



**Nottingham
Law School**
Nottingham Trent University

Executive Summary¹

ADDRESSING THE TORMENT OF POWERLESSNESS:

2023 FIRST RESEARCH AND IMPACT EVALUATION REPORT OF THE HEALTH JUSTICE PARTNERSHIP ON MENTAL HEALTH AND WELLBEING (BBM) on *Bagaraybang bagaraybang mayinygalang (BBM): Empowering & Alleviating: A Health Justice Partnership (HJP) of the Hume Riverina Community Legal Service (HRCLS) & Albury Wodonga Aboriginal Health Service (AWAHS) offering legal support for social & emotional well-being with Aboriginal Peoples in Northeast NSW and Victoria*

About the Research and Impact Evaluation and the Service being Evaluated

This Nottingham Trent University (NTU) BBM research examines the effectiveness of the *Bagaraybang bagaraybang mayinygalang* project, '*Bagaraybang bagaraybang mayinygalang (BBM): Empowering & Alleviating: A Health Justice Partnership (HJP) offers legal support for social & emotional well-being between the Hume Riverina Community Legal Service (HRCLS) & Albury Wodonga Aboriginal Health Service (AWAHS)*.

For this study, the researcher, Dr Liz Curran (author one) from Nottingham Law School (NLS) NTU, met with Aboriginal people, counsellors, doctors, nurses, financial counsellors, drug and alcohol workers, psychologists and other people who work with the local Aboriginal community. She also gathered feedback from the lawyers on the program and the managers who run each of the services mentioned. For the first of three planned field trips, 2-6 April 2023 there were 36 participants (with 9- 11 in the Female Yarning Circle and 11- 14 in the Men's Yarning Circle – noting that the number fluctuated due to the nature of Yarning Circles).

Bagaraybang bagaraybang mayinygalang (BBM) places lawyers from the Hume Riverina Community Legal Service at the Albury Wodonga Aboriginal Health Service (AWAHS) to provide free legal advice and assistance, and to work collaboratively with AWAHS staff to support client wellbeing. This project is funded by the New South Wales Government National Partnership on Legal Assistance Services under its mental health funding stream.

¹ This is also incorporated in the full report in a different format.

Messages from the base line data collected informing future measurement of impact for the HJP

The data collected in this first field trip in 2023 for the BBM has identified that for this Health Justice Partnership (HJP) to succeed, a key part of the role of the justice component delivered by HRCLS will need to challenge, and endeavour to dismantle, structural racism.

Consistent themes across the multiple data collection tools that provided a powerful message (particularly from the Aboriginal participants in this project) is that systemic racism is rife in the day-to-day lives of the Aboriginal participants, and their families.

“Justice is responsible for a lot of our bad experiences.”

“We don’t trust law. Law has done a lot of damage to us. The justice system is part of institutional racism. Lawyers and legal system doing things *to us* not *with us* or *for us*.”

“This is why we need the lawyers, but they must be lawyers who are on our side and who work with the people here at the health service but also who listen and work for us.”

Future work of the HJP

The draft of this report was circulated in early June 2023 to the project partners and their staff. The section of this report which indicates areas for future progress (including recommendations on future steps for service and organisational change) has been discussed in the final tool administered, namely the Reflective Practice Conversations which took place on 23 June 2023 and 3 July 2023, where implications of the data for this new BBM service model were discussed. HRCLS undertook to make a detailed plan in the next 12 months of the programme detailing how they will address the issues raised in this report. HRCLS and AWAHS have undertaken to do this through co-design and checking in with the partnership as to how to implement the changes in the best way possible with the Aboriginal community. HRCLS has also undertaken to bring together the boards and senior management of both organisations, noting that HRCLS is auspiced by UMFC and governed by their board. They also committed to discussing how they can continue to avail themselves of trauma informed training and other leadership strategies that may be needed to support the programme at leadership level.

As a result of the issues raised in this report, particularly around addressing problems with the broader legal community and the judiciary, HRCLS has also indicated it will look for opportunities to utilise this research report to continue to raise awareness and improve trauma informed practise with the judicial and legal professional sectors more broadly.

Start-up HJP Observations from the Data 2023

BBM is already gaining traction in the Aboriginal community, particularly in comparison to other similar MDP and HJP projects in the start-up phase. The project has seen staff of both agencies working together not only in its co-design but working through emergent issues together. The numbers in this short three-month startup phase, when the field trip and data was collected, show high numbers of clients seen already and waiting lists for appointments. This is indicative of the leverage secured from the ongoing Invisible Hurdles project where trust and familiarity had been built over the seven-year period between the two agencies.

The data shows however, that there is a high level of distrust in Aboriginal communities in

the catchment area which is shaped by previous experience with the legal system, service system, and implications of colonisation.

The Aboriginal community expresses scepticism about legal services but is prepared to give the BBM service a go if their feedback is integrated into the service model.

Conclusion and General Findings

The data collected for this 2023 annual report suggests the BBM is already gaining traction in the Aboriginal community, particularly in comparison to other similar MDP and HJP projects in start-up phase. The project has seen staff of both agencies working together not only in its co-design but working through emergent issues together with numbers in this short three-month startup phase when the field trip and data was collected. This period has seen high numbers of clients seen already and waiting lists. This is indicative of the leverage secured from the Invisible Hurdles project where trust and familiarity had been built over the seven-year period between the two agencies.

The data also shows however that there is a high level of distrust in Aboriginal communities in the catchment area which is shaped by previous experience with the legal system, service system, and implications of colonisation. This project will need to address this for positive outcomes on the social determinants of health and justice outcomes for Aboriginal clients. Despite these challenges, the partners at a management level and staff participants in this research and impact evaluation are already making positive changes to increase engagement, listen, hear, and adapt so that it is better positioned to respond to identified ways of working to address inequality.

It is concerning that the data suggests high levels of ignorance about the law, with perceptions that the role of the law is only when someone has 'done something illegal' rather than in the protection of rights or to enforce those rights. It was clear that this ignorance is seen to be utilised by authorities to suppress the Aboriginal community. This conclusion is based on some of the narratives collected across different tools (thus testing and verifying each other) during the field trip in April 2023.

There is also an element of members of the Aboriginal community identifying concerns that in exercising their rights they risk reprisals against them by authorities. This highlighted the great need not only for access to a lawyer but also the need to build legal awareness, capability, confidence, empowerment, and advocacy skills in both the Aboriginal community and among the 'trusted intermediaries' (TIs) namely AWHS non-legal support staff and professionals who support the community.²

The key conclusion for this first report which has collected baseline data for later comparisons is the Aboriginal community expresses scepticism about legal services but is prepared to give the BBM service a go if their feedback is integrated into the service model.

Significant challenges emerge from the research. The project will need to grapple with these, including overt and covert racism, psychosocial, spiritual, physical, emotional, and historical unresolved grief that the data shows are the ongoing impacts of colonisation, mental health issues, exhaustion, and certain levels of exasperation and powerlessness.

² Curran L (2017) Lawyer Secondary Consultations: improving access to justice: reaching clients otherwise excluded through professional support in a multi-disciplinary practice. *Journal of Social Inclusion*, 8(1), pp.46–77.

The partners including both the management and staff have demonstrated higher levels of reflective practise already and a willingness to take on board the implications of the data. This bodes well for project. This and progress in Aboriginal perceptions and trust in the BBM will be examined in future evaluations for the BBM project.

RECOMMENDATIONS

More Broadly

1. Need for long-term funding: The funding bodies and the policy makers need to recognise that collaborations and partnerships need to be adequately supported and funded on an ongoing basis rather than a short-term basis or fragmented funding models.

This is in recognition of the findings of this study that building trust needs to be sustained and genuine. Once trust is tested and has been built up overtime, it enables the relationships to traverse and overcome difficulties together. This was evidenced in the Invisible Hurdles Research where it identified that relationships were strengthened between partners, overcoming the odds such as those presented by Covid lockdowns and border discrepancies, because they had built trust and tested it over time. This project, because it has two of the common partners from Invisible Hurdles has meant usual start – up issues in HJPs have been overcome or quickly resolved, due to these established relationships of trust.

2. Integrated service is critical: Secure and stable funding overtime, partners with similar values, and the focus on client- centred and holistic service provision places partners on the trajectory to break through policy impediments building collective voice for changing unfair, inequitable, or unjust laws and policies.
3. Embed reflective practice & evaluation: Research evaluations that are embedded from service start up that include and incorporate in their model participatory, iterative, and reflective opportunities are immensely invaluable. They enable services to think about what they are doing, how they are doing it, what is effective, and what measures are required to make an impact. This evidence can then assess impact and can shape and inform services to recalibrate, reassess and adapt their service delivery models so that they can be more effective and have a greater impact.
4. Listen & be real: That the legal profession (more broadly) takes up the opportunity to hear from the Aboriginal community. Symbolism is important but services and institutions must go beyond the symbolic to match these with practice. Otherwise, it is perceived as institutional ‘hypocrisy’ and diminishes trust and faith in institutions. This includes the courts, the police, and so on, moving beyond rhetoric to real positive cultural respect and non-discriminatory practice. The following quote illustrates the importance of genuine efforts:

“A lot of what's happening is tokenistic and visual and it's not real. You could put up the pretty pictures of Aboriginal art, you can say it's safe spaces but it's not real. There needs to be real genuine changing in how you interact with us and how the systems interact with us. There needs to be a real effort to understand who we are and what we are and to give us a voice.”
(Yarning Circle April 2023)

5. Plain language & be kind: Lawyers need to continue to remember to use a more accessible, digestible language and a simpler terminology. “Break it down into small bits and use smaller simple words and be aware of the need for cultural safety. Be kind - that's key to cultural safety.” (Interview with TIs, April 2023)
6. Take time, give space & be trauma informed: In recognition of the Aboriginal community's distrust in the legal system and therefore lawyers, the legal professional means there is a need to make sure to have enough time and space to build trust and approach clients with a trauma-informed approach.
7. Manage expectations honestly: Delivery on promises needs to occur, managing expectations and being clear and transparent about what is on offer to Aboriginal community, as, if this does not occur trust suffers.
8. Recognition of systemic issues such as racial bias, institutional racism, and the impact of colonialism ought to shape and inform responses to Aboriginal issues if they are to be effective.
9. Institutions need to be transformed in a way that challenges structural racism. Representation for the Aboriginal community is key. One way to address this might be to explore Aboriginal traineeships within HJPs, particularly those that are integrated within ACCHOs (as per Recommendation 11 below) See below for the community's views on this point:

“We need to be represented. We need a justice system of people who fight for us. We need a justice service that helps us come out feeling better about ourselves.” (Yarning Circle April 2023)

“There need to be more black fellas working with black fellas and getting trained in the law. It's good to hear there are more coming forward, but we need a lot more and we need proper support for these people.” (Yarning Circle April 2023)

10. Human Ethics Approval requirements of government departments, universities and other agencies ought to consider the audience for their participant information sheets and consent forms. They need to be able to discern complications emerging from trauma -informed practice and oral traditions that are critical for cultural safety as a part of ethical practice. The feedback from the Aboriginal people in relation to the Yarning Circles was that consent cannot be truly informed if the forms are incomprehensible and are written in a language that is academic, complex, and informed by Western colonial ways that do not align with culturally safe practices. It was seen by Aboriginal participants ‘as another form of colonisation’ and problematic where oral traditions are strong, and literacy may be an issue.

BBM Specific

11. Focus should be given in communicating that the law is not only about ‘unlawful’ activity or for you when you do something ‘illegal’. Over this next year a more concerted campaign is needed in communities to demonstrate clearly and simply that the law is an important tool for making authorities accountable, realising rights, protecting people from abuse of power or ineptitude. The data suggests that Aboriginal community and TIs often see law as about criminal law or child removal rather than seeing the law as an important tool for enforcing their rights when their rights are

breached.

12. Continuity of care should be central in BBM (& like projects) where mental health and trauma can affect client behaviours readiness and ability to act in their own interests due to the intervention of their mental health condition.
13. Lawyers need to be constantly and consistently there for this client cohort of people with mental health and trauma issues, not only when an urgent legal issue arises.
14. BBM will need to be transparent and open about limitations (funding, not having staff to deal with criminal law, for example).

Future work that is required to make an effective BBM intervention for the Aboriginal Community

This section is informed by the findings of this research in 2023 and should inform the identified strategies for the BBM project to operationalise its aims in future years of the project. This will be discussed in the reflective practise conversations in June and July 2023 and any agreements reached will inform the future RIE in its assessments on effectiveness.

Elements identified in this section will be examined in future annual field trips to see whether progress has been made by the partners in these realms. The data collected in relation to this progress will also shape and inform the impact evaluation.

The key elements identified for this work in progress are summarised as follows:

- a. Training in trauma-informed practice and cultural safety, Aboriginal history, and operationalisation of this awareness in the day-to-day practise of the BBM staff and managers is an ongoing need.
- b. Enabling Aboriginal community voice in community development programmes, policy work and enabling them to drive the decision around what this looks like so that they have a voice in how programmes are designed to be more responsive to them and in decision making on matters that affect them.
- c. The legal support team need to focus on developing active listening skills with the Aboriginal community. BBM Legal support staff need to be trained in being aware during a client's narrative of when they are in a heightened state and able to interpret body language and withdrawal. The lawyers will need training and an awareness of how-to pick-up queues from the community so that they do not further traumatise them. Lawyers' traditional legal training tends to mean that in taking client instructions they are focused on organising material, chronology and placing the circumstance of the client into a legal context. Whilst this is an important legal skill, with this client group it can translate as being unconcerned about the client's dilemma and disrespectful. The lawyers will find that if they can build this skill set the clients will feel safer and they will have greater disclosure which means that we'll be able to help clients in tricky situations. This accords with the notion of client centred practise and skills development suggestions have been written up which can support the legal support team.³
- d. The lawyers and the legal service operations for this particular project given its focus

³ Curran L (2021) Better Law for a Better World: New approaches to law practice and education, Chapter 5 Client-centred Practice, 63-78 (Routledge UK Abingdon).

on Aboriginal community and clients with mental health, trauma and well-being issues, will need to move away from the traditional lawyering approach that tends to intervene when there is a current legal matter and try to develop a continuity of care model as befits clients experiencing mental health problems and with behavioural issues that can provide blockages and impede readiness for decision making.

- e. The community engagement activity of the project is its critical component. In initial stages of the project, the assessment in triage of clients has assisted in averting delays and problems created due to the need to undertake a conflict check and to make appropriate referrals if necessary. This includes warm referrals or preparing material to assist the lawyer for the client. This is a good starting point. Another key component in the community engagement is the role of community organising in empowering the Aboriginal community.
- f. While the BBM is about gaining access to legal support for immediate legal problems it is also about legal empowerment, so the Aboriginal community have their voices heard in decision making and civic participation. The current further marginalisation of the Aboriginal community because of the negative media connected to the referendum on acknowledging prior occupancy of Aboriginal Australians and the role of a *Voice to Parliament* in the *Constitution* needs remedial action. The impact on mental health and well-being if the referendum fails needs to be considered. There is an important role for the legal support team in informing the Aboriginal community of this historical and significant proposed legislative change. This is so they can make informed choices on their vote and potential future role in informing policy on their own issues. Identified in the research is a low level of engagement and understanding by the local Aboriginal community on what the referendum is about or even awareness of there being a referendum.

Additionally, social media has led to an increase in racially abusive commentary. This charged atmosphere could have the effect of disempowering community and marginalising further. There is a role given the expertise of lawyers in ensuring accurate information and improving understanding of the law reform processes and working with the health service to ensure that whatever outcome occurs in the referendum vote the Aboriginal community is prepared. A strategy is being developed by the health service partner to better position the Aboriginal community in the current debate so that they can make informed voting choices. The BBM legal support team and the legal service can engage in movement lawyering to galvanise and prepare the community but ensuring they have the confidence, capability, and skill sets needed to be advocates on their own issues.⁴

- g. Considering the data which challenges the colonised way in which the legal system operates and the lack of trust in the legal system and legal services, including Aboriginal

⁴ For materials and reading on community organising see <https://actbuildchange.com/blog/10-books-every-community-organiser-needs-tool-kit/?cn-reloaded=1>; Maloney J (2014) 'I feel Empowered, I Know my Rights: Communities empowered by peer educators and para legal'; Curran L (2021) *Better Law for a Better World: New approaches to law practice and education*, Chapter 11 'Community development and professional development, 180-200; chapter 12 'Policy research, submission writing an advocacy for change', 202-219 (Routledge UK Abingdon); Curran L, Taylor-Barnet P and Vernon A (2019) '*Reflecting on community development practice: Working with communities for effective change by enabling access to justice*' with P Taylor Barnett and A Vernon, 19 (1) *Flinders Law Journal*, (July 2017).

legal services, means that the way in which the legal service operates needs to be driven by Aboriginal self-determination, autonomy and actively seek to address racial discriminatory practises either formal or informal on which the legal system is based. This will be challenging so checking in with AWAHS and community about what works and does not work will be key in navigating this complex terrain.

- h. Policy work is needed is as a significant component of BBM. The issues identified to date (& including through the field trips) include: the inadequacy of the Stolen Generations Reparations Scheme; the way in which the care and protection system is administered⁵ to disadvantage people impacted across generations by colonisation; dislocation and institutionalisation. It also includes poor culturally informed practise - problems with the judiciary and their treatment of Aboriginal people appearing in their courts which is not culturally informed, presumptions around a level of understanding that many Aboriginal community do not hold, changing the way that other legal professionals interact with Aboriginal clients, and promoting the model that the BBM project will seek to exemplify.
- i. At an organisational level, the managers and board members also need to continue to build on and engage in cross partnership opportunities. This includes interaction by the management of HRCLS and their Boards with Elders and with training provided by or through AWAHS on trauma and cultural safety. It also includes attending each other 's staff meetings, board members meeting together across the partnership, joining together as appropriate on policy and law reform initiatives, and attending community events. It includes ensuring cultural safety and trauma informed training occurs not only at a staff level but across boards and managements. Also, looking at opportunities for board members to work together to promote and champion this project and encourage replicable models to better reach Aboriginal people who do not have the benefit of the BBM.
- j. A key challenge for both partners will be the capacity of having only two legal support staff and the significant levels of identified need in the Aboriginal community. This needs to be managed very carefully and mindfully using the reflective practise model that this RIE insists upon as a measure of ensuring positive impacts.
- k. The legal system is driven by court dates and timelines and time frames which do not necessarily accord with the mental health and well-being of Aboriginal people. These pressures can lead to further re-traumatisation and relapse in mental health recovery. This is a minefield where lawyers are trying to use their legal skills to alleviate and empower people who have experienced trauma, ongoing impacts of colonisation and discrimination (as identified by all the Aboriginal participants in this research). Combining with this is the view expressed by Aboriginal participants around what the measures are that will lead to the establishment of trust in BBM legal support team and how easily this trust can be lost once gained.
- l. It is going to be incumbent on this BBM project for the legal support team to be clear about what it can and cannot offer. This is to manage expectations whilst at the same time not emulating the sorts of legal support services that the Aboriginal participants have indicated they have lost faith in and will not work with. This is going to be a significant challenge for this project alongside is delivering its legal services in a way

⁵ Yoorrook Justice Commission Victoria (May 2023) Public hearings to examine the child protection and criminal justice systems. <https://yoorrookjusticecommission.org.au/hearings/>

that challenges structural inequality and racism. This research will be monitoring progress over the next three years in this area very carefully to honour the programme's stated commitment to make a difference and empower and alleviate conditions which lead to poor mental health and well-being outcomes for the Aboriginal community. This includes addressing the social determinants of health and justice outcomes.