 2016; S M Shepherd, 2016; S M Shepherd, Adams, McEntyre, & Walker, 2014; S M Shepherd, Delgado, Sherwood, & Paradies, 2017; S M Shepherd & Lewis-Fernandez, 2016). From a legal perspective there are two major implications for evaluators working in countries with Indigenous populations. First, judges must by law consider the ancestry of Indigenous communities in Australia (e.g., Director of Public Prosecutions [WA] v Mangolamara, 2007; R v Fuller-Cust, 2002), First Nations, Inuit and Métis communities in Canada (e.g., Ewert v Canada, 2018) and Māori communities in New Zealand (e.g., R v Peta, 2007) if it is relevant.

Second, judges in these countries are sensitive to ancestry because Indigenous people are over-represented in their criminal justice systems (e.g., Allan et al., 2018; Gutierrez et al., 2013; Wormith et al., 2015) due to the ongoing influence of colonisation and intergenerational trauma (e.g., Blagg, 2016).

The Supreme Court of Canada held in the Ewert-decision (2018) that correction authorities must take reasonable steps to make sure their assessment instruments gave accurate and complete results for Indigenous offenders. Australian courts are not bound by this decision, but Allan et al. (2018) found in their review of Australian cases that judges approached evaluators' reports regarding Indigenous offenders' risk of reoffending cautiously. Judges for example require evaluators to base their opinions on evidence from several sources (e.g., instruments, interviews and records) and to use batteries of complimentary assessment instruments. Australian evaluators' choice of instruments is, however, limited because no unique instrument has yet been developed for the assessment of Indigenous offenders in Australia or elsewhere and there are no published studies that have examined Indigenous-specific risk factors (e.g., cultural identity) that predict reoffending (Allan et al., 2018; Gutierrez et al., 2016; Gutierrez et al., 2013; S M Shepherd et al., 2014). They therefore mostly use instruments that were developed in North America (Allan et al., 2018) with the exception of the 3-Predictor model (Allan et al., 2006) that was developed in Australia but is meant to be used for through-care planning only (Burner-Fernie, 2015).

Non-Indigenous Australian evaluators consequently find themselves in a difficult situation when they receive instructions to evaluate Indigenous sexual offenders. First, they must use instruments laden with cultural assumptions that were developed by researchers whose culture differs from those of the people they assess (e.g., S M Shepherd & Anthony, 2018). Second, people find it difficult to do valid cross-cultural assessments (see Causadias, Vitriol, & Atkin, 2018a; Causadias, Vitriol, & Atkin, 2018b; DeSorcy, Olver, & Wormith,

2016; Mullins & Khawaja, 2018; Tamatea, 2017; Wand, Eades, & Corr, 2010; Westerman, 2010).

Evaluators are, however, reliant on researchers to develop instruments that have predictive accuracy for Australian Indigenous people (Allan, 2020) and such instruments will have to take into account each Indigenous group's unique culture and recent history (see Hart, 2016 for a more comprehensive discussion). Culture influences every aspect of people's lives because it represents a unique collection of schemata and scripts learned and shared by its members that guide them in perceiving and interpreting external stimuli and responding to them (Allan, 2016). Australian Indigenous and non-Indigenous people's world views will therefore necessarily differ (see Tamatea, 2017) and consequently they think differently about constructs such as anger (Day et al., 2006), mental disorders (e.g., Vicary & Westerman, 2004) and sex roles (e.g., Waldegrave & Tamasese, 1994). To complicate matters, Australian Indigenous people come from many distinct family or language groups and although they share common features (e.g., a strong connection with the place, i.e., country their ancestors come from) their language and cultural obligations can differ (Dudgeon, Wright, Paradies, Garvey, & Walker, 2014). Recent history is important because Australian Indigenous people share other Indigenous people's experience of colonisation and government interference (e.g., Atkinson, 1990a; Atkinson, 1990b; Commonwealth of Australia, 1997; Royal Commission into Aboriginal Deaths in Custody, 1991) that influence their current functioning and manifests in many forms, such as unresolved trauma and grief (Zubrick et al., 2014).

In the absence of a robust evidence base on culturally sensitive risk assessment, researchers developing assessment instruments for Indigenous offenders and those training evaluators to use them, should consult evaluators who have first-hand experience of the practical use of the instruments and the attributes required to use them (e.g., Shingler,

Sonnenberg, & Needs, 2018, 2019). We are, however, not aware of any research that examined Australian evaluators' views about the instruments they use or the attributes they believe they need to do cross-cultural assessments. We therefore as part of a more comprehensive study that included identifying valid methods and instruments that can be used to examine risk for reoffending in Indigenous offenders, set out to determine evaluators' views about:

- (a) risk and protective factors related to Indigenous male sexual offending;
- (b) the contributions standard risk assessment instruments make in their assessments of these offenders;
- (c) what potential risk and protective factors might not be captured in the instruments that they use; and
- (d) the attributes they believe evaluators should have to assesses Indigenous offenders' risk of sexual offending.

### **Method**

We used a thematic analysis to analyse our data because we were primarily interested in identifying patterns in evaluators' views regarding specific issues (see Braun & Clarke, 2006).

### **Ethics, Sampling, Recruitment, Participants and Procedure**

The project was approved by the Ethics Committee of the University of Western Australia and we used purposeful sampling because we were looking for participants who met specific criteria (see Palinkas et al., 2015; Suri, 2011). Participants had to be psychologists endorsed as clinical and/or forensic psychologists by the Psychology Board of Australia or

psychiatrists who were members of the Royal Australian and New Zealand College of Psychiatrists. They further had to be experienced evaluators of Indigenous sexual offenders' risk of sexual reoffending who were working or had worked in Australia. Our aim was to recruit Indigenous and non-Indigenous participants from all the states and territories.

We initially contacted the Directors of Forensic Mental Health Services and Chief Psychiatrists of the eight Australian states and territories by email asking them to participate or recommend potential participants. We further used snowball sampling by asking our professional connections and participants who we had already interviewed for recommendations. We also reviewed relevant court decisions to identify evaluators who regularly provide expert testimony regarding Indigenous sexual offenders' risk of sexual reoffending. We invited 53 potential participants by email and 13 agreed to participate: five psychiatrists and eight psychologists who came from all the states and territories except South Australia and Tasmania. There were four female participants but only one participant self-identified as an Indigenous person despite our special efforts to recruit more Indigenous evaluators. A possible explanation for this could be the small number of Indigenous evaluators, but we cannot exclude the possibility that some participants might not have identified themselves as Indigenous people because we initially did not ask participants whether they were.

The second author was the primary interviewer to ensure consistency and continuity and she was assisted by one of the other authors on each occasion. The recorded telephone interviews took approximately an hour and the interviewers used a semi-structured interview format (see Table 1 for examples of the questions) and asked participants to elaborate or give examples from their practice where indicated.

Table 1

*Interview Questions*

- 
- 1 Please tell us a about your professional background and experience in working with Aboriginal and/or Torres Strait Islander people in Australia who have sexually offended.
  - 2 From your experience, what risk factors may be present in Aboriginal and Torres Strait Islander people who have sexually offended / reoffended?
  - 3 From your experience, what protective factors help steer Aboriginal and Torres Strait Islander people away from sexual offending / reoffending
  - 4 From your experience, what contributions do standard risk assessment tools, such as the Static-99-R and the Violence Risk Scale-Sexual Offender version, make in the assessment of risk for sexual offending and reoffending of Aboriginal and Torres Strait Islander people?
  - 5 From your experience, what if any, may be factors not captured in standard risk assessment tools which may be relevant for sexual offending and reoffending of Aboriginal and Torres Strait Islander people?
  - 6 From your experience, what attributes are required of a practitioner who assesses risk of sexual offending of Aboriginal and Torres Strait Islander people? And why are these attributes necessary or desirable?
- 

**Data Analysis**

The second author used a deductive approach in doing the thematic analysis and analysed the data following the steps stipulated by Braun and Clarke (2006) to identify, review and refine

themes in the transcripts. The first and third authors subsequently checked the coding and helped further refine the analysis. The first and second authors are endorsed as forensic psychologists and have assessed the risk of sexual offenders reoffending sexually and have undertaken research with Indigenous sexual offenders. The third author is an academic criminologist who has undertaken research with Indigenous people.

### **Results and Interpretation**

We identified five themes in the data we collected, each with several sub-themes (see Table 2). The level of agreement amongst the participants were notable given that they came from different professions and worked in different parts of the country. We in places edited the excerpts to improve their readability and to correct obvious grammatical mistakes.

#### **Justification for Using Risk Assessment Instruments**

All but one of the participants commented on the limitations of risk assessment instruments, such as the lack of Australian norms in general, but especially for Indigenous people, and highlighted the heterogeneity of Indigenous people as a group.

No Australian norms and no Indigenous norms but particularly no remote Indigenous norms. (Participant 13, line 212)

Participants also expressed the view that established instruments were not always informative and specifically mentioned that they failed to consider contextual issues.

I think sometimes they are used as a very blunt instrument for making decisions and I often think providing a categorical statement of risk is not very informative and it's more the contextual issues. (Participant 10, line 258)

Table 2

*Themes and Subthemes*

| Themes   | Subthemes   |
|--|---|
| Justification for Using Risk Assessment Instruments  | Limitations<br>Criticism<br>Reasons for using instruments<br>Benefits exceed costs<br>Caution                             |
| Evaluators Responsibilities and Attributes           | Risk of harm<br>Appropriate use<br>Attributes   |
| Challenges of Undertaking Cross-cultural Assessments | Difficulties<br>Strategies  |
| Instruments and the Factors they Incorporate         | Heterogeneous<br>Same risk factors<br>Exposure to risk factors<br>Socio-historical background<br>Concerns<br>Improvements |
| Further research                                     | General research<br>Specific research   |

About half of the participants reported that they had been criticised for using instruments that have not been validated.

... it's often something that comes up at court and being asked about risk assessments in an Indigenous population is a perennial problem, about the limitations of risk assessments in the Indigenous population and lack of validation ... (Participant 3, line 522)

Participants who explained why they used instruments despite their limitations and the criticism they received gave four reasons. First, they believe courts and lawyers expected them to use instruments and will question them if they fail to use them.

Risk assessment is understood by courts to be based on actuarial risk assessment, typically the Static-99. So, the Department of Corrective Services have that as its core or base assessment. And judges and lawyers expect that a risk assessment will contain an estimate of risk based on the Static-99R and if you don't do it you get asked questions why. (Participant 9, line 165)

Most participants use these instruments because they play a central role in the criminal justice system.

We absolutely need the risk instruments and I think we need them at all stages of the criminal justice system, whether it's for informing whether someone gets a community supervision order, program triage, pre-sentence reports, initial screening leading to a broader assessment, what level of surveillance one is going to require post-sentence detention, mental health reports, involuntary civil commitment even. (Participant 1, line 256)

All participants thirdly said that these instruments improved the services they provided by helping them structure their assessments.

I think that it's important to do the standard sexual violence risk assessments discussed before. I think it would be a mistake to go back to any unstructured clinical judgment, because we obviously know that that is not an effective way so you need to have a structured approach and the best tools we have available would be applicable to this population. (Participant 3, line 280)

Several participants explained that they used these instruments to organise their reports and that doing this also helped them when they testify in court.

I've got a Static-99 in front of me now, generally it gives me a framework to form a conversation that allows me to speak to a court in a structure that judges especially understand. (Participant 5, line 131)

All the participants regarded risk assessment instruments as a major, if not the most important, component of the risk assessment process and believed the benefits of using them exceeded the cost of not using them.

I mean in my view the answer is they make a significant contribution, there is a wealth of literature out of there that talks about making forensic judgments in the absence of a framework, like a Static-99 and a VRS-SO for example. So, I think the danger of not using anything far outweighs the contribution that those tools make.... without it, we would be really flying blind. (Participant 11, line 182 & 200)

All the participants said that they were cautious in how they use instruments and indicated that they use them as part of a broader assessment.

... without in any way diminishing the important role that risk assessments play, I think we sometimes forget that there are other ways to elicit important information that informs risk assessment. So, self-report and behavioural observations and information from family or other people, so how we ensure that all of that is also part

of this process, helps us to individualise and contextualise what we're doing.

(Participant 13, line 466)

They also reported that they used batteries of instruments and make sure the scores of the different instruments converge.

Sometimes I use the Risk Matrix 2000 as well as the Static-99, particularly if it's going into a higher court you need to have multiple estimates of risk because we use the convergence model for assessing risk. And in the past before the RSVP, I used to use the SVR-20 ... (Participant 9, line 141)

### **Evaluators' Responsibilities and Attributes**

Most participants in this study addressed the importance of evaluators making accurate assessments to prevent profound harm to offenders.

A lot of harm can be done to people both Indigenous and non-Indigenous if you have people who aren't properly qualified administering tools to people in way that's not valid and replicable.... there's lots of consequences to people through incarceration etc. and potentially in indefinite sentencing. (Participant 3, line 340)

All participants stressed the importance of evaluators using instruments appropriately to obtain optimum information from them and indicated that this requires evaluators to look at the broader context. Some were critical of how their peers used the instruments.

I think more important than the tool is how they are used... I think the tools, if they are not used appropriately, don't give a good understanding of the individual.... And don't usually look at the context, and the context is usually in the early interpersonal history, what traumas they've received and how they've got on with life. So, they

score very highly.... but that doesn't paint the whole picture. And I think in our role, we can paint the whole picture. So again, it's not the tools that are the problem, it's the assessors that are the problem. (Participant 8, line 169 and 213)

Most participants agreed that evaluators should have five attributes. Evaluators should firstly have a good academic and practical understanding of mental disorders, sexual offending and risk assessment.

.... coming from a clinical discipline that understands the concept of risk and how it can be assessed and how it can be communicated as well .... I think you've got to have the clinical experience with those kinds of populations, so that you know about sexual offending.... And you've got to have the academic knowledge of risk assessment, the strengths and limitations and sexual offending, the causes and associations with mental disorders and treatment. How all of those things are put together. (Participant 7, line 258)

All participants believed that evaluators needed skill and experience in using instruments effectively.

Whereas people who have got less experience and less skill in the area, often are not able to properly elicit risk factors in people. So, I think it's really about having a lot of experience working in the area to be able to properly elicit things. (Participant 3, line 356)

All participants believed evaluators should be able to do comprehensive assessments and not mechanically and uncritically accept the findings of the instruments they use.

... people undertaking risk assessment in an uninformed way and they apply the instruments as if somehow the instruments tell you about a person's risk. Rather than

the instruments being one way to look at the person's risk they have to be integrated with other aspects of the assessment. (Participant 9, line 220)

Most participants thought evaluators should be able to assess the broader context that offenders live and offend in, and not merely consider whether they fall in a specific risk category.

... people aren't high risk or low risk, people can be put in situations where their risk increases or decreases ... and I think a lot of people categorise people into high risk or low risk, where they should be categorising scenarios into high risk and low risk. And what can keep people in the low risk group and what to watch for if they get into a high-risk scenario. So again, I don't see any problem with the tool, I see ... [problems with] ... the way the tool is interpreted and used. (Participant 8, line 181)

Evaluators should therefore understand the circumstances in the communities many Indigenous offenders come from, such as the prevalence of mental health problems and trauma.

You need to have an understanding of what's typical within the group. So, that you don't use a Western mindset to score up the various tools and then make an error. (Participant 3, line 509)

All participants finally thought evaluators should be culturally competent and confident.

there are practitioners working with Aboriginal and Torres Strait Islander populations and they lack cultural competence, they lack cultural confidence... (Participant 13, line 169)

They believe that cultural competence included the ability to get the balance regarding culture right without over or underdoing it.

You can overdo culture and you've got to careful not to use culture to avoid or minimise other kinds of risk factors to their personality or their behaviour. But at the same time, it's a good idea to know something about the group that you are dealing with. (Participant 9, line 250)

### **Challenges of Undertaking Cross-cultural Assessments**

Participants acknowledged that the assessment of Indigenous offenders itself was different and two subthemes emerged. Non-Indigenous evaluators firstly conceded that assessing a person of another culture influences their assessments.

I sometimes find it quite difficult being a white Anglo-Saxon person... doing these assessments. (Participant 8, line 239)

This was particularly true for the female evaluators who realised that male offenders face cultural constraints when they talk to females about sexual issues.

...obviously there is cultural issues between Indigenous men speaking to a woman, let alone a white woman. (Participant 3, line 213)

Participants pointed out that some offenders might, however, find it easier to communicate with non-Indigenous evaluators who have no ties with the offender's community.

... but the upside of course, might be ... someone who doesn't actually speak to my community so I'm probably safer to talk to them. (Participant 4, line 601)

Participants secondly commented on the level of mistrust they encountered when they assessed Indigenous offenders. They acknowledged that there was always a level of mistrust between evaluators and offenders.

.... a degree of mistrust is normal. You're usually seeing them for the court and they don't usually have a good opinion of the court and often you're saying this is a high-risk chap. So, there is a degree of suspiciousness so it can be a very difficult process.

(Participant 8, line 288)

They nevertheless believed that there was a higher level of mistrust with Indigenous offenders.

.... particularly in the forensic settings, a level of hostility and resistance among a lot of Indigenous prisoners towards non-Indigenous clinicians and evaluators. You know mistrust, perceived discrimination, family members sharing historical injustices that were committed in similar settings and so on. (Participant 1, line 468)

Participants suggested strategies to overcome both the cultural barriers and the mistrust between evaluators and offenders. They thought it would be useful if evaluators who assess Indigenous offenders were curious about culture and open to learn more.

I think one needs to be open to learning new things when managing Indigenous clients and I think an open-minded clinician who's flexible to learning new things, who is generally more adaptable to cultural considerations. I think those things are very important. (Participant 2, line 304)

They further believed evaluators should understand and acknowledge their cultural limitations and take appropriate action to remedy them.

... who acknowledge their limitations and are willing to refer on, who are able to work with other professionals and do co-work if relevant. (Participant 11, line 325)

One such action was cultural awareness training, but participants did not believe it should stop there.

So, beginning with some general cultural awareness training. But moving on from that we like to really individualise this instrument to the specific cultural context of a client. (Participant 13, line 364)

They therefore believed that evaluators needed in-depth cultural training.

I think it's really important that people have got specific training in Indigenous culture and culturally appropriate assessment because otherwise you're just not going to get a valid assessment. (Participant 3, line 392)

All participants supported the use of cultural consultants for two reasons. They can firstly provide very important in-depth cultural information to evaluators.

Consulting then with Elders or whoever the appropriate leaders would be, like justice groups members etc. in terms of how they would like us to do the work in their community and any protocols that would need to be followed, any cultural traditions that we would need to understand, so that we are starting to get more specific about what we would need to keep in mind.... And then having cultural consultations, having somebody who has information about that particular cultural group, community, clan or language group, to give feedback on how we do that work and to have a cultural supervisor so someone can critically examine our cross-cultural practice. (Participant 13, line 374)

Trusted cultural consultants further give evaluators an avenue into the community because they could vouch for the evaluator and therefore potentially facilitate a certain degree of trust.

... that's giving you an "in".... seeing people with Aboriginal consultants is a great thing. (Participant 8, line 261 & 267)

### **Instruments and the Factors they Incorporate**

Many participants reflected on the heterogeneity within the Indigenous population when talking about instruments for them.

... there is just a lot of heterogeneity there which always needs to be considered whenever we're trying to, for lack of a better term, Indigenous-ise an instrument or something (Participant 1, line 580)

All participants furthermore thought that the individual risk factors for sexual reoffending for Indigenous offenders are the same as those for non-Indigenous offenders.

...I don't think there are any unique cultural factors in my... knowledge that would differentiate between Indigenous and non-Indigenous. (Participant 1, line 35)

Participants believed, however, that Indigenous sexual offenders were exposed to more of the known risk factors than non-Indigenous people.

And I don't think it's a difference in the risk factors per se but rather the prevalence of some of the risk factors amongst the Indigenous population group. (Participant 3, line 15)

They further pointed out that Indigenous sexual offenders often grew up in communities where they were more likely to observe poor modelling behaviour than most non-Indigenous people.

... there's also this heightened element of being exposed to sexual abuse, sexual violence. ... Certainly, a large history of domestic violence, violence towards women in general. ... And often alcohol and drugs have been involved. Now I see that in non-Indigenous people too, it just seems to occur higher in the Indigenous people, from what I see, more often. (Participant 6, line 114)

The communities they grow up in often also lack protective factors, such as meaningful structured daily activity in the form of education and employment. Participants reported that this was particularly true regarding those who come from rural or remote communities.

... there would be more specific challenges for Aboriginal and Torres Strait Islander people in achieving some of those protective factors. For example, presence of a stable, productive, meaningful employment ... which might be really difficult for some people in remote, rural areas where unemployment is high, so they haven't educational backgrounds that allow them to be competitive in the workplace.

(Participant 11, line 140)

They ascribed this situation to Indigenous offenders' socio-historical background.

... the significant effects of the Stolen Generation and the trauma they've experienced and the higher likelihood of mental illness, abuse in Aboriginal communities and so on. (Participant 11, line 79)

Participants reported that they consequently observed issues such as anger more commonly when they assess Indigenous offenders than non-Indigenous offenders.

There's a lot of anger in a lot of their offending which has its basis in the early cultural breakdown of their families and of their relationships. (Participant 9, line 57)

All participants therefore believed that evaluators should consider Indigenous offenders' backgrounds.

I think some of the factors that need to be considered, whether they be risk or just contextual factors for Indigenous populations is the impact of colonisation, loss of culture, Stolen Generation issues and sense of disempowerment and not belonging to

the mainstream but then being subjected to mainstream norms. (Participant 10, line 62)

Their concern with the available instruments were therefore fourfold. First the instruments did not give them enough flexibility to consider contextual factors.

I see risk factors sitting at a far more contextual level.... I guess for me it's not to ignore individual risk factors, but I've tended to see ... more differences sitting at that systemic level. (Participant 13, line 51)

They want instruments that help evaluators understand the setting offenders live and offend in.

.... understanding the context and the environment that someone is living, and they are offending in I think is really important, I think that can speak to a lot more about why someone might be doing something like this. And that you won't find in the risk assessment tools, the context. (Participant 12, line 206)

They specifically thought instruments should make it possible for evaluators to collect information regarding the communities where offenders came from, for example, "communities where there is a concentration of sexual violence" (Participant 13, line 75).

The importance of this was that it would provide insight into the modelling behaviour offenders had been exposed to as children.

I don't think there is enough in the standard tests around the behaviours of family, so what did you grow up seeing? (Participant 5, line 175)

They particularly mentioned the need for more information about the trauma offenders experienced.

The big one is trauma. It's not usually captured very well and is not usually emphasised. (Participant 8, line 204)

Participants finally want instruments that provide guidance about how to interpret these factors for people from different cultural backgrounds.

My point is that most of the risk factors shouldn't need to change too much. It's quite possible you could have a set of guidelines to say 'well look with this particular group you might want to consider this'. (Participant 1, line 410)

At a more general level many participants recommended three changes that would improve instruments. They first suggested that instruments should allow evaluators to consider connection to culture as a protective factor.

I think kinship networks have been a real protective factor in terms of enhanced support ... Those networks amongst remote or Indigenous populations has been a strength or protective factor. (Participant 13, line 104)

Some participants pointed out, however, that Indigenous people's connection with their culture differ and that it should therefore be looked at specifically.

We've just got to be careful that we're not misled by the idea of culture and cultural attachment. It does mean different things to different people and it's also a very fluid kind of concept as well. (Participant 1, line 499)

Second, participants suggested instruments should have a stronger future focus.

What's missing I think is some kind of weighting towards well what's the planning for the future, well he's on this charge, whether there's going to be a period of supervised release or not, whether there are facilities to adapt for release or not... . I think it should be a much more weighted and a much more detailed assessment. It

could be something like what family supports are available.... what are the presence of supportive relationships? ... I think it could be like the option of further training or education and employment on release, things like that. And that seems to be targeted to the actual release situation rather than lifetime dynamic factors. (Participant 6, line 217)

Third, evaluators in this study recommended that instruments should guide evaluators to focus on risk management rather than risk assessment.

I would never just give a category of risk, I would never say this person is high, medium or low. I would describe risk manageability and risk situations. What empirical factors are reported in this assessment and how we might be able to respond to them or support them in this assessment. (Participant 10, line 304)

This they thought was necessary because offenders often find themselves in difficult circumstances after their discharge.

.... often when people are released, they go into far flung communities, isolated communities with not much access to policing, not much access to health care resources and often quite a lot of people reoffend.... and I think what I would say is that opportunities arise purely because of [geography] .... (Participant 2, line 119)

Many participants indicated that they used the Risk for Sexual Violence Protocol (RSVP; Hart et al., 2003) because it allowed them to remedy the concerns they had with instruments.

The RSVP I like because you do the risk factors and then you have to sort of bring out the scenarios, what's the most likely to happen, where would he be most likely to reoffend, things like that. And then maybe suggest how that could be managed. (Participant 6, line 196)

### Further Research

All the participants thought that much more research was necessary regarding the assessment of all Australian sexual offenders' risk of sexually reoffending to help them inform courts when necessary.

It's an area which is desperately in need of further research and understanding... cause it's often something that comes up at court and... So, I just think it's a very very important area where we need people working in the field and we need answers to be able to make sure that we're working within the evidence base. (Participant 3, line 522)

They were specifically looking for research that would help evaluators use existing instruments to optimally assess Indigenous offenders' risk of sexual reoffending and how they should adapt their assessments of Indigenous offenders.

... I think that we have a distinct lack of research to fully understand risk in this population. We don't have sufficient research to assess any differences in the way those potential risk factors play out. We don't have sufficient comparative research to really understand at a level which bring questions to the validity of these measures with this population. Depending on the population on which these measures have been normed, the research that has informed their development etc. I think there is an extra layer of questions that needs to be asked about the usefulness of these tools for this population. (Participant 13, line 155)

## Discussion

The aims of our study were to explore the perceptions of experienced evaluators who work, or have worked, in Australia about the risk assessment instruments they use to assess Indigenous sexual offenders' risk of reoffending and the attributes they believe users of these instruments should have. Research emerged as a third central theme even though we did not specifically enquire about it.

### Instruments

Evaluators confirmed Allan and colleagues' (2018) conclusion that they use instruments that have limitations despite being criticised for doing so and being aware of the burden of responsibility their role places on them (also see Shingler et al., 2019). They explained that they use these instruments because courts and employers expect them to do so, that they consider them an essential and central part of their assessments and that they find them useful in structuring their reports.

They believed the benefits of using them exceed the risks of doing so if they take steps to minimise the risks, such as undertaking comprehensive assessments with batteries of instruments. Noteworthy complaints are that most available instruments fail to allow them to give enough weight to protective (also see Kelley et al., 2020) and individual and contextual factors such as where the offending took place and where offenders will return to after release. It is therefore instructive that several evaluators mentioned the RSVP (Hart et al., 2003) as the instrument they found most useful. The RSVP requires evaluators to assess aspects of offenders' functioning such as their mental health, social adjustment and ability to engage in and respond to interventions. The instrument does not employ actuarial methods to support decision-making about risk, but instead offers guidelines for collecting relevant

information and developing scenarios that reflect the nature, severity, imminence and likelihood of future sexual violence. Evaluators must finally develop risk management strategies for each scenario to allow targeted interventions.

The RSVP therefore allows evaluators to address many of the problems they experience with other instruments, especially the actuarial instruments that do not allow them to consider what they refer to as individual and contextual factors. Individual factors they mentioned include offenders' level of anger, connection to culture, mental illness, exposure to dysfunctional modelling behaviour in the family, relationship with their family, and substance use and trauma histories. There is research about these constructs as responsibility factors in the rehabilitation of Indigenous offenders (e.g., Day et al., 2008; Day et al., 2006) but not in the context of risk assessment. Contextual factors included offenders' exposure to people with mental illness, sexual violence and substance abuse in their communities of origin and the level of proper law enforcement and availability of work, recreational activities and support services in the communities they come from and will return to. Evaluators' commitment to consider contextual factors might also explain why they use the 3-Predictor model in court assessments (see Allan et al., 2018) because it allows them to consider offenders' coping skills, release plans and long term goals systematically (see Burner-Fernie, 2015).

### **Attributes of Evaluators**

Evaluators held a strong view that instruments are only as good as those using them. Most of the evaluator attributes they mentioned were what authors of manuals recommend, such as that evaluators should have knowledge about mental health and sexual offending, skill and experience in administering the instruments they use and be able to do comprehensive

assessments. Their real focus was, however, unsurprisingly on the need for evaluators to understand the circumstances in the communities many Indigenous offenders come from and to be culturally competent and confident. Evaluators' concerns about finding the right balance between over and underestimating the role of the culture of Indigenous offenders mirror those of other mental health practitioners doing cross-cultural work in forensic (Tamatea, 2017; Tamatea & Day, 2019) and non-forensic (Causadias et al., 2018a, 2018b) areas. Evaluators pointed out that non-Indigenous evaluators had to manage cultural barriers and females also had to manage specific gender barriers, which for Australian Indigenous men include not talking to females about certain topics (Westerman, 2004). Evaluators must also be able to overcome two levels of mistrust because sexual offenders generally mistrust evaluators as representatives of governments and many Indigenous people distrust non-Indigenous people for social-historical reasons. They believed that culturally competent evaluators could overcome both the mistrust and cultural barriers, but that mere cultural awareness was not enough to give evaluators the in-depth cultural knowledge necessary to competently use risk assessment instruments to assess Indigenous offenders. Evaluators thought it was important that they had access to cultural consultants who could give them a better understanding of the Indigenous people they assess and to help them gain entrance into those people's communities. We are not aware of any Australian guidelines for the use of such consultants in the forensic or risk assessment contexts, but there is a body of literature about the use of cultural consultants in providing mental health services to Indigenous people (e.g., Vicary & Andrews, 2001; Westerman, 2004).

**Research**

Participants spontaneously made comments that are of importance to researchers. Their views regarding Indigenous sexual offenders' risk and need factors agree with the findings of two key literature reviews regarding violent offending in general. They match the findings of Gutierrez and her colleagues' (2013) international meta-analysis that the central eight risk and need factors have predictive power for violent recidivism by Indigenous offenders, even though some factors predict significantly better for non-Indigenous offenders. They also agree with the findings of S M Shepherd et al.'s (2014) review of Australian literature that Australian Indigenous violent offenders are more likely to present with certain violence risk factors compared with non-Indigenous offenders. Evaluators in this study thought that this might be because Indigenous offenders' circumstances are such that they are more exposed to some risk factors than non-Indigenous offenders.

Evaluators nevertheless made it clear that they required more Australian research to assist them when they assess the risk of people whose cultural or contextual backgrounds differ notably from those of the instruments' normative samples. Evaluators would therefore like more research that validates the central risk factors and instruments currently used with Indigenous and non-Indigenous sexual offenders. Such research will need to surmount specific problems regarding the relative smallness and heterogenous nature of the Australian Indigenous population and the relatively low base rate and heterogeneity of sexual offending (Allan, 2020). Evaluators would furthermore like to have culturally specific structural professional risk assessment instruments (also see S M Shepherd et al., 2014) with manuals that guide them regarding the weight they should give to factors for people coming from different groups. Manuals like that of the Violence Risk Scale – Sexual Version (Wong, Olver, Nicholaichuk, & Gordon, 2006) that alert evaluators to cultural bias only mention that

ratings might have to be modified for offenders from minority cultures and give only one brief example of how to do this.

Researchers developing such instruments for Australian Indigenous people might find it useful to consider Australian and international mental health researchers' approach to the cultural assessment of people from diverse cultural backgrounds (see Adams, Drew, & Walker, 2014). Adams et al. (2014) specifically mentioned the approach followed in the 5<sup>th</sup> edition of the American Psychiatric Association's (2013) Diagnostic and statistical manual for mental disorders.

The most feasible immediate research strategy for researchers might be to collect data that will assist evaluators when they assess the known risk and protective factors given the lack of reliable quantitative information in this regard (see Allan et al., 2018). They should, however, also study potential risk and protective factors such as *connection to culture* identified by participants and researchers (e.g., Hovane, 2015) and authors (e.g., Gee, Dudgeon, Schultz, Hart, & Kelly, 2014) as worth studying. Factors such as these are nuanced and difficult to measure as the participants pointed out and much research is therefore still required before they could be included in an assessment instrument.

### **Limitations and Implications**

This study is to the best of our knowledge the first that has explored the perceptions of experienced evaluators about the risk assessment instruments they use or have used to assess Australian Indigenous sexual offenders' risk of reoffending. The research shares the limitations of other qualitative research in that it reflects the subjective views of a small self-selected group of participants and the authors' subjective interpretation of the data obtained from them. The article is, however, the integrated view of authors who come from diverse

disciplinary and employment backgrounds. The Australian focus of the study further limits the direct application of the findings outside Australia, but the themes and future directions are likely to have broader international relevance, especially in other countries where courts are becoming increasingly critical of risk assessment instruments used to assess Indigenous offenders.

The findings could be especially informative to those who train, appoint and supervise evaluators and those intending to develop culturally valid methods and instruments to examine Indigenous sexual offenders' risk of reoffending. Some of the practitioners' views might differ from the views of those who develop instruments, but we believe it is important that developers should rise to the challenge of identifying those aspects of the participants' views that they can use to develop instruments that enable evaluators to do optimal assessments.

### **Authors' Note**

The authors take responsibility for the integrity of these data and the accuracy of the data analyses.

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