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Crime and justice in the Torres Strait region

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Acronyms and abbreviations

ATSIC	Aboriginal and Torres Strait Islander Commission
ABS	Australian Bureau of Statistics
ALRC	Australian Law Reform Commission
ATSILS	Aboriginal and Torres Strait Islander Legal Service
CJG	community justice group
DATSIP	Department of Aboriginal and Torres Strait Islander Partnerships
DFV	domestic and family violence
DVO	domestic violence order
NPA	Northern Peninsula Area
PNG	Papua New Guinea
QGSO	Queensland Government Statistician's Office
QPS	Queensland Police Service
TSICP	Torres Strait Island Community Police
TSIPSOs	Torres Strait Island Police Support Officers
TSR	Torres Strait region
TSRA	Torres Strait Regional Authority



Abstract

This project represents the first unique study of crime and justice in the Torres Strait region. While there has been much research into Indigenous crime and justice, previous research draws largely on Aboriginal peoples, who are culturally distinct from Torres Strait Islanders. The Torres Strait region offers an opportunity to observe how justice is practised in diverse remote contexts. Through statistical analysis and qualitative fieldwork involving local service providers and community members, this study documents crime rates, community and customary justice practices, as well as impediments to justice, to identify best practices specific to the Torres Strait region.



Executive summary

Introduction

The literature on Indigenous justice notes that crime rates vary considerably between different Indigenous communities and across different locations. However, there are few in-depth studies focusing on the elements of these communities that might produce these discrepancies. This project contributes conceptually, theoretically and empirically to two broad areas:

- de-homogenising Australian Indigenous peoples' diverse experiences with the criminal justice system; and
- understanding the impacts of island ecologies on crime and justice, especially as it relates to remote and isolated settings.

Colonial justice

The history of the Torres Strait region (TSR) suggests that patterns of colonisation were distinct from those of other regions, especially the Australian mainland. The geography of TSR contributed to this distinct history. There has been a tradition of self-policing in the TSR. During the colonial period elements of self-policing or community policing were retained in the TSR. There are also indications that government administrators intervened less in the lives of Torres Strait Islanders than in the lives of Aboriginal Australians. The geographic isolation the TSR has also fostered a relatively high level of cultural homogeneity.

Demographic characteristics

Demographically, the population is relatively young, resembling other Indigenous communities on the mainland and presenting as a potentially criminogenic factor. However, culture remains strong on the islands in both traditional and contemporary forms and the socialisation of young people is an important aspect of cultural practices. Traditional measures of social capital indicate that relatively homogenous and integrated communities exist in the TSR. This noted, economic indicators such as wealth and employment show relatively high levels of disadvantage in the TSR, as well as economic inequality between Indigenous and non-Indigenous households. In this way, economic capital presents as weaker than social capital.

Method

This research adopts a mixed-methods approach, drawing on comparative crime-report data for the period 2001–2018, and triangulating these with qualitative data garnered through fieldwork and interviews conducted with a range of actors in the TSR.

Findings

Torres Strait Islanders had a strong sense of themselves as being composed of peoples and cultures distinct from the mainland. ‘Culture’ was considered to be very strong in the TSR, especially so in the outer islands, where populations were small and bounded into small land areas by the sea. The more cultural homogeneity that existed on the island, the less crime was thought to exist. The islands were contrasted to other Indigenous islands, and also mainland areas, which contained multiple clans or family groupings, some of whom had a history of conflict and hostility. While culture remains strong in the TSR, older lore has also frequently been integrated into more modern traditions, the most notable and influential of which was Christianity. The adherence to religion and its embeddedness in island life was also seen as a major factor distinguishing island communities from mainland communities. In general, the unique ecology of the TSR has influenced the development of tight structures of formal and informal regulation. In particular, the ‘shame culture’ of the TSR drew sharp distinctions between normative private and public behaviours.

Even though culture and history were cited as strong, they continue to be eroded through processes of colonisation and globalisation.

Crime

The average rate of reported offences against the person between 2001 and 2018 in the TSR was lower overall than in Queensland’s Aboriginal communities, though it was higher than for the whole of Queensland. Rates of reported offences against the person in both the TSR and Queensland’s Aboriginal communities trended downwards over the period, while the rate remained relatively stable for the rest of Queensland.

The average rate of reported breach of domestic violence order offences in the TSR was lower overall between 2001 and 2018 when compared with Queensland’s Aboriginal communities, but was higher than for Queensland. Participants universally considered domestic and family violence (DFV) to be the most serious criminal justice issue in the TSR. Many interviewees linked the incidence of DFV (and other offences against the person) to the introduction of alcohol and alcohol culture to the TSR.

The so-called 'shame culture' which can encourage public order can also be linked to a lack of reporting in DFV and might even be considered a progenitor of it to the extent that perceived infractions against island norms are often thought to be best dealt with through informal and private forms of social control. Community policing responses to DFV were also considered to be inconsistent throughout the TSR and cultural roles and kinship or other communal affiliations could take precedence when responding to incidents. This issue was thought to be particularly acute in the outer islands. The isolation of the islands and the inevitably slow police attendance also meant that there were incentives to resolve incidents informally on the islands without reporting to police or for incidents to have been 'resolved' by the time police responded.

The average rate of reported offences against property in the TSR was lower overall between 2001 and 2018 when compared with Queensland's Aboriginal communities, and was also slightly lower than in Queensland. Rates of reported property offences in the TSR and in Queensland trended downwards over the period, while the rate in Queensland's Aboriginal communities trended upwards. The more culturally mixed communities of Bamaga and Waiben/Thursday Island, where there was also greater migration and emigration of people, were considered more prone to property crime than other areas in the TSR. Crime in these locations was also considered to be a result of there being a lack of things to do ('boredom') and a lack of parental or adult supervision. Small groups of repeat offenders were considered responsible for most youth offending.

Generally low property crime rates were considered to be caused by a mix of factors, including potential under-reporting. For instance, it was argued that in a 'sharing culture' lots of property crime does not get reported, to protect social networks such as family and friends.

Community justice groups

Community justice groups (CJGs) are composed of Elders who, despite being mostly voluntary, unpaid and under-resourced, form a very important part of the court process and also contribute to unique forms of local justice, such as cultural mediation. While CJGs are not unique to the TSR, the composition and specific functions of Torres Strait CJGs was thought to be relatively distinctive, particularly because they were involved in leading cultural mediation (as outlined below). In general terms, CJGs provide support to defendants and victims, as well as community information and cultural information, such as individual and cultural reports at sentencing and during bail applications. Notably, they provide the court with local and cultural information, which was considered an 'invaluable' resource by participants associated with the court process.

The CJGs were reported to make police more inclined to appreciate the local culture and also maintain 'cultural respect' for the police within a community. They had allowed police to work more closely with Torres Strait Islanders than they had in the past. In addition to engaging with the police, court and magistrates, these groups also implement crime prevention initiatives and programs.

Island courts

The institution of the court circuit on the islands was regarded by participants as essential in ensuring access to justice in the TSR. The court circuit was considered by several participants to be ‘educational’ and a deterrent to offending. For example, Elders sitting in court also ‘make a big difference’ to justice outcomes and community participation in the process in the TSR. This invokes a ‘shame factor’ because defendants are widely visible to their community and its Elders. This is significant in enforcing informal community social controls. As for other CJGs in Queensland, the Torres Strait magistrate involves the CJG members in the court process, asking the opinion of the members, and listening to Elders’ cultural submissions. The magistrate also invites Elders to sit on the bench with him. Elders are referred to in matters with regard to a person’s history, as well as island protocols, culture and customs.

Cultural mediation

A strong and unique aspect of the island court process is cultural mediation. This process can involve members of the CJG or other Elders, community leaders and other respected community members. With the agreement of the prosecution, a charge can be withdrawn if mediation has been successful and involved parties are satisfied that the matter has been dealt with by the community. The practice was thought to be most effective when a perpetrator was made accountable to their victim.

Cultural mediation was typically used for ‘minor’ wrongdoing. It was considered by participants to be ideal for matters such as intra-familial disputes, as it was thought that formal processes only provided a short-term fix that did not resolve grudges. The tight social networks and integration of people on the islands was also central to making cultural mediation a success and some interviewees noted that court statistics show rates of crime have dropped while it has been practised.

Torres Strait Island Police Support Officers (TSIPSOs)

An important role of the Torres Strait Island Police Support Officers (TSIPSOs) is building trust and rapport between police and communities. In this way they were frequently referred to as the ‘eyes and ears’ of the community and were the ‘frontline’ of policing, especially on the outer islands. Other services also relied on TSIPSOs to locate clients and they were also involved in reporting on probation and parole, and community service projects were often run by TSIPSOs. While their non-sworn roles were critical to crime and justice operations in the TSR, there has also been some local advocacy to provide TSIPSOs with further training, as well as powers of arrest and detention.

TSIPSOs and CJG representatives play an important role in ensuring that defendants and victims clearly understand court processes and orders. They also performed a crime prevention function in communities and visited schools to teach youth about cultural traditions. This noted, being embedded in communities could also prevent TSIPSOs from dealing with serious and minor matters and prevented responses in some instances, notably matters involving close kin or families. The level of supervision, oversight and accountability of TSIPSOs, and perceived conflicts of interest, have been noted as issues for possible review.

Policing

Police relations with the community were universally cited as being strong and positive. An important aspect of policing was doing regular visits and stays on the various islands. Island stays were very important for building relations and trust with community.

Participants, both police and local services, thought the most successful officers integrated well into the local community by engaging in community events and networks. Policing in the TSR was consistently observed to be distinct from policing on the mainland and police had to adapt to the local cultures and lifestyles. Police discretion, given the relatively small size and isolation of some communities, was also important. It was also thought that police should be ‘inducted’ into the community when they arrived in the TSR.

Discussion

Previous Australian research has suggested that crime can be prevented and controlled in rural and regional areas through strong economic conditions. Certainly, the TSR presents as an economically disadvantaged region, so it is the latter factors relating to social capital that are a primary focus in examining the relatively low rates of crime there. Data suggested that the geography of the TSR reinforced cultural homogeneity and made the islands relatively resistant to colonial incursions. This extends to the present day, as the TSR enjoys a far greater level of autonomy and self-governance than other Indigenous communities. Social capital is illustrated in the interdependency of the island’s familial and kinship networks, surveillance and adherence to cultural tradition in encouraging compliance with local norms. While opaque networks may not be crime productive per se, they may indeed enable conditions where crime can remain hidden and be left unaddressed. This was also apparent in the TSR for some types of crime.



Introduction

For decades, Australian criminologists have cited crime statistics to illustrate the extreme disadvantage Indigenous people in Australia experience in the criminal justice system (see, for example, Australian Law Reform Commission (ALRC) 2018; Mazerolle, Marchetti & Lindsay 2003; Memmott et al. 2001; Royal Commission into Aboriginal Deaths in Custody 1991; Weatherburn, Snowball & Hunter 2006; Walker & McDonald 1995; Weatherburn 2014). If conditions alter little, it is not through lack of awareness. However, broad-brush understandings of Indigenous Australians' interactions with the criminal justice system, as well as sweeping policy responses, often fail to appreciate diversity across and between Australian Indigenous communities.

Crime rates vary considerably between different Indigenous communities and between different locations (Lawrence 2007; McCausland & Vivian 2010). However, there are few in-depth studies focusing on the elements of these communities that might produce these discrepancies. Such knowledge may tell us, for instance, if crime rates are linked to the strength of bonds between community members, or whether they are perhaps associated with other factors, such as differences in socio-historical and socio-political contexts. Despite the obvious value of a comparative approach, much of the existing literature and policy treats Indigenous Australians as a homogeneous group, failing to recognise their different histories, cultures, languages and practices.

We contend that the empirical data, presented in such broad terms, hinders our ability to think critically about matters pertaining to Indigenous justice in Australia by masking the diversity of Indigenous Australian experiences. There are numerous Indigenous cultures in Australia, which the colonial misnomers of 'Aboriginal' or 'Indigenous' obscure. For instance, the terms conflate the Melanesian culture of the Torres Strait Islands with the various Aboriginal cultures of mainland Australia (Beckett 1990; Singe 1979). In presenting cultural homogeneity, this racialised terminology renders Torres Strait Islander people relatively invisible, ignoring the uniqueness of the history, places, spaces and people that make up the Torres Strait Islands.

Despite being a distinct Indigenous Australian culture, criminologists know virtually nothing about Torres Strait Islander epistemologies and how these influence social capital and bonding, which in turn can influence justice. Further, there is little understanding of how the ecology of the Torres Strait region (TSR)—isolated island communities—impacts on justice. While criminology has sometimes speculated on the ecology of rural and isolated communities,

almost nothing is known of how island environments influence crime prevention and control. This neglect is surprising given Australia's location in the Southern Pacific. In an era when post-colonial and southern criminologies have drawn attention to the forgotten places and spaces of criminology and the selectiveness of the northern gaze, it is timely to consider the place of islands in criminology. This study responds to these gaps in the literature by focusing specifically on the experiences of and approaches to crime and justice in the Torres Strait Islands.

Research aims, approach and key findings

This research adopts a mixed-methods approach, drawing on crime-report data for the period 2001–2018, and triangulating these with qualitative data garnered through fieldwork and interviews conducted in 2018 and 2019 with a range of participants in the TSR. We found that reported crime was relatively low in the TSR. Qualitative accounts indicated that key crime issues were domestic and family violence (DFV), driving offences, drug offences, and some property offences. A combination of factors appear to contribute to the relatively low incidence of crime in the TSR, including:

- under-reporting (particularly with regard to DFV and, to some extent, also property crime), which is partly due to the dispersed ecology of the TSR and also due to close familial and kinship bonds between Torres Strait Islander police and those being policed;
- a unique regional history of colonisation, self-governance and self-policing;
- relatively tight social bonds; and
- distinct justice innovations (including 'island courts', cultural mediation, a specific role for Torres Strait Islander Police Support Officers (TSIPSOs), and more).

Overall, the project finds that experiences of crime and justice in the TSR are unique, providing possible lessons for criminal justice and social policy elsewhere in Australia and beyond. The project also finds that the TSR's 'islandness' has unique impacts upon justice practices, which holds lessons for the development of a broader island criminology.

Structure of this report

This report provides an overview of existing literature in the areas of Indigenous Australian crime and justice and island criminology. The context of the study is set out before the methodology is described. The findings and discussions are then laid out before we provide a final summary, discuss limitations and suggest areas for future research.



Review of existing literature

The following sections provide a brief review of literature concerning crime and justice in Australian Indigenous communities. Australia's history of colonisation has deeply impacted the geography of what are now typically referred to as Australia's 'discrete Indigenous communities' (Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP) 2019). In contemporary public discourses, these 'communities' are typically signified by race and closed (mapped) geographic boundaries, both of which were imposed from above as part of colonial governing practices. In this context, geographic definitions of 'community' are largely post-colonial, artificial constructs (Scott & Hogg 2015). Nevertheless, these geographic boundaries now provide part of the architecture in which remote-living Aboriginal and Torres Strait Islander Australians' lives are lived, and present a useful lens through which to explore the spatial order of crime in rural and remote Australia.

We begin by examining the scope of existing studies, most of which treat Indigenous Australians as a homogeneous group. This has led some scholars to call for studies that more closely examine the diversity of Indigenous Australian experiences of crime and justice, particularly by focusing on the differences in experiences between communities—including between Aboriginal and Torres Strait Islander communities.

We then briefly examine the existing criminological literature concerning islands and crime. Despite a burgeoning literature on rural and remote crime, there has been relatively little attention paid to crime in the unique geographic and social contexts of islands. Thus, this study responds to two primary gaps in the literature and contributes conceptually, theoretically and empirically to two broad areas:

- de-homogenising Australian Indigenous peoples' diverse experiences with the criminal justice system; and
- understanding the impacts of island ecologies on crime and justice, especially as they relate to remote and isolated settings.

Indigenous Australians and the criminal justice system

In Australia, there has been a great deal of research and policy attention paid to the over-representation of Indigenous people in the criminal justice system (eg ALRC 2018; Memmott et al. 2001; RCIADIC 1991; Walker & McDonald 1995; Weatherburn 2014). However, most of the research into Indigenous Australian experiences of crime and justice has assumed a level of cultural homogeneity that does not exist (eg Cunneen 2001; Lincoln & Wilson 1994; Snowball & Weatherburn 2008; Weatherburn 2014). These studies have tended to rely on a handful of explanations to theorise, in a sweeping way, why Indigenous Australians experience a disproportionate level of contact with the criminal justice system. We briefly summarise some of these studies' findings below.

Reasons for over-representation

The literature presents a variety of reasons for the over-representation of Indigenous Australians in the criminal justice system. However, any discussion of these possible causes must begin by acknowledging and situating the current state of over-representation in the context of historical and ongoing colonisation. Although the resilience of Aboriginal and Torres Strait Islander Australians in the face of 231 years of devastating colonisation is incredible, colonial processes have nevertheless continued to erode and undermine Indigenous worldviews and ways of living. Settler definitions of crime and deviance overlay millennia-old cultural understandings of 'order' and 'disorder', and have the ongoing function of forcing Indigenous Australians to abide by normative settler ways. Forms of behaviour which were legitimate and authorised prior to colonisation, including sanctioned violence, have now been recast as illegal and problematic (Brigg et al. 2018; Sutton 2011).

In this regard, processes of colonisation have entrapped Indigenous Australians in the criminal justice system in a number of ways—through changing definitions of their society and cultures and through the criminogenic impacts of intergenerational dispossession, oppressive violence and continued subjugation (Cunneen & Tauri 2016; Weatherburn 2014). Much of the existing literature acknowledges and depends on this history of colonisation and associated strains to explain the overwhelming contact with the criminal justice system (eg Broadhurst 1997; Cunneen 1999; Lucashenko & Best 1995). Through this lens, the historical and ongoing violence of colonisation, and the concomitant destruction of Indigenous cultures and social structures, has resulted in a state of relative anomie, which has included the breakdown of traditional social controls, as well as widespread experiences of poverty (Atkinson 1990; Broadhurst 1997; Lucashenko & Best 1995; Reser 1991). In addition to the breakdown of Indigenous cultures caused by colonisation, others have argued that the social norms introduced by settlers have been equally damaging (Broadhurst 1997; Cunneen & Tauri 2016).

With regard to experiences of DFV in particular, Lucashenko and Best (1995: 20) argued that violence in Aboriginal communities was not only a result of the breakdown of Aboriginal lore that occurred as a result of colonisation, but also ‘...its replacement by white norms of sexist behaviour in communities already made dysfunctional by colonisation’. They argued that these settler norms included the notion that masculinity was performed through physical aggression: ‘Along with the gun, the rabbit and the pox, Europeans brought to Aboriginal Australia the scourge of sexist violence, and it is killing our women’ (Lucashenko & Best 1995: 20). Similarly, Atkinson (1991: 4) stated:

Violence by men towards Aboriginal women is an affirmation of a particular social order (that of white males) which arises out of the socio-cultural belief that women, and in particular Aboriginal women, are less important than men and so are not entitled to equal respect.

Others have argued that DFV is also a result of the tension caused by an erosion of traditional roles and responsibilities for men and women (Gale 1978; Hunter 1993). For instance, in ‘post-traditional communities the status of women increased whilst that of men declined’ (Gale 1978: 2).

Other forms of crime, such as public order offences, have also been viewed as the enactment of struggle and resistance against oppressive colonial forces, providing a counter-narrative to the conceptualisation of Indigenous Australians as passive, colonised and victimised people (Broadhurst 2002; Cunneen & Robb 1987). Though, as Tyler (1998: 154) argued, ‘...such a politicised explanation paradoxically returns to the dysfunctional or pathological effects of many forms of offending when traditional mechanisms are removed and resistance becomes self-destructive’. Thus, Tyler (1998) sees a ‘slippery slope’ to pathologising Indigenous Australians’ offending as a result of an inherent dysfunction.

Some anthropologists and other scholars have argued that violence was a functional aspect of pre-colonial Indigenous Australian societies, just as it has also been a functional aspect of European societies (Langton 1988; Martin 1993; McKnight 2002; Sutton 2011). As Lucashenko and Best (1995: 19) pointed out, however, there is strong evidence—at least among Queensland Indigenous populations—that pre-colonial violence was used ‘...only in limited, specific forms designated by Aboriginal law... [being] strictly controlled and far removed from the indiscriminate bashings which we experience today’ (Lucashenko & Best 1995: 19–20). Atkinson (1990: 10) also argued that, in pre-colonial Indigenous cultures, violence was contained within acceptable limits and indeed the victim was central to the resolution of the conflict. This aligns with restorative forms of justice and the associated concept of reintegrative shaming, which have been identified as being typically more aligned with (or emerging from) Indigenous justice approaches (Braithwaite 1989; Nancarrow 2006; Strang 2001).

Alcohol is also broadly identified as a key contributor to the disintegration of social controls and resulting crime among Indigenous Australians (eg Hunter, Hall & Spargo 1991; McKnight 2002; Royal Commission into Aboriginal Deaths in Custody 1991; Sutton 2011). For instance, Alyawarre woman Pat Anderson AO has spoken about ‘rivers of grog’ in Aboriginal communities as contributing to experiences of violence (in Rollins 2014: 25). However, despite acknowledging a valid link between alcohol and violence, Atkinson (1991) also argued that violence will not be addressed through alcohol-reduction measures alone, and that broader attention must be paid to the structural and social factors that accept violence as a social norm.

In their developmental study, Homel, Lincoln and Herd (1999) similarly recognised alcohol as a key risk factor for crime, alongside a range of other culturally specific risk factors including forced removals, a lack of self-determination (framed by the authors as ‘dependence’), institutionalised racism, and cultural factors such as structured fighting—what Brigg et al. (2018) refer to as ‘squaring up’ in the context of Mornington Island (Homel et al. 1999: 185–189). Protective factors included cultural resilience, personal controls, and family controls (eg strong social bonds among family and kin; Homel et al. 1999: 189–191). The factors identified by Homel et al. (1999) essentially reinforce the social strain perspective.

Although it is possible that elements of these different theoretical explanations hold true, it is also likely that experiences of crime and justice, as well as explanations for these experiences, differ across geographical and social contexts. Studies that see Indigenous offending as having a single explanation do not account for the differences between communities (Tyler 1995, 1998). The following section examines studies of Indigenous Australian contact with the criminal justice system that do consider cultural variation between Indigenous communities, before we then turn to the literature regarding islands and crime.

Considering crime in context

From the early 1990s, some Australian scholars began to draw attention to the myth of Indigenous Australian homogeneity—particularly with regard to the diverse experiences of Indigenous Australians living in rural and remote areas (Langton 1993; Tyler 1998), and some studies have subsequently also examined crime and justice within smaller community contexts. Of course, this sudden ‘awakening’ in scholarship merely represented a long-overdue recognition by the settler state of a fact that was long known to Indigenous Australians (Atkinson 1990: 7).

In 1998, Tyler argued that there was a recognisable move in criminal justice policy away from the assumption of a pan-Indigeneity and towards greater recognition of diversity across places and spaces. This shift was spurred on by a series of native title cases that drew national attention to the plurality of Indigenous Australian identities, including how these identities were spatially anchored through millennia-long links between diverse Indigenous nations and their discrete homelands. These included, for instance, the *Mabo* (1992) and *Wik* (1995) High Court judgements, and the *Native Title Act 1993* (Cth).

Tyler (1998) mapped Indigenous offending rates against socio-spatial criteria as a means of testing whether different offence types were spatially clustered. He found that property crime was more likely to occur in urban areas, while violent offences were more likely in remote areas that had more stable links to traditional culture (Tyler 1998). Other offence types were less prone to spatial differentiation. These findings have been reinforced by the continuation of remarkably different crime statistics for Indigenous communities across urban, regional and remote areas, where crime—and particularly crime against the person—is experienced in remote areas at disproportionately high rates when compared with the rest of Australia. For instance, in Queensland’s remote ‘discrete Indigenous communities’ (including both mainland Aboriginal communities and Torres Strait Islander communities), reported offences against the person in 2015–16 were between 3.2 and 24.2 times higher than the Queensland average (DATSIP 2019).

Brigg et al. (2018) studied experiences of crime and justice in Mornington Island, paying particular attention to the ability of the Queensland Government sponsored Mornington Island Restorative Justice Project to formally accommodate and integrate customary methods of mediation. The project was implemented at a time when, according to the authors, ‘...the extent of erosion of classical social structures [in Mornington Island] would have indicated, to the casual observer, little chance of drawing upon customary cultural norms and values for conflict management’ (Brigg et al. 2018: 351). For instance, earlier accounts by McKnight (2002) and others have recorded incidents of significant violence—particularly as a result of alcohol consumption—in Mornington Island (though Brigg et al. (2018) argue that some of these claims may have been exaggerated). Despite initial reluctance by the Mornington Island community, the project was eventually appropriated as a way to continue cultural forms of justice, including the practice of ‘squaring up’ or mediated public fighting (Brigg et al. 2018).

While these and some other studies have pointed to differences in the experiences of crime and justice in different Indigenous places and spaces, a number of authors have called for more studies that take this approach (eg Lawrence 2007; McCausland & Vivian 2010). In particular, Lawrence (2007) argued that further work is required in Australia to define the characteristics of ‘well-functioning’ Indigenous communities (ie those with less crime). He stated:

Criminological literature has pointed to variations in crime rates and the accompanying social factors in these [remote Indigenous] areas. Official crime statistics only reveal part of the picture. Further research is needed on local factors and the particular cultural and social characteristics of Indigenous communities with low crime rates. (Lawrence 2007: 6)

Scott and Morton (2018) also pointed to this need in relation to crime and justice experiences in the TSR. While there have been some studies of crime and justice in the TSR, these have focused on violent crime in particular, rather than crime more generally (eg Memmott 2010), or have drawn primarily on crime-report data without triangulating these with qualitative data reflecting the lived experiences of Torres Strait Islander people. As a result, Scott and Morton (2018) argued that Torres Strait Islander communities are typically rendered invisible in discourses about Indigenous crime. They argued that:

...as a distinct indigenous Australian culture we know virtually nothing about TSI [Torres Strait Islander] epistemologies and how these influence social capital and bonding, which, in turn, influences justice. Further, there is little understanding of how the ecology of the region, this being isolated island communities, impacts on justice. (Scott and Morton 2018: 605)

Below we briefly turn to this latter point regarding the unique ecologies of islands, before restating our research questions.

Islands and crime

Criminologists have long examined the ‘spatial order’ of crime, and both ‘place’ (the social construction of crime and the meanings given to it according to physical location) and ‘space’ (the objective social and geographic conditions that have criminogenic impacts) are considered to be important. Early criminology used terms such as ‘urban sociology’ and ‘ecology of crime’ for the study of crime and space—both areas pioneered by the Chicago school of sociology. This approach has remained current in strain approaches to criminology, especially research focusing on neighbourhood and city crime. Crime prevention literature has more recently directed attention towards the ownership and monitoring of public space (Carrabine et al. 2014). Criminologists also regularly use mapping to show the spatial dimensions of crime.

In contrast, place has mostly been an afterthought in criminology, examined occasionally with reference to fear of crime (see Loader, Girling & Sparks 2000) or in cultural criminology focusing on urbanity (see Hayward 2004) or rurality (see Scott & Hogg 2015). However, as Murray (2017: 32) argues, humans are ‘placelings’ in that all action and thought is located in a particular place. Place sculpts people’s identity (eg mountain people, coastal people, polar people, forest people, jungle people; (Hay 2006: 22). Similarly, places are also dependent on people for their identity (Memmott et al. 2001: 41; Murray 2017: 32–35). As such, it is not just the objective or physical characteristics of space that are important; place can also be a location or repository of meaning, imbued by individuals, groups and socio-cultural processes (Kolodziejski 2014: 29–30; Tuan 1979). Perceptions of places, including fear of crime, can be both evocative and highly criminogenic. For example, there have long been ‘bad neighbourhoods’, slums, ghettos, shanty towns and crime hotspots (Kolodziejski 2014: 29). However, the places and spaces of islands have largely been overlooked in criminology.

Islands have only recently appeared in criminology, though studies generally do not deeply consider the place- and space-based characteristics of island settings (Lauritsen 2019; Scott & Morton 2018; Staines & Scott 2019). For example, Stallwitz (2012) situated an empirical study on heroin use in the Shetland Islands (off Scotland) within rural criminology, but did not take account of the potential uniqueness the islands might hold beyond their mere rurality. There has also been much written about crime and tourism, a large proportion of it focusing on islands, especially in the Caribbean. Generally, mass tourism has been closely aligned with increases in crime rates (mostly property crime) on islands (Albuquerque & McElroy 1999) and tourists are more likely than residents to be victims of such crime (Chesney-Lind & Lind 1986). Two theories, both ecological, have dominated theorising on island tourism and crime, these being routine activities theory and hotspot theory (Albuquerque & McElroy 1999).

Some well-publicised violent robberies in the Caribbean during the 1980s and 1990s shook the tourism industry. Moreover, during the early 1990s the United States Virgin Islands had the dubious distinction of having higher violent crime rates than New York City (Albuquerque & McElroy 1999: 972). In the case of the US Virgin Islands, tourism officials hired a major public relations firm to improve the image of what the local police chief described as ‘our islands’ (Albuquerque & McElroy 1999: 973). Tourism crime reminds us that islands are often highly racialised post-colonial settings. In tourist scenarios, the outsiders are victims of crime and a focus is crime prevention to improve the safety of the economically significant group (see Albuquerque & McElroy 1999).

Some of this previous work has been critical and focused on the post-colonial experience (see Pratt & Melei 2018). In a valuable and rare contribution to a critical criminology of islands, Mountz (2011: 118) has argued ‘islands emerged as spatially significant sites of exclusion in a geographical landscape where migrants tried to access asylum processes and where nation-states invested significant resources in enforcement to manage entry’. In this process, borders are displaced and reconstituted in detention centres. In addition to being sites of exclusion, Mountz (2011) explores the history of islands as military sites strategic to colonial territories. The geography of islands allows for greater control over movement of detainees, information and people (including advocates for asylum seekers) moving into and out of facilities. Detainees in these spaces remain largely hidden from the view of media and human rights monitors. Notably, access to justice is mediated by distance, a theme significant to the current research.

Overall, existing studies tend to ignore the social construction of crime on islands, only examining its ‘real’ dimensions. Speaking about the TSR in particular, Scott and Morton (2018: 605) stated:

While criminology has long speculated on the ecology of rural and isolated communities, virtually nothing is known of how island environments influence crime prevention and control. The neglect is surprising given Australia’s location in the Southern Pacific... Perhaps here lies an opportunity for Southern criminology to develop an account of island justice, which will inform the already rich field of spatial criminologies.

In an era when post-colonial and southern criminologies have alerted attention to the forgotten places and spaces of criminology and the selectiveness of the northern gaze, it is timely to consider the place of islands in criminology. In this study, we seek to do just that, paying attention to both their place- and space-based attributes. The TSR provides us with an opportunity to re-examine how fundamental concepts for understanding crime and regulation, such as social integration, community and belonging, as well as exclusion and othering, are applied in the often closed and bounded networks of island ecologies.

Research questions

As a means of addressing the gaps identified in the above literature review, this project asks four primary research questions:

- How have the ecological conditions of the Torres Strait region influenced the historical and cultural factors influencing justice?
- What is the extent of crime occurring in the TSR?
- How do local people and criminal justice professionals construct ‘the crime problem’ in the TSR?
- How is justice practised in the TSR? In particular, are there community and customary justice practices and/or impediments to justice that are specific to this context?

In turn, this project contributes conceptually, theoretically and empirically to two broad areas:

- de-homogenising Australian Indigenous peoples’ diverse experiences with the criminal justice system; and
- understanding the impact of ecology on crime and justice, especially as it relates to remote and isolated (island) settings.

The following section, Context of the study, summarises the specific geographic, historical and demographic context for this study, before the methods used to undertake the study are outlined in the *Methodology* section.



Context of the study

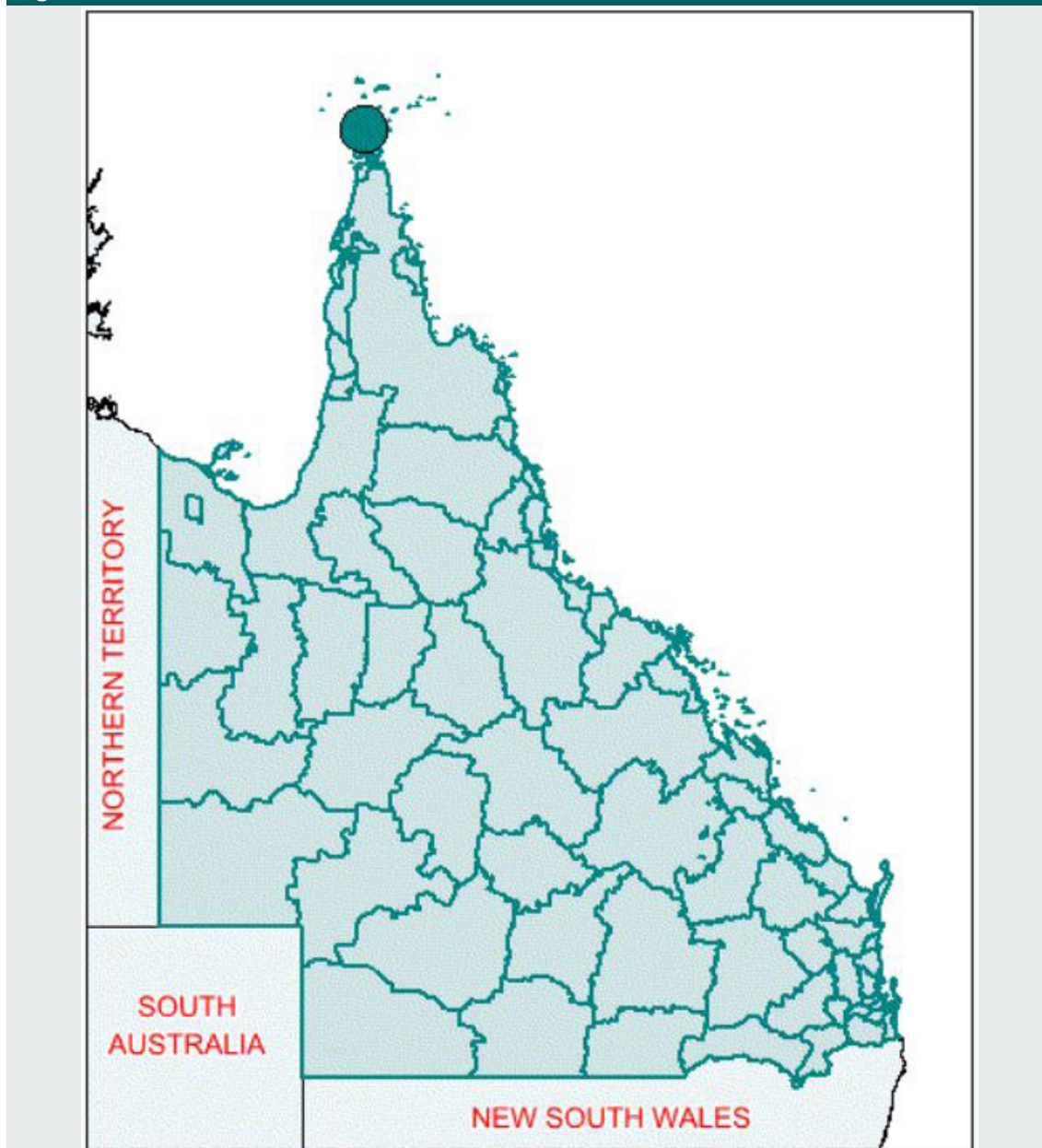
This section seeks to provide an overview of the geographic, historical and demographic context of the TSR. As described below, the TSR has a unique geography, history, politics and culture, which distinguishes Torres Strait Islander people from people living in other parts of Australia. The features of the TSR have provided Torres Strait Islander people with a degree of autonomy and cultural continuity not afforded to the Indigenous peoples of the Australian mainland. The TSR—and especially its outer islands—is also extremely isolated, providing an interesting backdrop for examining the potential influence of the spatial and social dynamics of ‘islandness’ on crime and justice (Conkling 2007).

Geographic context

The Torres Strait is a body of water between the northernmost tip of Queensland, Australia and the coast of Papua New Guinea (PNG), consisting of over 100 islands and outcrops (see Figures 1 and 2). These islands are spread over 48,000 square kilometres. (The smaller Local Government Area of the Torres Strait Islands has a total area of 490 square kilometres.) Islanders live in 18 permanent communities located on 17 of the region’s islands, but continue to visit traditionally-owned islands for fishing, gardening, food collection and recreation (Shnukal 2015). The TSR extends from the top of Cape York (in the Northern Peninsula Area, NPA) to just south of PNG.

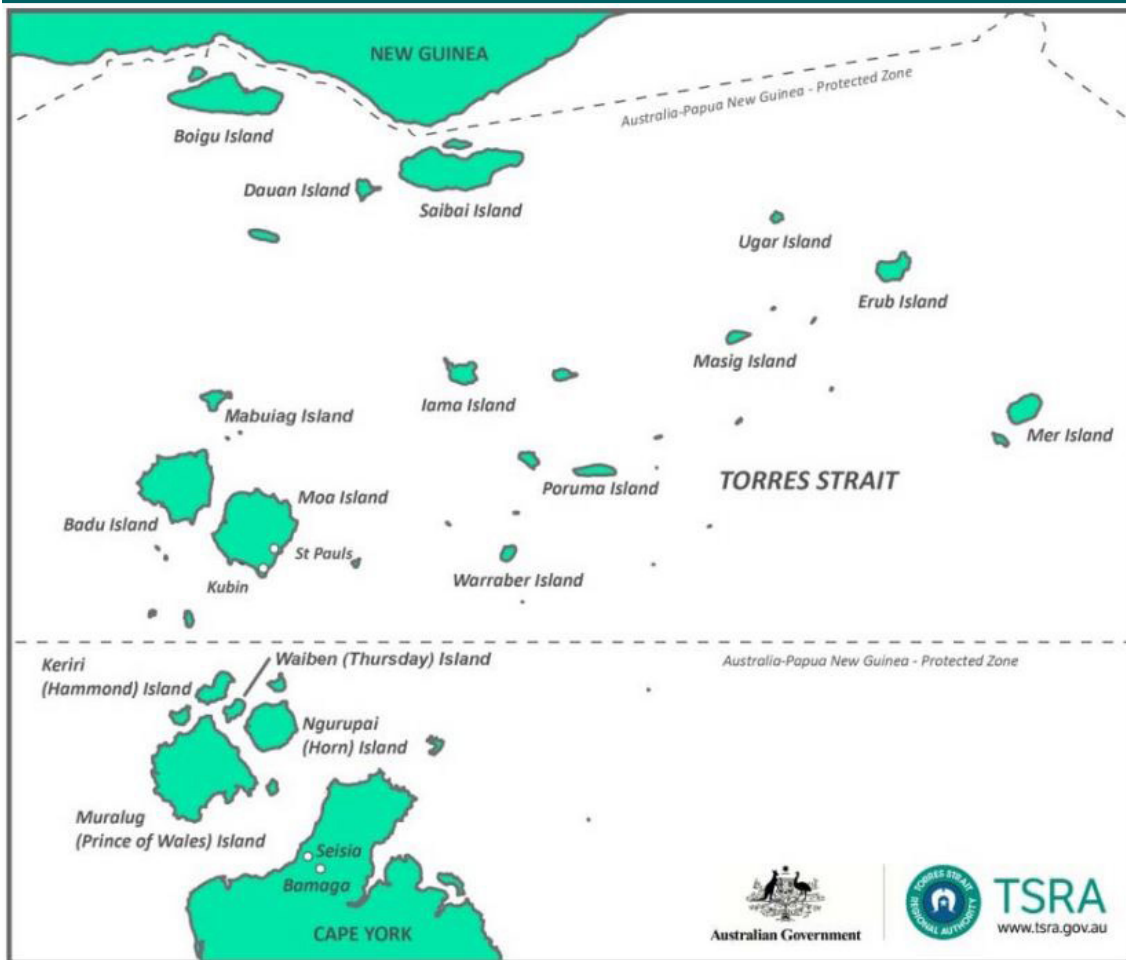
The NPA, located on the Australian mainland, consists of five separate geographic communities: the predominantly Aboriginal communities of Umagico, Injinoo and Mapoon, and the predominantly Torres Strait Islander communities of Bamaga and Seisia. The island groupings making up the Torres Strait are generally separated into five clusters: Inner, Eastern, Central, Near Western and Top Western. Each of the clusters is culturally diverse and distinct and contains a number of population centres that have a community of interest with one other, but also retain administrative links to the hub, Waiben/Thursday Island.

Figure 1: Location of the Torres Strait Islands in relation to Queensland



Source: DATSIP 2019

Figure 2: Map of the TSR



Source: Torres Strait Regional Authority (TSRA) in ANAO 2014: 14

The Inner Islands cluster (constituted by Waiben/Thursday Island, Ngurupai/Horn, Muralug/Prince of Wales Island and Keriri/Hammond Island) is the administrative hub of the Torres Strait region. The Western Cluster consists of the islands of Badu and Mabuiag and the communities of Kubin and St Pauls on Moa Island. Kubin village people are the descendants of displaced Aboriginal (Karrareg) inhabitants of Muralug/Prince of Wales Island and Keriri/Hammond Island. St Pauls, connected to Kubin and the island's airstrip by 15 kilometres of gravel road, started as a reserve for Pacific Islanders who survived the restrictive immigration policies of the federal government in the early 1900s by inter-marriage with Torres Strait Islanders.

The Near Western cluster is the closest to Waiben/Thursday Island, approximately 30 minutes flying time from the airstrip on Ngurupai/Horn Island (but 2–3 hours by dinghy, depending on sea conditions). The Top Western cluster includes the islands of Duaun, Boigu and Saibai. The Top Western islands of Boigu and Saibai identify strongly with PNG. The coastline of PNG is clearly visible from Saibai and Boigu (being situated about six kilometres away), which are low-lying swampy islands formed from detritus of the Fly River. The predominant language is Kalaw Kawaw Ya and the people are traditional traders and historical enemies of the Kiwai people of the Fly River region. To this day, there are almost daily visits from the Papuan Mabaduan and Sigabadaru villagers (to Saibai) and the Buzi and Berr villagers (to Boigu) in the hope of selling artefacts to their counterparts. These villagers also access shopping facilities on the Queensland islands. The New Guineans are permitted to travel across the international border by virtue of traditional visitor permits negotiated with the Whitlam government in the mid-1970s. Pursuant to the Torres Strait Islands Treaty, signed in 1978, free movement (without passports or visas) is allowed between PNG and the TSR for traditional purposes.

The Central cluster encompasses the sandy cays of Iama/Yam, Warraber/Sue and Poruma/Coconut islands. These islands are each very small but are significant to islander culture. A great historical figure, Kebisu, had his headquarters in these islands (also called the Three Sisters) and used them as a base for his canoes to trade and wage war on other communities and attack intruding European ships. The Eastern cluster comprises the islands of Masig/Yorke, Ugar/Stephen, Erub/Darnley and Mer/Murray islands. Masig/Yorke is more geographically aligned with the Three Sisters group, while Ugar/Stephen, Erub/Darnley and Mer/Murray are the last rocky outcrops of the Great Dividing Range.

All of the TSR is classified by the Australian Bureau of Statistics (ABS) as ‘very remote Australia’. This compares with the rest of Queensland, where only 1.3 percent of the population lives in very remote conditions (Queensland Government Statistician’s Office (QGSO) 2016c: 35). In terms of proximity to Queensland’s capital, Brisbane, the TSR is further away than all of Queensland’s other remote Aboriginal communities. The remoteness of the TSR is particularly apparent when considering that all other remote Aboriginal communities in Queensland are located on the mainland, with the exception of Mornington and Palm Islands. While Palm Island is part of a broader group containing 16 islands, these islands are less dispersed than those of the TSR. Mornington Island is part of the Wellesley Islands group, which includes 22 islands that are also less dispersed than those of the TSR.

The geographic isolation of many of the Torres Strait Islands means there are black spots with no mobile phone coverage between islands. For eight months of the year the islands also experience heavy trade winds, especially the south-east winds or ‘sager’, which render the waters extremely rough and too dangerous to travel by dinghy. This makes the geography of the TSR particularly unique and interesting.

The geographic isolation of the region has fostered a relatively high level of cultural homogeneity. Until quite recently, there was limited access to telecommunications technologies in the TSR. The national broadcaster commenced radio broadcasts to the TSR in 1979, telephones appeared in 1980 and television broadcasts in 1981 (Robertson 2010: 474). Internet connectivity among Indigenous households in the TSR is almost half that of the non-Indigenous population in the TSR or in the rest of Queensland (QGSO 2016a: 36).

Historical context: Colonisation, governance and crime

This section provides an overview of the historical context of the TSR, drawing on anthropological and historical literature. It should be noted that these texts overwhelmingly summarise history through a non-Indigenous (predominantly male) gaze (Moreton-Robinson 2004), and we cannot assume that historians and anthropologists have recorded ‘all there is to know’ about Indigenous cultures and histories (Watson 2002: 13). Thus, the following information should be interpreted with this in mind.

The islands of the TSR first appeared on maps as early as the late 1500s, though the first recorded voyage was by a Spanish ship (captained by Luis Vaez de Torres) in 1606 and it was not until Cook’s travels on the *Endeavour* in 1770 that the region was officially charted (Singe 1979). There are stories of violent conflicts during this period; Torres Strait Islanders ‘confidently and aggressively’ defended their land and sea against newcomers (Singe 1979: 19). However, retaliation by voyagers often involved the killing and kidnapping of Torres Strait residents and the burning of entire villages, which had the effect of destroying livelihoods and the local provisions needed for survival (Singe 1979). Ultimately, Torres Strait Islanders could not compete with the newcomers’ weaponry; Singe (1979: 32) recorded that, between 1840 and 1870, ‘Islanders were frequently shot on sight whilst any boat crew less than well-armed would be risking massacre.’

From 1868 onwards, the pearling industry took hold in the Torres Strait (Beckett 1977), which Singe (1979: 33) described as the ‘final act of European intervention’. This occurred alongside the introduction of Christianity to the TSR from 1871. The first Christian missionary teachers were placed on Erub/Darnley Island in 1871 and a school was opened two years later. The first service held in 1871 is now considered part of the fulfilment of traditional belief systems, as opposed to a break from the past and is celebrated annually as ‘the Coming of the Light’. These missionaries were part of the Calvinist evangelical London Missionary Society, which was later superseded by the Church of England Torres Strait Mission in 1915. Presbyterian and Catholic churches were also established on the islands in the 1880s (Lawrence & Lawrence 2004). The work of conversion and cultural modelling was typically carried out by Pacific Islander pastors, not Europeans.

The islands were annexed by Britain comparatively late, in 1872, and in 1879 the islanders became British subjects and their islands Crown lands. Missionaries were apparently actively encouraged into the TSR by government administrators as a way of promoting local stability during the influx of migrants involved in the pearling industry (Singe 1979: 60).

The geographical area of the TSR that fell under Queensland's responsibility was not extended to include the southern parts of the region until 1872 (Singe 1979). In 1877, a previous settlement at Somerset (on Cape York) was abandoned and a new settlement established on Waiben/Thursday Island. A police magistrate was transferred to Waiben/Thursday Island in 1877 (alongside five water police) before the entire TSR, including northern areas, were brought under the authority of Queensland in 1879 (Singe 1979).

There has been a tradition of self-policing in the TSR, including prior to European settlement (Torres Strait Island Community Police (TSICP) 2007). TSICP (2007: 1) reported that the first involvement of non-Indigenous officers in policing the Torres Strait was around 1888 (TSICP 2007: 1) but, as stated above, Singe (1979) suggests this occurred from 1877 with the arrival of the non-Indigenous police magistrate Henry Marjoribanks Chester, and water police. By mid-1878, Chester had initiated a system of justice whereby island chiefs, called mamoooses, were appointed to maintain order, only drawing on the assistance of official police for serious offences such as murder and rape (Shnukal 2015; Singe 1979). Mamoooses later began to appoint local community members as island police to assist them in their local duties (Shnukal 2015). This system of chieftdom was similar to pre-colonial authority structures, which were described as an oligarchy of Elders (Haddon 1904, cited in Shnukal 2015), though mamoooses were sometimes appointed by colonial officials and at other times voted in by their communities (Shnukal 2015). Passi (1989, cited in Shnukal 2015: 59) recounted being told that, at least on Mer/Murray Island, mamoooses 'resolved disputes and dealt with wrongdoers. They were the first Mer/Murray Islanders to hold political power over the whole island'. The mamoooses' authority was not absolute, though the system enabled a degree of local administration and governance in the Torres Strait that did not exist for Aboriginal groups elsewhere in the state (Shnukal 2015; Singe 1979). The TSICP (2007: 1) stated that the mamoooses had 'the responsibility [to] administer law throughout the Torres Strait', while Shnukal (2015: 58) described the system as 'a form of community self-government unique in nineteenth century Indigenous Australia'.

Although mamoooses exerted local control over policing matters on their islands, the police magistrate had overarching control over administration of the TSR from 1877 until 1885 (Frankland 1994). Thereafter, from 1885 to 1917, an appointed Government Resident of Waiben/Thursday Island (initially Hon John Douglas from 1885 to 1904) assumed administrative control over the TSR (Frankland 1994). Not long after assuming the appointment, Douglas (1886, cited in Shnukal 2015) stated, 'The law, such as it is, though it is not very accurately defined, is thoroughly respected, and it is founded on a code which is both simpler and older than that of Queensland' (referring to traditional lore). He later added that 'the peace of these little communities is seldom disturbed by any serious crime' (Douglas 1898, cited in Shnukal 2015: 62).

Douglas ensured the authority of the mamooses was upheld, reprimanding and exiling non-Indigenous teachers, missionaries and workers if they interfered with or tried to override local authority (Shnukal 2015). O'Brien (1906, cited in Shnukal 2015: 65–66) observed that the system of local governance and community policing 'constitute[d] an integral part of the very excellent system of governing the Torres Strait Islanders by allowing them to govern themselves'.

Around the turn of the century, 'White Australia' policies officially identified 'Anglocentric whiteness' as an exclusive prerequisite for Australian citizenship (Moreton-Robinson 2004: 79). Non-white subjects, including Aboriginal and Torres Strait Islander Australians, were identified as needing management and control. In 1897, the *Aboriginal Protection and Restriction of the Sale of Opium Act 1897* ushered in Queensland's protectionist era. Under the Office of the Chief Protector of Aboriginals (later succeeded by the Office of the Director of Native Affairs in 1939), the state was divided into protectorates and local protectors appointed in each of the protectorates from 1898 onwards. Frankland (1994: 4) recounted that:

Local Protectors had many responsibilities including the administration of Aboriginal employment, wages, and savings bank accounts. Local Protectors also played a significant role in the removal of Aboriginal people onto reserves.

The master in charge of the Waiben/Thursday Island Shipping Office was appointed as protector in 1899, making the TSR the only location where the protector was not also a police officer (Frankland 1994). However, the role of the Torres Strait Protector was initially constrained by intervention from the Government Resident.

Although the 1897 Act technically applied to Torres Strait Islanders, there are indications that government administration over their lives, particularly before 1917, involved less intervention than that of Aboriginal Australians (ALRC 2018; Frankland 1994). For instance, Frankland (1994) stated, 'The extent to which Torres Strait Islanders were subject to the provisions of the 1897 Act is unclear as were the responsibilities of the Government Resident and the local Protector of Aboriginals on [Waiben] Thursday Island.' However, the author also noted that in a 1907 report the Waiben/Thursday Island Government Resident stated 'the provisions of the Aboriginal Acts should not apply to the natives of Torres Strait' (Frankland 1994: 3). Upon the death of the Government Resident in 1917, however, it is likely the protector exerted greater control. Nevertheless, a system of island councils, established earlier in 1907, remained and continued to hold a distinct degree of autonomy.

Each island community was to have its own elected council, which was at first guided by Europeans, but with the ultimate objective of creating self-governing communities, and whereas the gap between the concept and its implementation was quite formidable, it could be appreciated by all as a progressive step. (Singe 1979: 88)

The island councils formed local administrative structures, primarily staffed by local community leaders, which continued (though to varying degrees) to uphold traditional custom and lore, including through local policing. They ‘wielded considerable power...allowing the feelings of the people to be voiced and taken into account’ (Singe 1979: 108). Singe (1979: 108) also warned that, in practice, ‘church representatives and officials of the administration, usually resident European teachers, continued to dominate proceedings’. However, notwithstanding the ultimate overriding authority of colonial figures, the councils again represented a form of local authority that did not exist for other Aboriginal populations until far later in the 20th century. The councils persisted throughout the 20th century and their authority was strengthened in various ways, including through broader authority over police and island courts from the late 1930s onwards (Passi 1986).

The Torres Strait Islands were gazetted as ‘Aboriginal reserves’ in 1912 (Shnukal 2015), though as Nakata (2007) points out, leasehold ownership of some of the islands prevented them from also being gazetted. Nevertheless, during the 1920s and 1930s, ‘This type of administration disrupted the Islanders’ self-management autonomy’ (Passi 1986: 14). Despite these changes, island councils and community police continued to operate and in 1937 a conference of the councils was called on Masig/Yorke Island (Passi 1986). Councillors petitioned the Queensland Government to introduce and pass the *Torres Strait Islanders Act 1939* (Qld), which made special provisions for Torres Strait Islanders, removing them from the provisions of the protectionist acts.

In 1939, with the introduction of the *Torres Strait Islanders Act* (Qld), island councils were to be elected or appointed by the protector, and had local governance powers, including to appoint local community police (*Torres Strait Islanders Act 1939*, Part III; Scott & Morton 2016; TSICP 2007). The government did, however, retain overarching control of affairs across the TSR (Finch 1977). Thereafter, with a view to exerting greater control and ‘management’ over northern Aboriginal and Torres Strait Islander populations, the Office of the Director of Native Affairs was relocated from Brisbane to Waiben/Thursday Island in 1948, and a Deputy Director stationed in Brisbane instead (Frankland 1994: 9). The 1948–49 annual report of the Director of Native Affairs stated that this change was made to:

...give the Northern Torres Strait Islanders and aboriginals [sic] a greater measure of control, direction and management than had previously applied to them, and furthermore to give these people the same encouragement, industrial progress, and general amenities as prevails with Southern Aboriginals. (in Frankland 1994: 9)

Upon moving to Waiben/Thursday Island, the Director of Native Affairs (Cornelius O’Leary) took on the position of protector (Frankland 1994: 9). From 1966 onwards, Aboriginal councils began to be established in other parts of Queensland and enjoyed limited powers over local governance—powers that had been afforded to island councils of the TSR far earlier. The TSR island councils were maintained under the *Torres Strait Islanders Act 1971* (Qld) and the *Community Services (Torres Strait) Act 1984* (Qld). Although the emergence of Indigenous councils enabled a greater measure of local control than had been afforded under the strict protectionist era, many Aboriginal and Torres Strait Islander Australians continued to be

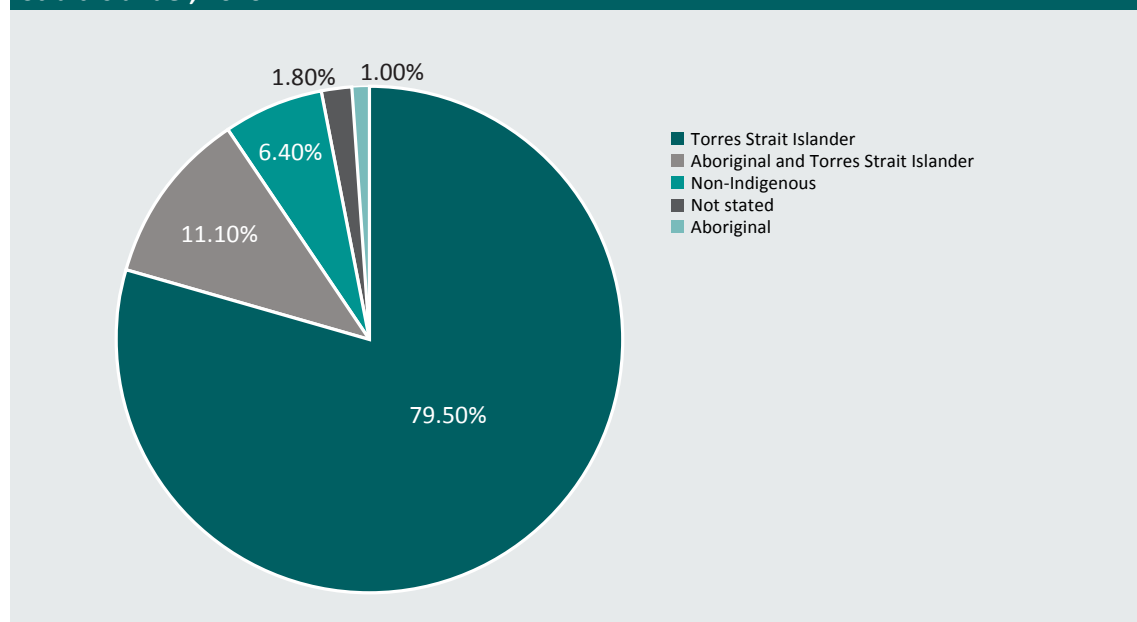
subjected to extensive control by protectors (and later ‘District Officers’) until the 1970s. For instance, it was not until 1975 that Aboriginal and Torres Strait Islander peoples were required to provide consent before a third party could manage their property (Frankland 1994).

In 1994, the Torres Strait Regional Authority (TSRA) was established under the *Aboriginal and Torres Strait Islander Commission Act 1989*. This commission gave Aboriginal and Torres Strait Islander Australians a greater degree of control (though not absolute) over the policies that governed their lives. However, when it was abolished in 2005, this level of control subsequently diminished for Aboriginal Australians. In contrast, the TSRA was maintained as a government statutory authority under the subsequent *Aboriginal and Torres Strait Islander Act 2005* (Cth) and continues to hold control over the coordination and implementation of policies and programs for those living in the TSR. It also advises the federal Minister for Indigenous Affairs ‘on matters relating to Torres Strait Islander and Aboriginal Affairs in the Torres Strait’ (TSRA nd). The TSRA’s approach is encapsulated in its vision statement: ‘Empowering our people, in our decision, in our culture, for our future’ (TSRA nd). The TSRA continues to symbolise the distinct level of autonomy held by Torres Strait Islanders.

Demographic context

In 2016, Aboriginal and/or Torres Strait Islander persons made up 92 percent of the total population of the TSR, as shown in Figure 3 (DATSIP 2019). These individuals were dispersed across the 38 inhabited islands (see Table 1). The majority of the population resides in the inner cluster of islands surrounding the main centre of Waiben/Thursday Island, while the balance is dispersed across 19 small remote island communities. The population of each community varies from 85 at Ugar/Stephens Island to 2,938 on Waiben/Thursday Island.

Figure 3: Proportion of Torres Strait population identifying as Aboriginal and/or Torres Strait Islander, 2016



Source: DATSIP 2019

Table 1: Communities and community-level populations in the TSR				
Regions	Community	Population (2016)	% identifying as Aboriginal/Torres Strait Islander	Median age
Mainland (NPA)	Seisia	260	74.4	25
	Bamaga	1,164	82.4	24
Inner	Waiben/Thursday Island	2,938	68.6	28
	Ngurupai/Horn Island	531	72.0	26
	Keriri/Hammond Island	268	93.0	22
	Muralug/Prince of Wales	109	71.4	37
Eastern	Mer/Murray	453	96.4	25
	Erub/Darnley	328	95.7	26
	Ugar/Stephens	85	84.7	19
Central	Iama/Yam	319	94.7	25
	Warraber/Sue	245	96.7	25
	Poruma/Coconut	167	94.6	27
	Masig/Yorke	270	94.9	24
Near Western	Badu	813	86.3	25
	Mabuiag	210	97.2	22
	St Pauls (on Moa Island)	248	95.7	26
	Kubin (on Moa Island)	187	84.9	22
Top Western	Boigu	271	90.5	20
	Dauan	191	85.6	20
	Saibai	465	74.4	25
Total		9,522	M=87.4	

Note: NPA=Northern Peninsula Area

Source: ABS 2016

Before European contact, Torres Strait Islander peoples did not regard themselves as a single homogeneous or unified group, despite sharing some cultural links through warfare, trade and ceremonial exchange. Indeed, each island could be distinguished from its neighbours through linguistic and cultural differences (Robertson 2010; Shnukal 2001). It was not until the Queensland *Torres Strait Islanders Act 1939* that Torres Strait peoples were considered separate. As a result of this legislation, the people of the TSR were classified as Polynesian in the first postwar census in 1947. In the 1954 and 1961 censuses, Torres Strait peoples were classified as 'Pacific Islanders', but were later classified as 'Aboriginal' and thus excluded from official figures in the 1966 Census. It was not until 1971 that a separate 'Torres Strait Islander' category was used (Shnukal 2001).

The Torres Strait Island population is relatively young when compared with Queensland. The median age across all Torres Strait communities was around 24 in 2016, while the median age for Queensland was 37 in the same year (ABS 2016). Of all Aboriginal and/or Torres Strait Islander people living in the Torres Strait Islands in 2016, 36 percent were aged 0–14 years, versus 35 percent across Queensland (DATSIP 2019). In comparison, non-Indigenous people across both the Torres Strait Islands and Queensland were older (only 15% of non-Indigenous people in the Torres Strait, and 19% across Queensland were aged 0–14 years; DATSIP 2019). This is consistent with the younger age profile of Aboriginal and Torres Strait Islander peoples across Australia (ABS 2016).

Local cultural life remains strong in the TSR and over 75 percent of Torres Strait Islander people living in the region speak a language other than English at home (Cooperative Research Centre for Aboriginal Health (CRAH) et al. 2006: 4). Rates of religious participation are very high, with the 2011 Census recording that 81 percent of people were affiliated with a Christian denomination, compared with the state average of 64 percent (QGSO 2016b: 15). An Australian Law Reform Commission Report (1986) described Torres Strait Islander peoples as ‘strictly monogamous, mostly church married’. The most significant area of customary practice on the islands was that of adoption, especially of extra-marital children, by grandparents or other members of extended family. In the region during 2011, 49 percent of families were couples with children, compared to 43 percent of all families throughout Queensland. Of total households in the TSR, 67 percent were one-family households, compared to the 71 percent of such households throughout Queensland (QGSO 2016c: 16–17).

A Queensland Government report observed that raising children in the TSR is a shared responsibility; while parents are primarily responsible, extended family play a significant role. Family can include close friends and respected community members (CRAH et al. 2006: 7), resulting in extensive supervision and support of youth, but also the potential for young people to see this supervision as invasive (CRAH et al. 2006: 7).

Research has indicated a strong sense of traditional culture exists in the region, expressed in a desire to include the teaching of traditional languages and cultures in schools. This includes the teaching of traditional practices, such as food gathering and gardening. Elders are actively involved and those young people who engaged in cultural education were considered less likely to be impacted upon by what were seen as negative influences, including Western cultural practices (Nakata 2007). Cultural retention appears stronger in the more remote northern islands. Nevertheless, a high value was also placed on formal (Western) education (CRAH et al. 2006: 8). In relation to his own family’s history on Naghir Island (in the central TSR), Nakata (2007: 4) recounted that his grandfather, who was a leader on the island, saw:

...education—that is, knowledge and understanding about the world outside of the islands—... [as] a matter of great importance. It appeared obvious that education, and English literacy in particular, were needed not just for the development of our own community, but also for us to understand and master the system so that the bastards [Queensland Government] could not rob us again. We needed to know how it was that Western regimes did things that always seemed to advantage them but not us...

Here, Nakata (2007) is referring to his great grandfather's wealth, accumulated through his involvement in the pearling industry, which was intended to be passed down to his family but disappeared.

The Torres Strait Islander population is also relatively stable, with only 11 percent of Aboriginal and Torres Strait Islander people living in the region having a different address one year prior to the 2016 Census (ABS 2016; DATSIP 2019). This compared with 22 percent of Aboriginal and Torres Strait Islander people across Queensland as a whole. Conversely, the non-Indigenous population living in the TSR was more likely than the non-Indigenous population of Queensland more generally to have a different address one year prior to the 2016 Census (30% in the TSR versus 18% across Queensland), suggesting short relocations either for tourism or to take up periodic work in the region (DATSIP 2019).

Rates of participation in volunteer work are relatively high in the region, with 23 percent of people in the TSR having done so in the 12 months prior to the 2011 Census. This compares with Queensland state figures of 14 percent of Indigenous people and 20 percent of non-Indigenous people (QGSO 2016a: 14–15). This may be a product of the small size of island communities and their geographic boundedness and isolation.

The index of relative socio-economic advantage and disadvantage indicates that the TSR experiences less disadvantage than Queensland's remote Aboriginal communities (see Figure 4). The TSR is also placed relatively high in the index of economic resources (see Figure 5) and index of education and occupation (see Figure 6), though it places lower than Queensland for the first two indexes and just above the Queensland average for the third (education and occupation). These indexes do not, however, account for disparities between Indigenous and non-Indigenous residents of the region, some of which are described below.

There is much income inequality in the TSR, with Indigenous households earning considerably less than non-Indigenous households and the region having a higher proportion of lower-income households when compared to both Indigenous and non-Indigenous populations throughout the rest of Queensland. For example, in 2011, 24 percent of Indigenous households in the TSR earned between \$400 and \$599 a week, compared to four percent of non-Indigenous households in the TSR and 14 percent of non-Indigenous households in the rest of Queensland. Certainly, Indigenous people in the region comprise a higher proportion of people in labouring occupations (29%) when compared to the state average (10%) and non-Indigenous people in the TSR (10%). Further, the unemployment rate of Indigenous people in the region was 7.8 percent, compared to 3.2 percent among non-Indigenous people in the region. This was considerably lower, however, than Indigenous unemployment rates at the state level (18.1%), although still higher than non-Indigenous unemployment rates throughout Queensland (QGSO 2016a: 22–30).

The proportion of children residing in jobless families is lower for Indigenous people in the TSR (22%) compared to the rest of Queensland (38%), although such figures remain high when measured against those for non-Indigenous Queenslanders (12%)—likely due to the fact that remote economies are generally weaker, with fewer job opportunities overall (QGSO 2016a: 11). Median total personal income in the TSR in 2011 was \$21,614 per year (versus \$30,524 per year in Queensland), while low-income families accounted for 22 percent of the households in the TSR, versus 13 percent of households in Queensland (QGSO 2016c: 39). In 2011, six percent of dwellings in the TSR were owned outright, compared to 29 percent of dwellings throughout Queensland (QGSO 2016c: 19).

This is also likely influenced by the existence of different land tenures. Aboriginal and Torres Strait Islander freehold land makes up five percent of northern Queensland. In Queensland, both Aboriginal freehold and Torres Strait Islander freehold exist and are governed by the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*. Aboriginal and Torres Strait Islander freehold land cannot be sold or transferred, but can be leased in some instances. The land is held in trust by either a land trust established under those Acts, or by a corporation. The trustees can grant leases of up to 99 year terms for any purpose, including home ownership. In Queensland, there is also a land tenure type called an Aboriginal Deed of Grant in Trust (DOGIT). Aboriginal and Torres Strait Islander local governments hold trusteeship of the DOGITs. Land tenure under a DOGIT is held in collective title, in trust for future generations and cannot be sold.

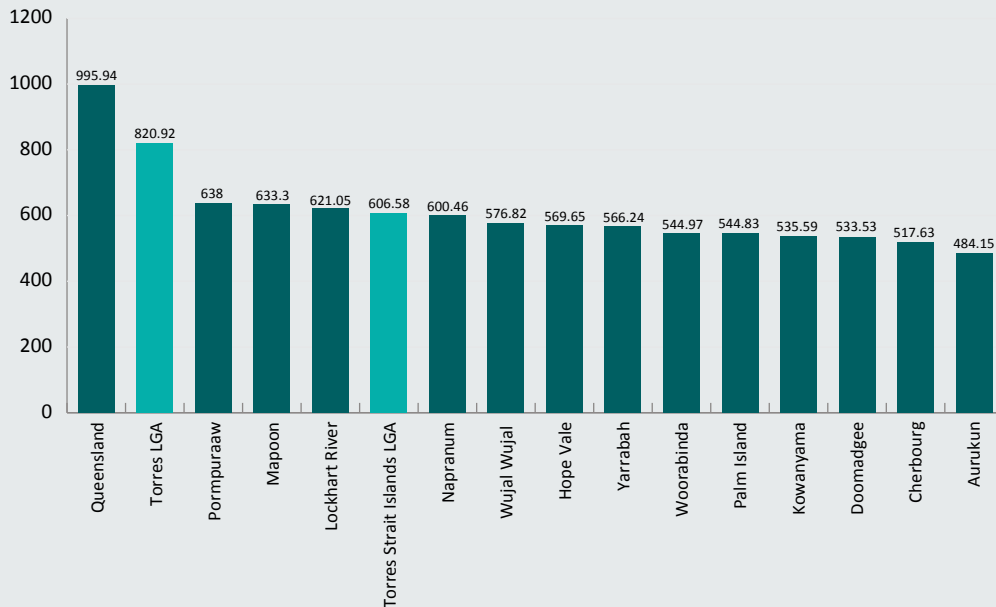
Figure 4: Index of relative socio-economic advantage and disadvantage (2016)



Note: The Index of Relative Socioeconomic Advantage and Disadvantage (IRSAD) score is one of four Socioeconomic Indexes for Areas (SEIFAs) reported by the ABS, which draw on a combination of weighted variables derived from the Census. The IRSAD scores reported here are standardised so that the mean is 1,000; higher scores indicate higher relative advantage, while lower scores indicate lower relative advantage. The Torres LGA takes in mainland communities on the tip of Cape York, while the Torres Strait Islands LGA only includes islands situated off the coast

Source: ABS 2016

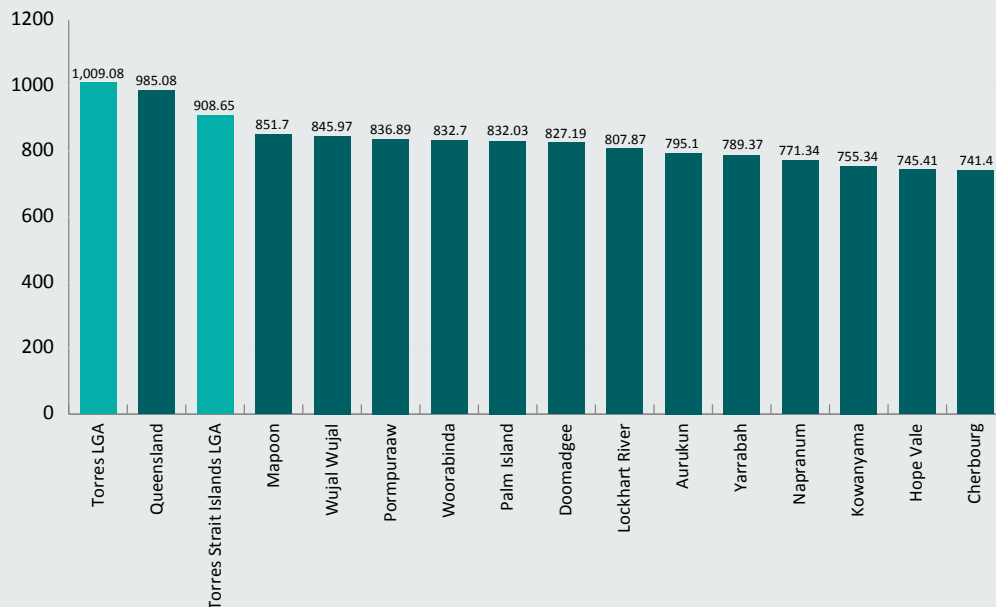
Figure 5: Index of economic resources (2016)



Note: The Index of Economic Resources (IER) is one of the four SEIFAs reported by the ABS. The IER scores reported here are standardised so that the mean is 1,000; higher scores indicate higher relative advantage, while lower scores indicate lower relative advantage. The Torres LGA takes in mainland communities on the tip of Cape York, while the Torres Strait Islands LGA only includes islands situated off the coast

Source: ABS 2016

Figure 6: Index of education and occupation (2016)



Note: The Index of Education and Occupation (IEO) is one of the four SEIFAs reported by the ABS. The IEO scores reported here are standardised so that the mean is 1,000; higher scores indicate higher relative rates of people with qualifications and skilled jobs, while lower scores indicate lower relative rates of people with qualifications and skilled jobs. The Torres LGA takes in mainland communities on the tip of Cape York, while the Torres Strait Islands LGA only includes islands situated off the coast

Source: ABS 2016

Educational attainment in the TSR is relatively high, with 45 percent of people having completed year 12 or equivalent in 2016, compared with 38 percent of Indigenous people throughout Queensland. Still, this was lower than the non-Indigenous Queensland population (51%). Of course, education provided by Elders continues to form an important aspect of life in the TSR; this is not captured in official statistics (Nakata 2007).

Figures for vocational training completion among Indigenous people in the TSR are also relatively high when compared to Indigenous populations throughout Queensland (32%), but lower than rates for non-Indigenous people (51%). Non-high school qualifications among Indigenous people living in the TSR were slightly higher (54%) than for Indigenous people living throughout Queensland (44%), but low when compared to non-Indigenous people throughout Queensland (57%) (QGSO 2016a: 15–17).



Methodology

The following sections briefly describe the research approach and methodology used to respond to the research questions for this study:

- How have the ecological conditions of the Torres Strait region influenced the historical and cultural factors influencing justice?
- What is the extent of crime occurring in the TSR?
- How do local people and criminal justice professionals construct ‘the crime problem’ in the TSR?
- How is justice practised in the TSR? In particular, are there community and customary justice practices and/or impediments to justice that are specific to this context?

These methods include analyses of crime-report data, and fieldwork and interviews. The section then concludes with an overview of ethical considerations for this project.

Quantitative component: Crime-report data

To explore recent trends in reported crime across the TSR, we undertook descriptive graphing of crime-report data published by the Queensland Police Service (QPS) for the period January 2001 to July 2018. We graphed rates of reported offences for three crime types:

- offences against property;
- offences against the person; and
- domestic violence order (DVO) breach offences.

We used the QPS offence classifications (in QGSO 2019) to aggregate offence data according to these overarching categories. The first two offence categories were chosen to allow us to examine overarching differences between these two major crime types. We also examined the specific offence type of reported breach of DVOs because one of few empirical studies of crime in the TSR conducted by Memmott (2010) recognised that DFV may be a significant crime issue, but one that is potentially under-reported. Although crime-report data cannot provide insight into under-reporting, they are a starting point for further exploration.

We did not explore the QPS ‘other offences’ aggregate category, which includes liquor offences and drug offences (among others), because it is likely that this category is heavily influenced by the presence of alcohol management plans in most of Queensland’s remote Aboriginal communities, while these do not exist in the TSR (CMC 2009: 44; Clough & Bird 2015). Other research has acknowledged increased criminalisation under these plans, both for *Liquor Act 1992* (Qld) offences and drug offences (there is evidence that illicit drugs have been substituted for alcohol) (Clough et al. 2017).

QPS crime-report data for the TSR were available in disaggregated form for Badu Island, Waiben/Thursday Island and Ngurupai/Horn Island. Three QPS stations are situated on two islands in the Torres Strait: two on Waiben/Thursday Island and one on Ngurupai/Horn Island; all crime that occurs on the outer islands is responded to locally by TSIPSOs, but must then be processed through one of these three QPS stations. Thus, reported crime data for these three stations captures all reported crime in the TSR. The QPS does not otherwise publish overall crime data for the TSR, so we have calculated and reported an average across these three stations as a ‘Torres Strait’ average reported crime rate.

We treated the two mainland (predominantly) TSR communities of Seisia and Bamaga differently than the remaining communities of the TSR. In particular:

- we excluded Seisia from our analyses because we could not locate disaggregated QPS crime-report data for this community; and
- we graphed crime-report data for Bamaga (also located in the NPA on the tip of Cape York) separately because its history and social make-up are distinct to the rest of the TSR.

While the areas that constitute the NPA (including Bamaga) were originally inhabited by Aboriginal Australians (notwithstanding accounts of historical mobility; Singe 1979), these two TSR communities (Bamaga and Seisia) were officially established after World War II, when Torres Strait Islanders moved there and erected an initial settlement, before a large area of land was gazetted by the Queensland Government for the use of Torres Strait Islanders after the war effort in 1948 (Memmott 2010). Thus, these mainland communities have a different history and different geographic make-up than the rest of the TSR.

To determine which geographical locations to use for comparison, we drew on DATSIP’s 2017 breakdown of what it refers to as ‘discrete Indigenous communities’. DATSIP (2017) lists a total of 18 communities, 13 of which were also reported against at the community level in QPS crime-report data. Reported crime rates for each of these 13 Aboriginal communities were used to calculate overall, average aggregated reported crime rates, which we used as a crude point of comparison of reported crime between the TSR and Queensland’s other discrete Aboriginal communities.

Limitations

Crime-report data are limited in a number of ways. Although they give a high-level indication of the extent of crime, they rarely accurately or wholly represent the true rate or experience of crime. Furthermore, our approach of aggregating crime-report data into overall averages for ease of comparison means we do not explore potential differences within these groupings. While this was beyond the scope of this study, this more granular comparison should be the subject of further research, as called for by others (eg McCausland & Vivian 2010).

We have also treated the Torres Strait as a distinct geographical region for the purpose of this analysis, though this does not assume cultural homogeneity across the region. However, the available crime data did not enable us to more deeply explore subregional variations.

Finally, of the total TSR population in 2016, about 82 percent identified as Indigenous (ABS 2016). It is, however, impossible based on the available crime-report data to determine whether offenders and victims of crime in the TSR identify as either Indigenous or non-Indigenous. (This limitation has also been noted by others; ALRC 2018). Thus, as described earlier, the crime-report data drawn on here are bounded by geography, not by Indigeneity or cultural identity.

Qualitative component: Fieldwork and interviews

A qualitative component was added to this project to enable us to better understand the social and cultural characteristics of the TSR, including localised, customary and communitarian forms of justice unique to the region. We paid specific attention to the operation of police, community, justice, legal and court services in the TSR and sought to capture the strengths of the region, as defined by its community members.

Fieldwork context

For Indigenous peoples, research frequently has negative connotations. Indigenous people have often experienced research as being exploitative and self-serving, with negative implications for those who have been 'researched' (Nakata 2007; Tuhiwai Smith 2012). Academic knowledge is organised into particular academic frames, often reflecting a view modified by a Western lens, and not necessarily reflecting Indigenous understandings of justice, the criminal justice system, or Indigenous people's encounters with that system (Tuhiwai Smith 2012). This research sought to be responsive to the needs of TSR communities. Participants included individuals who held representative roles, as well as service providers drawn from within the community (Cochran et al. 2008).

This project is informed by and reflects the guidelines for research merit, integrity, justice and respect found in the *National statement on ethical conduct in human research*, chapter 4.7: Aboriginal and Torres Strait Islander Peoples (National Health & Medical Research Council 2007). The research also followed the principles of ethical research as stated in *Guidelines for ethical research in Australian Indigenous studies* (Australian Institute of Aboriginal and Torres Strait Islander Studies 2012). The research was approved by the Queensland University of Technology's Office of Research Ethics and Integrity (ref: 613990).

A total of 14 days of fieldwork was conducted. This included nine days staying on Waiben/Thursday Island, three days on Ngurupai/Horn Island, two days in Cairns and a day in Bamaga, with day trips to the outer islands (unnamed here to preserve anonymity, taking into account their small size). During these stays, two visits were also made to outer islands and to Bamaga and Seisia on the mainland. There were breaks between trips to allow the researchers to reflect upon the quality of the data and, if necessary, modify the interview schedule accordingly.

The period of time spent in the TSR, largely limited by costs, prevented us from conducting ethnographic research. However, travel to the islands allowed the researchers to observe justice practices first-hand. In this way, observation further triangulated the research process. Fieldwork also included observation of the local court circuit in operation on Waiben/Thursday Island, on the outer Islands and in Bamaga. The cost of accommodation in the region is relatively high. On two occasions the researcher was accommodated through in-kind support.

All participants were provided an information sheet (see *Appendix A*) outlining the project and were asked for consent to participate in the research (see *Appendix B*). Interviews were recorded, where possible. All participants were anonymous and, where appropriate, information was de-identified. The exception was Magistrate Trevor Black, who in some instances waived his anonymity to provide context to his comments and for clarity. A total of 27 formal interviews were conducted, totalling approximately 21 hours. The interviews permitted an exploratory approach and for justice practices to be identified and examined in context, as participants' insights could be probed, enabling greater depth of information than other approaches such as questionnaires. Importantly, semi-structured and open-ended interviews permitted a reflexive data collection process that was iterative, and not limited to preconceptions about possible impacts, but open to learning from local participants. Questions focused broadly on participants' work experience, the characteristics of community and social life in the TSR, crime in the TSR, and approaches to crime prevention (see *Appendix C*).

Interviews ranged from approximately 20–90 minutes in length and averaged about 45 minutes. All except for two interviews (via telephone) were conducted face-to-face. In addition to formal interviews, several people did not wish to be interviewed formally or did not have time to participate in a formal interview. In these instances, notes were taken with the participants' consent. Interviews were conducted until it was considered there was data 'saturation'—that is, when it was considered that the amount of variation in the data was levelling off and new perspectives on the research questions were no longer emerging from the data.

Participants

Twenty-seven individuals were interviewed in total, including 10 women and 17 men. Sixteen participants were Indigenous and 11 were non-Indigenous. Of the 16 Indigenous participants, 13 identified as Torres Strait Islander, one identified as Aboriginal and Torres Strait Islander, and two identified as Aboriginal. Fifteen participants were born in the TSR and had spent a considerable period of their life living there. Four participants lived on the inner islands, three on the outer islands, three in Cape York, and three in South-East Queensland.

All but two of the participants (currently police, based in Brisbane) were employed in the TSR. Many of the participants held current and previous roles relevant to the research, including local government councillors, counsellors, clerics, state or federal government workers, judiciary, lawyers, police officers, probation and parole workers and social workers. Nine participants were currently employed by the QPS and one participant had retired from the service. Two people interviewed identified as Elders. All participants were aged 18 years or over, with the average age being late 30s. Two participants were retirees in their 70s.

To protect anonymity, participants are not referred to by name. Given the relatively small, isolated and 'closed' nature of the TSR, it would be possible to identify participants if details of occupation or other personal details were linked to data such as quotes. As such, data have been referenced according to gender (F for female and M for male), ethnicity (I for Indigenous and N for non-Indigenous) and a number indicating the chronological order of interviews. So the first Indigenous female participant would be referred to as 'FI1'.

Analysis

Interview data were coded and thematically analysed (Spradley 1979). Thematic analysis was used to inductively distil in-depth information from the data (Marks & Yardley 2004). Each transcript was analysed for passages and/or content of a type which referenced issues, events, experiences and opinions that might inform relevant research elements. Recurring themes were established by colour coding transcript margins and re-grouping into conceptual constructs. In this way, an initial skeleton of recurring themes and patterns was progressively developed (Miles & Huberman 1994).

Limitations of qualitative data

Findings from the 27 interviews should not be taken to be generalisable and, indeed, this was not the core purpose of this study. They do, however, give deep insight into the crime and justice practices of the TSR. Because of difficulty with access, travel, timing and budget, it was also not possible to visit all inhabited islands in the TSR. Thus, although many of the interviewees had direct knowledge and experience of crime and justice in these more remote outer islands, and commented on this, it is possible that the direct participation of individuals living on these outer islands may have produced slightly different findings.



Findings

As outlined earlier in this report, we were particularly concerned in this study with understanding how the place and space of the TSR influenced experiences of crime and justice there. In this section, we discuss findings in relation to the culture and ecology of the region.

Culture of the region: One culture, fifteen different lifestyles

Torres Strait Islanders had a strong sense of themselves as composed of distinct peoples and cultures, different from those of the mainland. Interestingly, locals often refer to the mainland as 'Australia' and talked about having visited Australia, as though the islands were a separate nation. Despite significant diversity in lifestyles, a strong sense of community pervades the region, which is reinforced by remoteness. As one interviewee remarked:

The Torres Strait is one culture and fifteen different lifestyles. (MI9)

Islanders refer to themselves as 'ku bui' (one big family) and it was noted that in recent times, with less regulation of movement and migration between islands, there has been much intermarriage.

Individual islands were considered by participants to possess highly homogeneous cultures and close-knit communities. 'Culture' was thought to be very strong, especially so in the outer islands, where populations were small and bounded into small land areas by the sea. People on the outer islands are also bound by blood and kinship networks, and everywhere in the region locals are known to one another inter-generationally through clan and kinship systems.

Tight [culture]. Culture is a big thing. Dance, cultural protocols. Kids are taught from a young age who they are. Identity is big. This clan and this totem. It's put in the forefront. They know who they are. You can't trick them. They are not confused. They speak the language. They know who their granddad was [and] what their ancestors did... What line they come from... It brings strength to them... (MI11)

This was especially the case with the outer islands.

The culture and family structure is such that there is a lot of self-policing, self-discipline there. If anyone steps out of line, the community helps them back in. Not so much on [Waiben/Thursday Island], because [it] is a little bit easier to hide. But if you play-up on some of those outer islands, where do you hide? (MN16)

The greater the cultural homogeneity on the islands, the less crime was thought to exist. This was a view expressed repeatedly by participants, especially police. A distinction was often drawn between the more 'multicultural' Ngurupai/Horn and Waiben/Thursday Islands and the more remote islands. Both Ngurupai/Horn Island and Waiben/Thursday Island were considered to have a different character in that they were more culturally diverse hubs, with greater internal and external migration, particularly from the mainland.

Those places with strong cultures and strong customs have less crime. Where you see that separation [from culture] there are more dysfunctional families. Crime is a natural fruit of dysfunctional families and that is not just a black issue... Poruma, for instance, has very strong local customs, local laws, very strong tight-knit community, very low-level offending. When we were out there that day the only matter coming before court was a public nuisance charge of some guy drinking and swearing in a public place. (MI13)

Visitors to the outer islands are asked to notify local authorities of their intent to visit an island and seek approval. In this way, islanders know who is coming and going. As described earlier, pursuant to the Torres Strait Islands Treaty, free movement is allowed between Australia and PNG for traditional purposes. It was reported that no more than 30 people have come from PNG to visit an outer island on any one occasion; visitors arriving by private boat must show they have enough fuel to return home (MI8).

Torres Strait Islanders were viewed by participants as people whose culture and history has been overshadowed by that of Aboriginal Australia. As one participant stated:

They [government] tend to lump us in with the Aboriginal people on the mainland and focus their attention there and not here. (MI3)

However, Torres Strait Islanders have a strong sense of their cultural distinctiveness. For instance, the culture of the TSR is Melanesian and has strong links to PNG rather than to Aboriginal Australia. This was reinforced by comments from participants who had worked in the region as well as in other discrete Aboriginal communities on the mainland:

Totally different cultures [Aboriginal and Torres Strait Islander]. Different values. Just everything [different]. (MI5)

Even though they are... grouped as Indigenous peoples—Aboriginals and Torres Strait Islanders—they are really nothing alike, in my opinion. Mainland Aboriginals will get offended if you call them an Islander and vice versa. More particularly, the culture of the Torres Strait and Northern Peninsula Area will get offended if you accuse them of being Aboriginal, because they very much identify themselves as Torres Strait Islanders. (MN7)

The Torres Strait Islands were contrasted to other Indigenous islands, such as Palm Island, and mainland communities such as Aurukun, which contained multiple clans or family groupings, some of whom had a history of conflict and hostility. In the TSR, relative cultural homogeneity had produced tight social controls:

What's different here compared to mainland Aboriginal Australia is that those communities on mainland Australia were differently hit and affected by the policy and legislation of the government... dispossession of land, dispossession of language, dispossession of culture, and dispossession of their children. Torres Strait Islanders didn't have any of that... When a young person grows up, they see and know through their genetic line, through their cultural heritage and storyline, what's right and what's wrong... (MI17)

Torres Strait Islands haven't lost as much culture, so that the restrictions that cultural law puts on you are stronger than what it is in the mainland. (MN2)

Very different community [as compared to mainland]—I think the culture is more intact here. (MN12)

While culture remains strong in the TSR, older lore has also frequently been integrated into modern traditions, the most notable and influential of which is Christianity. Participants highlighted the strength of religion throughout the islands, one stating that the islands were known for two things: 'Church and rugby' football (MI8). The adherence to religion and its embeddedness in island life was also seen as a major factor distinguishing island communities from mainland communities. There were 27 churches in the region, servicing around 10,000 people, and they had traditionally been involved in justice matters including mediations (see Figure 7). While it was considered less frequent today and such services had been taken up by secular agencies, churches had provided hospitality and refreshments to coincide with court sittings, which, like church services, were events which drew in a wide cross-section of the community.

They are certainly, as I would describe them 'God-fearing people', up in the Straits. Less so among mainland Aboriginals. Why that comes about, I don't know. Every island that we go to on the [court] circuits up here have at least one church and on little islands where they have very few community buildings at all. Some have more than one church of different denominations. Whereas, you go to the likes of Aurukun—where missionaries set all those places up—no churches there. (MN7).

...And then when we had the introduction of Christianity that then added another layer of law and order... eighty percent of Islanders practise one form of Christianity anyway. It's the same stuff....it added a rigor, a framework that Torres Strait Islanders were able to embrace in this changing world of the modern and the postmodern era... (MI17).

Despite first quote above, there is at least one church in Aurukun (Aurukun Shire Council 2019).

Figure 7: One of many churches located in the TSR



Source: Author image

In general, the unique ecology of the islands had influenced the development of tight structures of formal and informal regulation in the region prior to the colonial period. These informal structures of social control continue to hold a strong influence over island custom and culture, especially with reference to notions of shame. The shame culture of the islands drew sharp distinctions between normative private and public behaviours.

When we look at crime and justice we look at the past and where we came from... In the Torres Straits there is a structural protocol that, for the most part, is still intact and unbroken... this is operated through... Ailan Kustom, which is the way we embody ourselves through respect, respect of Elders, respect of the land, and respect of who we are... So whenever you're thinking about things... you learn through observation and through practice how you need to act and how you need to behave and how you associate with people and individuals. Part of that is a few spoken rules, but a heck of a lot of unspoken rules. And so you learn that growing-up naturally... so if you think about crime... a lot of those things were traditionally not welcome and crime was, through the law and customs and traditions, severely punished... (MI17)

MI17's description of unspoken rules aligns with other notions of Torres Strait Islander knowledge being passed down in what Whap (2001: 22) refers to as 'everyday situations'. MI17 also expanded on the concept of shame:

...shame is a really big thing. When shame arrives, or when you put shame on yourself or your community or your family... It is a cardinal rule that you mustn't break or shouldn't break. And if we look at the past, with crime and order, they used to have open court sessions where the offender would stand in front of the Elders and talked about what they actually did and explain and also talk about that in front of the community as well. And as they were able to, I guess, talk about their offences... the Elders [would then] make their decision... and once that was done it was never spoken about again... So there was also a form of reparation and restitution through the island courts systems... (MI17)

Even though culture and history were cited by many to be key distinguishing characteristics, as well as strong protective factors for crime, others also thought that these were being eroded through processes of continued colonisation and globalisation.

The challenge of globalisation

Young bamboo you can straighten, but a fully grown and mature one, you can't.

(Old Islander saying)

There were challenges cited for island social integration, especially with regard to globalisation. Young people were frequently cited as being more interested in social media than island culture.

Social media and television is damaging to us and starting to separate us. Elders have to bring it all back together as a culture and not lose sight of who we are—it is essential for our survival. (MI9)

They are very house-proud people. Those islands are just pristine. Yards raked, because there is no grass... But I just wonder a bit with the next generation coming through, because everyone has a mobile phone up there now. They all have pay TV and all these things are progressing. And the younger generation, are they going to leave and come back? I know the culture is very strong, but there is the lure of a big world that they might not have known about years ago. (MN16)

Many children would go to the mainland for high school education, between the ages of approximately 12 and 18 years, and this caused a break in cultural continuity and socialisation, especially during what were seen as being formative years. Cultures of 'the south' were considered to detach young people from church and familial networks. With respect to islanders who had migrated, one Elder stated: 'Down south they lost their culture' (FI7).

Our culture is very different. We eat together from one plate and we sleep together. Everything we do together and then the time comes for them to go away to school. When my first son went to high school, part of me was taken away from me. Something was missing from me... We are warriors. We need direction to bring us back. To follow and sit with old people and learn the old ways. Kids lost their culture because of going away. It is hard for young parents who have not been on the journey to pass it on to their kids, so culture can't be passed on. (MI8)

Moving away to boarding school was also a disruption for the young people themselves, some of whom it was considered would 'play up' when away in order to be sent back home, as many experienced homesickness. There was also the attraction of better employment and lifestyle opportunities away from the region. Most jobs in the region were in the service industries or hospitality and, beyond Waiben/Thursday Island, even these forms of employment are very rare. The region's isolation also poses other challenges in relation to crime and justice.

Isolation

There is a general lack of infrastructure in the region and all services are impacted by isolation and cost. As MN7 stated:

Because they are very small and isolated communities, just by distance between one island [and] the other—the closest island to them may be a two hour dinghy trip and that island may only have 200–300 people on it... that isolation. You might have trips by road to communities across the Cape, it's a whole different thing up here. You literally take your life into your own hands if you are travelling those distances and unfortunately people go missing and lose their lives just trying to get from A to B up here. Their culture is affected just by the pure cost of getting around. The cost of just providing court services to these places is expensive...

Travelling from the outer islands to Waiben/Thursday Island can cost up to \$1,000 and often requires a flight. Similar costs are incurred when travelling from Ngurupai/Horn Island Airport to Cairns. Costs of living are also generally high, with \$70–75 for a 20 litre drum of fuel for a boat (\$3.50 to \$3.75 per litre). A 160 kilometre trip from Masig/Yorke Island to Waiben/Thursday Island would take approximately four hours by boat. Distance and cost also makes policing difficult, requiring special equipment such as a fixed-wing plane and fast boat and, very often, access to a helicopter.

Up until 2008 police only had access to one slow boat and a plane was accessible once a month from Cairns for a four-day period. This limited policing capabilities and restricted the type of policing to a mostly reactive service:

There was nothing proactive about what we did on the islands. [Waiben/Thursday Island] was not too bad, but getting out to those outer islands, [it] was really hard to get there... (MN16)

Biggest thing that affects policing is that whole isolation thing. You are making assessments all the time about how logistics will affect something (MN7)

As MN7 went on to explain, there are still restrictions on pilot hours and two islands have no air strips, in which case a helicopter is hired. In general:

The isolation brings in a range of issues you don't have to contend with in a big city or even major town... if you have to arrest someone on Saibai, that is the closest place to PNG, and take them back to the watch house on [Waiben/Thursday Island]... but once they are here and released on bail, they have to get back to Saibai and the police don't provide that service and it's a long way away. It's on family members to get them back ... It's a bit different to being arrested on one side of Brisbane and having to get a bus back home...

Thus, the ecology of the islands plays a key role in how crime and justice practices occur there, as we also expand upon later. This context, as well as the cultural context described earlier, also have implications for the volume of crime that is reported and acted upon, as well as how it is acted upon.

Crime in the TSR: Extent and understandings

This section summarises our findings in relation to our second and third research questions, which were concerned with understanding the extent of crime in the TSR, and how local people and criminal justice professionals understand and construct the region's 'crime problem'. We first describe the extent of reported crime before turning to our interviewees' accounts of key crime issues in the TSR.

Extent of reported crime

The average rate (per 100,000 population) of reported offences against the person in the TSR was lower overall between 2001 and 2018 ($M=282.32$; $\text{min}=35.50$; $\text{max}=1,463.85$; $SD=189.99$) when compared with Queensland's Aboriginal communities ($M=729.28$; $\text{min}=416.56$; $\text{max}=1,270.02$; $SD=159.41$), though it was higher than for the whole of Queensland ($M=62.07$; $\text{min}=43.16$; $\text{max}=88.14$; $SD=9.17$; see Figure 8). Rates of reported offences against the person in both the TSR and Queensland's Aboriginal communities trended downwards over the period, while the Queensland's rate remained relatively stable.

Data for the separate Torres Strait community of Bamaga (situated in the NPA on the tip of mainland Cape York) were similar to those seen in the rest of the TSR ($M=315.79$; $\text{min}=0$; $\text{max}=1,494.63$; $SD=217.68$), and also trended downwards over the period (see Figure 9). The higher standard deviation in the Bamaga crime-report data is due to a smaller sample size.

The average rate of reported offences against property in the TSR was lower overall between 2001 and 2018 ($M=453.62$; $\text{min}=92.45$; $\text{max}=1,492.49$; $SD=245.12$) when compared with Queensland's Aboriginal communities ($M=846.79$; $\text{min}=435.96$; $\text{max}=1,727.48$; $SD=203.23$), and was also slightly lower than Queensland ($M=457.97$; $\text{min}=322.86$; $\text{max}=764.30$; $SD=106.49$; Figure 10). Rates of reported offences against property in the TSR and Queensland trended downwards over the period, while the rate in Queensland's Aboriginal communities trended upwards.

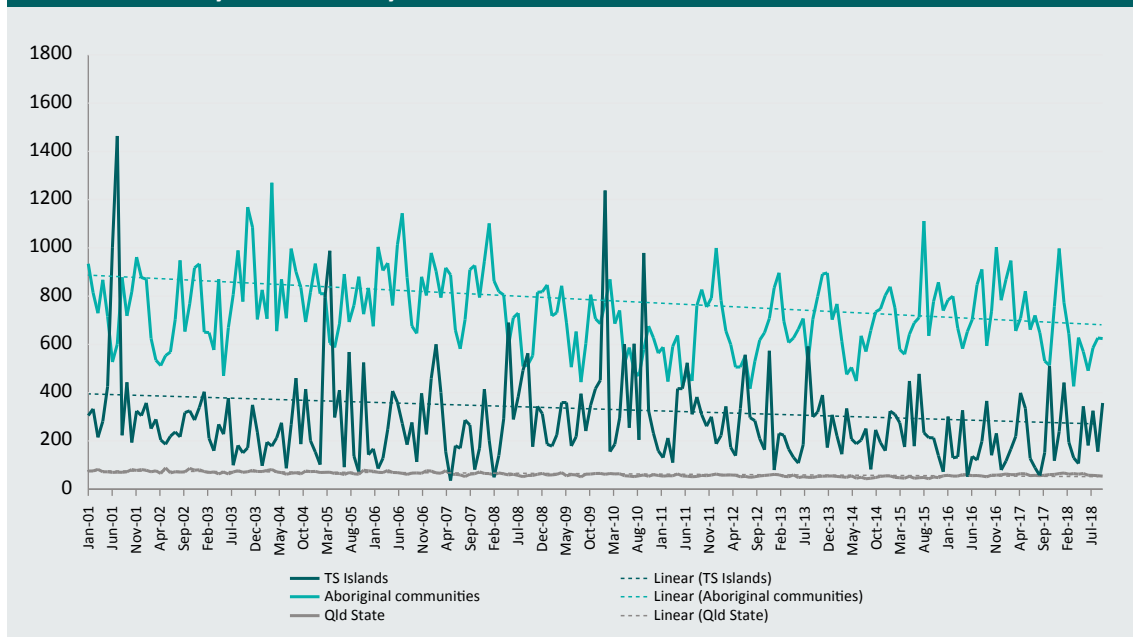
Data for Bamaga were similar to those seen in the rest of the TSR ($M=481.58$; $\text{min}=0$; $\text{max}=5,184.49$; $SD=437.98$), and also trended downwards over the period (see Figure 11). The relatively high peak rate of 5,184.49, which occurred in October 2001, appears to be particularly anomalous to the overall trend and, in general, the higher standard deviation in the Bamaga crime-report data is due to a smaller sample size.

Finally, the average rate of reported breach of DVO offences in the TSR was lower overall between 2001 and 2018 ($M=81.22$; $\text{min}=0$; $\text{max}=418.90$; $SD=68.86$) when compared with Queensland's Aboriginal communities ($M=405.92$; $\text{min}=177.43$; $\text{max}=749.09$; $SD=114.87$), but was higher than Queensland ($M=23.76$; $\text{min}=12.60$; $\text{max}=52.18$; $SD=9.73$; Figure 12). Rates of reported breach of DVO offences trended upwards for all three comparison areas over the period.

These data are likely influenced by increased awareness of DFV offences during the period, especially over the previous five years with widespread campaigning by significant public figures, and with the establishment of a Special Taskforce on DFV in Queensland in 2014, which delivered its *Not now, not ever* report to the Queensland Premier in February 2015 (Goldsworthy & Raj 2015; Special Taskforce on DFV in Queensland 2015). The trends are also likely influenced by changes to Queensland's DFV laws, which extended the default period for DVOs from two to five years, and led to changes in policing practices and the recording of incidents as being domestic violence related (D'Ath 2017). (We also expand on this point later, under *Domestic and family violence*.)

Data for Bamaga were similar to those seen in the rest of the TSR ($M=134.37$; $\min=0$; $\max=717.36$; $SD=103.26$), and also trended slightly upwards over the period (see Figure 13). The higher standard deviation in the Bamaga crime-report data is likely due to a smaller sample size.

Figure 8: Reported offences against the person (rate per 100,000 population), comparison of averages across the TSR^a, Queensland Aboriginal communities^b, and Queensland^c between January 2001 and July 2018

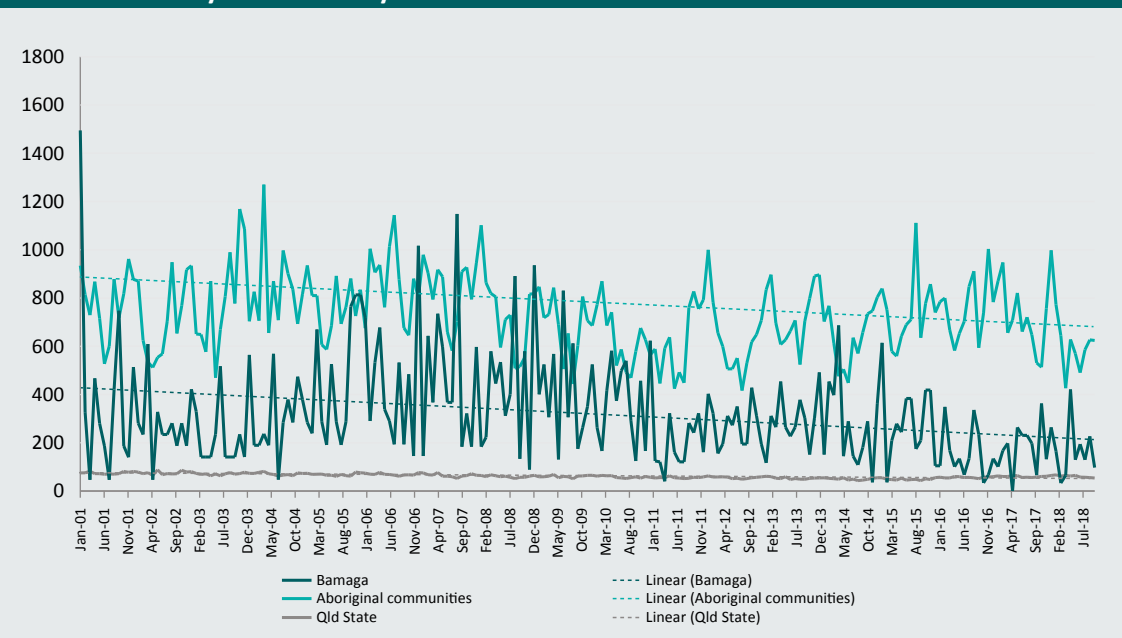


a: Average rate of reported offences across Badu Island, Waiben/Thursday Island and Ngurupai/Horn Island. This captures reported offences occurring across the TSR, including in outer islands

b: Average rate of reported offences across 13 of Queensland's discrete, remote Aboriginal communities

c: Average rate of reported offences across Queensland

Figure 9: Reported offences against the person (rate per 100,000 population), comparison of averages across Bamaga^a, Queensland Aboriginal communities^b, and Queensland^c between January 2001 and July 2018

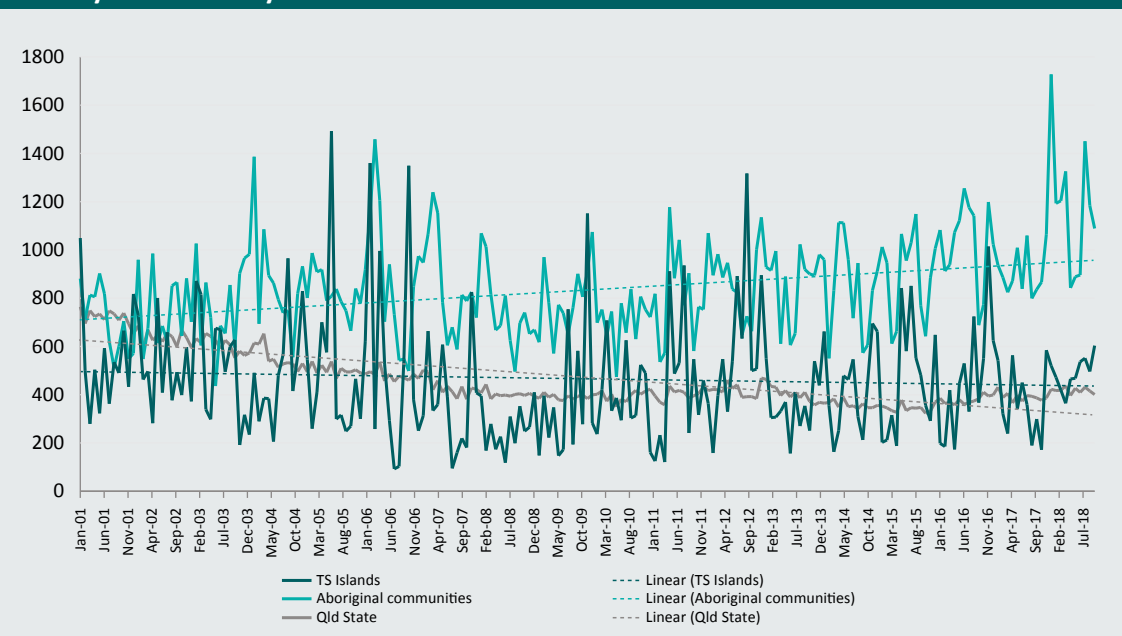


a: Average rate of reported offences in Bamaga

b: Average rate of reported offences across 13 of Queensland's discrete, remote Aboriginal communities

c: Average rate of reported offences across Queensland

Figure 10: Reported offences against property (rate per 100,000 population), comparison of averages across the TSR^a, Queensland Aboriginal communities^b, and Queensland^c between January 2001 and July 2018

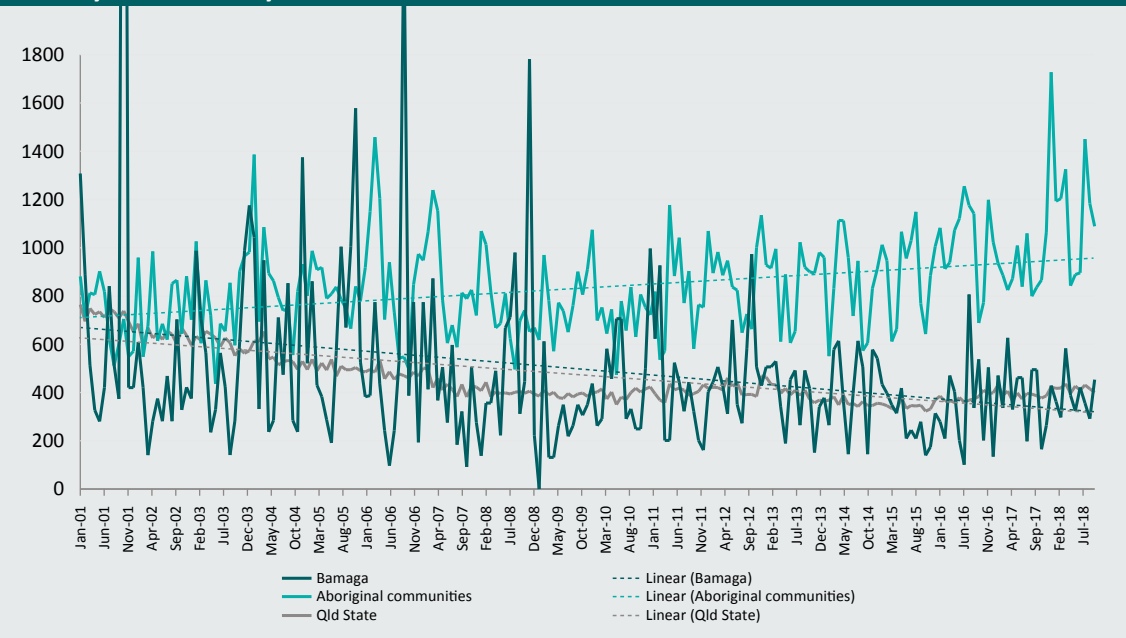


a: Average rate of reported offences across Badu Island, Waiben/Thursday Island and Ngurupai/Horn Island. This captures reported offences occurring across the TSR, including in outer islands

b: Average rate of reported offences across 13 of Queensland's discrete, remote Aboriginal communities

c: Average rate of reported offences across Queensland

Figure 11: Reported offences against property (rate per 100,000 population), comparison of averages across Bamaga^a, Queensland Aboriginal communities^b, and Queensland^c between January 2001 and July 2018

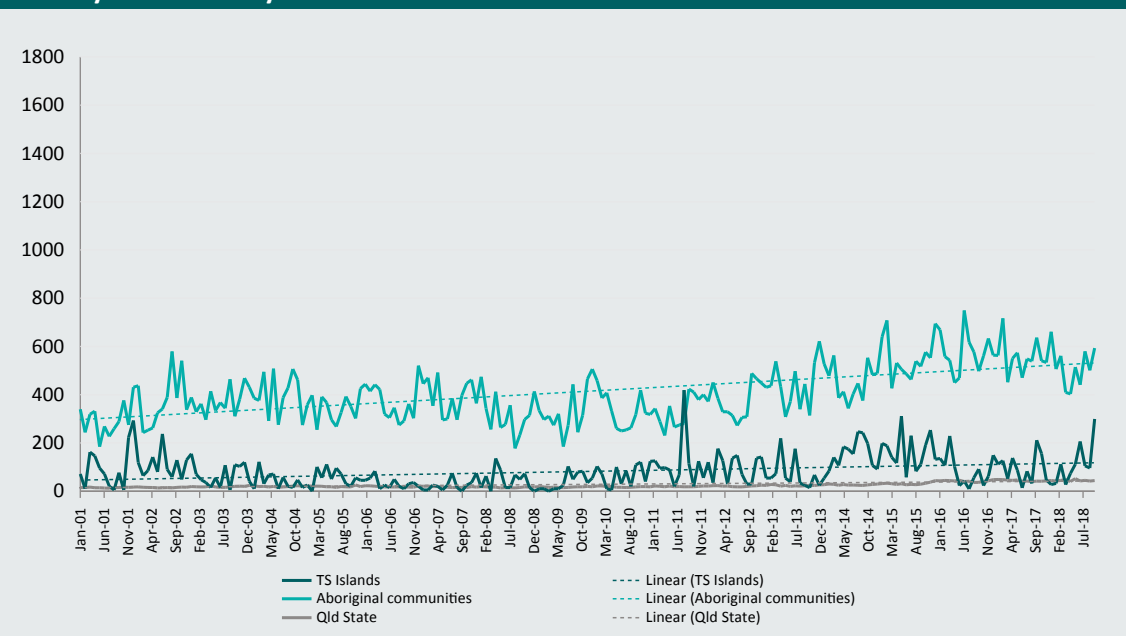


a: Average rate of reported offences across Bamaga

b: Average rate of reported offences across 13 of Queensland's discrete, remote Aboriginal communities

c: Average rate of reported offences across Queensland

Figure 12: Reported breach of DVO offences (rate per 100,000 population), comparison of averages across the TSR^a, Queensland Aboriginal communities^b, and Queensland^c between January 2001 and July 2018

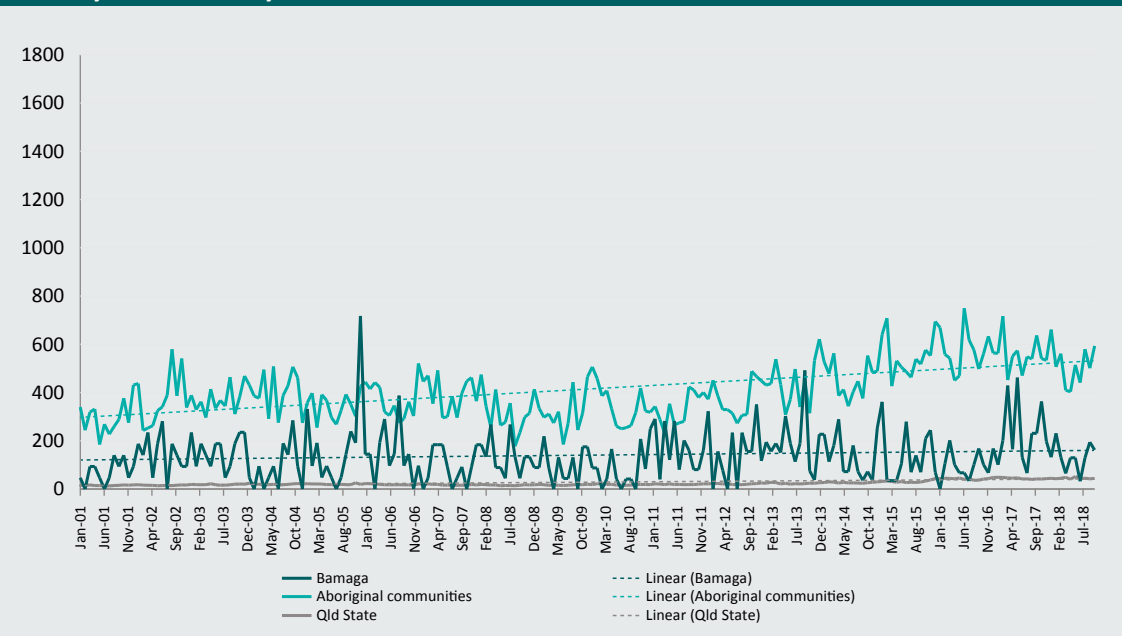


a: Average rate of reported offences across Badu Island, Waiben/Thursday Island and Ngurupai/Horn Island. This captures reported offences occurring across the Torres Straits, including in outer islands

b: Average rate of reported offences across 13 of Queensland's discrete, remote Aboriginal communities

c: Average rate of reported offences across Queensland

Figure 13: Reported breach of DVO offences (rate per 100,000 population), comparison of averages across Bamaga^a, Queensland Aboriginal communities^b, and Queensland^c between January 2001 and July 2018



a: Average rate of reported offences in Bamaga

b: Average rate of reported offences across 13 of Queensland's discrete, remote Aboriginal communities

c: Average rate of reported offences across Queensland

These findings broadly align with how interviewees perceived crime in the region, as we describe below.

Specific crime issues

In general, crime on the islands was thought to be low.

Torres Strait people are happy-going. We are a sharing culture. We were once fearless headhunters, but have changed. We are now happy, law-abiding people. (MI3)

Crime was also thought to fluctuate, particularly due to the availability of alcohol (as we describe later) and also because of general social disadvantage, including unemployment. Income on the islands is relatively low and often seasonal and dependent on the local fishing industries. The importance of being in paid and unpaid forms of work, including 'work for the dole', was emphasised by one participant as having improved crime rates in the region.

Working for dole is good for purpose and vision. Clothes on and up at 8.00. People down south are like 'Get rid of it', but, man, it is good for us. It is working. You hear the lawyers ask them 'do you work?' and it's a job for them. That breaks the [violence] cycle too. (MI11)

The opening of a mine on the mainland was also credited by this service provider with reducing crime generally and interpersonal violence in particular by ‘keeping families together’ and instilling self-worth and purpose in people who had previously lacked employment opportunities.

If you have got money you are happy and if you don’t have money you are stressing out... If people are given a go, if they work, they become normal, just like any other person. They are providing for their family. They are happier. The kids are well-clothed and going to school. It’s what everyone wants. (MI11)

But employment growth also brings challenges. One participant noted that large increases in income for people who had previously been unemployed had led to increases in house-parties with large quantities of alcohol consumed.

Drops in crime in areas such as Bamaga and on the islands were also explained as being a result of innovative programs addressing men’s violence (some of which we describe below). One service provider claimed that two years ago he had worked with 25 clients, but through the funding of new social programs he was now working with only six clients in his community—something the provider took as a positive sign that the remaining men no longer required the service.

Domestic and family violence

Participants universally considered DFV to be the most serious criminal justice issue in the region. A police officer stated:

Court lists are dominated by... [DV] and they’re far and away the most serious things... that’s what people up here are getting sent to prison for. (MN7)

Two police officers felt that there was one incident of DFV a day on average in the inner island area. A female police officer stated:

[DFV] is 80–90% of our work and assaults and wilful damage associated with [DFV]. I am talking about every day. Every single day. (FI6)

In general, the causes of DFV were hard to define; it might be best considered multi-causal. One participant felt that a masculine culture existed on Ngurupai/Horn and Waiben/Thursday islands, where men had vastly outnumbered women prior to the postwar period, when traditional pearling and fishing industries dominated.

In Torres Strait Islander culture the man is the head of the family and always has been. If the man is here, he says ‘she’s got her place and I’ve got my place’. They are not equal. So, a lot of the problems stem from that. (FI6)

There are clashes between Island lore and mainstream, all the time. It gets confusing. In some communities they use the other one to their advantage too and it clashes, especially with domestic violence orders. Some islands, where the man is the head of the table and walks first blah, blah, blah... And then there is today’s society where they are educated and they know their rights and they can use them. So, there is an imbalance there. (MI4)

There was strong universal disapproval of DFV among participants, one stating, 'It was never our culture' (MI3).

When the men get violent, they get violent right? When you think about violence we're talking 'Once Were Warriors' right? That's the violence I'm talking about. To the point where members of my family when they seen that film they walked out and threw up, right? Because it was so reflective of what is in the Torres Strait Islands. But we don't talk about that because we don't want to disrespect our Elders. So you can see the confusion and tension between that... (MI17)

Never let it be said that domestic violence was then part of Islander or Aboriginal culture either! It is something that has developed with alcohol having a big part. The conflict between male and female positions in society has caused conflict. (MN6)

One interviewee did not consider that local DFV rates were very different from those of other regions in Australia and did not want it to be viewed as a problem particular to the TSR. However, they—and others—noted that alcohol played a key role.

Many interviewees linked the incidence of DFV (and other offences against the person) to the introduction of alcohol and alcohol culture to the islands. It had not been a traditional aspect of islander life and was considered a relatively new introduction, especially to the remote islands, primarily during the postwar period. Changing legislation and social mores had also facilitated the introduction of alcohol consumption on the islands. For example:

We have come from an oppressed time.... Island people called the [legal] acts of the day the 'Dog Acts' because we were treated like dogs. There was a curfew on. If you walked the streets—any Torres Strait Islander or Aboriginal people—after six we would be locked in jail and in the court the next day for breach of curfew... 11 o'clock everybody was in bed and the police would ring the bell, like a cow... By 10 or 11 o'clock you can't cross the street to another person's house... People did not know what alcohol was and would see white people drinking it and even if it was on your breath, you would be jailed. When freedom came, because of the lifestyle of look-and-learn, we wanted to know what the white man was doing in that building there [hotel]. People want to know what's that and try that. When freedom came, people drank. People drank overboard because of lost time. When young people grow up now they see uncle and brother and also go overboard. (MI8)

There is no limit to the range of alcohol available on Waiben/Thursday Island, where there are seven licensed premises. Some of the outer islands also have registered canteens. Individuals can transport alcohol privately to islands, but different islands have local rules to control alcohol consumption. On Mer/Murray Island, for example, an open canteen is operated by the community most days between 4 pm and 7.30 pm. Customers are allowed one six-pack of light beer as takeaway and have the option of privately ordering 'heavier' drink from Cairns or Waiben/Thursday Island.

DFV was also viewed by some participants as a result of families having been displaced and trauma based around unemployment, both of which it was thought led to alcohol abuse and then rage, anger and frustration. One TSIPSO on an outer island claimed that much of the problem there could be isolated to only three families and was linked to alcohol and drug use. Two other participants noted that DFV decreased whenever football season commenced, because:

Men need a purpose... not having a purpose brings anger and frustration and not dealing with emotions. When you are drunk you can't control emotions and all the things come out... The persons closest to you, it comes out on them. There is a shame factor too: you don't want to be doing things outside, so it goes to your family. (MI11)

One year the football season had been delayed and the incidence of DFV was thought to have increased as a result. Some crime, including some incidents of interpersonal violence, were blamed on outsiders visiting the region to participate in special events. For example, it was thought some incidents of DFV were difficult to police as they involved PNG nationals visiting islands close to the PNG mainland, such as Boigu and Saibai. However, most DFV was recognised as a problem of local dimensions. In turn, this had implications for reporting of DFV incidents.

Under-reporting of DFV

Some areas were considered to have cultural attitudes that were less responsive to DFV prevention and education. In the past people were considered very reluctant to give statements, so DFV was 'written-off' and infrequently reported or responded to, whereas now people are more willing to give statements and more likely to press charges. The 'shame culture', which could encourage public order, could also be linked to a lack of reporting in DFV and might even be considered a progenitor of it to the extent that perceived infractions against island norms might be best dealt with through informal and private forms of social control.

Community policing responses to DFV were also considered to be inconsistent, and cultural roles and kinship or other communal affiliations could take precedence when responding to incidents. This issue was thought to be particularly acute in the outer islands. For instance, it was noted by DFV service providers that women on outer islands might be linked to an external community by marriage, so they were more isolated and DFV was therefore harder to report and less likely to be responded to. An incident was cited in which a woman was being physically abused on an outer island and there was a poor response from the TSIPSO as he was closely related to the perpetrator. Indeed, part of the effectiveness of TSIPSOs is as a result of their integration into island communities, but this can also be a limitation.

Isolation of the islands and the inevitably slow police attendance at an incident also meant that there were incentives to resolve incidents informally on the island without reporting to police, or for incidents to have been 'resolved' by the time police responded. This noted, of the approximately 30 sworn police officers stationed in the region, over half were women—an unusually high proportion—though only two were Indigenous. It was thought that if police visited the outer islands more frequently, the opportunity to report would be increased and the rapport with police would be stronger.

This noted, several participants thought that some DFV was best dealt with informally through cultural mediation, as opposed to formally through the police (we discuss cultural mediation in greater detail later). An example was given that, if a husband is violent to his wife, the first thing a wife will do is go to her family and it was felt that they would take her in. Following this, the husband's family should come and talk to them and an Elder would consult with both families, the perpetrator and victim. It was emphasised that such consultation would occur in a private space and that such a process was preferable to one that occurred in the public space and involved the police or health services. For example:

We try and address the gap through family intervention to stop that [DFV]. Next thing you know they are going to come to our island and take your husband to jail and take the kids and they cry and who do they run to? But we [public services] don't have the answer. (FI3)

For this reason, DFV was often regulated informally in the past, and informal regulation continues today:

Torres Strait Islanders are much more amenable to correction without going the whole hog of a custodial sentence. Don't get me wrong, because there are a lot of Islanders who have gone to jail. But if you talk about the outer islands, young fellows that come to live out there are under the purview of the Elders and a bit of summary justice is often handed out. Back in the older days with domestic violence, if a young man took to his partner, her uncle and the father would invite him down to the beach and have a discussion with him and the discussion often left bruises, but of course you can't do that anymore... (MN6)

Several participants noted that reporting of DFV had improved in the region. Moreover, the number of offenders asking for help from service providers had increased in the last couple of years. These improvements in responses were linked to greater awareness of DFV through educational programs that had raised awareness of the different types of violence that can occur, including verbal and emotional abuse. These programs extended to the outer islands and two community champions had recently been appointed on each island to recognise and respond to DFV, and do capacity building. They also had access to brokerage funds to evacuate women and children from dangerous locations, including by night if needed. Currently a DFV initiative is also being adopted in Queensland in response to the Not now, not ever report, which will allow community justice groups (CJGs) in the region to receive \$150,000 in funding to respond to DFV over three years.

It is possible that, as outlined earlier, greater awareness and improved resourcing has led to increased reporting of DFV in the region. Thus, this is a likely cause (or at least partial cause) of the increasing trend in DVO breach offences discussed earlier, as opposed to an underlying increase in the incidence of DFV. One participant spoke about this directly, arguing that changes in Queensland legislation had led to a spike in DFV statistics:

If it was Joe Bloggs, at his Aunty's house, because he damaged her window, she may not have been there, now we call this a [DFV] offence. It was property [before], but can be characterised as a [DFV] offence [now]. (MI13)

A further example was given of an actual incident before the court of driving without a licence and it happened to involve an uncle's car. Thus, the incident was reported as a DFV offence. This had been challenged by the Aboriginal and Torres Strait Islander Legal Service (ATSILS) and the prosecution agreed to strike it out under section 49 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW).

Responding to DFV

There had been one specific DFV service (Mura Kosker) for the whole region for 30 years, which was based on Waiben/Thursday Island. Many of the successful programs cited in interviews involved work with young people and work around gender roles, such as in men's groups and a family violence counselling camp. Nevertheless, programs for men and boys were considered by several participants to be lacking. One service provider stated that during the colonial period men and women were often separated by colonial authorities and that the same patterns had persisted:

People haven't learnt to connect, because they have learnt to be separated. There wasn't time to bond. (MN12)

Under one program, men and boys on Masig/Yorke Island participate in woodworking activities. Another program also encouraged men to build quality time with their partners and family members through learning reciprocity and touch. It was argued that men 'go out all day fishing and hanging with boys, so we need to teach men there is not just one way to connect'. It was thought that some men needed to invest in quality time with children and partners, and that it was important to reduce toxic language through good communication skills. It was also claimed that this program, delivered in Bamaga, saw a huge drop in people coming to courts. Out of 40 men the service provider had worked with previously, only three people who completed the program reoffended.

A 'warrior program' was also cited, which worked specifically with men and discussed things such as ancestors and clans, building on tradition and identity:

There are watchmen in all clans, who watch the boundaries of community and look from the high areas for intruders to raise the alarm. Colonisation and past removal of rights and powers from men and family structure have symbolically brought men down from the watchtower and the enemy has come in and attacked our tribes and families and the consequences of this will be violence, anger and jealousy. We need to talk about how we get to the purpose in our family and how the warrior will rise up again. Take men back to that care. Change their mind-set. Building each other up. Become watchmen again: watching for their family. You're not the harmer. You're the protector. (MI11)

Several participants argued that there was a need to direct more resources to counsellors and other services for rehabilitation. In particular, DFV perpetrators lacked access to resources and programs when on probation and parole. A particular barrier to providing this access was the remoteness of the islands; there might be one perpetrator on each island and it is difficult to get counsellors out to each client at an appropriate time. ATSILS is restricted from fulfilling this role because it is only able to visit the outer islands during routine court circuits, and does not have sufficient funding to visit in between these times. It also lacked funding for community legal education. As noted earlier (and also elaborated upon later in the *Community justice groups* section), the CJGs will soon have two DFV support workers, one based on Bamaga and the other on Waiben/Thursday Island. Their role will be supporting courts, victims and perpetrators before and after incidents.

Driving offences

Following interpersonal violence, the biggest challenge in the region, as identified by study participants, was driving offences such as driving unregistered vehicles or driving when disqualified or unlicensed. These offences were considered to be linked to multiple issues. On one level they were associated with close familial bonds, where, for example, a relative or Elder will ask a person who was drinking or unlicensed to drive them somewhere and such a request could not be refused or even queried because individuals were obliged to do it by the structure and bonds of the family and culture. In such an instance, lore had precedence over any consideration of law. One participant described a young person who had been disqualified from driving eight times. They ran the risk of going to jail, but after being apprehended driving unlicensed they stated: 'The reasons are my Aunty had asked me.' It was observed:

There is a certain cultural obligation that you can't really say 'no' to one of the Elders and especially an Elder in your own family, so that, in a sense, [it] is known as a cultural obligation, despite it means breaking the law. But that sense of keeping your Aunty happy overrides any sense of obligation you owe to the courts. (MI13)

Driving offences were considered to be a significant matter, especially on the mainland (Bamaga) because the region contained remote communities without public transport or other modes of transport such as taxis. To access services, go to court or the shops, or from one community to the next, people would 'take a chance' with an unregistered or uninsured car.

If you are in a city, you could have got a bus, but there are no buses. (MI13)

Another issue is that vehicles were purchased unregistered and uninsured from 'down south' through dodgy dealers, and registering them on Waiben/Thursday Island, where the closest registry after Cairns was located, could be significantly costly. Recently, licensing musters had been conducted at the Bamaga courthouse to address problems associated with proof of identity and registration (see Figure 14). Licensing musters involved ATSILS working closely with the QPS, the Department of Transport and Main Roads and the Registry of Births, Deaths and Marriages to ensure people in the community get access to licences. ATSILS, for example, can assist with identification documents and police do checks.

Figure 14: Flyer advertising a licensing muster in the TSR

NPA Licensing Muster
(with the Licensing Mob)

When? 18-20 August 2020 (8 a.m. - 4 p.m.)
Where? NPA Court House
What for? Getting help with your licence, rego or ID!

The Licensing Muster team can help with:

- ✓ Licence and rego renewals
- ✓ Learner Licence
- ✓ Practical tests to get your Ps
- ✓ Photo ID Card
- ✓ SPER debts and unpaid fines
- ✓ Getting your ID sorted (e.g. getting a birth certificate)
- ✓ Plus much more! Just come ask!

 **Please bring all of your ID with you - Original copies only!**
No cash - EFTPOS only.

 **There will also be a BBQ.**

The NPA Licensing Muster Initiative is a cross-agency collaborative initiative of the following:

- Aboriginal and Torres Strait Islander Legal Services (ATSILS)
- Queensland Police Service
- NPA Community Justice Group
- Licensing Mob (Department of Transport and Main Roads)
- NPA Family and Community Services.

 **Covid-19 restrictions will apply!**

Any questions please contact:

ATSILS Bamaga: 4069 3970 NPA Community Justice Group: 0487 851 207 Bamaga Police: 4090 4500

The last muster was cited as having registered 26 people in Bamaga. It was noted by participants that many islanders lacked proof of identity, especially those living far from Waiben/Thursday Island. However, without such documents you:

Can't get nothing: licence; employment. You get arrested and make up a name and date of birth and this creates more problems. (MI11)

One participant noted that they did not have a birth certificate until they were 17 and had their first job without a bank account as a consequence. They observed that they could not even book a plane ticket, which, in such a remote region, had created frustration and anger.

Drug offences

'Hard drugs', such as methamphetamines, were universally considered among participants to be rarely found in the region. If they were encountered, participants thought that they were being introduced by short-term visitors to the islands, such as fly-in fly-out workers or tourists. This noted, hard drugs were occasionally encountered in the northern mainland communities. Locals on the islands were considered by one service provider to be 'scared of the [hard] stuff' (MN12).

A police officer noted that occasionally people would visit on trawlers and attempt to sell harder drugs, such as speed, to locals, but this would be quickly reported to the police. However, 'softer' drugs such as cannabis were relatively common. The use of cannabis had also been common on the islands in the past, but was less so now as a result of federal border policing initiatives. Nevertheless, an outer islander participant claimed cannabis was being introduced from PNG:

[Border Force] looking for the big fish, while the termites are running beneath our feet. (MI9)

An Indigenous service provider who had worked in the islands for over 20 years stated that there was anecdotal evidence to suggest that cannabis use prevented crime by having a calming effect on users. He argued that when it was around there was less 'trouble' and less violence and fighting. He contrasted it with alcohol, which had a close association with interpersonal violence and disputes.

Property offences

Property crime was considered to be relatively low in the region, which aligns with the crime-report statistics examined earlier. For instance:

Property crime is not really a big issue and, to an extent, that is consistent with smaller towns and communities. (MN7)

The more culturally mixed communities of Bamaga and Waiben/Thursday Island were considered more prone to property crime than other areas in the TSR.

Generally low property crime rates were considered to be caused by a mix of factors, including potential under-reporting. For instance, it was argued that in a 'sharing culture' lots of property crime goes unreported to protect social networks, such as family and friends. Break and enters into homes and shops and stealing from pubs had occurred on Waiben/Thursday Island and were also encountered regularly on the mainland, but it was thought that these were rare in the outer islands. For instance, a resident of an outer island observed:

You can leave your doors open and the only thing that people are afraid of is the dogs and other animals going into your house. I think it is the lifestyle too. We grow up knowing our neighbours and everybody's related on the island. There is no need for us to steal from others. It is our good nature that you see in Torres Strait Islanders. We are a God-fearing people. We are law abiding to some extent. We are a nation that supports the idea of not letting our hands and feet wander into other peoples' [property]. We instil it in our children 'don't steal'. You work for your money and the things that you want. (MI14)

Nevertheless, older participants, especially those Indigenous to the region, were more inclined to highlight property crime as a problem. In particular, young people were blamed by these participants for any property crime that did occur, including theft and vandalism. Youth crime was considered more of an issue in Bamaga, Ngurupai/Horn and Waiben/Thursday islands, where cultural networks were relatively loose compared to those of the other islands. Break and enter into shops or private residences or stealing vehicles were cited as the most common crimes committed by youth. Most children before the Children's Court were from Ngurupai/Horn Island. Crime in these (hub) locations was also considered to be a result of there being a lack of things to do ('boredom') and lack of parental or adult supervision. Small groups of repeat offenders were considered responsible for most youth offending (MI3).

PNG nationals were also blamed for property crime in the outer islands; PNG nationals stealing fuel from Saibai was reported as a problem. PNG nationals often come to the islands and barter and trade, the closest island being eight kilometres from the border. Tens of thousands of visitors cross this border legally every year and 'people smuggling' is not considered a major concern in the region. However, organised crime, including some smuggling of weapons, has been identified as a concern. This issue was also raised by a police officer who had worked on Waiben/Thursday Island:

Unregulated airspace. You can fly a light plane up there and you are not getting anything on radar. If you don't put your monitor on and own-up that you are there, you can land on one of those remote islands, because the airport reporting officer isn't at the strip, do your pick-up and be gone. And they know a plane has come. We got the information anecdotally. There are also all those bush strips down on the Cape where people just land. So, we know all that was happening and stuff coming down from China, from those Chinese owned mines at PNG. Especially with those Eastern Islands, because the air strips at [Erub] Darnley and [Mer] Murray Island are on top of a hill. Yorke is harder, but in [Iama] Yam the strip is out of town a little bit. The Customs work hard to stop it, but with no radar, you don't know it's there. (MN16)

This again demonstrates the influence of the region's isolation on local experiences of crime and justice.

Crime and justice practices and innovations in the TSR

This section summarises our findings in relation to our fourth research question, which was concerned with how justice is practised in the TSR. We start by outlining the import of CJGs, before describing the region's unique island court system. We also describe other practices, such as cultural mediation and unique forms of policing.

Community justice groups

The Court Innovations Program was established by the Queensland Government in 1993 in response to the Royal Commission into Aboriginal Deaths in Custody (1987–1991). This program funds CJGs, whose overarching objective is to reduce numbers of Indigenous people in contact with the criminal justice system. Around 50 CJGs now operate across Queensland, including one for each larger island in the TSR (Queensland Courts 2017).

Islands have CJGs composed of Elders who, despite being voluntary, unpaid and under-resourced, form a very important part of the court process and also contribute to (and in some cases lead) unique forms of local justice such as cultural mediation (described later). While CJGs are not unique to the TSR, the composition and specific functions of TSR CJGs was thought to be relatively distinct.

In general terms, CJGs provide support to defendants and victims, as well as community information and cultural information, such as individual and cultural reports at sentencing and during bail applications. They do not provide legal advice, but do have input into sentencing. Notably, the local and cultural information they provide was considered an 'invaluable' resource by participants associated with the court process. They bring Elders to the courts, engage with magistrates, police, legal representatives and communities, establishing communication lines with communities and courts. They were described as a 'middle man' and could fulfil this role by explaining court outcomes to communities (MI11). They actively engaged communities during court sitting days and explained to the community how the court works. One CJG leader described their role thus:

[I] keep the court a non-depressing place. Keep it lively. Talk the lingo. Talk our language—our creole. Explain, joke, keep it fresh and remove the shame factor. Everybody's watching them. I sit outside. I don't go in the court. I work for community justice. I don't work for government. I work for the people... I grew up here and my grandfather is buried here. Everyone's buried here, so this is my lineage, like family. This is our country. It is close to my heart, before money. Put people first... I said to myself 'I'm not going to be a person [Justice of the Peace] who signs warrants for petty crime, because I don't work for the police: I work for the community...' so I don't want to be a part of that... Keep my people in prison is not my role: keep my people out of prison for such small crimes. (MI11)

The CJGs monitor policing processes and provide support to incarcerated inmates and their families. Under the *Penalties and Sentences Act 1992* (Qld) the magistrate, district court judge or the judicial officer must have regard to the submissions of the CJGs. A participant cited two Queensland hearings where a magistrate did not have regard to CJG submissions that were referred to the District Court and were found in favour of the CJG. In effect, it is the local island CJGs that link the mainstream court and the circuit courts. This relationship is in its infancy and needs to be nurtured. It is only through cooperation between the CJGs and the courts that the sought-after 'access to justice' will be achieved. Magistrate Black stated:

A lot of time I have said that if the... [CJG] was not working there is little point going to the islands. The... [CJG] keeps the court informed of the attitudes on the islands. They have oversight for the orders of community service and they ensure that community service is done... And the court goes there to not only see justice done, but to have them have a say on what is the appropriate justice.

Relations between island leaders, CJGs and the police were considered to be highly positive. The CJG was reported to make police more inclined to appreciate the local culture and also maintain 'cultural respect' for the police in the community. They had allowed police to work more closely with Torres Strait Islanders than they had done in the past. The CJGs have, thus, improved communications between the police and communities and allowed the police to exercise greater discretion.

In addition to engaging with the police, court and magistrates, these groups also implement crime prevention initiatives and programs. A CJG on Waiben/Thursday Island had established a boxing program for young people, with 40–50 young people (8–25 years) attending the program regularly. The aim of the program was to discourage violence and promote alcohol-free social activities. The same CJG also ran crime prevention programs for adults. However, the role of the CJGs was viewed as being distinct from government services, with one CJG leader making the point that they did not 'case manage'. Rather, '[I] just point people in the right direction'. In this way, the service was informal.

CJGs might be seen as an obvious extension of the social capital prevalent on the islands. They enhance a cultural responsibility to care for and provide guidance and supervision to children and young people. A leader of a CJG emphasised that it was not a police responsibility to care for young people; another leader saw that it was his role to act as a 'role model' for young men.

There were general concerns that most Elders were not paid or reimbursed for their involvement with CJGs. The only paid group is the Waiben/Thursday Island CJG. In contrast, all of the work of the CJGs located on the outer islands is voluntary. Even though the Waiben/Thursday Island CJG did receive some compensation, only a relatively small amount of money is provided and this was not thought to be adequate recompense for the time invested by CJG members. It was also noted that the leader of the Waiben/Thursday Island CJG was not funded for travel. This situation was described as:

...frustrating, as we can't just drive to the next community to help out kids in trouble and no government agency will fund us for that travel. (MI4)

Instead, funds were sought through the TSRA, which did not always support such travel.

It was argued that expert witnesses receive a higher hourly rate than the monthly 'pay' for CJG involvement, which presented as unfair. This lack of compensation was regarded by several participants as a sign of disrespect for Elders involved in the CJGs and a lack of official acknowledgement of their important work.

Elders keep it afloat and we need to acknowledge what they have done. (MI4)

They go out of the way to help us in finding people and also for other services. (FI1)

Resourcing was also lacking for CJGs to hold events, such as facilitating court visits with cultural mediation:

So, the coordinator works full time and they have to set up the hall and afternoon tea etc, morning tea and organise Elders to come to court. They get funds for morning and afternoon tea, but otherwise there is no support... There are also no funds to resource them. Mobile phones, laptops and office space is all lacking. (FI1)

CJGs play a critical role in the TSR, yet their positions are not adequately remunerated or resourced—an issue that is not isolated to the TSR (KPMG 2010). At the same time, many in the TSR survive on low incomes, jobs are otherwise scarce, and the current Queensland Government (as well as past governments) has repeatedly emphasised the importance of 'creating jobs' in Far North Queensland (Trad 2019). Those serving on CJGs undertake work that would, in any other circumstance, be paid and stabilised through formal employment agreements. If the CJGs are to continue their important roles, adequate resourcing and succession planning appear to be key issues of concern.

Island courts

The institution of the court circuit on the islands was regarded by participants as essential to ensuring access to justice in the region. (It should also be noted, however, that the local courts have not been without criticism—see, for example, Cullen 2017). As we described in the *Historical context* section of this report, a former non-Indigenous police magistrate for the region, Henry Marjoribanks Chester, initiated a system of justice whereby existing island chiefs, termed mamoooses, were appointed to maintain order, only drawing on the assistance of official police for serious offences like murder and rape (Shnukal 2015; Singe 1979). Under the system of governance, the mamoose or chief of each island was installed as chief magistrate, invested with insignia of office and able to appoint local community members as 'island police' to suppress crime and disorder. Court proceedings were recorded and monetary fines were remitted to Waiben/Thursday Island. The first Government Resident, John Douglas, travelled frequently to the various islands to oversee the workings of the courts. It seems, however, that these magisterial visits ceased with his death in 1904, even though the practices of island councils as well as island-based policing continued.

From 1904 to 2001 everyone in the TSR had to come to Waiben/Thursday Island for court and to be charged and would be collected in a dinghy by police and later by plane. Several participants recalled this practice was highly problematic with regard to access to justice, because islanders often lacked the resources needed to travel. Offenders who were charged could pay exorbitant airfares in order to return to their homes. Travel between islands could also be dangerous (as described earlier). As a consequence, many offenders failed to appear in court and warrants of apprehension were issued (Black 2008). Nonetheless, it was relatively easy for people to 'island hop' and difficult to monitor bail breaches.

In the early 1980s there was agitation for the recommencement of visits by magistrates to the outer islands (Black 2008). The islands were thought to have become 'lawless' (though not 'loreless'), but only insofar as they were out of reach of sworn police, visited irregularly, usually in the event of major crime. Following considerable agitation, in September 2001, a Magistrates Court was convened on Badu Island—the first court conducted by a regularly appointed magistrate since the days of the mamoooses. It was an immediate success in reducing the number of defendants who failed to appear on Waiben/Thursday Island. Magistrate Black described the opening of the court circuit:

The opening of the Badu Island Court caused some angst in the communities much more remote than Badu Island. Pressure mounted, particularly from the peoples of Mer Island, for the reinstitution of the Courts on the outer islands.

The Regional Justice Agreement between the residents of the Torres Strait and the Queensland Government identified the need for the Torres Strait Islander people to have increased participation in the administration of justice, including the development of their own solutions for local justice issues. In late 2007, an additional magistrate was appointed to the Cairns bench to allow circuits to the islands of the Torres Straits and also to provide for an enhanced Cape circuit. (Black 2008: 132–33)

The 'Torres' Court circuit commenced in January 2008, after former Chief Magistrate Judge Marshall Irwin and Cairns magistrate Trevor Black had conducted extensive consultation with islander communities. At the time, it was estimated there were 100 Bail Act warrants for people not attending courts, whereas in the six months following the establishment of the circuit, only six were issued (Magistrate Black).

Since 2008, Magistrates Courts have convened in the communities of Saibai and Boigu islands. The court has also sat at Kubin village, on Moa Island, and the Central cluster islands of Iama/Yam, Masig/Yorke, Warraber/Sue, Mer/Murray, Erub/Darnley, Mabuiag, Dauan, Ugar/Stephens and, most recently, Poruma/Coconut Island (see also the earlier section relating to *Service delivery context*). The large islands are visited four times per year and the smaller islands three times per year. Magistrate Black has been the sole magistrate of the TSR since 2008 (after also being involved with Torres Strait Island justice since 1986), which has provided a sense

of continuity. Having a magistrate who consistently works the circuit has been important to outcomes:

We know that if we go back and it is Magistrate Black we are going to jail. Having the same magistrate is good. (FI1)

Another participant also stated:

There was an issue when I was up there when a Magistrate did not heed the advice of the [Community] Justice Group and he was never sent back there to [the Torres Strait Islands]... it really alienated them, as they were not being taken seriously. (MN16)

In relation to the island courts, Magistrate Black has stated:

We sit on one island under a tree of knowledge, the Edonilu at Erub. It's been a meeting place for generations. It has its own innate dignity. In other places we sit in community halls, and it's sometimes difficult to establish a sense of decorum; you have to establish a sense of presence I guess. In Mer we sit in the open hall. People stroll past and lean in through the window and they have a listen for a while, and I think the fact that it's an open court, and people can go about it and observe its practices in an open manner, I think it's a good thing. (Barraud 2012: np)

Magistrate Black (2008: 133) has also noted:

Presiding magistrates have been presented with symbols of justice and peace, including a law stone or Watticula on Masig, a bu shell on Iama and a Seuri Seuri on Mer. Sim leaves are a cultural representation of peace and they accompany the other icons. The Court opening on Warraber was accompanied by the haunting tones of the warup or war drum which accompanied the singing of a traditional island hymn. The opening ceremonies have been warm and welcoming with the island leaders expressing their sincere thanks on behalf of their people for the extension of the Court's processes.

The court circuit has been widely cited as a success on the islands and was considered by several participants to be 'educational' and a deterrent to offending. It was noted that the opening of the new court at Poruma/Coconut Island in 2019 had been attended by the 'whole community' on the island, including schoolchildren, and had been a celebratory occasion (MI13). A high level of community engagement with courts was observed during the fieldwork. For example:

It's very important to their island and community that the magistrate comes and sits there. They very much encourage people to come along and people who are not part of the court will sit there in the back and have a look. It's a big thing when court comes—put on food for the visitors. Huge fanfare when the chief magistrate was up... It's an honour for them in those communities, these people in the judicial system are coming to their island. It is the concept of 'justice is seen to be done'. (MN7)

The Torres Strait Magistrate involves the CJG members in the court process, asking the opinion of the members, and listening to Elders' cultural submissions. The magistrate also invites Elders to sit on the bench with him. Elders are referred to in matters with regard to a person's history, island protocols and island culture and customs. This was thought to provide for increased respect and dialogue between parties, including the court and community. Families also come along with defendants and victims to the court, especially in the outer islands. Some of the courts on the outer islands open with a prayer to show respect to the community and its traditions. Courts also respect other local traditions and customs, such as 'sorry business', which is stringently observed in the region.

Elders sitting in court 'make a big difference' to justice outcomes and community participation in the process in the region (MI14). As we have referred to earlier, this invokes a 'shame factor' because defendants are widely visible to their community and its Elders. This is significant in enforcing informal community social controls. The power of this shame is aptly demonstrated in a story relayed by one participant, who indicated that offenders had asked if they could travel to Waiben/Thursday Island Court rather than go to their local outer island court as they were trying to save face and get their case dealt with anonymously (MI14).

Cultural mediation

A strong and unique aspect of the island court process is the involvement of cultural mediation.

Old lore involved members of the community bringing people together same as a mediation process. Sit in front of a panel of selected leaders in the community who would come up with a solution. The parties would have to agree with it... In the Straits people are connected to each other, one way or another and when we sit down and do these mediations it also tends to defuse a number of other underlying issues in the community. There is always something that is underlying, which is what we want to take out. (MI4)

Cultural mediation is not set up in statute but is treated as more of an adjournment process. CJG members facilitate the mediation, in which offenders receive instruction in cultural protocols and 'learn about why they behave in the way that they do', as one CJG leader put it (MI4). This process could involve members of the CJG or other Elders, community leaders or respected community members. On Waiben/Thursday Island approximately 100 people a month were involved in cultural counselling. With the agreement of the prosecution, a charge can be withdrawn if mediation has been successful and they are satisfied that the matter has been dealt with by the community. The practice was thought to be most effective when a victim confronts a perpetrator and the perpetrator is made to be accountable:

Just getting [a] lecture from a Magistrate is not going to do anything. Usually you see my clients' eyes glaze over and it's in one ear and out the other. But then to go in front of your Elders that you have known all your life and be growled-at by them and then have to confront your victim and hear how they felt about the crime, makes a huge impact. (MI13)

While cultural mediation is very much considered a unique local initiative, it has been closely associated with the tenure of Magistrate Trevor Black, who has been involved in Torres Strait justice system since 1986. As Magistrate Black explained:

If a matter comes before the court that involved a member of the family, a conflict between families or a member of the community we try, in suitable cases, to have the [Community] Justice Group mediate between the parties. The justice groups have developed their own patterns and, generally speaking, the Elders meet with the protagonists and discuss the issues, sometimes going back generations. Or there may be a mother and son issue with a cultural divide or a child might not be respecting a parent's authority. So, the justice group mediates and does a report that is submitted to the court and prosecutor and the prosecutor will take advice from [the] complainant and senior officer and, in appropriate cases, offers no evidence, so the person avoids a day in court and the offender avoids a day in court. In other circumstances if the prosecutor does not feel able to withdraw the charge, the court can take into account that they have mediated and come to some arrangement in the mitigation [of sentencing].

Mediation programs have been implemented elsewhere in Queensland—for example, in Mornington Island (Brigg et al. 2018) and in Aurukun (Limerick 2016)—but these operate differently to those in the TSR.

Community members have to agree to the process for cultural mediation to happen and many matters were considered unsuited to it, such as unlawful wounding and matters involving people with extensive histories of assaults or apprehended violence orders. Instead, cultural mediation was typically used for 'minor' wrongdoing, including common assaults, public nuisance and wilful damage. Support for victims is also offered by CJGs, especially with regard to paedophilia. CJGs will not make a submission to the court on behalf of the defence in such cases. (A couple of participants noted that sexual abuse of children had been a historic issue in the region and that a decade ago the 'child protection unit had been really busy'. At the time there were several high-profile cases involving prominent locals. However, it was considered less of an issue now.)

Cultural mediation was considered by participants to be ideal for matters such as inter- and intra-familial disputes. A case was cited in which an island community wanted to evict a family from the island, but they could not prove their offending. This led to offences being committed against the family. The situation was managed after police intervened and cultural mediation occurred. Another example offered was an incident of family violence in which a young man assaulted his mother, in which the CJG intervened and mediated to reduce contact with the criminal justice system.

Cultural mediation was said by all participants in the research to have a very high success rate. As one interviewee stated:

It's a long term fix, man—they won't do it again. (MI4)

Another Elder stated:

We don't need them [formal criminal justice personnel]: we can do it ourselves. (FI7)

In contrast to the 'long-term fix' offered by cultural mediation, it was thought that formal processes only provided a short-term fix that did not resolve grudges:

It's different in island communities. There are grudges. You pass each other at least three or four times a day. You go to one supermarket where everyone goes shopping. And at every community event you will see them, at every wedding and every funeral. (MI4)

The success of cultural mediation was linked by many to the ability of Magistrate Black, who was recognised as being supportive of Torres Strait Islanders' efforts to continue local justice traditions by enabling them to be woven through formal justice processes. The magistrate is widely known and has a strong interest in and understanding of cultural protocols and traditions.

Magistrate Black doesn't talk to them in official language: he 'gives them a serve'. It's a huge advantage for the Magistrate to know the culture and the background [of people]. They respect his decisions too up here. [He's] been coming up as Magistrate for a long time and worked here prior to that. They have known him for a long time... If they have to cop it, they will cop it from 'Judge Black', as they call him. (MN7)

A community justice leader suggested that the tight social networks and integration of people on the islands was also central to making cultural mediation a success and court statistics show rates of crime have dropped while it has been practised (MI4). However, even though cultural mediation was widely regarded as being successful, and crime was thought to have had dropped since it began, data related to 'successful outcomes' from mediation are not specifically recorded either in the ATSILS database or by the Queensland Magistrates Court. Instead, all that is shown on the databases is that a charge has appeared before the courts and that it has then been withdrawn. Thus, there may be room for better documenting the effects of this unique Torres Strait justice practice—particularly as it may hold lessons that could be drawn upon elsewhere.

Finally, participants noted that there were important differences between cultural mediation and justice conferencing. As one Elder described:

With the youth justice conferencing, they are still flying people up from Cairns [to run the conferencing]. No offence to them, they run a brilliant service, but community input is important and to take that ownership of that program and have our own Elders facilitate it, so the outcome... stays within the community [is important]. They fly in and fly out and don't consult enough: "You guys need to get us in. We need to take ownership of that and you guys sit-in, not we sit-in with you". (MI4)

More formal justice procedures, such as youth conferencing, were perceived as lacking community input. For instance, it was considered vital in the TSR that a person's background and family history was accounted for as part of justice procedures. In this way, cultural mediation could provide a more holistic approach to justice than that provided through more formalised practices, as it engaged people at the local level of community.

Torres Strait Island Police Support Officers

Torres Strait Island Police Support Officers (TSIPSOs) are situated on more than a dozen islands in the TSR and are a form of community police. They were originally located on only two islands, Waiben/Thursday Island and Ngurupai/Horn Island, and funded by local government. However, commencing in 2013 they were employed by the QPS.

The police were employed by the local council and that was hit and miss, because if the council ran out of money they didn't have a police officer and the level of training they got back then was 'Here's a police shirt, you're the police officer'. When the councils amalgamated they said policing really is a State responsibility. We can't expect local government to do it and they don't do it anywhere else on the mainland. (MN16)

There had been some reluctance to make this shift and it was thought criminal histories might have prevented people being recruited into QPS roles. However, there are nevertheless now a total of 31 TSIPSOs trained by the QPS, and they can work up to 40 hours a week, with overtime.

There have also been some advantages for TSIPSOs in these changes, including increased pay rates, and pay for overtime and call-outs. Several participants commented that working for the QPS had been a positive step, making TSIPSOs more accountable and resolving what was previously viewed as an issue of poor monitoring. It was also thought that they had previously had poor communication and cooperation with sworn police, but that this had also now improved.

Lack of resources initially meant that TSIPSOs were supplied with second-hand police uniforms and unroadworthy vehicles. While the QPS wanted to take them seriously, it was hard to be credible with second-hand police shirts. The resourcing of TSIPSOs has improved since 2013, but a number of participants argued that they could still be better resourced and have greater powers. Lack of training was also still considered a problem:

The TSIPSOs do an absolutely fantastic job... in some instances they are doing better work with less resources than what a sworn police officer can do in terms of initial first response engagement. [But] they don't have the skills. They are never taught the skills what police receive, they don't have the right training in terms of use of force and the resources to support them in first contact engagement. Especially with alcohol-related crimes and DVs and all that sort of stuff. But what they do, based on what little they have, from [what] I have seen, they do a fantastic job. (MI15)

TSIPSOs can take statements, present and serve documents (including DFV orders and affidavits). However, the officers have no powers of arrest or detention and can only file incident reports. There has been some local advocacy to provide TSIPSOs with powers of arrest and detention. However, TSIPSOs currently do not carry firearms or handcuffs; rather, their weapon is considered to be their 'mouth'.

You have to police differently, heavily relying on TSIPSOs, the eyes and ears on the ground. They have no powers, they have no authority to investigate, but they will be in place all the time essentially doing a local police role to keep people safe, take people out, provide information... (MN7)

Their status is similar to those of 'community police' in other remote parts of the state, but many community police remain employed by local councils rather than by the QPS (see, for example, Coolican 2014).

An important role of the TSIPSOs is building trust and rapport between police and communities. If an incident reported by a TSIPSO is considered serious, police will respond by boat or plane and investigate. One officer noted that TSIPSO advice would allow a decision to be made about whether to fly a police helicopter out to an island at \$5,000 an hour at three o'clock in the morning. In this way they were frequently referred to as the 'eyes and ears' of the community (MN7) and were the 'frontline' of policing, especially on the outer islands, where it could take police up to eight hours by boat to respond to calls and where bad weather could delay access for three or four days. Other services, such as ATSILS, also relied on TSIPSOs to locate clients. TSIPSOs were also involved in reporting on probation and parole, and often managed community service projects.

In addition to cultural barriers in understanding justice, Islanders also experience language barriers; English can be a second or third language. TSIPSOs and CJG representatives play an important role in ensuring that defendants, victims and court orders are clearly understood. There are two traditional languages spoken in the TSR; individual dialects are also found on each of the islands. A third language has also developed over time—Torres Strait creole, sometimes colloquially called 'pidgin'—which is a mixture of the two traditional languages and English. A police officer stated:

It's a different language up here and a big adjustment to that different language. I didn't understand when I first came up here a statement in the language. Now I can take a statement in pidgin. And having to deal with people who live on PNG... (FN5)

Another officer stated:

I can't understand PNG language. TSIPSOs translate. (FI6)

Understanding matters such as bail conditions can be very difficult. Service providers need to avoid legal jargon and have strong cultural awareness and cultural knowledge, as locals will often seem to agree with authorities even if they do not understand, stating 'Yeah boss'. This is typically referred to as gratuitous concurrence (Lauchs 2010). Thus, communicating and understanding the culture (including mainland culture) can be very difficult without the assistance of TSIPSOs, who act as lingual and cultural interpreters.

TSIPSOs also perform a crime preventative function in communities and visit schools to teach youth about cultural traditions, such as the Coming of the Light and other ceremonies. It was noted that young peoples' only contact with the police was often highly negative and involved 'just seeing family members taken away' and for this reason there was a fear and mistrust of police (MI8). They see police making the arrest and not the TSIPSO reporting the incident.

TSIPSOs were typically locally respected figures and some were custodians of local culture and lore. An exemplar figure is Mr Edward (Ned) Mosby, Honorary Superintendent of Police. He had a full state police uniform and his honorary rank was a sign of the esteem he was held in by his own community and the QPS. Mr Mosby is also a pastor and an active member of his community. He works as a TSIPSO seven or eight hours a week and often gets call-outs on weekends. Mr Mosby was inspired to become a TSIPSO by an uncle who was previously an Inspector in the Department of Native Affairs; there was some indication that other current TSIPSOs had followed a similar family tradition of community policing. Mr Mosby also held roles in the State Emergency Service, Rural Fire Service, and Voluntary Marine Rescue. In his words, 'I like helping people.'

TSIPSOs could be seen as an extension of the social capital networks on the islands. In the words of one participant:

They do these things because they care for their community. (MN7)

This noted, being embedded in communities could also prevent TSIPSOs from dealing with some matters, notably those involving close kin or families. In this way, there could be strain between lore and law:

Without uniform I am a community member, uncle, brother, granddad. (MI8)

The level of supervision, oversight, and perceived conflicts of interest and accountability for TSIPSOs have been noted as issues for possible review. Another community member was critical of the transferal of TSIPSOs from council authority and also thought they lacked powers, complaining that police intervened too late to be effective in matters on the outer islands. In the case of DFV, many complaints are withdrawn or settled. One outer island participant felt that current legislation had eroded the power of TSIPSOs by placing them with the QPS and that it was preferable for local government to manage TSIPSOs.

Under the old *Community Services Act*, which constituted an island court, and as soon as that happens we pull that person up straight away and we actually dish out the appropriate punishment as we see fit... The *Community Services Act* was so powerful and it constituted the island councils. If you played-up the last resort was to evict you from the community, and that hurts. When you send people away, they come back a different person. The Act overrode all principal legislation and gave the power back to the councils to fix the community. The Act would be enforced by the police. (MI9)

Another community member on an outer island echoed these concerns, adding that TSIPSOs lack training in mediation:

[They] need the right training and ongoing training. You can't pick them off the street and say 'go and talk to Joe Blow down the road'. You need a point where they know what they are getting themselves into and an outcome in terms of knowing what they want to get out of that mediation. (MI14)

The same community member noted his island had one TSIPSO for 400 people and felt that they lacked the powers needed to be effective in the role (eg they could not even perform breath testing) and only patrolled casually with no active presence on their islands:

Our local people wear the same badge, wear the same uniform, drive the same car, yet they can only do so much and this gets very frustrating for elderly people and vulnerable in the community who should be protected... they have presence, but without the teeth to sink in the law on the island. Give them the opportunity to arrest and so forth. (MI14)

Policing

There is a staff of 33 officers, including 17 uniformed (general duties) police, one Criminal Investigation Branch officer, water police, and Child Protection Investigation Unit police. The 17 uniformed police service most of the islands. Police relations with the community were universally cited as being strong and positive. For example:

Their mentality now is to bring people here who want to invest in the community and stay here. People with family and not just people who are here to get a couple of ticks on their chart. They have to be invested into the community and make it as their home. (MI4)

A police officer who had previously been stationed on Waiben/Thursday Island recounted his time spent there fondly:

Loved it. Great people, strong culture. Because I have worked in an Aboriginal community on the mainland and, at that time, you could not cite culture as being integral in the communities, whereas up in the Torres Strait, culture is really strong, really powerful... Just to be on the Island and share a part in the culture is a big honour. We got invited to tombstone openings and weddings, which is a big thing. (MN16)

It was, however, suggested by one participant that police should be 'inducted' into the community upon arrival. In a couple of recent police appointments to the TSR, a member of the local CJG had participated in the appointment panel and this was considered a very useful practice, providing community input into long-term decision making. Elders cited instances of poor policing or inappropriate police appointments where police had failed to integrate or build rapport with local communities. An example was given in which locals took offence when a police officer walked into a local hotel with weapons. In another example, a police officer arrested the daughter of an Elder and did not know who her mother was.

He was very rude and did not know who I was. I didn't give him permission to call me 'Aunty'. This is my culture and I am an Aboriginal woman. (FI7)

Participants, both police and local service providers, thought the most successful officers integrated well into the local community by engaging in community events and networks. One long-term officer in the region stated:

You see the same people all the time and a lot of what you do as a police officer is about your relationship with the community and how people respond to you. Here it is about relationships with people and going to a job and knowing the history of people. (FN5)

Policing was consistently observed to be distinct from the mainland and police had 'to adapt to the culture and how the community live'. (MN10)

The people are really friendly and welcoming and good to work with. There is more opportunity to be proactive and work with the community to prevent crime... the police here are involved in the community, not only through work, but in private lives. (MN10)

Police discretion, given the relatively small size and isolation of some communities, was also important:

One bloke [who was charged with DFV] was [the] only person who could operate a desalination plant every four or five hours, so we moved [the] victim of D[F]V off the island, but usually [we] would have moved the perpetrator into custody and opposed bail. But the only other person who could run the desalination [plant] was on the mainland doing sorry business. If you acted differently, essentially this work would destroy the whole community and you can't live there anymore. That person is now in custody. (MN7)

The example of discretion in policing unroadworthy vehicles was also provided:

Vehicles? Turn [the] other cheek, if not a life endangering offence. Waived tickets. We have to live here. We have to police here. We have a good relationship with the community. If we have overly zealous policing, we lose that trust. It was a balancing act... You police by consent and a lot of goodwill up there. In volatile situations the community will often intervene on your behalf. (MN16)

The same participant emphasised that good policing practice in the TSR adopted a 'localistic' as opposed to a legalistic approach (Scott & Jobes 2007) and that this included making use of informal social control networks that existed in the islands, capitalising on the tight-knit social structures and networks:

Really strong social cohesion... The discipline of Aunties three or four times removed had more credibility than us [police]. If you had a young fellow playing up, you wouldn't put them in the watch house and why would you? It takes a police officer off the road. If it's a street offence, you wouldn't do it here, why would you do it there? So you would take them home and mum or dad would look after it. There was a lot of community self-policing. (MN16)

An important aspect of policing was doing regular visits to and often stays on the various islands. This was facilitated by a patrol boat which would visit different island clusters every fortnight. A police plane is also used to visit the islands and do overnight stays, which were very important for building relations and trust with community. While visiting islands, police would be involved in community activities, such as Blue Light Discos, which had proven very popular with locals. Even adults were cited as looking forward to them and whole communities would participate. This noted, the availability of events such as this depended on staff numbers and staff expertise.



Discussion

This section briefly discusses the findings of this research, including how they relate to but also extend upon existing literature.

Low rates of recorded crime in the TSR

The crime-report data indicated that between January 2001 and July 2018 the TSR experienced lower rates of reported crime than Queensland's Aboriginal communities and, on average, lower rates of reported property crime than Queensland. Breach of DVO offences were also lower in the TSR than in the comparison Aboriginal communities. This echoes findings by the Crime and Misconduct Commission (2009) in relation to Torres Strait crime trends between 1995 and 2006. It also reflects the ALRC's (2018: 85) claim that, during consultations in the Torres Strait, it had been told that 'many of the criminal justice issues affecting Aboriginal communities across Australia were not experienced by Torres Strait Islander people living in the Torres Strait'.

The findings in relation to breach of DVO offences support a previous study by Memmott (2010), where the author recounted that, in mid-2007 (during data collection for the study), senior QPS officers reported that DFV in the Torres Strait was not as severe as in mainland Aboriginal communities (Memmott 2010: 346). While police officers in the current study reflected similar views, it was nevertheless made apparent by all participants that DFV is the most significant crime issue experienced in the TSR.

Memmott (2010) questioned whether under-reporting may have played a role in shaping the perceptions of QPS officers involved in his study. This study has also found that under-reporting is a significant challenge for DFV, but also for other offence types, such as property crime. While some level of under-reporting likely occurs because of the distinct, remote and isolated geography of the region, where access by sworn police is difficult, a strong theme in the interviews was that familial and kinship bonds played a key role in shielding some assailants from formal criminal justice intervention. Innovative justice practices, some of which are peculiar to the region, were also cited by participants as playing a key role in keeping crime rates low. We discuss these and other factors below.

The role of social capital

Previous Australian research has suggested that crime can be prevented and controlled in rural and regional areas through strong economic conditions, high levels of civic participation and strong parental supervision (Carcach 2000). Certainly, the TSR is an economically disadvantaged region, so it is the latter factors relating to social capital that will be our primary focus in examining the relatively low rates of crime there. However, these factors cannot be disassociated from the distinct ecology of the region.

The physical geography of the region, such as its distance from the state capital and the isolation of the islands, has reinforced the cultures of the region and rendered them relatively resistant to external and/or disruptive incursions. This geography also informs what has been referred to here as 'islandness', a way of thinking about identity and culture that is informed by place. Data suggested that the identity of Torres Strait Islanders was strongly informed by an understanding of themselves as a distinct people, dissimilar to both mainland cultures and other Indigenous cultures. Place, in this respect, informed local identity and a strong sense of belonging in the region; Torres Strait Islanders had a strong sense of attachment to place and this was celebrated in the history and culture of the islands. Place can be linked to social capital, which is particularly important in relation to social disorganisation perspectives in criminology.

First developed by the Chicago School of Sociology, social disorganisation takes an ecological approach to crime, contending that the spatial distribution of crime is reflective of organisational differentiation in a geographically defined unit. The social disorganisation model of crime control suggests that communities with low crime rates have integrated, dense social networks and include high levels of civic participation (Bursik & Grasmick 1999; Sampson, Raudenbush & Earls 1997). Thus, 'strong communities' might be defined in terms of social capital, and can include such elements as strong leadership, cohesiveness, inclusivity, capacity-building and resources. Subjective elements such as attachment to place and belonging also inform the strength of a community.

Social capital describes features of social organisation, such as relations of honesty, cooperation, reciprocity, engagement and mutual obligation that exist between people within social networks, social structures and social institutional arrangements. Portes (2000) describes social capital as the ability of actors to receive benefits by virtue of membership within networks and other social structures. Thus, social capital is not something that resides in actors themselves, but is a product of relations between them and facilitates coordinated, mutually beneficial outcomes for the collective (Rostila 2011). For instance, Putnam (1993) described social capital as developing within groups and across groups—something he referred to as 'bonding' and 'bridging' ties. Bonding ties are evident in closed and intimate groups in which all members are connected and interact exclusively with one another. They are inward looking and occur among people who see themselves as coming from the same social network. These ties reinforce homogeneity and reciprocity and mobilise solidarity, producing what Putnam (1993) calls 'thick trust'. In contrast, bridging ties are those that exist across or between social groups. The statement 'one culture, fifteen different lifestyles' captures elements of bonding and bridging capital evident in the region.

Closed social networks with strong bonding capital facilitate submission to norms by rewarding or punishing behaviours (Rostila 2011). While Putnam (1993) focuses on social relationships, on a more individual level, social control theory emphasises social bonding and notes that when such bonds fail to develop or are strained or broken, individuals will be motivated to engage in forms of deviance or criminal activities which ‘reward’ them. There are four elements of social bonding:

- attachment (emotional connection to others);
- commitment (accumulated relationships which provide a stake in conformity);
- involvement (participation in legitimate activities; and
- belief (the acceptance of the existing normative order).

Braithwaite (1989) observed that, in control theory, the most significant social bonds are to family, school, and occasionally church. There is, for instance, overwhelming evidence in criminology to indicate that young people who are attached to school and family are less likely to engage in delinquency. This noted, such bonding can be criminogenic relative to the norms of a community. If a community is patriarchal in its norms, for example, bonding may involve attachment and compliance with structures and networks which encourage or reward practices which regulate and oppress women, including violence.

Sampson, Raudenbush and Earls (1997) described social cohesion among community residents, combined with their willingness to intervene for the common good to prevent crime and disorder, as ‘collective efficacy’. Combined, social capital and collective efficacy facilitate crime control and have been linked to crime prevention, especially with respect to violent crime (Buonanno, Montolio & Vanin 2009; Sampson, Raudenbush & Earls 1997).

Australian research on crime in rural and remote communities suggests that factors such as the level of community participation, economic change, family disruption, concentration of Indigenous residents, Indigenous contacts with the justice system, and forms of social capital may assist in explaining crime rate variations (McIntosh et al. 2008). Similarly, there are several indicators of social capital in the TSR data. For instance, a well-established fact in criminology is that crime is disproportionately committed by people who have experienced high residential mobility or live in areas characterised by high residential mobility (Braithwaite 1989: 47), a characteristic that is distinctly absent from the TSR data. Torres Strait people also have high levels of volunteerism (which has also been linked to strong social capital), tend to be deeply immersed in religion (particularly Christianity), and experience strong family attachment. Their social networks are dense and typically involve thick trust. For instance, high rates of intermarriage across the islands (including the outer islands) has led to Torres Strait Islanders’ self-conception as ‘ku bui’: one big family. There is also evidence of strong bridging capital; the TSR is also arguably the home of Australian multiculturalism and has, since the nineteenth century, housed people from diverse ethnicities, welcoming them and adapting local socio-cultural practices (Putnam 1993).

Braithwaite (1989) argued that communitarian societies, which combine a dense network of individual interdependencies with strong cultural commitments of mutuality and obligation, have a significant capacity to deliver potent forms of shaming, which produce social integration and lower levels of crime. He concluded that cultural homogeneity is a precondition for effective social control, including reintegrative shaming (Braithwaite 1989: 94). A number of participants in this study highlighted the central role played by shame in establishing and enforcing social norms and, more generally, the TSR demonstrates a strong sense of communitarianism. This is illustrated, for instance, in the interdependency of the familial and kinship networks, surveillance and adherence to cultural tradition in encouraging compliance with local norms. This type of communitarianism embodies what sociologists have described as *Gemeinschaft* qualities. These qualities, so often considered elements of small rural communities, might also be perceived as features of islandness. While the concept of *Gemeinschaft* has been relatively forgotten in the social sciences, the qualities it evoked have recently been captured by the concept of social capital, as discussed above (Bourdieu 1986; Coleman 1988; Portes 2000; Putnam 1993; Rostila 2011).

History as a contributor to enduring social capital

The available evidence indicates that the frontier violence and dispossession experienced by most of Queensland's Aboriginal populations did not occur to the same extent in the TSR (Passi 1986). This appears to be because of the remoteness of much of the region, its general unsuitability for agriculture, and different approaches by early colonial administrators (Robertson 2010; Shnukal 2015). The conditions that continue to render the administration of justice difficult today also limited colonisation. During the colonial and protectionist eras, Torres Strait Islanders 'were not driven from their lands or exposed to unstemmed violence' of the same nature and magnitude as that experienced in Queensland's other Indigenous communities (Sharp 1992: 25; Singe 1979). Passi (1986: 1) noted that colonial contact was 'not as catastrophic as in other parts of Australia since Islanders were not displaced from their ancestral lands as were the mainland Aborigines... much of Islander traditional culture was retained'.

While there are records of Torres Strait Islanders being removed under protectionist policies (see, for example, Queensland Government 2018a, 2018b), the extent of removal and dispossession of land presents as far less severe in the TSR, while Aboriginal groups were subject to widespread and often violent dispossession throughout much of the 1800s and 1900s (ALRC 2018; Beckett 2014; Sharp 1992). On this basis, Torres Strait Islanders were spared at least some of the disruption to culture, ties to land and relationships that were experienced by most Aboriginal Queenslanders. Many in the TSR were also spared the experience of living in institutionalised mission and reserve environments, which involved violence, as well as the banning of ancestral languages and other forms of cultural expression (Anti-Discrimination Commission of Queensland 2017; Bottoms 2014; Cruickshank & Grimshaw 2015).

Instead, many Torres Strait Islanders continued practising their culture and speaking their languages, even after the Coming of the Light and the widespread introduction of Christianity to the region from 1871 onwards (Finch 1977; Singe 1979). Singe (1979: 108) noted that Christianity did not replace traditional culture and religion; rather, ‘they just went underground, working on the principle that what the white man could not see would not concern him’. But, more than this, Christianity was appropriated as a fulfilment of local myths and as part of a trajectory to cultural destiny. This appropriation allowed for it to be practised bottom-up, becoming a vital aspect of Islander identity and culture (Nakata 2007). This relates to Nakata’s (2007: 7) account of Torres Strait Islander history—particularly the history of his own home island of Naghir Island—whereby he states:

This historical trajectory shows a community which was, since at least the 1880s, actively engaging with the changing world around it; a community intent on working in its own interests but, nevertheless, positioning these by necessity in relation to those larger forces which pulled and tugged from both inside and outside the community... While some may mourn the loss of pure lineage and tradition from former times, perhaps my forebears considered that the flexibility necessary for autonomy and independence was preferable to being rigidified, patronised and subtly shaped in the mould of dependence...

Torres Strait Islanders were also spared much of the violence carried out by colonial police (Passi 1986). Because of the presence of community policing structures across the TSR, official police had less of a role there (Shnukal 2015). In contrast, police were often at the frontline of the expanding Queensland colony, and carried out regular and horrific and genocidal violence against Aboriginal populations (Bottoms 2014; Cunneen 2001; Robertson 2010: 466). The European incursion into the TSR is distinctly different to the incursion on the mainland. While mainland Aboriginal communities were steadily dispossessed of their lands, confronted with cultural assimilation and forced to the fringes of an intrusive settler society, Islanders, in contrast, experienced limited dispossession. Robertson (2010: 466) states:

There has been no significant permanent settlement of Europeans beyond the administrative centre of Waiben/Thursday Island. Segregation, assisted by the region’s remoteness and assimilation, has characterised colonial rule. Islanders, in contrast to the mainland Indigenous communities, did not contend with the conflicting interests of settlers, only the imposition of colonial order... Islanders have been subjected to *colonial rule*, while mainland Indigenous communities have been the casualties of the European settlement of the Australian continent.

The relative maintenance of formal and informal social controls throughout the colonial period, including through state sanctioned forms of local governance, is a key distinguishing factor of the Torres Strait Islands' history, providing a contrast to mainland Aboriginal communities where traditional authority structures were actively weakened and/or destroyed. TSR local authority structures have also been intimately involved in the administration of justice in the region, including through the management of local community police and courts, which provides another particular point of departure from Queensland's Aboriginal communities. Coupled with the smaller number of removals and a less potent protectionist regime overall, traditional authority, culture, language and connection to land appear to have been supported in the TSR while being actively damaged in Queensland Aboriginal communities. This extends to the present day, where the TSR enjoys a far greater level of autonomy and self-governance (particularly under the TSRA) than Queensland's (and Australia's) Aboriginal communities.

This is not to say that colonisation has not impacted the TSR; as some of our participants pointed out, segregation policies have left an enduring mark in the memories of many Torres Strait Islanders—especially those living in the main administrative hub of Waiben/Thursday Island. For instance, Nakata (2007: 5–6) recounted his grandfather's experience as a leader in the Torres Strait during the 1900s: 'I think about his generous nature and his intelligence. I think about his bitterness and suppressed anger and confusion over the intrusions of colonial regimes in his community'. Indeed, it is not our intention here to downplay the horrific (and ongoing) incursions that have characterised colonisation in the region, but there are differences in the history of the TSR that make it particularly distinct. When considered through the lens of social disorganisation theory, it is possible that this different history of colonisation ensured the continuation of informal modes of social control, including strong social networks, which have resulted in relative cultural continuity and high levels of social control. While this may be the case, dense social capital can also serve alternative ends, as we discuss below.

The other side of social capital: Under-reporting and under-policing of crime

Much of the research literature on social capital assumes a consensus perspective that aligns 'the common good' with mainstream or official functions. However, just as social capital and dense social networks have been theorised in criminology as being crime protective, they can also be crime productive when the norms adopted by networks are criminogenic. Alternatively, the kind of thick trust involved in dense social networks may also serve to make them opaque. While opaque networks may not be crime productive per se, they may indeed enable conditions where crime can remain hidden and be left unaddressed. For example, in rural areas, such features have recently been linked to hate crimes, such as DFV and homophobic violence or the failure to report or police such activity.

In this study, there were several indications that some forms of crime—particularly DFV, but also some property crime—were not always brought to the attention of police because of the dense social capital and opaque networks present in the region. For example, TSIPSOs could be placed in difficult positions when they needed to respond to offences committed by family and kin; sometimes this meant crimes, including serious physical violence, went unreported. In a similar way, to be a successful sworn police officer in the region involved practising a high degree of discretion.

In Australia, police who are stationed in rural and remote communities also typically live there, at least during their tenure. This means their private lives are closely intertwined with their public roles. According to existing studies of policing in rural Australian spaces (though not discrete Indigenous spaces), accomplished officers tend to integrate into their local communities and make effective use of established local social networks (Jobes 2002). In this respect, existing research tends to demonstrate that officers take a 'localistic' approach, where they consider the needs and expectations of the community they work in, as opposed to the 'legalistic' approach generally adopted in urban settings, where adherence to laws was at the forefront of their policing style (Jobes 2002, 2003; Scott & Jobes 2007). This relates to Bayley's (1989) observation that, while crimes are policed in the city, people are policed in the country.

Social fragmentation has been closely associated with highly urbanised environments where there is greater anonymity, a transient population and a general weakening of social control institutions. In communities characterised by fragmentation and conflict, police are likely to develop strong ties of mutual dependence. Police may adopt a 'closed shop', avoiding criticism and harassment by isolating and insulating themselves from the communities they serve (Jobes 2002). As a result, police develop distinctive police-centred cultures with unique normative structures. In the extreme, interaction with the public may be reduced to confrontational associations, typified by an 'us and them' mentality, which defines community members as the 'outsiders' and locates officers on 'the inside'. Consultation between community and police is viewed as interference and interactions are based on a client-server relationship in which the public are passively dependent on the police.

The small size and isolation of the communities in the TSR increases opportunities for intimate and informal interaction between police and local communities. As with some culturally and ethnically homogeneous towns on the mainland, sworn and unsworn police typically reside in the community, their private lives being closely intertwined with their public role. A local officer can be well known to the community and connected to the community through informal social networks. An accomplished police officer will be able to integrate into a local community and make effective use of established local social networks, adopting a 'peacekeeping' role commensurate with community expectations regarding the proper duties of a police officer. Successful integration with a community can indirectly reduce crime and accelerate law enforcement responses as an officer becomes increasingly sensitive to and familiar with the vagaries of a local environment, local population and local social organisation. As a consequence, clearance rates in these areas are typically higher than in cities. The more integrated an officer is within a community, the more likely residents are to confide information that leads to apprehending a suspect. What develops is a 'localistic', as opposed to 'legalistic', approach to policing. Greater importance is accorded to 'keeping the peace' than to imposing law and order at any cost (Jobes 2002).

As indicated, with a localistic model of policing, the public can exert influence over how police work is done; the community has more input into defining the role of the police. This may influence important aspects of police work, particularly with regard to police discretion. Police discretion is not influenced by the organisational structure of a department but is likely to be influenced by the way in which the community is organised. However, immersion in the community can also exacerbate the problematic aspects of police work, as police are expected to become part of the community, even where it has the potential to compromise objectivity. This may produce strain between an officer's role as a law enforcer and a local resident. Yet the reward is community support, which can improve quality of life and allow police to carry out their work more effectively (Jobes 2002).

The localistic model does not necessarily translate to an idealised form of community policing. A problem may be that powerful groups in the community come to exert a significant influence over police and determine who is and is not subject to surveillance. The outcome may be the over-policing or under-policing of specific communities. While policing is a partnership for some members of the community, for others it is experienced as something imposed. For example, over-policing in many isolated mainland communities has resulted in Indigenous persons feeling singled-out, harassed and, in some cases, fearful of police. There is subsequently much resentment of police intrusion into daily life. The response has been to develop an oppositional culture hostile to police (though this might also be reframed as a mere reaction to police having first adopted this hostility towards local people), and more generally the dominant culture, viewing police as instruments of white control and policies of subjugation. The resulting antagonism towards officers leads to a law and order response, with calls for greater police powers and numbers. Extreme polarisation is the result. This sort of polarisation was not evident in the current research. Rather, participants expressed support for the police and police had a positive attitude towards their work and the local community. This support was nevertheless contingent on police officers integrating and understanding local custom—something that was being at least partially managed in the TSR by cooperation with CJGs.

The integration of police, sworn and unsworn, should not be viewed as inherently 'bad'. For example, the deep relationships that TSIPSOs have with their communities is vital to their being able to carry out their roles and to some extent enables a continuation of the kinds of locally-led policing approaches that have been present in the region for more than a hundred years. The discretion held by TSIPSOs may also be conceived of as an ability to uphold and enforce cultural norms in the space between traditional methods and the formal (settler-imposed) justice system. However, it may equally mean that access to justice may be difficult or impossible for some victims of crime. As some of our participants pointed out, this may be particularly acute where intermarriage between islands means that some women move to new locations, leaving behind their family and kin, as well as any support these might be able to provide.

The role of the region's unique justice practices

The study identified some unique justice practices in the TSR. These practices had partly been local initiatives and were not viewed as having been imposed on people in the region. It was evident from data that while various external services and agencies could improve cooperation and coordination, the level of cooperation was nevertheless very strong within the region. Local bodies such as CJGs and TSIPSOs were considered to be the 'eyes and ears' of external bodies, such as the courts and police; the geography of the islands had necessitated these groups working closely together to address justice and crime problems.

The CJGs had deployed a form of cultural mediation which has proven to be successful in the context of the region. This was distinct from conferencing (such as youth conferencing) as practised on the mainland as it was less formal and was initiated and managed by local people likely to have strong social and cultural associations with the offender. Justice providers mostly worked closely together, despite the challenges of geography or because of them. The relationship between the CJGs, courts and police ensured that people escaped criminal prosecution and convictions for relatively minor offences. Similarly, a coordinated service approach to registration and licensing offences has prevented Indigenous people from being caught up in the criminal justice net as a result of economic and geographic disadvantage. However, the success of such practices has not been formally measured or documented. Furthermore, while the role of Elders in these processes was crucial, their significant commitment was often not formally acknowledged or adequately compensated. In contrast, the role of TSIPSOs had been increasingly recognised and their adoption into the QPS was considered to have strengthened this service.

'Island courts' are unusual to the extent that they were a product of local Indigenous advocacy. On one level, they resolved a geographic problem of travelling, sometimes in dangerous conditions, to a distant court. This had been costly and disadvantaged islanders on the basis of geography. It also transported them from an islander place to a colonial place. While the courts had been successful, some of this can be attributed to having a magistrate who had an interest in and strong understanding of the region and its cultures, and who had a long history of working in the region. Success in policing was similarly measured through immersion in place, but it may be that poor policing practices can be more readily remedied than poor judicial practices. Participants offered examples of police who had failed to integrate into their new environment, but overall the experience of policing was relatively positive throughout the region and police had worked hard to build relationships and networks. The involvement of CJG members on police appointment panels was presented as a positive step that progressed these relations beyond the symbolic and everyday in a more formal direction of genuine cooperation and partnership. Initiatives such as this could develop and maintain mutual networks of trust and reciprocity that build the social capital needed to bridge the divides of white and black, Islander and mainlander and government and non-government.



Conclusions and future research

There is a perception of Indigenous communities as being violent places with high rates of victimisation. Invariably, the crime ‘problem’ outside metropolitan centres is represented as an Indigenous problem (Scott & Hogg 2015). This is made possible by the historical designation of Indigenous Australians as a dangerous and suspect population, disentitled to the same presumptions of individuality, citizenship and belonging as non-Indigenous people. In this view, crime is not the responsibility of the community but is associated with the Indigenous ‘other’, whose very visibility is a violation of the moral and spatial boundaries of ‘community’, and is a threat to security, requiring suppression by draconian law and order measures (Moreton-Robinson 2015). As Lawrence (2007: 3) points out, within this context:

...there is an increasing amount of data available on the economic and social conditions of Indigenous people in Australia, [but] much of this research has been problem-focused. A narrow emphasis on the negative aspects of Indigenous communities has meant that the positive aspects of communities have not been recognised and recorded, and there has been little study of the interrelationships between different aspects of communities.

Australia’s Indigenous populations share the common experience of continued subjugation in a nation that has consistently failed to meaningfully recognise or uphold their sovereignty and self-determination (Cunneen & Tauri 2016; Davis 2016). However, crime rates vary considerably between different Indigenous communities and between different locations (Lawrence 2007), something that is regularly overlooked in research concerning Indigenous Australians’ experiences of crime and justice.

This project builds on previous research regarding Indigenous crime in Australia by examining the unique experiences of crime in the TSR. Through a mixed-methods approach, we found that crime is generally lower in the TSR than in Queensland’s remote Aboriginal communities. This appears to be due to a range of factors. These include, for example, relatively strong social capital that has endured as a result of a distinct history which resisted some of the adverse impacts of colonisation and as a result of self-governance in the region. This social capital also appears, however, to contribute to the under-reporting of crime, especially DFV and some property crime. Alternatively, a range of unique justice practices in the region, such as cultural mediation, divert offenders and achieve what some participants in this study referred to as long-term rather than short-term fixes.

The findings of this study also illuminate the challenges and opportunities involved in policing and administering justice in island settings. This is timely, given the interest in southern, Indigenous and neo-colonial criminologies. While the islandness of the TSR has undoubtedly contributed to strong social capital there—including because the relative isolation and remoteness of the islands appears to have reduced the impact of colonisation that was felt so severely elsewhere—it also presents a range of challenges in administering justice. The isolation and remoteness of the islands renders them largely beyond the everyday reach of sworn police, and can facilitate the under-reporting of some types of crime. In this regard, strong social networks, particularly on the outer islands, can become opaque and hide crime. In some respects, this was seen as positive; it made space for more traditional methods of responding to crime. However, it could also lead to the denial of justice for some victims.

Generally, the findings of this study speak to broader literatures about the importance of self-determination for Indigenous Australians. As alluded to above, an overriding theme in this research was the notion that the relatively high levels of self-determination in the TSR had played a central role in producing communities that have managed, at least to some degree, to refute and shirk the ‘possessive logics’ of colonisation (Moreton-Robinson 2015). As repeatedly observed by participants and others, this level of self-determination was certainly not absolute, and falls far short of any true recognition of unceded sovereignty. Nevertheless, in research participants’ accounts, any ‘successes’ in terms of crime and justice practices in the TSR can be understood as examples of a revival or continuation of pre-colonial practices, and the associated suppression of colonial influence. This provides a point of difference when considered in the broader context of Australia as a settler society that has consistently perceived and treated Indigenous Australians as a savage ‘other’, that has destroyed Indigenous peoples, relationships, knowledges and technologies to substantiate colonial claims to an imagined terra nullius (Moreton-Robinson 2015).

The critical importance of self-determination to an array of life outcomes, including crime- and justice-related outcomes, is of course not a new finding. It nevertheless remains highly relevant in a broader society where Indigenous sovereignty continues to be repudiated and where attempts by Indigenous Australians to reclaim governance of their lives, even within colonial architectures, are repeatedly ‘snuffed out’ by government (Davis 2016; Synot 2019). It again sheds light on the importance of directly confronting how the concept of race has operated in Australia, and still operates, to exclude some groups and to categorically deny their sovereignty as a means of legitimating possession. And it exemplifies the critical importance of building social capital through policies that empower rather than disempower Indigenous Australians. If experiences of crime in remote Indigenous communities are to truly be confronted, then less rather than more colonialism is called for. As the TSR experience shows, when space is made for traditional practices to continue or be resurrected, the outcomes can be positive.

References

URLs correct as at July 2020

Albuquerque K & McElroy J 1999. Tourism and crime in the Caribbean. *Annals of Tourism Research* 26(4): 968–984

Anti-Discrimination Commission Queensland (ADCQ) 2017. *Aboriginal people in Queensland*. Brisbane: ADCQ

Atkinson J 1991. Stinkin' thinkin' – Alcohol, violence and government responses. *Aboriginal Law Bulletin* 2(51): 4–6

Atkinson J 1990. Violence in Aboriginal Australia: Colonisation and gender. *Aboriginal Health Worker Journal* 14(2): 5–21

Aurukun Shire Council (ASC). 2019. *Community services in Aurukun*. Aurukun: ASC

Australian Bureau of Statistics (ABS) 2016. *Census of population and housing, 2016*. ABS cat. no. 2071.0. Canberra: ABS. <https://www.abs.gov.au/ausstats/abs@.nsf/mf/2071.0>

Australian Law Reform Commission (ALRC) 2018. *Pathways to justice*. Canberra: ALRC

Australian Law Reform Commission 1986. *Recognition of Aboriginal customary laws no. 31*. Canberra: ALRC

Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) 2012. *Guidelines for ethical research in Australian Indigenous studies*. Canberra: AIATSIS

Australian National Audit Office (ANAO) 2014. *Torres Strait Regional Authority: Service delivery*. Canberra: ANAO

Barraud A (presenter) 2012. Community justice in the Torres Strait [radio program]. *Law report*, ABC Radio National, 3 July 2012. <https://www.abc.net.au/radionational/programs/lawreport/community-justice-in-the-torres-strait/4114774>

Bayley R 1989. Community policing in Australia. In D Chappell & P Wilson (eds), *Australian policing*. Sydney: Butterworths: 63–82

Beckett J 2014. *Encounters with Indigeneity*. Canberra: Aboriginal Studies Press

Beckett J 1990. *Torres Strait Islanders: Custom and colonialism*. Cambridge: Cambridge University Press

- Beckett J 1977. The Torres Strait Islanders and the pearling industry. *Aboriginal History* 1(1): 77–104
- Black T 2008. Reconnecting with the Torres Strait Islanders. In *Magistrates Court of Queensland annual report 2007–2008*. Brisbane: Queensland Magistrates Court: 132–134
- Bottoms T 2014. *Conspiracy of silence: Queensland's frontier killing times*. Sydney: Allen & Unwin
- Bourdieu P 1986. The forms of capital. In J Richardson (ed), *Handbook of research and theory for sociology of education*. New York: Greenwood Press: 241–258
- Braithwaite J 1989. *Crime, shame and reintegration*. Cambridge: Cambridge University Press
- Brigg M, Memmott P, Venables P & Zondag B 2018. Gununa peacemaking: Informalism, cultural difference and contemporary Indigenous conflict management. *Social & Legal Studies* 27(3): 345–366
- Broadhurst R 2002. Crime and Indigenous people. In A Graycar & P Grabosky (eds), *The Cambridge handbook of Australian criminology*. Cambridge: Cambridge University Press
- Broadhurst R 1997. Aborigines and crime in Australia. In M Tonry (ed), *Ethnicity, crime and immigration: comparative and cross-national perspectives*. Chicago: University of Chicago Press
- Buonanno P, Montolio D & Vanin P 2009. Does social capital reduce crime? *Journal of Law and Economics* 52: 145–170
- Bursik RJ Jr & Grasmick HG 1993. *Neighborhoods and crime: The dimensions of effective community control*. New York: Lexington Books
- Carcach C 2000. Regional development and crime. *Trends & issues in crime and criminal justice* no. 160. Canberra: Australian Institute of Criminology. <https://www.aic.gov.au/publications/tandi/tandi160>
- Carrabine E, Cox P, Fussey P, Hobbs D, South N, Thiel D & J Turton 2014. *Criminology: A sociological introduction*. Abingdon: Routledge
- Chesney-Lind M & Lind I 1986. Visitors as victims: Crimes against tourists in Hawaii. *Annals of Tourism Research* 13(2): 167–191
- Clough A & Bird K 2015. The implementation and development of complex alcohol control policies in Indigenous communities in Queensland (Australia). *International Journal of Drug Policy* 26(4): 345–351
- Clough A, Margolis S, Miller A, Shakeshaft A, Doran C, McDermott R et al. 2017. Alcohol management plans in Aboriginal and Torres Strait Islander (Indigenous) Australian communities in Queensland. *BMC Public Health* 17(55): 1–14
- Cochran PAL, Marshall CA, Garcia-Downing C, Kendall E, Cook D, McCubbin L & Gover RMS 2008. Indigenous ways of knowing: Implications for participatory research and community. *American Journal of Public Health* 98: 22–27

- Coleman J 1988. Social capital in the creation of human capital. *American Journal of Sociology* 94: 95–120
- Conkling P 2007. On islanders and islandness. *Geographical Review* 97 (2): 191–201
- Coolican C 2014. *Aurukun community police trained to help their local community*. Brisbane: Queensland Police Service
- Cooperative Research Centre for Aboriginal Health (CRAH), Telethon Institute for Child Health Research & Department of Families, Community Services and Indigenous Affairs (FaCSIA) 2006. *Growing up in the Torres Strait region: A report from the Footprints in Time trials*. Occasional Paper no. 17. Canberra: Australian Government
- Crime and Misconduct Commission 2009. *Restoring order*. Brisbane: Crime and Misconduct Commission
- Cruikshank J & Grimshaw P 2015. I had gone to teach but stayed to learn. *Journal of Australian Studies* 39(1): 54–65
- Cullen S 2017. Submission 64. Pathways to justice – *An inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples*, no. 133. Sydney: ALRC
- Cunneen C 2001. *Conflict, politics and crime: Aboriginal communities and the police*. Sydney: Allen & Unwin
- Cunneen C 1999. Criminology, genocide and the forced removal of Indigenous children from their families. *Australian and New Zealand Journal of Criminology* 32(2): 124–138
- Cunneen C & Robb T 1987. *Criminal justice in north-west New South Wales*. Sydney: NSW Bureau of Crime Statistics and Research
- Cunneen C & Tauri J 2016. *Indigenous criminology*. Bristol: Policy Press
- D'Ath Y 2017. New domestic and family violence laws now in effect. Media statement, 31 May. <http://statements.qld.gov.au/statement/2017/5/31/new-domestic-and-family-violence-laws-now-in-effect>
- Davis M 2016. Listening but not hearing: When process trumps substance. *Griffith Review* (51): 73–87
- Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP) 2019. *Regional profile – Torres Strait Islands (LGA)*. Brisbane: DATSIP
- Finch N 1977. *The Torres Strait Islands: Portrait of a unique group of Australians*. Brisbane: Jacaranda Press
- Frankland K 1994. *A brief history of government administration of Aboriginal and Torres Strait Islander peoples in Queensland*. Brisbane: Queensland Government
- Gale F 1978. *Women's role in Aboriginal society*. Canberra: Australian Institute of Aboriginal and Torres Strait Islander Studies

- Goldsworthy T & Raj M 2015. We must ensure that domestic violence awareness yields results. *The Conversation*, February 24. <https://theconversation.com/we-must-ensure-that-domestic-violence-awareness-yields-results-37362>
- Hay P 2006. A phenomenology of islands. *Island Studies Journal* (1): 19–42
- Hayward K 2004. Space: The final frontier. In J Ferrell, K Hayward, W Morrison & M Presdee (eds), *Cultural criminology unleashed*. London: Glass House Press
- Homel R, Lincoln R & Herd B 1999. Risk and resilience: Crime and violence prevention in Aboriginal communities. *Australian and New Zealand Journal of Criminology* 32(2): 182–196
- Hunter E 1993. *Aboriginal health and history: Power and prejudice in remote Australia*. Cambridge: Cambridge University Press
- Hunter E, Hall W & Spargo R 1991. Alcohol consumption and its correlates in a remote Aboriginal population. *Aboriginal Law Bulletin* 2(51): 8–10
- Jobes PC 2003. Human ecology and rural policing. *Police Practice and Research* 4(1): 3–19
- Jobes PC 2002. Effective officer and good neighbour: Problems and perceptions among police in rural Australia. *Policing* 25(2): 256
- Kolodziejwski A 2014. *Connecting people and place: Sense of place and local action*. Manchester: School of Environment, Education and Development, University of Manchester
- KPMG 2010. *Evaluation of the community justice groups: Final report*. Brisbane: Queensland Government
- Langton M 1993. “Well, I heard it on the radio and I saw it on the television...” : *An essay for the Australian Film Commission on the politics and aesthetics of filmmaking by and about Aboriginal people and things*. Sydney: Australian Film Commission
- Langton M 1988. Medicine square: For the recognition of Aboriginal swearing and fighting as customary law. In K Keen (ed), *Being black*. Canberra: Aboriginal Studies Press
- Lauchs M 2010. Providing access to English in Queensland courts. *Australian Journal of Professional and Applied Ethics* 12(1–2): 171–184
- Lauritsen A (ed) 2019. *Crime and crime control in four Nordic Island societies: The Faroe Islands, Greenland, Iceland and the Aland Islands*. Aarhus, Denmark: Scandinavian Research Council for Criminology
- Lawrence D & Lawrence H 2004. Torres Strait: The region and its people. In R David (ed), *Woven history, dancing lives*. Canberra: Australian Institute of Aboriginal and Torres Strait Islander Studies
- Lawrence R 2007. Research on strong Indigenous Communities. Indigenous Justice Clearing House Research Brief no. 1. Australian Institute of Criminology and NSW Attorney General’s Department

- Limerick M 2016. *Evaluation of the Aurukun Restorative Justice Project*. Brisbane: Limerick & Associates and Queensland Government
- Lincoln R & Wilson P 1994. Aboriginal offending: Patterns and causes. D Chappell & P Wilson (eds), *The Australian criminal justice system*. Sydney: Butterworths
- Loader I, Girling E & R Sparks 2000. *Crime and social change in Middle England*. London: Routledge
- Lucashenko M & Best O 1995. Woman bashing: An urban Aboriginal perspective. *Social Alternatives* 14: 19–22
- Marks D & Yardley L 2004. *Methods for clinical and health psychology*. London: Sage Publications
- Martin D 1993. Aboriginal and non-Aboriginal homicide. In H Strang & S Gerull (eds), *Homicide patterns, prevention and control*. Canberra: Australian Institute of Criminology. <https://www.aic.gov.au/publications/proceedings/proceedings17>
- Mazerolle L, Marchetti E & Lindsay A 2003. Policing and the plight of Indigenous Australians: Past conflicts and present challenges. *Police and Society* 7: 77–104
- McCausland R & Vivian A 2010. Why do some Aboriginal communities have lower crime rates than others? A pilot study. *Australian and New Zealand Journal of Criminology* 43(2): 301–332
- McIntosh A, Stayner R, Carrington K, Rolley F, Scott J & Sorensen T 2008. *Resilience in rural communities: Literature review*. Armidale, NSW: Centre for Applied Research in Social Science, University of New England
- McKnight D 2002. *From hunting to drinking: The devastating effects of alcohol on an Australian Aboriginal community*. London: Taylor & Francis Ltd
- Memmott P 2010. On regional and cultural approaches to Australian Indigenous violence. *Australian and New Zealand Journal of Criminology* 43(2): 333–355
- Memmott P, Stacey R, Chambers C & Keys C 2001. *Violence in Indigenous communities*. Canberra: Australian Government
- Miles M & Huberman A 1994. *Qualitative data analysis: An expanded sourcebook*, 2nd ed. Thousand Oaks, California: Sage Publications
- Moreton-Robinson A 2015. *The white possessive*. Minnesota: University of Minnesota Press
- Moreton-Robinson A 2004. Whiteness, epistemology and Indigenous representation. In A Moreton-Robinson (ed), *Whitening race: Essays in social and cultural criticism*. Canberra: Aboriginal Studies Press: 75–88
- Mountz A 2011. The enforcement archipelago: Detention, haunting, and asylum on islands. *Political Geography* 30: 118–28
- Murray T 2017. Islands and lighthouses: A phenomenological geography of Cape Bruny, Tasmania. In E Stratford (ed), *Island geographies: Essays and conversations*. Routledge: 32–43

- Nakata M 2007. *Disciplining the savages: Savaging the disciplines*. Canberra: Aboriginal Studies Press
- Nancarrow H 2006. In search of justice for domestic and family violence. *Theoretical Criminology* 10(1): 87–106
- National Health and Medical Research Council (NHMRC) 2007. *National statement on ethical conduct in human research*. Canberra: NHMRC
- Passi G 1986. *Traditional resource knowledge, western education and self-management autonomy of the Torres Strait* (Masters thesis). University of Queensland, Brisbane
- Portes A 2000. The two meanings of social capital. *Sociological Forum* 15: 1–12
- Pratt J & Melei T 2018. One of the smallest prison populations in the world under threat: The case of Tuvalu. In K Carrington, R Hogg, J Scott & M Sozzo (eds), *The Palgrave handbook of criminology and the Global South*. London: Palgrave
- Putnam R 1993. Making democracy work: *Civic traditions in modern Italy*. Princeton, NJ: Princeton University Press
- Queensland Courts 2017. *Magistrates Courts of Queensland annual report, 2016–17*. Brisbane: Queensland Government. <https://www.courts.qld.gov.au/about/publications>
- Queensland Government 2018a. *Badu: History of Badu*. Brisbane: Queensland Government
- Queensland Government 2018b. *Thursday Island (Waiben): History of Thursday Island*. Brisbane: Queensland Government
- Queensland Government Statistician's Office (GQSO) 2019. *Crime report: Queensland 2017–18*. Brisbane: Queensland Government
- Queensland Government Statistician's Office 2016a. *Indigenous profile: Queensland regional profile: Custom region compared with Queensland*. Brisbane: Queensland Government
- Queensland Government Statistician's Office 2016b. *Resident profile—People who live in the region: Queensland regional profile: Custom region compared with Queensland*. Brisbane: Queensland Government
- Queensland Government Statistician's Office 2016c. *Time series profile—The region over time*. Brisbane: Queensland Government
- Reser J 1991. The socio-historical argument and constructions of Aboriginal violence: A critical review of Hunter. *Australian Psychologist* 26(3): 209–214
- Robertson J 2010. Evolutionary identity formation in an Indigenous colonial experience: The Torres Strait experience. *Nationalism and Ethnic Politics* 16(3–4): 465–482
- Rollins A 2014. Rivers of cheap grog blight Indigenous communities. *Australian Medicine* 26(22): 25–26
- Rostila M 2011. The facets of social capital. *Journal for the Theory of Social Behaviour* 41: 308–326

- Royal Commission into Aboriginal Deaths in Custody 1991. *National report*. Canberra: Australian Government Publishing Service
- Sampson R, Raudenbush S & Earls F 1997. Neighborhoods and violent crime: A multilevel study of collective efficacy. *Science* 277: 918–924
- Scott J & Hogg R 2015. Strange and stranger ruralities: Social constructions of rural crime in Australia. *Journal of Rural Studies* 39: 171–179
- Scott J & Jobes PC 2007. Policing in rural Australia: The country cop as law enforcer and local resident. In E Barclay, J Donnermeyer, J Scott & R Hogg (eds), *Crime in rural Australia*. Sydney: Federation Press: 127–137
- Scott J & Morton J 2018. Understanding crime and justice in Torres Strait Islander communities. In K Carrington, R Hogg, J Scott & M Sozzo (eds), *The Palgrave handbook of criminology and the Global South*. London: Palgrave
- Sharp N 1992. *Footprints along the Cape York sand beaches*. Canberra: Australian Institute of Aboriginal and Torres Strait Islander Studies
- Shnukal A 2015. Aspects of early local administration, education, health and population on Mabuyag. *Culture* 8(2): 55–125
- Shnukal A 2001. Torres Strait Islanders. In M Brandle (ed), *Multicultural Queensland 2001: 100 years, 100 communities, A century of contributions*. Brisbane: Department of Premier and Cabinet
- Singe J 1979. *The Torres Strait: People and history*. Brisbane: University of Queensland Press
- Snowball L & Weatherburn D 2008. Theories of Indigenous violence: A preliminary empirical assessment. *Australian and New Zealand Journal of Criminology* 41(2): 216–235
- Special Taskforce on Domestic and Family Violence in Queensland 2015. *Not now, not ever: Putting an end to domestic and family violence in Queensland*. Brisbane: Queensland Government
- Spradley J 1979. *The ethnographic interview*. New York: Holt, Rinehart and Winston
- Staines Z & Scott J 2019. Crime and colonisation in Australia's Torres Strait Islands. *Australian and New Zealand Journal of Criminology*. <https://doi.org/10.1177/0004865819869049>
- Stallwitz A 2012. *The role of community-mindedness in the self-regulation of drug cultures: A case study from the Shetland Islands*. London: Springer
- Strang H 2001. *Restorative justice programs in Australia*. Report to the Criminology Research Advisory Council. Canberra: Australian Institute of Criminology
- Sutton P 2011. *The politics of suffering*. Melbourne: Melbourne University Press
- Synot E 2019. The Uluru Statement showed how to give First Nations people a real voice – now it's time for action. *The Conversation*, 5 March. <https://theconversation.com/the-uluru-statement-showed-how-to-give-first-nations-people-a-real-voice-now-its-time-for-action-110707>

Torres Strait Island Community Police 2007. Submission to the Crime and Misconduct Commission inquiry into policing in Indigenous communities. Brisbane: Crime and Misconduct Commission

Torres Strait Regional Authority nd. The TSRA. <http://www.tsra.gov.au/the-tsra>

Trad J 2019. *Budget backs jobs in Far North Queensland*. Media statement, 18 June. <http://statements.qld.gov.au/Statement/2019/6/18/budget-backs-jobs-in-far-north-queensland>

Tuan Y 1979. Space and place: Humanistic perspective. In S Gale & G Olsson (eds), *Philosophy in geography*. Dordrecht: Springer: 387–427. <https://doi.org/10.1007/978-94-009-9394-5>

Tuhiwai Smith L 2012. *Decolonizing methodologies: Research and indigenous peoples*. London: Zed Books

Tyler W 1998. Race, crime and region: The socio-spatial dynamics of Aboriginal offending. *Journal of Sociology* 34(2): 152–169

Tyler W 1995. Community-based strategies in Aboriginal criminal justice: The Northern Territory experience. *Australian and New Zealand Journal of Criminology* 8: 127–142

Walker J & McDonald D 1995. The overrepresentation of Indigenous people in custody in Australia. *Trends & issues in crime and criminal justice* no. 47. Canberra: Australian Institute of Criminology. <https://www.aic.gov.au/publications/tandi/tandi47>

Watson I 2002. *Looking at you, looking at me: Aboriginal culture and history of the south-east of South Australia*, vol 1. Burton: Single Step Printing

Weatherburn D 2014. *Arresting incarceration: Pathways out of Indigenous imprisonment*. Canberra: Aboriginal Studies Press

Weatherburn D, Snowball L & Hunter B 2006. *The economic and social factors underpinning Indigenous contact with the justice system*. Crime and Justice Bulletin no. 104. Sydney: NSW Bureau of Crime Statistics and Research

Whap G 2001. A Torres Strait Islander perspective on the concept of Indigenous knowledge. *Australian Journal of Indigenous Education* 29(2): 22–29

Appendix A: Participant Information Sheet

 Queensland University of Technology Brisbane Australia	PARTICIPANT INFORMATION FOR QUT RESEARCH PROJECT -Interview-
Understanding Crime and Justice in the Torres Strait Islands QUT Ethics Approval Number 1700000167	

Research team

Principal Researcher: John Scott, Professor, School of Justice
Faculty of law, Queensland University of Technology (QUT)

Associate Researchers; Zoe Staines, Research Assistant, QUT
James Morton, Magistrate, Mount Isa, QLD

Description

The pilot project will undertake the first study of crime and justice in the Torres Strait Islands (TSI). While there has been much research into 'ATSI' crime and justice, previous research draws exclusively on Aboriginal people who are culturally distinct from TSI. The TSI offers a unique opportunity to observe how justice is practiced in diverse remote contexts. Through mostly qualitative fieldwork, involving local service providers, this pilot study will identify and document community and customary justice practices and impediments to the justice, to identify best practice unique to the TSI. It is anticipated that such information may provide benefits to the region, including improved resourcing outcomes.

You are invited to participate in this project because you have experience in the justice system involving Aboriginal and Torres Strait Islander people in remote and rural locations.

Participation

Your participation will involve an audio recorded interview at agreed locations that will take approximately an hour.

Questions will include:

1. Description of criminal justice issues specific to the Torres Strait Islands.
2. Description of crime and justice practices in the Torres Strait Islands.
3. Description of strengths and weaknesses of current criminal justice initiatives in the Torres Strait Islands.

Your participation in this project is entirely voluntary. If you do agree to participate you can withdraw from the project without comment or penalty. You can withdraw anytime during the interview, and from the project at any time you decide, prior to publication of any materials. On request any identifiable information already obtained from you will be destroyed. Your decision to participate or not participate will in no way impact upon your current or future relationship with QUT.

Expected benefits

It is expected that this project will not benefit you directly. However, it may benefit the wider community in general to better understand the Torres Strait Islander culture and community justice practices, which may differ to that of Aboriginal communities. It is anticipated that such information may provide benefits to the region, including improved resourcing outcomes through the identification of best practice and provision of empirical data regarding crime and justice.

Risks

There are minimal risks associated with your participation in this project. The risk to you may vary, however it is a possibility that you may feel different range of emotions as they are entrenched in the type of work being researched and they have a level of understanding and acceptance of the emotions of the work that they are employed to do. Different emotions such as frustration, hopelessness and anger may emerge generated from their own perceptions of certain situations.

If it is identified that you are experiencing extreme discomfort from relaying your stories then the interviewer may terminate the interview and you will be referred to relevant support assistance, as listed below. Alternately, you may also be given the option of a break, a support person, or the option of skipping a particular question. You will be provided a transcript of your interview via email and then will be given the opportunity to verify the comments.

Local counselling services in the Cairns area are available through Centacare Counselling

22-34 Aplin Street, Cairns QLD 4870

PO Box 201

CAIRNS QLD 4870

Phone: (07) 4044 0130

Fax: (07) 4044 0120

Email: client.intake@centacarecairns.org

In addition, QUT provides for limited free psychology, family therapy or counselling services (face-to-face only) for research participants of QUT projects who may experience discomfort or distress as a result of their participation in the research. Should you wish to access this service please call the Clinic Receptionist on **07 3138 0999** (Monday–Friday only 9am–5pm), QUT Psychology and Counselling Clinic, 44 Musk Avenue, Kelvin Grove, and indicate that you are a research participant. Alternatively, Lifeline provides access to online, phone or face-to-face support, call **13 11 14** for 24 hour telephone crisis support.

Privacy and confidentiality

All comments and responses will be treated confidentially unless required by law. The names of individual persons are not required in any of the responses. All participants of the research project will be anonymous.

As the project involves an audio recording:

- You will have the opportunity to verify your comments and responses prior to final inclusion.
- The audio recording will be destroyed 5 years after the last publication.
- The audio recording will not be used for any other purpose than this project and its subsequent phases, with later phases extending data collection to the Torres Strait islands.
- Only the named researchers and a transcriber of the recording will have access to the audio recording.
- It is not possible to participate in the project without being audio recorded.

Consent to participate

We would like to ask you to sign a written consent form to confirm your agreement to participate.

Questions/further information about the project

If you have any questions or require further information please contact one of the researchers listed below.

John Scott j31.scott@qut.edu.au 07 31381276

James Morton je.morton@qut.edu.au 07 31382279

Concerns/complaints regarding the conduct of the project

QUT is committed to research integrity and the ethical conduct of research projects. However, if you do have any concerns or complaints about the ethical conduct of the project you may contact the QUT Research Ethics Advisory Team on +61 7 3138 5123 or email ethicscontact@qut.edu.au. The QUT Research Ethics Advisory Team is not connected with the research project and can facilitate a resolution to your concern in an impartial manner.

Thank you for helping with this research project. Please keep this sheet for your information.

Appendix B: Consent Form (Indigenous)

 Queensland University of Technology Brisbane Australia	CONSENT FOR QUT RESEARCH PROJECT
Understanding Crime and Justice in Torres Strait Islander Communities QUT Ethics Approval Number 1700000167	

Research team contacts

John Scott j31.scott@qut.edu.au 3138 7126

James Morton je.morton@qut.edu.au 3138 2279

Statement of consent

All information will be treated as confidential and will not be shared, with all reports maintaining the anonymity of participants, unless (in the unlikely event) that the research team is legally required under subpoena and oath to answer specific questions that may include information gained from this research.

By signing below, you are indicating that you:

- Have read and understood the participant information document regarding this project or have had this participant information document regarding the project read to me and have understood this
- Have had any questions regarding the project answered to my satisfaction
- Understand that if I have any additional questions I can contact the research team
- Understand that I am free to withdraw from the project until the time of publication without comment or penalty
- Understand that if I have concerns about the ethical conduct of the project, I can contact the Research Ethics Advisory Team on 07 3138 5123 or email ethicscontact@qut.edu.au.
- Understand that non-identifiable data from this project may be used in future phases of the project
- I agree to QUT using, reproducing and disclosing the audio recording of my interview as explained in the Participation Information
- Agree to participate in the project

Name

Signature

Date

Please return this signed consent form to the researcher.**A copy will be provided for your records**



Appendix C: Interview schedule

Interview Schedule—Understanding Crime and Justice in Torres Strait Islander Communities Project

Introduction:

In this interview, we are going to ask you some questions specifically relating to your professional work experiences. We will aim to talk about 4 topics – 1. your general work experience 2. your account of policing and working in the Torres Strait islands 3. Your understanding of crime issues affecting the Torres Strait Islands and 4. Strategies and initiatives to address and prevent crime in the Torres Strait Islands.

This interview is entirely voluntary and you are free to terminate at any point in time. The conversation will be recorded solely for the purpose of transcribing so we can use the information you provide for academic research at the QUT. All information you give will be held strictly confidential and your anonymity is assured. Do you have any questions before we begin?

Topic 1: Background Information

- Q1. Where have you lived and worked in the past?
- Q2. Where do you currently live and/or work?
- Q3. Can you tell us about your work?
- Q4. Are you involved in any community groups or other organisations?
- Q5. What sort of employment have you done in the past?
- Q6. Do you do other work as well?
- Q7. What type of education have you had?
- Q8. What do you like about your current job? What's the best part of your job? Why?
- Q9. Can you describe 1 or 2 best/worst experiences in your current role?

Topic 2: Community in the Torres Strait Island

- Q10. Is there anything distinct about communities in the Torres Strait Islands?
- Q11. Is there anything distinct about Torres Strait Islander peoples (ie. culture)?
- Q12. What are the best things about living and/or working in the Torres Strait islands?
- Q13. Can you describe any particular challenges that Torres Strait Islander communities experience?

Topic 3: Crime in the Torres Strait Islands

- Q14. What are the main crime issues in Torres Strait Islands?
- Q15. Can you tell us about any issues that are unique to Torres Strait islander communities?
- Q16. What sort of groups or people are engaged in crime?
- Q17. What is the most serious crime concern in the Torres Strait Islands?
- Q18. Why have these problems emerged?
- Q19. Is some crime a product of the unique environments and cultures of the Torres Strait Islands? If so, how?
- Q20. Does crime vary between the different islands? If so, in what way?

Topic 4: Crime prevention

- Q28. What is being done to address crime issues in the Torres Strait Islands?
- Q29. What is the role of police in addressing crime problems? Are they effective?
- Q30. Please tell us about effective crime prevention strategies in the Torres Strait Islands?
- Q31. Can you tell us about any crime prevention initiatives that have been community driven?
- Q31. Can you tell about any crime prevention initiatives that are customary or traditional or draw on local cultures?
- Q32. Please tell us about any initiatives that have not been effective an addressing crime in the Torres Strait Islands.
- Q33. Please tell us what you think needs to be done to address crime in the Torres Strait Islands.
- Q34. Are there sufficient resources to prevent crime and address existing crime issues?
- Q35. What resources (community and external) are needed to address crime?

Closing statement

Thank you very much for your time and all of the information you have shared with us. If you would like to learn about the research outcomes, we would be more than happy to share them with you.

CRG reports
CRG 24/16–17

John Scott is Professor at Queensland University of Technology's School of Justice.

Zoe Staines is a Research Fellow at the University of Queensland.

James Morton is a magistrate based in Bowen, Queensland.

www.aic.gov.au/crg

