
THE NOT-SO-STANDARD INDIGENOUS QUESTION:

IDENTIFYING ABORIGINAL AND TORRES STRAIT

ISLANDER VICTIMS

by Anastasia Hardman

The collection of data is essential for effective research and policy. The approved method of data collection in relation to Indigenous victims of crime is currently not being adhered to consistently across Australia. As a result of this inconsistency the data that is available is piecemeal and largely unreliable.

This article argues that nationwide changes to the way in which the Indigenous status of victims is recorded would have a significant impact on the quality of research and policy development concerning the specific experience of Indigenous victims.

Part I describes a research project currently being run by the Indigenous Law Centre which is bringing these issues to light. Part II explains the 'Standard Indigenous Question' ('SIQ') and the important role it plays in facilitating consistent data collection. Part III examines the differing treatment of Indigenous data where the information collected concerns offenders rather than victims. Part IV considers the significance of data collection in the context of sexual assault offences. In concluding, I discuss how these problems can be addressed and provide suggestions for reform.

THE PROJECT

The Indigenous Law Centre is currently conducting a research project funded by the Commonwealth Attorney-General's Department examining the experiences of Indigenous women and children who have been victims of sexual assault. Fundamental to the project is the identification of past judicial proceedings which involved Indigenous victims. The information that is available is largely drawn from hospital reports, qualitative research, support services and national surveys.¹ Through the course of the research, gaps in the information that is available about Indigenous victims (particularly victims of sexual offences) have become obvious.

What is lacking in the current state of data collection is the identification of victims *at the beginning* of the judicial process as Aboriginal or Torres Strait Islander. Proper recording of this information would enable the tracking

of matters through the courts and their subsequent progression to support services. This is the kind of critical information that would present a picture of how these victims fare through the criminal justice process. Such information should come, for the most part, from the police who have first contact with victims. While there are some jurisdictions where police do record the Indigenous status of victims, currently only selected data is available in the public domain.²

THE STANDARD INDIGENOUS QUESTION

The Australian Bureau of Statistics ('ABS') developed the SIQ, adopted in 1995, as the standard for identifying an individual as a member of the Indigenous population.³ The question is based on self-identification as Aboriginal or Torres Strait Islander, as both, or as neither.

The SIQ was implemented to ensure that information on Indigenous status was collected in a consistent manner across multiple and varied data collections throughout the country.⁴ Many organisations, including hospitals, corrective services, health services and welfare institutions, use the question to record the number of Aboriginal and Torres Strait Islander clients accessing their services.⁵

The ABS asserts that the SIQ should be asked 'of *all victims* of crimes against the person'.⁶ This would presumably be best done at the point of complaint to or interview with police. In 2006, the ABS for the first time included experimental data on Indigenous victims in its national report on victims of crime.⁷ In that report, only the figures obtained in NSW, Queensland and the ACT were 'of sufficient quality for national reporting' as they represented the jurisdictions in which police had adhered to the requirements set out by the ABS for the use of the SIQ.⁸

In 2007, Queensland's statistics were omitted from the report due to 'a reduction in the quality' of this data.⁹ At the same time, it was projected that the quality of data in South Australia, Northern Territory and Queensland would be up to standard and ready for inclusion in the

following year's report.¹⁰ However, while publishing data from NSW, South Australia and Northern Territory, the most recent report (2008) states that information collected in the majority of jurisdictions is 'not of sufficient quality for national reporting'.¹¹ The report goes on to state that the excluded jurisdictions are working towards improving the quality of their data.¹² These reports and the lack of reliable statistics to inform them, demonstrate that police across Australia are either failing to ask the SIQ in its standard form, or are failing to record the answers in the approved manner.

OFFENDERS AND THE STANDARD INDIGENOUS QUESTION

In contrast with paucity of data on victims, there seems to be a better understanding of the Indigenous status of offenders. The SIQ is being used effectively in all but one jurisdiction to identify Aboriginal and Torres Strait Islander people entering corrective services as offenders. According to the Productivity Commission, 'corrective services agencies in all states and territories except Western Australia currently enter and store the ABS SIQ appropriately in recording systems for custodial data.'¹³

On the back of the 1991 Royal Commission into Aboriginal Deaths in Custody, there is an underlying sense that greater attention is paid to the Indigenous status of offenders than that of victims. It seems counter-intuitive that more consideration is given to those who have done wrong than to those who have had wrong done to them.

This differential approach is not an insignificant one. A person's identification as Aboriginal or Torres Strait Islander changes the way he or she is dealt with by police. For example, reg 24 *Law Enforcement (Powers and Responsibilities) Regulation 2005* (NSW) categorises Indigenous suspects as 'vulnerable persons', giving rise to a number of special provisions governing appropriate police procedure.¹⁴ Given that it is not always immediately apparent, asking offenders the SIQ is an important procedural step for police to take in establishing whether or not they are dealing with a 'vulnerable person'. Surely establishing the Indigenous status of victims should carry the same sort of flow on effects. For example, as is noted in the NSW Police Aboriginal Strategic Direction information booklet, asking the SIQ is necessary 'to determine access to appropriate victim support schemes'.¹⁵

SIGNIFICANCE OF ADEQUATE DATA COLLECTION BY POLICE

The 2009 *Overcoming Indigenous Disadvantage* report notes that much of the publicly available data about Indigenous

victims is derived from police records and that the accuracy of this data depends on effective record-keeping procedures.¹⁶ There is a particular obligation for police to properly record data in situations of sexual assault. This is not only because of the specific difficulties faced by victims in coming forward, but also because of the public benefit that can be derived from the decision to report such offences.

It is well known that sexual offending is under-reported throughout the wider community.¹⁷ For Indigenous victims there are substantial barriers, beyond what is faced by most other women when reporting sexual offences.¹⁸ Some hurdles include different community obligations and familial pressures, the lack (both real and perceived) of procedural sensitivity to the needs of Indigenous victims, the limited availability of culturally specific services, and a certain acceptance or ingrained understanding of sexual violence as part of life.¹⁹

By failing to correctly record the Indigenous status of victims, the courageous act of reporting the incident and going through the court process has little effect past the personal justice that the affected individual may or may not receive. On the other hand, where statistics are recorded systematically, victims' experiences can be studied and, as a result, positive changes to the system can be considered and implemented. These changes would acknowledge the trauma associated with being a victim, would allow for better measurement of the frequency and circumstances of such offences upon Indigenous women, and could potentially help other vulnerable members of the community to secure safety.

Collecting accurate and consistent data relating to Indigenous peoples is 'a vital precursor to effective policy'.²⁰ The Australian Institute of Health and Welfare points to the importance of such information at a service provision level in order to 'plan, promote and deliver appropriate health, housing and community services, to monitor changes in wellbeing and to account for government expenditure'.²¹ This is no less true of complaints of sexual assault. Where these statistics are routinely collated and recorded, it gives researchers and policy makers an insight into where Indigenous victims enter the system, not just where they end up. With this quantitative information, the specific experiences of Indigenous victims can be better understood. When it is used in conjunction with information collected by hospitals and support services, women's trajectory through the justice and support systems can be better traced. In this way, the entire process can be critically analysed with a view to reforming practices

to better support victims, whether they are entering or exiting the criminal justice system.

THE WAY FORWARD

There is no reason why a systematic approach to recording the Indigenous status of victims could not be implemented in all jurisdictions around Australia. The ABS has already outlined how the SIQ can be used in a way that would lead to better and more reliable data. Namely, police ought to put the SIQ to victims either when they are 'providing an initial report or when they are interviewed'.²² The ABS also endorses police processes in NSW and the ACT, where individual officers are responsible for 'directly entering details of an incident into the recording system'.²³

Ultimately, to achieve a clearer picture of the circumstances involved in sexual assault offences committed upon Indigenous victims, police ought to put the SIQ to *all* victims in *all* jurisdictions of Australia. This responsibility should be required at the institutional level but, in practical terms, must be borne by the individual officers who make the report. Moreover, the collection of statistical information should begin at the earliest possible stage, providing a comprehensive record from the very first point of contact with the criminal justice system. When this does not occur, forming a complete, national picture of how these individuals fare through the judicial process is close to impossible.

Part of making Indigenous status recording a priority means recognising that there are differences between the Indigenous and non-Indigenous experience as victims. The relatively minor changes outlined above would allow policy makers and practitioners a much better understanding of the impact of crime on Aboriginal and Torres Strait Islander people. This information would be invaluable in the development of culturally-appropriate systems, processes and much-needed support services..

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1 Colleen Bryant, Matthew Willis, *Risk Factors In Indigenous Violent Victimization* (2008) <<http://www.aic.gov.au/documents/B/3/D/%7BB3DA1CED-B75E-41BE-B7DB-738D9618E007%7Dtp030.pdf>> at 19 February 2010.

2 Ibid.

- 3 United Nations Department of Economic and Social Affairs - Secretariat of the Permanent Forum on Indigenous Issues, *Collection and Disaggregation of Data Concerning Indigenous Peoples: An Australian Perspective* (2004). <<http://www.un.org/esa/socdev/unpfii/pfii/Datacoll%20Walter%20eng.htm>> at 19 February 2010.
- 4 Australian Institute of Health and Welfare, *Collecting Indigenous Status Information* (2006) <http://www.aihw.gov.au/indigenous/national_standards/collecting_ind_status.cfm> at 19 February 2010.
- 5 Australian Bureau of Statistics, *4510.0 - Recorded Crime - Victims, Australia*, (2008) <<http://www.abs.gov.au/ausstats/abs@.nsf/39433889d406eeb9ca2570610019e9a5/28c1672e9851867aca2575ca00141b6d!OpenDocument>> at 19 February 2010.
- 6 Ibid (emphasis added).
- 7 Ibid.
- 8 Australian Bureau of Statistics, *4510.0 - Recorded Crime - Victims, Australia* (2006) <[http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/E9E9A8A4336E01D1CA2572F10017B A43/\\$File/45100_2006.pdf](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/E9E9A8A4336E01D1CA2572F10017B A43/$File/45100_2006.pdf)> at 19 February 2010.
- 9 Australian Bureau of Statistics, above n 5.
- 10 Ibid, appendix 2.
- 11 Ibid.
- 12 Ibid.
- 13 Australian Bureau of Statistics, *4512.0 - Corrective Services*, (2009) at explanatory note 29, <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4512.0Explanatory%20Notes1Sep%202009?Open>> at 19 February 2010.
- 14 *Law Enforcement (Powers and Responsibilities) Regulation 2005* (NSW), regs 24-36.
- 15 NSW Police, *Aboriginal Strategic Direction - Information Booklet* <http://www.police.nsw.gov.au/_data/assets/pdf_file/0018/105183/atsi_police_brochure.pdf> at 19 February 2010.
- 16 Productivity Commission, Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2009* (2009): <http://www.pc.gov.au/_data/assets/pdf_file/0020/90182/49-appendix4.pdf> at 19 February 2010.
- 17 Natalie Taylor and Judy Putt, 'Adult Sexual Violence in Indigenous and Culturally and Linguistically Diverse Communities in Australia', *Trends and Issues in Crime and Criminal Justice* (2007) 3-4.
- 18 Ibid.
- 19 See Rex Wild and Pat Anderson *Ampe Akelyernemane Meke Mekarle, Little Children are Sacred: Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse* (2007) <http://www.nt.gov.au/dcm/inquiry/saac/pdf/bipacsa_final_report.pdf> at 19 February 2010; Aboriginal Child Sexual Assault Taskforce, *Breaking the Silence: Creating the Future, Addressing Child Sexual Assault in Aboriginal Communities in NSW* (2006) <[http://www.lawlink.nsw.gov.au/lawlink/acsat/acsat.nsf/vwFiles/80001%20CP%20Rep-all_sml.pdf/\\$file/80001%20CP%20Rep-all_sml.pdf](http://www.lawlink.nsw.gov.au/lawlink/acsat/acsat.nsf/vwFiles/80001%20CP%20Rep-all_sml.pdf/$file/80001%20CP%20Rep-all_sml.pdf)> at 19 February 2010.
- 20 United Nations Department of Economic and Social Affairs - Secretariat of the Permanent Forum on Indigenous Issues, above n 3, 1.0.
- 21 Australian Institute of Health and Welfare, above n 4.
- 22 Australian Bureau of Statistics, above n 8, 38.
- 23 Ibid.