





## Aboriginal and Torres Strait Islander perspectives on forensic risk assessment

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**Abstract.** Risk assessment instruments are used to estimate risk of recidivism and aid in decision-making and treatment planning. However, many of these instruments, including the Level of Service/Risk, Need, Responsivity (LS/RNR), are validated on predominantly Western populations, and research has questioned whether the factors included in the LS/RNR adequately capture the experiences and needs of non-Western communities, including Aboriginal and Torres Strait Islanders. The current study aimed to canvas the opinions of Aboriginal and Torres Strait Islander community justice workers as to the suitability of the LS/RNR for use with this population. A general qualitative methodology was adopted to gain in-depth information through the facilitation of a focus group, and data were analysed thematically. Whilst participants agreed that the LS/RNR risk factors are relevant to Aboriginal and Torres Strait Islander offenders, they reported that the instrument did not adequately capture relevant culturally specific considerations and made suggestions to improve the LS/RNR.

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Risk assessment instruments are frequently used in criminal justice and forensic mental health settings to estimate offender risk of recidivism and guide treatment planning decision making. Risk instruments classify offenders into risk groups, commonly from low to high, based on the presence or absence of empirically supported risk factors. Instruments often comprise a mix of static (unchangeable) and dynamic (changeable) risk factors.

One of the most commonly used types of risk assessment tool are actuarial risk assessment tools (ARAI), which mechanically classify offenders into risk groups according to an

algorithmic or additive formula. This form of risk assessment leaves little room for professional discretion to influence the risk categorisation and is thus promoted as reducing bias and increasing the reliability of assessments. However, critics have questioned the ability of these instruments to adequately capture contextual information and the unique needs of individuals (e.g. Hart et al., 2007). A widely-used ARAI is the Level of Service/Risk, Need, Responsivity (LS/RNR; Andrews et al., 2008), which follows the empirically-validated and widely-used ‘risk, need, responsivity’ model of forensic risk assessment (Andrews et al., 1990, 2006; Bonta & Andrews, 2017).

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The ‘risk’ principle refers to the need to match the offenders’ treatment to their level of risk of reoffending. Risk levels are calculated based on the presence or absence of the ‘central eight’ risk factors, which are widely agreed to be among the best predictors of offending. These factors include criminal history, education/employment, family/marital, substance abuse, leisure/recreation, antisocial personality pattern, procriminal attitude/orientation and criminal acquaintances. The ‘need’ principle refers to *criminogenic needs* of the offender that can be targeted in treatment – that is, issues or characteristics of the offender that are relevant to offending behaviour. Finally, the ‘responsivity’ principle refers to the need to provide treatment and interventions that match the offender’s unique learning styles, abilities and strengths.

Another form of risk assessment, Structured Professional Judgment (SPJ), allows the assessor to determine the offender’s risk level after considering a number of empirically-based static and dynamic risk factors (Hart & Logan, 2011). This approach arguably allows for a more nuanced assessment of risk, although some critics argue that the potential for bias is increased as there is more room for assessor discretion. SPJ and ARAIs are generally considered to predict risk commensurately, and both types are widely used across the world (Guy, 2008; Shepherd, Luebbers, & Ogloff, 2014; Yang et al., 2010).

### **Risk assessment and culture**

A plethora of research demonstrates that both ARAI and SPJ instruments are valid and reliable for use with offenders from Western countries and, generally speaking, can predict likelihood of future offending across cultural groups (e.g. Barnes et al., 2016; Chenane et al., 2015; Gutierrez et al., 2013; Meyers & Schmidt, 2008; Olver et al., 2014; Onifade et al., 2009; Shepherd, Adams, et al., 2014; Wilson & Gutierrez, 2014). However, recent research has queried the ability of these instruments to

accurately assess offenders from Black, Indigenous and Persons of Colour (BIPOC) backgrounds (e.g. Day et al., 2018; Hart, 2016; Shepherd & Lewis-Fernandez, 2016; Shepherd & Spivak, 2021; Venner et al., 2021a). This concern is based on the fact that the majority of popular risk instruments are normed on Western populations, and thus many of the risk items reflect Western cultural norms and values. Therefore, it is possible that some risk items may not adequately reflect the experiences, worldviews and practices of persons from BIPOC cultures (Day et al., 2018; Moore & Padavic, 2011; Shepherd & Lewis-Fernandez, 2016; Shepherd & Spivak, 2021; Venner et al., 2021a). Whilst risk assessment literature shows that several widely used instruments can validly predict recidivism for BIPOC cultural groups (e.g. Barnes et al., 2016; Chenane et al., 2015; Gutierrez et al., 2013; Lowder et al., 2019; Meyers & Schmidt, 2008; Olver et al., 2014; Onifade et al., 2009), several studies suggest that this prediction is marginally less accurate (Shepherd, Adams, et al., 2014; Shepherd, Luebbers, Ferguson, et al., 2014; Wilson & Gutierrez, 2014; Wormith et al., 2012). Furthermore, studies have found that BIPOC offenders are misclassified more regularly than White offenders on actuarial instruments (Ashford et al., 2021; Campbell et al., 2018; Fass et al., 2008; Whiteacre, 2006; Wilson & Gutierrez, 2014).

Multiple explanations have been offered for these discrepancies in accuracy, including differences in offending base rates (Chouldechova, 2017), assessor bias (Jimenez et al., 2018; Venner et al., 2021a, 2021b) and the item content of risk instruments (Shepherd & Lewis-Fernandez, 2016). As regards the content of risk instruments themselves, although widely used risk factors including the central eight are acknowledged as relevant to offending across cultures (Gutierrez et al., 2013), several researchers have questioned

whether risk instruments that are normed on predominantly Western populations may include risk items that do not adequately reflect the experiences of BIPOC cultures and/or fail to capture culturally specific risk and protective factors (e.g. Ferrante, 2013; Homel & Herd, 1999; Shepherd & Anthony, 2018; Weatherburn et al., 2008).

For example, Shepherd and Lewis-Fernandez (2016) highlight that many instruments include risk items focusing on family instability or disconnection. One such instrument is the Structured Assessment of Violence Risk in Youth (SAVRY; Borum et al., 2009), a widely used SPJ instrument, which includes an 'early caregiver disruption' item. A young offender who experienced changes in caregivers and unstable living patterns in early childhood may thus receive a high-risk rating on this item. However, research in Australia has demonstrated that it is not uncommon for Aboriginal and Torres Strait Islander young people to live with extended family at various times (Day et al., 2018). Thus, an Aboriginal or Torres Strait Islander young person could receive a high-risk rating based on this factor that is not reflective of cultural norms, and thus not an accurate reflection of their risk levels. Moore and Padavic (2011) similarly suggest that other risk items, such as those assessing locale, employment and education, may also unfairly disadvantage offenders from ethnic minority backgrounds who may reside in low socioeconomic areas with lower rates of high school completion and fewer employment opportunities. Furthermore, BIPOC offenders may be disparately impacted by biases in the wider justice system that are reflected in risk assessment instruments. For example, static risk items such as criminal history may unfairly impact BIPOC offenders due to higher arrest rates and over-policing of BIPOC people, which contribute to more extensive involvement in the justice system (Clemons, 2014; Tonry, 2011). Indeed, Black and Indigenous offenders have been found to score higher than White offenders on

criminal/offending history items on actuarial instruments (Chenane et al., 2015; Hsu et al., 2010; Perrault et al., 2017). These concerns were further elucidated in a novel study conducted by Shepherd and Willis-Esqueda (2018), which found that representatives from Native American and First Nations cultures did not believe that *all* included risk items on the SAVRY were appropriate for use with offenders from their cultural background. Whilst these factors may indeed be indicative of risk, it is suggested that some factors such as those that focus on socioeconomic status may have a disparate negative impact on BIPOC offenders, as BIPOC cultures are often disproportionately disadvantaged in these areas. Shepherd and Willis-Esqueda (2018) also found that Native American and First Nations representatives believe there are several additional risk and protective factors that are unique to offenders from their culture and should be included in risk assessment. For example, it was suggested that protective factors that acknowledge culture-based pro-social involvement such as tribal ceremonies, spiritual activities and community involvement could be included in addition to Western forms of pro-social activities, and that only Western therapy is defined as beneficial rather than potential benefits of culture-based treatments. As such, some researchers have called for greater input from members of BIPOC cultures regarding risk instruments and procedures so as to ensure risk assessments are capturing the experiences of non-Western cultures (Shepherd, 2018; Shepherd & Willis-Esqueda, 2018; Venner et al., 2021a).

### ***Aboriginal and Torres Strait Islander offending***

In Australia, Aboriginal and Torres Strait Islander offenders are disproportionately incarcerated, and overrepresented in community correctional services (Australian Bureau of Statistics, 2022). At time of writing, 50% of youth in detention are Aboriginal and Torres Strait Islander (Australian Institute of Health

and Welfare, 2021), whilst approximately 30% of imprisoned adults are Aboriginal and Torres Strait Islander, despite comprising only approximately 3% of the Australian population (Australian Bureau of Statistics, 2022). The most recent statistics from Corrective Services Australia show that the average daily Aboriginal and Torres Strait Islander imprisonment rate is 2,269 per 100,000 persons, as opposed to 201 per 100,000 for the general population (Australian Bureau of Statistics, 2022). Aboriginal and Torres Strait Islanders also make up a disproportionate number of offenders being managed in Victorian community correctional services – approximately 12% as of April 2022 (Department of Justice and Community Safety, 2022). A 2016 Australian Senate report found that reasons for high imprisonment rates are twofold: underlying factors that contribute to higher rates of offending, and systemic biases and discriminatory practices within the justice system itself (Commonwealth of Australia, 2016). Indeed, a plethora of research supports both these points, with factors associated with disadvantage and marginalisation widely acknowledged as contributing to criminal behaviour among Aboriginal and Torres Strait Islander people (Cunneen & Porter, 2017; Day et al., 2018; Shepherd, 2015). Many Aboriginal and Torres Strait Islander people have endured ongoing economic and social challenges, which have been linked to historical injustices, including state-sanctioned child removal, dispossession of land and racism and social exclusion (Atkinson et al., 2014; Dudgeon et al., 2014; Shepherd, Adams, et al., 2014). It is believed that the trauma of the Stolen Generation (the government-sanctioned forced removal of Aboriginal children from their families) and colonisation has engendered the disruption and dislocation of Aboriginal and Torres Strait Islander families, leading to loss of identity and mistrust of authority (Shepherd, 2015). This disconnection and loss of identity is particularly relevant as connection to culture, spirituality, land and family is widely

recognised as essential to the social and emotional wellbeing of Aboriginal and Torres Strait Islander people (Dudgeon et al., 2014; Gee et al., 2014; Shepherd et al., 2018). Studies have shown that Aboriginal and Torres Strait Islander people have, on average, higher rates of exposure to trauma, psychological distress, substance abuse and physical health issues than non-Aboriginal and Torres Strait Islander Australians (Parker & Milroy, 2014; Shepherd, Adams, et al., 2014), all of which could be considered risk factors for criminal behaviour.

Indeed, risk assessment studies have found that Aboriginal and Torres Strait Islander offenders may receive higher risk scores than White offenders (Hsu et al., 2010; Kenny & Nelson, 2008; Shepherd, 2015; Thompson & McGrath, 2012). Day et al. (2018) suggest that there is a need to establish a theory of offending behaviour for Aboriginal and Torres Strait Islander peoples that identifies common risk and protective factors, in order to inform guidelines for forensic risk assessment with Aboriginal and Torres Strait Islander people. In particular, they suggest that social and cultural contextual factors should be considered when assessing risk for Aboriginal and Torres Strait Islander offenders, including exposure to intergenerational trauma, social disorganisation, the effects of foetal alcohol syndrome, a confused sense of cultural identity, unprocessed anger due to experiences of racism, inequality and disadvantage, and lack of support. Conversely, connection with culture and connection with community have been identified as protective factors for Aboriginal and Torres Strait Islander people, promoting social and emotional wellbeing, resilience and coping (Ferrante, 2013; Shepherd, 2015; Shepherd et al., 2018; Zubrick et al., 2014). Ferrante (2013) examined the specific risk factors that predict arrest for Aboriginal and Torres Strait Islander people, finding that being male, substance misuse and alcohol consumption are the most significant predictors, with unemployment, financial stress, being a victim of

assault, being a member of the Stolen Generation and living in outer regional or remote locations also associated with arrest. Factors such as having a high-school level of education, strong cultural ties and connection to community were found to be protective against arrest. As alluded to above, although risk instruments are routinely used with Aboriginal and Torres Strait Islander offenders, these instruments have not been normed on Aboriginal and Torres Strait Islander populations and thus may not reflect relevant, culturally specific risk and protective factors.

### *The current study*

This study canvases the opinions of Aboriginal and Torres Strait Islander justice workers in Victoria, who are trained in administering the LS/RNR, as to whether the LS/RNR is appropriate for use with offenders from Aboriginal and Torres Strait Islander backgrounds, and makes suggestions as to how the instrument and risk assessments more broadly can be improved for Aboriginal and Torres Strait Islander offenders. The LS/RNR is used in correctional settings in Australia with offenders of all cultural backgrounds; however, to date no research has sought to canvas the opinions of Aboriginal or Torres Strait Islander people as to the appropriateness of this instrument for use with Aboriginal and Torres Strait Islander offenders. Given the disproportionate representation of Aboriginal and Torres Strait Islander people in prisons and community correctional services, and concerns identified in extant research regarding the impact of Western norms on risk assessment, it is important to gain input from Aboriginal and Torres Strait Islander people as to the validity and fairness of existing risk assessment instruments and procedures.

### **Method**

This study used a qualitative thematic analytic approach. This study was created with input

from Aboriginal representatives from corrections organisations in Victoria and the Koori Justice Unit at the Victorian Department of Justice and Community Safety.

### *Sample*

Participants were recruited by way of purposive sampling from corrections organisations in Victoria. All participants were required to be of Aboriginal and/or Torres Strait Islander background, work with Aboriginal and/or Torres Strait Islander offenders and be trained and experienced in using the LS/RNR. Five participants, out of 15 eligible, consented to participate in the focus group. All participants identified as female and as Aboriginal/Torres Strait Islander. Participants' ages ranged from 25 to 42 years, with a mean age of 33.4 years. All participants identified as working with Aboriginal and Torres Strait Islander offenders in the community (rather than in prison settings).

### *Experience and training*

All participants had training and experience in using the LS/RNR. One participant had been using the LS/RNR for less than a year, two for between one and three years, two for between three and five years, and one for between five and 10 years. All participants had received booster training within the past three years. Three participants reported using the LS/RNR between once a week and once a month, one reported using it less than once a month, and one reported using it more than once a week. Two participants reported last using the LS/RNR less than a week before participating in this study, one between one week and one month ago, one less than six months ago, and one less than a year ago. On a 5-point scale ranging from not confident to confident, three participants reported feeling confident in using the LS/RNR, and two reported feeling somewhat confident in using the LS/RNR.

### **Procedure**

The focus group took place online via Zoom. Participants were invited to participate in the study by representatives of their organisation, who then forwarded their email contact to the researchers. Emails were then sent to participants to find a suitable time to conduct the focus group that was convenient to all the participants. Prior to the focus group, participants viewed the Participant Information Statement on Qualtrics, and provided written consent to participate in the focus group. They also answered demographic questions about their profession, cultural background and level of training/experience in using the LS/RNR. The focus group ran for approximately 90 minutes, was conducted by the first and fourth authors and was video recorded to ensure accurate transcription. Observations of verbal and non-verbal agreement or disagreement between participants, to questions posed by the researchers, were made by the first author to determine the level of consensus on a particular opinion and to triangulate this with data derived from discussion during the focus group. This ensured rigour of process and reliability of the data collected. During the focus group, Aboriginal leadership was present to ensure cultural safety for the participants. Participants were also given the opportunity to provide feedback to the researchers and/or additional comments after the focus group using an anonymous online Qualtrics survey. No participants responded to this survey. To ensure that the focus group comments were interpreted correctly, participants were also given an opportunity to review this manuscript and did not suggest any changes.

### **Materials**

#### *The LS/RNR*

The LS/RNR (Andrews et al., 2008) is an actuarial risk assessment tool that assesses offenders' risk of general recidivism and their rehabilitation and supervision needs. The first section assesses for the presence or absence of

eight general risk/need factors: criminal history, education/employment, family/marital, leisure/recreation, companions, alcohol/drug problem, procriminal attitude/orientation and antisocial pattern. Each factor can also be marked as a 'strength' for the offender. The LS/RNR scoring guidelines note that a strength is present when not only does a factor represent low risk, but the circumstance is 'so positive that it may reduce the influence of other risk factors that are present' or is 'incompatible with a reasonable expectation of antisocial conduct' (Andrews et al., 2008, p. 10). Scores on Section 1 are added together to form a total risk/need score, which is categorised into a high, medium or low risk rating. The remaining sections of the instrument assess for additional factors that do not contribute to the risk score, but may be relevant to treatment and case management including non-criminogenic needs, social, health and mental health factors and responsivity factors that may impact on treatment engagement. There is also an option to override the risk category attained in Section 1 if the clinician believes it does not accurately represent the offenders' risk.

#### *Focus group question guide*

Participants were provided with a 'focus group outline' at the beginning of the discussion so as to provide clarity on the topics to be discussed. The focus group discussion focused on three major topics: key risk and protective factors for Aboriginal and Torres Strait Islander people, cultural peer review of the LS/RNR and general advice and opinions on engaging Aboriginal and Torres Strait Islander people in risk assessment interviews.

Regarding the first topic, participants were asked two questions:

1. What are the key risk factors for offending for Aboriginal and Torres Strait Islander people?
2. What are the key protective factors against offending, and pathways out of offending?

Regarding the second topic, participants were shown the LS/RNR instrument and answered the following questions:

1. What are your initial thoughts on the LS/RNR for use with Aboriginal and Torres Strait Islander offenders?
2. What are your thoughts on the risk/strength items (their content, language, relevance).
3. Are there any risk/need or protective items that are not included on the instrument that you think are relevant to Aboriginal and Torres Strait Islander offenders?
4. What are your thoughts on the responsibility items (helpful/unhelpful?).
5. Do you think the risk instrument is appropriate in its current form for use with Aboriginal and Torres Strait Islander offenders? What changes, if any, would you make?

Regarding the third topic, participants answered the following questions:

1. Risk assessment often incorporates an interview – how should this be conducted? What should assessors be aware of?
2. How can assessors more effectively engage with Aboriginal and Torres Strait Islander clients when conducting a risk assessment?

The first two discussion points and questions were derived from extant research mentioned above that has queried whether the LS/RNR (and risk assessment instruments in general) includes factors that accurately reflect the experience of Aboriginal and Torres Strait Islander offenders, and whether there may be culturally specific risk and protective factors that pertain to Aboriginal and Torres Strait Islander offending. The third topic sought to answer questions posed in previous studies regarding the importance of assessor cultural competence in conducting interviews with

Aboriginal and Torres Strait Islander people, and how this process can be made more culturally safe and appropriate.

### **Data analysis**

Data were analysed using an inductive thematic approach, which aligns with the explorative qualitative approach used to canvas the opinions of Aboriginal and Torres Strait Islander justice workers as to the suitability of the LS/RNR for use with Aboriginal and Torres Strait Islander offenders. Firstly, a transcript of the focus group was created. Multiple readings of the transcript ensued to familiarise researchers with the data collected. Rigour of the analysis procedure was ensured by using multiple analysts. Three analysts independently analysed participant responses to the three major topics discussed in the focus group and coded each topic for major themes. These themes were cross-checked between analysts until consensus was reached, producing 23 major themes across the three parts of the focus group discussion.

### **Results**

#### ***Part 1: General risk and protective factors for Aboriginal and Torres Strait Islander people***

*Question 1: What are the key risk factors for offending among Aboriginal and Torres Strait Islander people?*

Thematic analysis of participant responses identified the following recurring themes: intergenerational trauma and prior incarceration, social challenges, and incarceration offering refuge and cultural/community belonging.

*Intergenerational trauma and prior incarceration.* All participants agreed that intergenerational trauma, including violence and child removal, is a risk factor for offending behaviour – ‘the generational trauma, incarcerations, child protection involvement, kids being

removed. . . .’ (Participant 1). Similarly, all participants agreed that prior incarceration was predictive of future offending behaviour.

*Social challenges.* All participants referred to a number of social challenges that can be considered as risk factors for offending behaviour among Aboriginal and Torres Strait Islander offenders, including: low socioeconomic status, low levels of education, unstable housing, disability and substance use – ‘. . . drugs and alcohol, education and housing, disability, violence etc. . . .’ (Participant 1).

*Incarceration offers refuge and cultural/community belonging.* All participants also noted that incarceration can offer refuge and a sense of belonging for offenders, which can lead to offenders returning to prison. As stated by one participant, ‘another (risk factor) is the feeling of safety when incarcerated as well as routine and stability’ (Participant 3).

Other participants agreed with this statement, with one further elaborating that incarceration can offer ‘cultural connectedness and that community which they have lacked previously’ (Participant 5).

Participants also suggested that this sense of belonging and family present in prison, which is often lacking in the community, can lead offenders to return to prison – ‘When they are released after doing their time, sometimes they feel bad that their family is still in there and so they make their way back into custody so they can be together again’ (Participant 1).

*Question 2: What are the key protective factors that deter from offending and provide pathways out of offending?*

Thematic analyses revealed three themes in discussion of protective factors: cultural connection, kin/family, and socioeconomic factors. Five subthemes emerged from the discussion regarding socioeconomic factors.

*Cultural connection.* All participants identified that connecting with cultural community

can be protective against offending. A participant noted the particular relationship between cultural connection and cultural identity in the context of intergenerational trauma – ‘the generational stuff, as hard as it is for them to work through, shows them who they are and their identity’ (Participant 1).

All participants agreed that cultural connection in the context of intergenerational trauma provides an avenue for role models to have a positive influence on the younger generations by encouraging them to veer away from a criminal path they may have taken themselves in the context of trauma. As Participant 1 remarked, ‘. . . working through the system that someone else before them has walked through. . . hopefully older role models talk to them and encourage them to veer away from that path’.

*Kin/family.* Many participants made specific reference to family and kin as a protective factor. The notion that family extends beyond immediate family to kin and other people who may have had a role in caring for the person was highlighted. Participants also discussed the impact of having children, and noted that creating one’s own family can be both a risk and protective factor – ‘I’ve found a lot of men and women mature and move away from offending behaviour when they want to do better for their kids and family, but it can go both ways’ (Participant 2). This issue is discussed further below.

*Socioeconomic factors.* Participants identified multiple socioeconomic protective factors, totalling five subthemes, including employment and education, housing, independent living skills, access to services and pro-social peers.

*Employment and education.* Employment was noted as important in steering people away from offending, with the type of employment and the workplace culture highlighted as important in determining whether this would be protective or not – ‘employment, if they



can get into a job it can assist in steering them away from reoffending. It depends on the type of employment, what type of people work there and the culture within that workplace or field' (Participant 1).

Education was also discussed as protective, with a participant remarking that 'some senior education [is also protective]' (Participant 1).

*Housing.* All participants agreed that stable housing was an important protective factor, and helped offenders regain a sense of security and control over their life – 'if they don't have housing then they don't have that stability – they don't see much light at the end of the tunnel' (Participant 1).

*Access to services.* All participants also reference the protective characteristics of connection with services, noting the importance of pathways to services and their availability in helping people to steer away from offending. As Participant 3 explained, 'another protective factor for the offenders that I have worked with is a cultural connection and connection with services. It's also the pathways into those services as well as the availability of those services, and the connectedness'.

*Independent living skills.* Independent living skills was also highlighted as protective in allowing people to provide for their families in a pro-social manner, including learning to budget, cook and clean. As Participant 1 remarked, 'independent living skills. I find if they learn them there is more of a chance that they are going to budget properly, and know how to provide for the family, cook, clean and be the provider'.

*Pro-social peers.* Pro-social peers and role models were flagged as a protective factor in motivating offenders to move away from criminal behaviour – 'having someone positive who may have been caught up in the justice system in the past, and so has their own story of

breaking that cycle and getting out and being positive and how they have done that. That would definitely be a protective factor' (Participant 4).

*Factors can be both risk and protective.* Furthermore, an observation that emerged from discussion around key risk and protective factors was that participants noted several factors that can be both predictive of risk and protective. All participants discussed the example of family and kin, noting that whilst absence of family, disconnect and toxic relationships can be a risk factor, the presence of positive family and kin connections can protect against offending as discussed above. As one participant remarked, 'I would probably say, that one of the risk and protective factors is family. Sometimes, their influences and connections can be positive, though can also be negative if there's a lot of dysfunction, trauma, grief, and loss' (Participant 4). Other factors considered both risk and protective included employment, education and housing. For example, participants agreed that lack of stable housing is a risk factor for offending; however, stable and secure housing can be one of the most significant protective factors. Similarly, participants noted that lack of education employment can be a risk factor; however, meaningful education and secure employment provide stability and a sense of control over one's life that can promote desistance from offending.

## ***Part 2: Cultural peer review of the LS/RNR***

Several themes emerged in the discussion about the use of the LS/RNR with Aboriginal and Torres Strait islander offenders. Participants were first asked to reflect on the instrument as a whole and were then taken through the instrument section-by-section. As many of the themes recurred throughout the discussion of each section of the instrument, each theme is presented once, with specific reference made to the sections of the instrument that participants referred to.

*High/relevant risk factors*

Participants first commented on risk factors that present at a high rate among Aboriginal and Torres Strait Islander offenders, including education, employment, family, procriminal attitudes and criminal history. They clarified that these factors are indeed relevant to risk, but may also be disproportionately present in the Aboriginal and Torres Strait Islander population – ‘the criminal history. I know there is not much we can do about that, as it’s just recorded and can’t be changed, but most of the time it is scored very highly’ (Participant 1). A participant pointed out that the procriminal attitudes factor would likely always be high due to negative attitudes towards police and authority.

This theme re-emerged in review of Section 1 of the instrument, where participants discussed the prevalence of high scoring of the criminal history factor.

*Gaps in the LS/RNR*

A theme that emerged from the LS/RNR peer review was that the instrument contains gaps and is not able to capture enough information to adequately represent an offender’s risk and is inflexible in its application. This theme recurred throughout discussion of the specific instrument sections. Participants gave the family item as an initial example, explaining that its focus on ‘parents’ may not adequately capture grandparents and other kinship providers that may have been involved in someone’s upbringing, and thus result in an elevated risk score that does not reflect their circumstances – ‘yeah so potentially they were marked negatively in that section when they might have been raised from a very young age by grandparents which they see as their parental support’ (Participant 2). However, it is important to note that the LS/RNR scoring guidelines specify that the parental item can include persons other than biological parents.

Some also suggested that the leisure/recreation factor does not give adequate consideration to engagement in culture and

suggested that celebrations and significant community engagements should be a relevant consideration – ‘I think celebrations and significant community engagements such as NAIDOC [week] should be included under leisure/recreation. Because they might not be organised sport or anything, but attending significant celebrations is engagement and involvement with pro-social people’ (Participant 3). National Aborigines and Islanders Day Observance Committee (NAIDOC) week occurs annually in Australia and celebrates the history, culture and achievements of Aboriginal and Torres Strait Islander peoples.

Similarly, gaps in the education/employment factor were discussed – specifically that it does not encourage consideration of knowledge of cultural lore and the knowledge/wisdom of life experience that may be possessed by elders and other community members. As Participant 4 stated – ‘We don’t give any importance to the knowledge and wisdom of life experience. I would consider that person to be a very educational person, rather than marking them down for not completing year 10’.

Participants pointed out that even if such a person did not complete school, their relevant cultural education should be taken into account and their risk scored accordingly. A participant also highlighted that having these two factors grouped together may not allow for a nuanced assessment of risk, as some Aboriginal and Torres Strait Islander people may exit school early but have a long work history. It is worth noting that this would also apply to non-Aboriginal people.

Participants also remarked on the instruments’ inability to consider *why* an offender may be marked as high risk on factors such as employment. They discussed the importance of considering lack of opportunity for Aboriginal and Torres Strait Islander people and the various reasons someone may have to leave school early or lack meaningful employment. A participant also highlighted that the instrument does not consider people’s motivations or

possible barriers to finding work, education and engaging in the community.

Similarly, participants discussed this in relation to the Section 2 risk/need factor of non-compliance, highlighting the importance of being able to consider *why* someone may be non-compliant, such as disengagement and poor relationships with previous service providers:

Clear problems of compliance – there could've been fractures in a relationship between the last person that filled this out. Or the client engaging with other services, so they are disengaged. We trust that the collateral that we have in our files are from an unbiased person. If we don't check on why there is that non-compliance, I think that can be to their detriment. (Participant 1)

The underachievement factor was similarly considered to require consideration of *why* someone may 'underachieve' and whether it could be due to lack of opportunity or pursuing other goals – 'most of the time they are going to tick underachievement if they left school early, but that doesn't indicate whether they left to either make money or pursue a trade' (Participant 1).

In relation to Section 3 of the instrument, participants discussed the importance of capturing whether a person was engaged in cultural programmes and supports whilst incarcerated, as this can assist with transition back into the community – 'I think it might be important to determine, in terms of their current incarceration, whether they are engaged in cultural supports/programmes. Just to provide a snapshot which will support their transition into the community' (Participant 5).

#### *LS/RNR is subjective*

Participants also highlighted the subjective nature of the instrument – 'I've always found the tool is open to interpretation . . . what I interpret with my own perceptions, expectations and life experience will be very different to my colleague' (Participant 4).

Many participants noted that there can be some reluctance from offenders to talk about their experiences due to shame, which results in risk assessors having to interpret the influence and meaning of the offenders' life experiences, such as intergenerational trauma. This can be especially present when working with non-Aboriginal case managers. This limitation was also emphasised in relation to the strengths box, with participants noting that risk assessors may interpret strengths differently (see below). Participant 2 remarked that:

Something I find difficult is Aboriginal offenders doing the family/marital with non-Aboriginal managers or advance case managers. Because there's a shame associated with intergenerational trauma, drug use from a young age; they close up shop and won't talk about their experiences. So, then it's more to the case managers own interpretation. And sometimes its minimisation when its actually just shame.

#### *Inconsistent use of strengths box*

As noted above, some participants drew attention to the subjective nature of the strengths box in Section 1 of the instrument. They highlighted that use of the strengths box is not well understood and may be discouraged in some workplaces. 'The strength box and how that's utilised across the sections is interesting. What I might see as a strength in an Aboriginal person is not necessarily what my colleague next to me might recognise as a strength' (Participant 4).

Some participants also discussed the challenges of identifying strengths in offenders when they may not be aware of them themselves – 'If our clients can't identify their strengths, how can we reflect that for them?' (Participant 1).

#### *Absence of cultural considerations*

In discussing Section 1 risk factors and Section 2 responsivity factors, all participants

drew attention to the absence of cultural considerations. All participants agreed that 'there's nothing in there [the instrument] about culture'. Participant 5 further elaborated that 'the LS/RNR tool isn't giving you an opportunity to expand on any cultural issues presented or any cultural considerations – it's all very quantitative'. Participants highlighted the family/marital, criminal history and education/employment items as lacking in cultural contextualisation, and again suggested that protective factors such as cultural connection and involvement in cultural leisure/recreation activities could be helpful inclusions in the instrument.

In particular, participants pointed out that the tool is normed on Western values, and that there is a lack of cultural overlay throughout all sections of the tool. As one participant explained:

It's a system based on the values of a Western society i.e. education and employment, even family/marital, and doesn't take into consideration the kinship networks and connections. I think we could have more of a cultural overlay in every section of this tool. (Participant 4)

They also noted the absence of self-determination as a pro-social factor that may be specific to Aboriginal and Torres Strait Islander offenders, with Participant 1 observing that 'there's nothing in this document about self-determination either'.

All participants then discussed where to include cultural considerations in the tool. They noted that whilst it would be helpful to include cultural connection as a protective factor, some offenders may not have had opportunities to engage meaningfully with culture, and it would be necessary to ensure that their risk scores were not unfairly elevated because of this. As stated by one participant:

When we talk about the cultural connectedness, I wonder whether it might find people being marked down regardless

of whether they have had an opportunity – due to inter-generational trauma. I would still prefer it to be in there, but would it be detrimental to some people? (Participant 2)

A participant suggested that it might be better included in Section 2 of the instrument so that an offender's risk score is not impacted by lack of cultural opportunities. Participants generally agreed, highlighting that many Aboriginal and Torres Strait Islander people do not have cultural understanding or identity:

I don't think it would be beneficial to have been scored against in that space. A lot of our mob don't have that cultural understanding or identity yet. I feel that if you were to put that in the risk factor section as a detriment to them, maybe consider terming it as an environmental factor. (Participant 5)

In spite of this, participants felt that risk items such as education/employment and family/marital should be modified to more accurately reflect the experiences of Aboriginal and Torres Strait Islander people, highlighting the need to 'still adjust the scored sections to reflect the other stuff we are talking about like family, employment, education' (Participant 2).

#### *Possible revisions for the LS/RNR*

As mentioned above, participants made some suggestions as to how the instrument could be improved for use with Aboriginal and Torres Strait Islander offenders. They discussed making adjustments to Section 1 of the instrument to reflect unique circumstances regarding family, employment and education that may result in an Aboriginal or Torres Strait Islander offender receiving a high score. For example, a participant suggested adjusting the scoring of these items to better reflect the experiences of Aboriginal and Torres Strait Islander people in regard to employment, education and family situations. All participants also discussed how best to consider the impacts of

intergenerational trauma in the risk assessment process. Whilst they agreed it needs to be considered, they highlighted the challenge of finding an appropriate section of the instrument in which to include it. Some participants queried whether this could be incorporated into Section 2. Some participants also suggested including engagement in cultural programmes in Section 3 to capture their involvement in such programmes during incarceration.

#### *Practical limitations of the LS/RNR*

In discussing Sections 2, 3, 4 and 5 of the instrument, some participants identified several practical limitations of the LS/RNR. They highlighted that the instrument is reliant on collateral information that may be biased, with one participant remarking that 'We trust that the collateral that we have in our files are from an unbiased person'. Participants also emphasised that when considering items such as 'problems of compliance' it is necessary to consider why an offender may have been non-compliant, although this information may not be accessible.

Several participants also noted the strict timeframe in which LS/RNR assessments need to be completed in many workplaces, and the challenges this poses to collecting accurate and detailed information. They noted that this is often at odds with the need to build trust and rapport with clients, and that it can be disrespectful to elicit information quickly. As explained by one participant:

An overall issue I find is the time frame it has to be done within and how well it truly reflects the situation. Speaking to our people can take many months to get quality information. . . . I just feel like some offenders tell us the basic information to just get it done, but it's not a true reflection. And so I find it to be quite a pointless tool if it's not utilised to the full ability. (Participant 3)

Participants reflected on the LS/RNR assessment requiring regular updating, which

poses challenges for staff. Participants also noted practical limitations regarding the responsivity section of the instrument, explaining that responsivity on the LS/RNR is often not reflected in other risk tools and assessments used in services (see below).

#### *Limited use of override*

Some participants also highlighted problems with the override section. They noted that the section is rarely used, and that there is a lack of clarity on how and when override should be exercised. Participants suggested it could be helpful to override in a case of an Aboriginal offender who receives a high-risk profile that is not truly reflective of their current situation due to some of the reasons outlined above. They also noted that the override section cannot take into consideration any changes in behaviour during the year.

I don't think they get used all that often, when maybe they should be considered. Either for higher or lower, if we are getting Aboriginal clients who are marking quite high but that's not reflective of the current situation then maybe we need to be asking for an override to go lower, so that we are not overservicing. (Participant 2)

#### *Presence of multiple Social Health and Mental Health (SHMH) factors*

Several participants drew attention to the Social Health and Mental Health (SHMH) factors listed in Section 4 of the instrument, explaining that many Aboriginal and Torres Strait Islander offenders would score on the majority of these items. Participant 1 remarked that 'it's very depressing that a lot of my clients are going to tick at least five of those issues'.

In particular, they highlighted the prevalence of financial problems, homelessness, parenting concerns, health issues, child protection involvement, low self-esteem, suicide attempts, victims of family violence, physical assault, sexual assault and emotional abuse.

*Limitations in using the 'cultural issues' responsivity factor*

All participants addressed the lack of clarity in the meaning of the 'cultural issues' responsivity factor. They noted that little information is provided in training on the instrument as to what this means, and as such it is left to the discretion of the assessor to determine what might qualify as a cultural issue (however, it should be noted that 'cultural issues' is defined in the LS/RNR scoring guidelines). They also noted that this factor is dependent on the offender's knowledge of their cultural identity, which may be limited for some people. Several participants also questioned the use of the word 'issues', reflecting that this has a negative connotation. They noted that it is unclear whether this refers to problems with their culture, cultural considerations that may be relevant, a lack of cultural engagement, a lack of cultural identity or something else.

I've always had an issue with the question around cultural issues. Because it's down to interpretation, as an Aboriginal person I looked at that and thought 'how could you have an issue?' An issue could be that they're not connected to their culture because they've only just found out that they're Aboriginal. Maybe limited information in terms of their family. I think it's really poorly worded to be honest. (Participant 4)

*Lack of focus on and clarity in using responsivity*

Participants explained that there is often a lack of focus on the responsivity section. Participants also discussed the lack of clarity around what constitutes a valid responsivity factor in regard to time frame. They noted it refers to present and/or ongoing issues; however, they noted confusion regarding how this can be integrated with other tools and information. As one participant stated – 'I have never had responsivities that I have needed to do on other tools . . . , that truly reflected the responsivities in an LS' (Participant 3).

***Part 3: Advice on conducting risk assessments with Aboriginal and Torres Strait Islander offenders***

Four themes emerged from the discussion on advice for conducting risk assessments with Aboriginal and Torres Strait Islander offenders.

*Make client comfortable to build trust and engagement*

All participants referenced the importance of making the client feel as comfortable as possible during the assessment process. Participants first discussed the benefits and disadvantages of taking the LS/RNR tool and/or guiding questions into the interview. Some participants felt it best to have the tool in front of them in the interview to promote openness and honesty in the assessment process, whilst others felt it discouraged offenders from speaking openly. Participants then agreed that this decision could be made on a case-by-case basis and emphasised the importance of the assessor doing what is best for the individual. Participants felt that it is helpful to explain the process of the assessment to the offender so as to promote transparency – 'I think something that you have both identified is that idea of full transparency, and that openness and building trust right off the bat' (Participant 5). Participants also highlighted the benefit of offering breaks to offenders and doing so in a manner that allows participants to have some control over the interview process.

Participants highlighted some issues that can arise from this, however. Whilst discussing giving offenders breaks and control over the interview process, participants noted that this can sometimes result in offenders disengaging. Several participants noted it is common for offenders to come to an initial interview and then fail to return and highlighted the issues this poses for attaining accurate information – 'That's a common theme, they may turn up for their induction and first appointment and then not come back at all' (Participant 1).

They also emphasised showing empathy when discussing potentially traumatic events in the hope of eliciting greater levels of rapport, trust and engagement in the process. Participants also highlighted the impact of the assessors' experience on ability to build rapport with offenders, noting that the ability to ask helpful questions sensitively and identify useful information develops over time.

*Considered use of collateral information*

Participants emphasised the importance of making an individual assessment of the client rather than relying on collateral information. They discussed the limitations of relying on collateral information, including issues with the reliability of information gathered by other services/workers, especially as these people could harbour biases. Whilst participants acknowledged that collateral information is helpful and often necessary, they emphasised the need for caution when using this information as part of a risk assessment:

And yes we have collateral, but who filled out that info? Was it an Aboriginal person, was it someone who had a bias? Yes I will read all that information, but until I meet the client and make my own assessment . . . that's how I work. (Participant 1)

*Being mindful of shame*

Participants agreed that getting detailed information from offenders can be challenging and limits the utility of the instrument. They discussed the influence of shame associated with intergenerational trauma and drug use, and also the particular challenges that might be faced by female assessors interviewing older Aboriginal men. Some participants highlighted that it is considered disrespectful in Aboriginal culture for women to discuss 'men's business', with one participant noting that 'as a young Aboriginal woman when I am getting significantly older fellas coming in as my offenders, asking them these questions within the time

period of four weeks is just disrespectful' (Participant 3).

*Culturally competent risk assessment*

Participants emphasised the importance of conducting a culturally safe and competent interview, especially for assessors who are non-Aboriginal. They suggested obtaining cultural advice and reaching out to local Aboriginal workers and emphasised the importance of assessors being willing to take this advice onboard:

Maybe speak to the Aboriginal person at their office, or reach out to cultural advice, there's a lot of support out there for people working with Aboriginal people. They must be willing to take on some of that information though. (Participant 1)

Participants noted the importance of culturally sensitive training in the LS/RNR. They also discussed the possibility of having Aboriginal offenders assessed by only Aboriginal workers; however, they noted the extra burdens this would place on the workforce. A participant suggested that reviews could be conducted by Aboriginal case workers – 'Whether it be a review by an Aboriginal person from head office all from a panel of sorts to assess whether Aboriginal people are being scored appropriately across the board by both non-Aboriginal people and Aboriginal people' (Participant 5).

**Discussion**

The LS/RNR is used throughout Australia to assess offender risk of recidivism, however Aboriginal and Torres Strait Islander people have had no opportunity for input regarding the appropriateness of the instrument. The current study aimed to canvas the opinions of Aboriginal justice workers on the suitability of the LS/RNR for use with Aboriginal and Torres Strait Islander people, and make suggestions as to how the instrument and risk

assessments more broadly can be improved for Aboriginal and Torres Strait Islander offenders.

### *Suitability of LS/RNR items*

Generally speaking, participants agreed that the LS-risk factors are relevant to Aboriginal and Torres Strait Islander offending, which aligns with prior research demonstrating the validity of these factors across cultures (Shepherd & Willis-Esqueda, 2018). However, several risk factors were identified as likely to be disproportionately present among Aboriginal and Torres Strait Islander offenders, which is consistent with studies that have found Aboriginal and Torres Strait Islander offenders to have higher scores on several risk items including criminal history (Hsu et al., 2010; Thompson & McGrath, 2012). Prior incarceration was specifically highlighted as predictive of future offending, and participants noted that this may occur at a higher rate for Aboriginal and Torres Strait Islander offenders due to the many unique risk factors and challenges relating to historical and entrenched disadvantage. Indeed, results reflected the numerous social challenges that Aboriginal and Torres Strait Islander people may face that can elevate risk of offending behaviour, including low socioeconomic status, lack of education and employment, housing difficulties, disability and substance use, which have been linked to the continued impacts of historical injustices such as colonisation and the Stolen Generations (Atkinson et al., 2014; Dudgeon et al., 2014; Ferrante, 2013; Shepherd, Adams, et al., 2014). Indeed, participants highlighted intergenerational trauma and being a member of the Stolen Generations as a unique risk factor for offending among Aboriginal and Torres Strait Islander offenders, which is supported in existing research (Ferrante, 2013; Shepherd, 2015; Weatherburn et al., 2008).

The comment from one participant regarding the criminal history item nearly always being endorsed for Aboriginal and Torres

Strait Islander offenders due to negative attitudes toward police and authority is consistent with prior research that has identified the relationship between mistrust in authority and criminal behaviour among Aboriginal and Torres Strait Islander people (Shepherd, 2015). The criminal history item has also been discussed in studies in the United States, with researchers highlighting that over-policing and higher rates of arrest among BIPOC offenders result in lengthier criminal records (Clemons, 2014; Tonry, 2011), which could translate into a high risk score on the LS/RNR and, more broadly, lead to a perpetual cycle of involvement in the criminal justice system.

Similarly, the Social, Health and Mental Health factors in Section 4 of the instrument were identified as manifesting at a high rate among Aboriginal and Torres Strait Islander offenders, which is consistent with prior research that shows Aboriginal and Torres Strait Islander people to have higher rates of physical and mental health concerns (Australian Institute of Health and Welfare, 2020; Commonwealth of Australia, 2014, 2017; Dudgeon et al., 2014; Kairuz et al., 2021; Parker & Milroy, 2014). Furthermore, Aboriginal and Torres Strait Islander people have different conceptions of mental health to those of Western society, which may not be adequately reflected in risk assessment tools (Parker & Milroy, 2014; Shepherd, 2016; Westerman, 2004).

Results also suggested that imprisonment offers Aboriginal and Torres Strait offenders a sense of community, safety, stability and belonging, which can result in offenders returning to prison. This suggests that prison may offer Aboriginal and Torres Strait Islander offenders something positive that they cannot access in the wider community, which could lead to a cycle of criminal behaviour. Whilst this point seems paradoxical, it is consistent with research that has highlighted the ongoing impacts of the Stolen Generations and colonisation, including disconnection from land and identity (Dudgeon et al., 2014;



Shepherd, 2015). In this context, prison could be seen as a way to reconnect with identity and community, and find the safety and stability that is often not afforded to Aboriginal and Torres Strait Islander people due to racism, marginalisation and disadvantage. Other Aboriginal and Torres Strait Islander people in prison may also provide camaraderie and social support, and many prisons have specific Aboriginal and Torres Strait Islander cultural programmes. Indeed, research has shown that shared connection based on culture is higher among Aboriginal inmates than non-Aboriginal inmates, and that prison provides opportunity for building cultural and familial connection with other Aboriginal inmates (Lafferty et al., 2016). Further research on this topic may be beneficial to better understand specific factors that contribute to Aboriginal offenders returning to prison.

Participants also identified protective factors that promote desistance among Aboriginal and Torres Strait Islander offenders. All participants identified connection to culture as a protective factor. This aligns with prior research that has highlighted the positive impacts of cultural connection and community in promoting resilience, coping and social and emotional wellbeing among Aboriginal and Torres Strait Islander people (Ferrante, 2013; Shepherd, 2015; Shepherd et al., 2018; Zubrick et al., 2014). Dudgeon et al. (2014) highlight that connection to culture, spirituality, land and family is essential to the social and emotional wellbeing of Aboriginal and Torres Strait Islander people and consequently can help to divert people from crime. Indeed, Shepherd et al. (2017) found that connection to culture in prison lowers likelihood of violent recidivism, whilst Ferrante (2013) found that cultural ties and connection to community were protective against arrest. Positive relationships with family and kin was identified as a protective factor, which again aligns with commonly held views that connection to family is important for the wellbeing of Aboriginal and Torres Strait Islander people (Dudgeon et al., 2014).

Several of the previously-identified socioeconomic factors, such as education and employment, were also identified as potential protective factors. This is consistent with previous studies that have found education to be protective against arrest and involvement in the criminal justice system (Farrington et al., 2012; Ferrante, 2013).

Additionally, it became evident that protective and risk factors have a reciprocal relationship whereby they can interchangeably be one or the other depending on the socioenvironmental conditions associated with these factors. Therefore, by reversing the circumstances surrounding risk factors for individuals, those very same factors can provide protection against offending or rather present opportunities for redressing the challenges that contribute to heightened risk for Aboriginal and Torres Strait Islander people. For example, kin/family as well as education and employment were highlighted as factors that can be risk or protective depending on the unique circumstances of the individual.

### *Cultural decontextualisation*

A major theme that permeated the discussion was that there are gaps in the LS/RNR that limit its ability to accurately and fairly assess Aboriginal and Torres Strait Islander offenders. In particular, participants drew attention to the inability of the instrument to consider the socioenvironmental context in which risk factors may present in Aboriginal and Torres Strait Islander people. Participants reflected that the instrument lacks culturally relevant considerations and also does not encourage assessors to consider why an offender may present with a particular risk factor. For example, participants highlighted that lack of education and employment could be attributable to a lack of opportunity for Aboriginal and Torres Strait Islander offenders. Whilst these considerations could be relevant to all offenders, they are perhaps particularly pertinent for Aboriginal and Torres Strait Islander offenders given the

unique challenges they face due to systemic racism and lack of opportunity (Day et al., 2018; Shepherd, 2016; Shepherd, Adams, et al., 2014).

Participants appeared to advocate for a more nuanced assessment of risk that takes into account an individual's circumstances, and in particular factors that may be culturally relevant. However, it is unclear whether adding context to risk factors would change their relationship with risk of offending. The LS/RNR is based on the central eight risk factors that have been empirically demonstrated to be indicative of risk. It is not necessarily true that having an externally attributable 'reason' for presenting with a risk factor, such as unemployment due to lack of opportunity, means it is not relevant to risk of offending. Context could, however, be an important consideration for treatment to prevent reoffending. It is also important to consider how contextual considerations could be incorporated into risk assessment and the impact this would have on reliability. Risk assessment instruments were developed in order to minimise the influence of assessor discretion in unstructured assessment, which had poor reliability (Grove & Meehl, 1996). In order for risk assessment to account for context, assessor discretion would likely increase, and reliability could be compromised. Participants themselves identified that the subjectivity of the LS/RNR can present a challenge, especially when assessors need to interpret the impact of offender experiences. This challenge would arguably increase if assessors take contextual factors into account. Encouraging further discretion in risk assessment would thus likely require a greater level of cultural competence among assessors so that they can accurately understand the relevance of particular contextual matters. Affording increased discretion to raters who may have little understanding of important cultural matters could open assessment up to clinical biases and potential conflation of culture with risk. Indeed, prior research has highlighted that it is important to ensure that the

impact of race and culture is not over-emphasised when examining cross-cultural risk factors (Shepherd, 2015). Whilst cultural beliefs and experiences may indeed be relevant to offending behaviour, it would not be appropriate to over-attribute problem behaviours to culture. A study by Hannah-Moffatt et al. (2009), in which clinicians admitted to consciously changing the risk ratings of Black offenders because they believe risk instruments overestimate their risk, is illustrative of this issue as it suggests that clinicians may emphasise culture in their decision-making when there is not necessarily empirical evidence to support such contentions.

It is also important to consider how specific culturally relevant risk and protective factors could be incorporated into risk assessment, given that there is a lack of empirical evidence that links particular cultural experiences to either risk or protection from offending for Aboriginal and Torres Strait Islanders and other BIPOC groups (Day et al., 2018). Whilst some studies have examined the relationship between culturally relevant factors and offending (e.g. Ferrante, 2013), further empirical validation would likely be required before items such as cultural connection and historical injustices can be incorporated formally into risk assessments.

Whilst there is currently no formal way for clinicians to consider the impact of an offender's culture in the LS/RNR and risk assessment instruments more broadly, contextual considerations pertaining to culture are considered in sentencing in some jurisdictions. In Canada, judicial officers can request a *Gladue* report when sentencing an Indigenous offender that provides unique insight into their circumstances and what may have contributed to their offending behaviour, and suggests culturally appropriate community options for rehabilitation (Australian Law Reform Commission, 2018). It has been suggested that a similar approach could be taken with risk assessment (Shepherd & Anthony, 2018). A more structured and guided approach to

considering cultural information could alleviate some concerns regarding reliability and potential biases of assessors impacting assessment.

### ***The ‘cultural issues’ responsivity factor***

The use of the phrase ‘cultural issues’ in the responsivity section of the LS/RNR was specifically identified as problematic, with participants noting the potential biasing impact of the word ‘issues’ and lack of clarity around what this factor pertains to. The LS/RNR scoring guidelines state that “‘cultural issues’ refers to ‘way of life’ considerations that may suggest culturally specific programs. For example, involvement of elders in Aboriginal (Native American) programs could be considered’ (Andrews et al., 2008, p. 28). However, participants in the current study did not seem to think this was well understood by risk assessors. Additionally, the use of the word ‘issues’ arguably does not reflect the true intention of this factor – to invite assessors to consider culturally relevant programme and treatment options.

### ***Other considerations***

Several of the themes identified in the focus group discussion reflect concerns that are not necessarily specific to Aboriginal and Torres Strait Islander offenders, including the subjective nature of the LS/RNR, inconsistency in the use of the strengths box, the use of the override function, and other practical limitations of the LS/RNR including time constraints and reliance on collateral information. However, it was apparent that some of these concerns may manifest uniquely for Aboriginal and Torres Strait Islander people. For example, the amount of discretion afforded to assessors in the tool may be problematic when non-Aboriginal case managers are working with Aboriginal offenders, particularly regarding conversations around shame and intergenerational trauma. Furthermore, reliance on collateral information could be problematic if

service providers harbour biases (consciously or unconsciously) toward Aboriginal and Torres Strait Islander offenders.

It is also important to acknowledge that whilst the focus of this study was a cultural peer review of the LS/RNR risk instrument, issues with assessing the risk of Indigenous populations, and cross-cultural risk assessment more broadly, extend beyond problems with individual risk instruments. For example, the risk-focused nature of the RNR model, which underpins modern forensic risk assessment, has been critiqued as overly narrow and lacking in efficacy (e.g. Ward & Maruna, 2007). Alternatively, some researchers have called for a more rehabilitative-oriented approach in forensic assessment and treatment, which prioritises the attainment of personal strengths/aspirations and optimising wellbeing (e.g. Strauss-Hughes, 2022; Ward et al., 2022; Ward & Maruna, 2007). This process is believed to better align with a culturally sensitive desistance process (Leaming & Willis, 2016; Prescott & Willis, 2022; Strauss-Hughes et al., 2022). More broadly, a recent paper by Ward et al. (2022) highlights the dangers of continuing to evaluate the cross-cultural efficacy of risk assessment instruments through the existing Western risk paradigm, instead advocating for consideration of alternative approaches that empower Indigenous (and persons of other non-White cultures) to develop their own theories and approaches to risk assessment and management.

### ***Advice on conducting risk assessments with Aboriginal and Torres Strait Islander offenders***

Discussion suggested that important considerations in conducting a safe risk assessment interview are not specific to Aboriginal and Torres Strait Islander offenders, but draw on general skills of clinicians that enable them to build rapport and create a trusting and safe environment for the offender. Cultural competence was, however, identified as an important factor, and participants particularly highlighted

the need for assessors to be willing to seek clarification and guidance when conducting cross-cultural risk assessment. Cultural competence refers to the capacity of assessors to work effectively with people from cultural backgrounds different to their own, and thus requires some knowledge and appreciation of different cultural norms, beliefs and worldviews. Shepherd and Lewis-Fernandez (2016) have previously highlighted that current risk assessment frameworks do not specifically incorporate procedures for cultural competence. However, an appreciation of cultural norms and worldviews would likely be beneficial in conducting a risk assessment interview, and in interpreting the risk/protective nature of offender experiences and circumstances. For example, participants highlighted the role that shame may play in a risk assessment interview with Aboriginal and Torres Strait Islander offenders. An assessor lacking cultural competence may lack this understanding and interpret the offenders' hesitancy to engage incorrectly. However, whilst cultural competency training is now provided by many government agencies in Australia, including corrections agencies, there has been little empirical investigation into whether cultural competency training actually improves the utility and accuracy of risk assessments. Such research may be helpful in clarifying what kind of content could be included in cultural competency training to ensure it assists in promoting safe and accurate risk assessments with Aboriginal and Torres Strait Islander offenders.

### **Implications**

There are several important implications for risk assessment and management that arose from the focus group discussion.

Firstly, whilst participants acknowledged that the LS/RNR risk factors are relevant to Aboriginal and Torres Strait Islander offending, discussion suggests that the LS/RNR instrument in its current form does not adequately consider specific cultural considerations and requires some modification in order

to be used safely and sensitively with Aboriginal and Torres Strait Islander offenders. However, the nature of this modification must be carefully considered. If risk assessors are to be encouraged to take a more nuanced approach to risk assessment with Aboriginal and Torres Strait Islander offenders, taking into consideration contextual factors that may contribute to their risk, it will be vital to ensure this is done in a culturally competent manner that does not reduce the reliability of the assessment. Similarly, if additional culturally specific risk and protective factors are to be incorporated into risk assessment, such as intergenerational trauma and connection to culture, it will be necessary to firstly prioritise research programmes and agendas that aim to empirically validate them.

Secondly, the current study draws attention to potential problems with some responsivity factors in the LS/RNR, particularly the 'cultural issues' factor due to lack of clarity on what this pertains to, and the potentially negative connotation of the word 'issues'. It may be necessary to reconsider the phrasing of this factor and provide greater direction as to what 'cultural issues' refers to.

Thirdly, although not directly related to the appropriateness of the LS/RNR, results highlighted the need for cultural support and engagement for Aboriginal and Torres Strait Islander offenders outside of prison. Prison appears in some cases to offer a level of support, stability and cultural connection that some offenders may not be afforded in the community, thus perpetuating their criminal behaviour. As such, it is vital to offer the same level of support to Aboriginal and Torres Strait Islander people in the community that promotes desistance from offending behaviour.

Fourth, this study highlights some issues in the use of the LS/RNR more broadly, such as confusion about the use of the strength box and professional override. These issues are not specific to Aboriginal and Torres Strait Islander offenders, and perhaps indicate a need

for further research into how well these sections of the instrument are understood.

Finally, the current study highlights the need for assessors to possess cultural competence in conducting risk assessments with people from cultural backgrounds different to their own. Future studies may wish to empirically investigate what kind of cultural competency training could enhance the accuracy and safety of structured risk assessments with BIPOC offenders.

Whilst this study focused specifically on Aboriginal people in the justice system, and some of the identified issues are likely specific to the Aboriginal population in Australia (e.g. lack of consideration for impacts of the Stolen Generation), it is possible that some of the more general results (e.g. regarding the ‘cultural issues’ factor and the overall cultural decontextualisation of the instrument) would apply to other jurisdictions. Indeed, the overall conclusion that the LS/RNR requires changes to make it more culturally appropriate is consistent with research conducted by Shepherd et al. (2018) on the SAVRY in the United States. This suggests that lack of cultural considerations impacts risk assessment instruments generally, and that there is value in conducting similar studies with representatives from a range of BIPOC backgrounds.

### **Limitations**

There are limitations to the current study. Firstly, the number of participants in the sample is arguably low. However, the qualitative research is not dependent on the size of sample for trustworthiness of data, rather on the quality of information gathered through meaningful engagement with participants through open discussion. This facilitates an in-depth examination and a contextualised understanding of individuals’ lived experiences of the phenomenon under investigation. Indeed, the small sample in this study is reflective of the number of Aboriginal and Torres Strait Islander justice

workers in Victoria – only 15 were eligible for the study – and allowed for a coherent and engaging focus group discussion in which all participants were able to contribute meaningfully.

Secondly, it is unclear from the results of the current study whether the participants work specifically with Torres Strait Islander people. As such, recommendations and results from this paper should be interpreted cautiously as regards their application to Torres Strait Islanders. Furthermore, the current study focuses on Aboriginal and Torres Strait Islander people as one cultural group; however, it is widely acknowledged that Aboriginal and Torres Strait Islander populations are heterogenous. As such, general recommendations and assumptions made in this paper, such as the impact of intergenerational trauma, should not be interpreted as automatically applicable to all Aboriginal and Torres Strait Islander people, but rather considerations that can be made on an individual basis. With that said, in spite of the heterogeneity of Aboriginal and Torres Strait Islander culture, it may still be possible to create an empirical set of risk and protective factors for Aboriginal and Torres Strait Islander offending, or alternatively develop tools that have the flexibility to incorporate culturally specific risk and protective considerations. Indeed, the very nature of risk assessment is that general empirically validated risk and protective factors are applied to individuals – each risk factor does not necessarily have the same relevance for each person. It is, however, important that any risk and protective factors, or contextual considerations, that are incorporated into risk assessment for Aboriginal and Torres Strait Islander offenders are empirically validated as related to risk of reoffending.

### **Conclusion**

The LS/RNR is widely used across the world, including with Aboriginal and

Torres Strait Islander offenders, to predict risk of general recidivism and plan for treatment. However, the instrument is normed on Western values and as such may not reflect the experiences, beliefs and values of Aboriginal and Torres Strait Islander people. The current study suggests that the LS/RNR does not adequately consider factors that may be relevant to Aboriginal and Torres Strait Islander offenders. Included risk factors such as family relationships, education/employment and leisure/recreation are relevant, but may not adequately capture the experiences of Aboriginal and Torres Strait Islander offenders. Furthermore, unique cultural risk and protective factors such as intergenerational trauma and cultural connection are not reflected in the instrument, and the instrument overall appears to lack cultural contextualisation. This study suggests that further cultural consultation is required on the applicability of risk instruments to BIPOC offenders, and that risk assessment instruments including the LS/RNR could benefit from modification for use with Aboriginal and Torres Strait Islander offenders, including the addition of culturally relevant risk and protective factors. However, it will be necessary to ensure that any additional risk and protective factors, and efforts to improve cultural contextualisation, are empirically supported so as to ensure culturally sensitive risk assessment that does not conflate culture with risk of reoffending.

### **Ethical standards**

#### ***Declaration of conflicts of interest***

Samantha Venner has declared no conflicts of interest

Natasha Maharaj has declared no conflicts of interest

Diane Sivasubramaniam has declared no conflicts of interest

Stephane M. Shepherd has declared no conflicts of interest

#### ***Ethical approval***

All procedures performed in studies involving human participants were in accordance with the ethical standards of the institutional and/or national research committee [Victorian Department of Justice Research Ethics Committee (JHREC) no. CF215120, and the Swinburne University Human Research Ethics Committee (SUHREC) no. 20215858-6869] and with the 1964 Helsinki declaration and its later amendments or comparable ethical standards.

#### ***Informed consent***

Informed consent was obtained from all individual participants included in the study.

#### ***Disclaimer***

The views and opinions of individuals expressed in this study do not necessarily represent the official views, policies and procedures of the Victorian Government or the Department of Justice and Community Safety.

#### ***Author note***

This study was not preregistered.

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