



Australian Government

Australian Institute of Criminology

Trends & issues in crime and criminal justice

No. 659 November 2022

Abstract | Pre-sentence reports (PSRs) provide information to courts on an individual's background, circumstances, risks, needs and plans. Research has found that PSRs focus heavily on risk of recidivism, while identification of prosocial cultural and community factors is limited. This study sought to describe the language and sentiment in these reports. We studied PSRs written for Aboriginal and/or Torres Strait Islander people sentenced by the mainstream County Court of Victoria and the Koori Court Division of the County Court of Victoria. Findings indicate that risk-related words are more prevalent than words associated with strengths and culture in PSRs submitted to both courts. While the frequency of positive and negative sentiment was low in PSRs for both courts, those for the Koori Court were more positive in sentiment.

Pre-sentence reports for Aboriginal and Torres Strait Islander people: An analysis of language and sentiment

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Pre-sentence reports (PSRs), also known as 'sentencing assessment reports' or 'pre-sentence and suitability reports', are used in all jurisdictions to assist courts in determining appropriate sentences. They provide information to the courts about a person's engagement with programs and rehabilitative services, their family and housing arrangements, and their social, educational, health and employment history, and link this information to past offending, predictors of future offending and prospects for rehabilitation in the community. PSRs provide an assessment of eligibility for community-based orders. In drawing conclusions, PSRs usually rely on risk–need–responsivity assessment tools. The length of PSRs ranges from one paragraph to several pages. PSRs strongly influence sentence outcomes (see Anthony et al. 2017).



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Scope of PSRs and capacity for cultural and systemic considerations

Aboriginal and Torres Strait Islander people comprise over 30 percent of Australia's prison population (Australian Bureau of Statistics 2021), while accounting for approximately 3.3 percent of its total population (Australian Bureau of Statistics 2016). One of the key factors put forward to explain this hyperincarceration is the dismissal of Indigenous knowledge and unique experiences by those working and researching in the criminal justice system (Cunneen & Tauri 2019). By taking into account Aboriginal and Torres Strait Islander people's experiences of culture, community and systemic factors, sentencing courts may be better placed to reduce the weight given to deterrence, to account for moral capability and to identify relevant community-based options (Edwige & Gray 2021; *DPP v Snow (a pseudonym)* [2020] VSCA 67).

Legislation in Australia (see, for example, *Sentencing Act 1991* (Vic), s 8A) sets down circumstances in which PSRs may be ordered. However, the content is not prescribed by law. In Victoria, legislation does not require courts to consider an Aboriginal and/or Torres Strait Islander person's cultural or community background or experiences of racism in PSRs or as part of sentencing considerations. The Australian Capital Territory is the only jurisdiction to stipulate in legislation that cultural background is a pre-sentence matter (*Crimes (Sentencing) Act 2005* (ACT), s 40A(b)).

In relation to sentencing Aboriginal and Torres Strait Islander people, legislation in the Australian Capital Territory, Queensland and the Northern Territory states that culture is a sentencing consideration: *Crimes (Sentencing) Act 2005* (ACT), s 33(1)(m); *Penalties and Sentences Act 1992* (Qld), s 9(2)(p); *Sentencing Act 1995* (NT), s 104A. Legislation and guidelines also provide for Aboriginal and Torres Strait Islander sentencing courts in most Australian jurisdictions, such as the Koori Court Division in Victoria's County Court, Magistrates' Court and Children's Court. These courts provide a more culturally sensitive process for the sentence hearing. Provided that the Aboriginal and Torres Strait Islander sentencing court is within the court's jurisdiction and able to sentence the matter, the court is available for Aboriginal and/or Torres Strait Islander persons who plead guilty or have been found guilty and agree to be sentenced by the Aboriginal and Torres Strait Islander sentencing court. Elders and/or respected persons participate in the sentencing process and provide advice to the judicial officer (who still retains the power to sentence) in relation to the penalty imposed (Marchetti 2017).

Outside of formal legislation, community corrections and sentencing courts nonetheless have broad discretion to consider culture, including for the purpose of promoting individualised justice (Australian Law Reform Commission 2017). While PSR assessors in all Australian jurisdictions may include information pertaining to an Aboriginal and/or Torres Strait Islander person's cultural background and community circumstances (including strengths and supports), research indicates that these aspects do not feature largely or at all in PSRs (Anthony et al. 2017). Rather, PSRs tend to characterise people in accordance with risk criteria that refer to factors such as criminal history, antisocial behaviour, education, health and employment rather than a holistic account of the person's background (see Hannah-Moffat & Maurutto 2010).

In Canada, and more recently in Australia, the limitations of PSRs have given rise to reports that consider the person's First Nations background (ie Gladue reports in Canada and Aboriginal Community Justice Reports in Victoria). These reports consider the person's cultural background as well as the intergenerational and immediate impacts of colonisation and systemic racism on them, their family and their community (MacLennan & Shields 2013). They also pay attention to community-based options that are relevant and meaningful to First Nations people, including outside of institutional services (Murdocca 2021).

Risk assessment in PSRs

In Victoria, PSR assessors use a correctional risk assessment tool called the Level of Service/Risk, Need, Responsivity (LS/RNR; Andrews, Bonta & Wormith 2008) to complete their reports. Risk instruments guide the assessor to consider salient risk factors associated with offending and other antisocial behaviour. Risk factors are divided into two types: static and dynamic. Static risk factors are those that cannot be changed through intervention—for example, age and criminal history (Andrews, Bonta & Wormith 2006). Dynamic risk factors, such as employment status and substance use, can change over time and through intervention (see Andrews & Bonta 2010) and thus provide treatment targets to reduce the risk of reoffending.

Scholars have raised concerns that reliance on risk instruments reduces sentencing to a group-based, data driven process, which may contravene the principle of context-based, individualised justice (Hannah-Moffat 2013). They also contend that risk instruments could promote unfair stereotypes or reproduce existing systemic biases that disproportionately impact vulnerable groups (Barabas et al. 2018; Hannah-Moffat 2013; Shepherd & Lewis-Fernandez 2016; Starr 2015). Moreover, the instruments are believed to encourage punitive rather than rehabilitative outcomes, given that they are framed with a focus on risk (Hannah-Moffat & Maurutto 2010; Harcourt 2006; Shepherd & Anthony 2018).

The present study

To our knowledge, this is the first study to examine PSRs prepared for Aboriginal and/or Torres Islander people in Australia. Given the hyperincarceration of Aboriginal and Torres Strait Islander people in Australia, there is an urgent need to transform criminalising processes.

We obtained PSRs submitted to the mainstream County Court of Victoria and the Koori Court Division of the County Court of Victoria (County Koori Court). First, we used text-mining and natural language processing techniques to compare the language and keywords of PSRs submitted to the County Koori Court to PSRs submitted to the mainstream County Court for Aboriginal and/or Torres Strait Islander people. We aimed to:

- identify differences in the sentiment of PSRs for Aboriginal and/or Torres Strait Islander people being sentenced in the mainstream County Court and County Koori Court; and
- evaluate the emphasis placed on issues of risk and reoffending in PSRs, as opposed to issues relevant to protective factors and strengths of cultural identity.

Method

Sample

We compared a sample of 32 PSRs written for Aboriginal and/or Torres Strait Islander people sentenced by the County Koori Court of Victoria to a sample of 31 PSRs written for Aboriginal and/or Torres Strait Islander people sentenced by the mainstream County Court of Victoria. All extended PSRs completed for Aboriginal and/or Torres Strait Islander people in our study period (1 July 2016 to 31 January 2019) were included ($n=16$). Corrections Victoria then randomly selected brief PSRs completed during this period to reach a sample size of 32 PSRs for each court. One person's PSR (from the mainstream County Court) was excluded as they had sexually offended and the County Koori Court cannot deal with sexual offences (*County Court Act 1958* (Vic), s 4E(b)(i)). See *Pre-sentence reports* below for differences between extended and brief PSRs. Table 1 presents the frequency counts of the PSRs, split by type (brief or extended), court type and gender.

The subjects of the reports for both the mainstream and County Koori courts were predominantly male (80.6% and 78.1% respectively), with the remaining people identified as female by Corrections Victoria.

Report type	County Koori Court		Mainstream County Court	
	Male	Female	Male	Female
Brief	21	7	14	5
Extended	4	–	11	1

Note: County Koori Court=Koori Court Division of the County Court of Victoria. Mainstream County Court=County Court of Victoria

Measures and covariates

Courts

The PSRs we received were written for people sentenced by either the County Court of Victoria (mainstream court) or the County Koori Court. The County Court of Victoria is an intermediate court between the Magistrates' Court of Victoria and the Supreme Court of Victoria. It sentences people who are convicted of serious indictable offences.

Pre-sentence reports

PSRs are conducted in Victoria to provide information to the court when it is considering a community corrections order but may otherwise impose imprisonment. PSRs outline the accused person's eligibility for a community corrections order (taking into account their circumstances); the conditions attached to the order; and whether the necessary external facilities exist to enable conditions to be imposed (*Sentencing Act 1991* (Vic), s 8A(2)).

We collected both brief and extended PSRs. Brief PSRs are completed on or shortly after the day they are requested and are significantly shorter and less detailed than extended PSRs. To give sufficient time for an extended PSR to be completed, an adjournment of up to six weeks is usually required. The court decides whether to request a brief or extended PSR, but community corrections staff may advocate for an extended PSR to ensure that all appropriate issues are considered in detail.

Keyword dictionaries

For the purposes of text-mining and natural language processing analyses, we created lists of common keywords that fell into one of three categories: risk (eg 'criminal', 'theft', 'custody'), strength-based culture words (eg 'healing', 'cultural', 'spiritual'), or prosocial factors (eg 'support', 'respect', 'family'). We canvassed social and emotional wellbeing and culture-based rehabilitation literature to identify keywords for the culture dictionary. For the risk and prosocial dictionaries, we identified relevant keywords from forensic and correctional psychology literature. The number of keywords in each category differed (risk=73, culture=17, and prosocial=25). For details of the keyword dictionaries, see the full report (Coulter et al. 2022).

Procedure and plan of analysis

We employed natural language processing technology, a form of machine learning, to conduct high-level text mining and sentiment analysis of the PSRs.

Sentiment analysis

We conducted sentiment analyses for each of the PSRs. Sentiment analysis is widely used to identify emotions, opinions, sentiments or subjectivity from a text collection. It aims to identify words or phrases that characterise positive and negative sentiments from the underlying text collection. In this study, we applied sentiment analyses in the legal domain, which is relatively under-explored. More specifically, we focused on estimating sentiments from PSRs submitted to the County Koori Court and mainstream County Court.

We analysed the proportion of each PSR that our sentiment analyses classified as negative (eg 'bad', 'poorly') and positive (eg 'great', 'excellent'). After extracting these proportions, we conducted *t*-tests to evaluate whether the mean proportions of text classified as positive and negative differed significantly between and within each sample of PSRs.

Text-mining analysis

We analysed each PSR to determine the frequency counts of keywords from each of our keyword dictionaries for all PSRs. We also extracted the frequency counts of unique keywords (ie multiple instances of the same keyword were treated as one instance) in each PSR. For each PSR, we calculated the proportion of keywords belonging to each category (risk, culture, prosocial). Due to differing numbers of keywords in each category's dictionary, we also calculated normalised mean proportions.

Results

Text analysis of PSRs

Our results indicate that, of our three keyword categories, risk-related words were the most prevalent (County Court $M=39.3$ words per document; County Koori Court $M=23.3$), followed by prosocial (County Court $M=21.7$; County Koori Court $M=13.7$) and culture-related words (County Court $M=1.2$; County Koori Court $M=1.2$). Prosocial words were lower in incidence than risk characterisations but not as scarce as culture-related words. It is important to note that risk, prosocial and culture keywords comprised a small proportion of the overall number of words in a PSR, given that extended PSRs are generally over 1,500 words in length.

On average, risk-related words accounted for more than half of all extracted dictionary keywords in the County Court (60.3%) and County Koori Court (56.5%). After we adjusted our analyses to account for the number of keywords in each of our dictionary categories, prosocial keywords were the most common across both samples.

Table 2 presents the findings from our text-mining analyses for the County Koori Court sample and mainstream County Court sample.

Court	Risk			Prosocial			Culture		
	<i>M (SD)</i>	%	Normalised %	<i>M (SD)</i>	%	Normalised %	<i>M (SD)</i>	%	Normalised %
All keywords									
County Court	39.3 (41.4)	60.3	36.5	21.7 (19.0)	37.9	58.8	1.2 (2.1)	1.8	4.6
Koori Court	23.3 (34.5)	56.5	34.0	13.7 (17.2)	33.9	58.3	1.2 (2.5)	3.4	7.7
Unique keywords									
County Court	12.7 (9.2)	69.4	41.4	5.2 (4.1)	27.6	49.1	0.7 (1.3)	3.0	9.5
Koori Court	8.4 (7.4)	63.5	38.0	3.5 (3.5)	24.3	46.2	0.8 (1.4)	5.9	15.8

Note: Normalised=The unequal number of keywords in each of our predefined dictionaries was accounted for. All keywords=Every keyword contained in our predefined dictionaries that we extracted from the pre-sentence reports. Unique keywords=Repeat presentations of same keyword within a pre-sentence report were not included in analyses

Sentiment analysis

Table 3 presents the results of our sentiment analyses for the County Koori Court sample and mainstream County Court sample. We found that the language in the PSRs for Aboriginal and/or Torres Strait Islander people in both courts was generally neither positive nor negative in sentiment. However, PSRs from the mainstream County Court contained more negatively-worded text than those from the County Koori Court ($t(61)=2.58$, $p=0.01$, $d=0.65$). The mean proportion of positive text was similar across both courts' PSRs ($t(61)=0.31$, $p=0.76$, $d=0.08$).

Table 3: Average proportion of pre-sentence reports' text classified as positive or negative (%)

Report type	County Koori Court			Mainstream County Court		
	Positive	Negative	Neither	Positive	Negative	Neither
Brief	8.2	7.1	84.9	7.8	8.4	84.0
Extended	8.4	9.0	82.6	9.4	11.6	79.0
Total	8.1	7.3	84.6	8.4	9.6	82.0

Note: County Koori Court=Koori Court Division of the County Court of Victoria. Mainstream County Court=County Court of Victoria

We analysed brief and extended PSRs separately and found that extended PSRs had a higher mean proportion of negative text than brief PSRs in the mainstream County Court (Welch's $t(28)=2.99$, $p=0.01$, $g=1.01$). This difference was also found in the County Koori Court (Welch's $t(21)=2.41$, $p=0.03$, $g=1.82$). We did not detect any differences between brief and extended reports in the mean proportion of positively worded text in PSRs for the County Koori Court (Welch's $t(4)=0.18$, $p=0.87$, $g=0.10$), nor the mainstream County Court (Welch's $t(28)=1.68$, $p=0.10$, $g=0.54$).

Discussion

This study examined the language in PSRs prepared for Aboriginal and/or Torres Strait Islander people, and compared the PSRs of those sentenced in the mainstream County Court and the County Koori Court. Our results indicated that for both courts PSRs exhibited a higher incidence of risk-related words than prosocial factors and culture-related words. The text of PSRs for both samples was mostly neither positive nor negative in sentiment. However, the mean proportion of negative text in these reports was slightly higher for the mainstream County Court sample than the County Koori Court sample. Inversely, the proportion of positive text in County Koori Court PSRs was marginally higher than in the mainstream court PSRs.

The finding that PSRs were more negative in sentiment when written for the Aboriginal and/or Torres Strait Islander people sentenced through the mainstream County Court compared to the County Koori Court could reflect various factors. It may be that PSR assessors for the Koori Court are cognisant of the Koori Court dynamics, including the presence of Elders, who will seek more holistic information in preparing their advice. It could also be due to the fact that PSR assessors are encouraged to meet with Koori Court staff or liaison officers, which broadens their inquiry for the purpose of PSR preparation.

The higher incidence of risk keywords could be attributed to the use of the LS/RNR assessment tool, which is focused on risk factors. This could in turn influence the written content of the extended PSRs in Victoria. Many of the risk keywords in our dictionary mirror the risk factors included in the LS/RNR (eg antisocial behaviours). Given that PSRs are conducted to assess suitability for a community-based order, and community safety is a sentencing principle in Victoria, the focus on risk is not unexpected. The concern with a relatively high frequency of risk words is that the person is viewed through a single lens, perpetuating the punitive tropes of the criminal justice system.

The focus on risk in PSRs has implications for the way Aboriginal and/or Torres Strait Islander people are sentenced in Victoria. A higher incidence of risk words can affect the harshness of the sentence. Risk is an aggravating factor that can contribute to the hyperincarceration of Aboriginal and Torres Strait Islander people. It has been identified in Australian courts in other jurisdictions that reliance on PSRs may result in 'a custodial rather than a non-custodial sentence, or a longer term of imprisonment than would otherwise have been imposed, or a refusal to order eligibility for parole' (*HAS v The State of Western Australia* [2005] WASCA 29 [62]). Reflecting the influence of PSRs, judicial officers acknowledged in research evidence that they cannot deviate from PSRs' recommendations without strong evidence that counters the claims in the PSR (Anthony et al. 2017). Moreover, PSRs can have adverse implications for prison security classification.

Strength-based, culture-related words were the least commonly used keyword group in PSRs across both court samples. There were slight differences in the use of cultural words across the Koori Court and mainstream County Court PSRs, but overall report assessors used them very little. As discussed above, this may have implications for individualised justice. The limited discussion of strength-based cultural issues in the PSRs may be due to a number of factors. The PSR structure and risk tool do not lend themselves to a consideration of cultural identity and background. Furthermore, there are few Aboriginal and Torres Strait Islander staff available to conduct PSRs (Department of Justice and Community Safety 2020). This may inhibit the propensity for report assessors to comprehend the role of culture and experiences of racism in an individual's life. Alternatively, low rates of culture-related words across both courts could reflect individual's severed connections with families and communities.

The Australian Law Reform Commission (2017) recommended that Aboriginal Community Justice Reports (which it named Indigenous Experience Reports) be implemented in Australian courts prior to sentencing. The County Court of Victoria, as well as its Koori Court division, are currently piloting the use of these reports (Victorian Aboriginal Legal Service 2021). They are prepared by Aboriginal report writers within the Community Justice Program of the Victorian Aboriginal Legal Service. The writers provide a culturally safe space where the person can share their story over six to eight weeks. Like Gladue reports in Canada, they provide a deeper discussion of a person's background and the life circumstances that exist due to their Aboriginal and/or Torres Strait Islander identity. They also canvass systemic issues affecting the individual and their criminalisation, including the role of over-policing; colonial legacies in institutions involving the person and their family and community; the person's experiences of racism in the penal, health, housing and education systems; and the impacts of child removals on the person. They highlight the person's strengths and options for community-based supports that are culturally safe and, preferably, Aboriginal controlled.

Limitations and future directions

Further research is required to engage samples with a higher number of extended reports for the County Koori Court. This will ensure that there is no bias caused by the differences in proportions of extended and brief reports between the County Koori Court and the mainstream County Court.

While the sentiment analysis identifies specific words, it does not consider their context in either individual sentences or the report as a whole. A high prevalence of prosocial words, for instance, does not necessarily demonstrate a positive report if the overall theme of the report is that the person continues to be a threat through demonstrating antisocial behaviours.

Further research, of a qualitative nature, is required to understand why the tenor of assessments in Koori Courts is more favourable than for Aboriginal and/or Torres Strait Islander people in mainstream courts. In addition, research is required to understand the impact of the PSRs on sentencing remarks, outcomes and orders.

Conclusion

The present study has demonstrated that PSRs feature, on average, more risk related words than prosocial and especially strength-based cultural factors. Framing of PSRs with a focus on risk may engender a narrow characterisation of the person and contribute to negative carceral controls. Additional or alternative mechanisms for fashioning information on and with the person need to be considered. Aboriginal Community Justice Reports could be a meaningful addition to pre-sentence information and promote a holistic account of the person. These could encapsulate information on systemic factors that have inhibited the person's circumstances and could underscore the person's strengths.

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ISSN 1836-2206 (Online) ISBN 978 1 922478 79 5 (Online)
<https://doi.org/10.52922/ti78795>

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