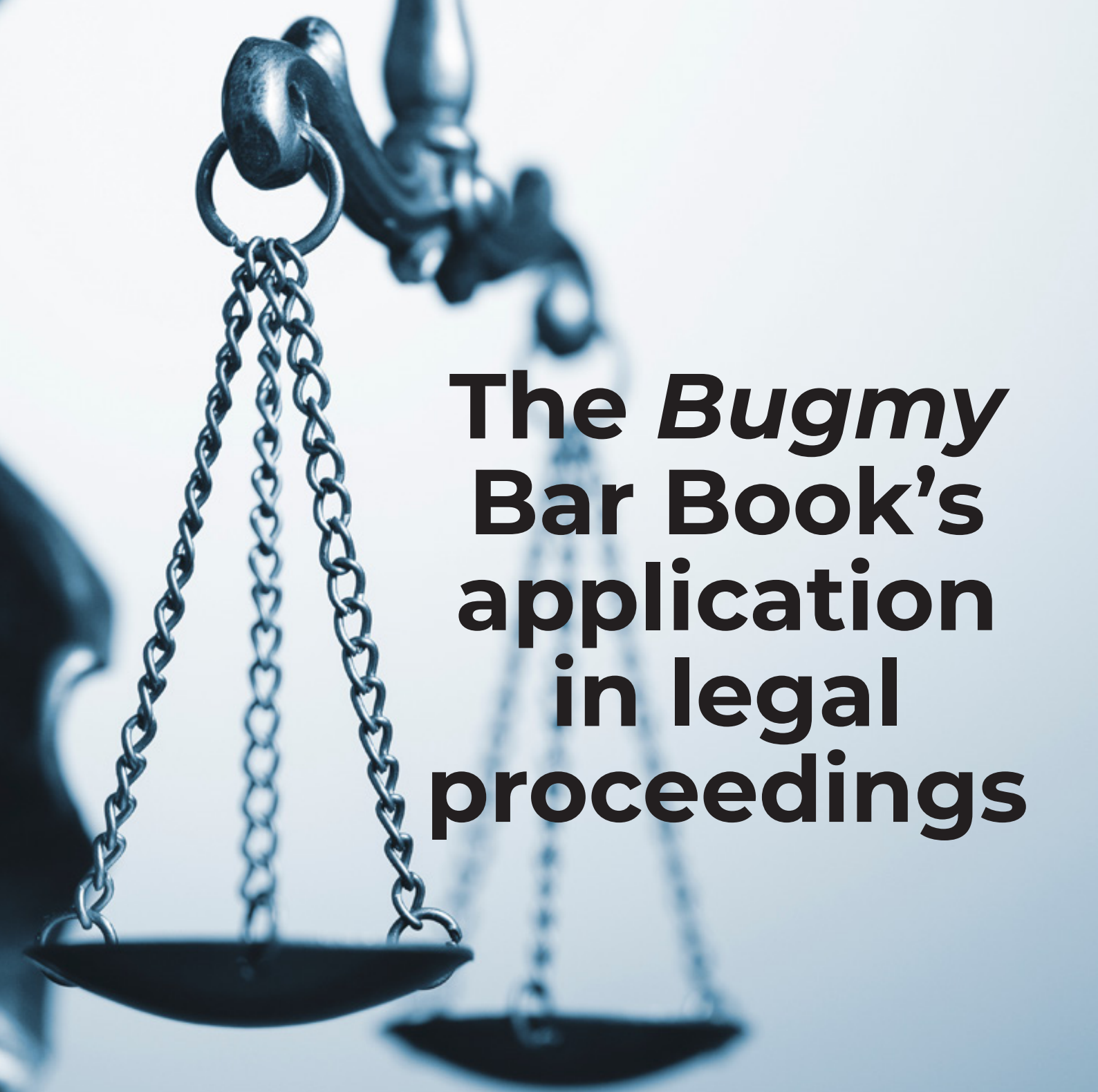




The *Bugmy* Bar Book's application in legal proceedings

'From little things,
big things grow'

The authors acknowledge and pay their respects to the traditional custodians of the lands on which this article was written, the Arakwal, Minjungbal and Widjabul Wia-bal people of the Bundjalung Nation, and the Wurundjeri and Bunurong people of the Kulin Nation, and the lands on which this article will be read. This land is Aboriginal land. Sovereignty was never ceded.

By **Sophie Anderson**

Barrister, Commercial Bank Chambers, Far North Coast NSW

Crystal Triggs

Project Director, *Bugmy Bar Book*

and **Sophie Parsons**

Partner and In-House Counsel AccS(Crim), Doogue + George Defence Lawyers

The *Bugmy Bar Book* is a free online evidence-based resource, which summarises nationwide research on the impacts of trauma, socioeconomic inequality and structural disadvantage, and strengths-based evidence, for use by lawyers and decision-makers in circumstances where a person's life experience has particular relevance.

Legal problems rarely arise in isolation. People dealing with the legal system often do so in combination with disadvantage and complex needs. In these cases, it is helpful for lawyers and decision-makers to have access to credible and informative resources. The *Bugmy Bar Book* is such a resource.

The project

The project was originally set up by a committee in NSW in 2018 to assist criminal lawyers with the application of sentencing principles set out by the High Court of Australia in *Bugmy v The Queen*.¹ The resource is now being used in a range of legal proceedings, including civil law practice areas and tribunals, in NSW, the ACT, Victoria and Queensland. The *Bugmy Bar Book* is supported by the NSW Judicial Commission,² the Judicial College of Victoria,³ the Judicial Council on Diversity and Inclusion,⁴ and the Australasian Institute of Judicial Administration Limited.⁵

By providing open access to credible research on a variety of topics, it aims to assist with lawyers'

preparation and presentation of evidence to establish the impact of a background of deprivation and identify the relevance of a person's background to legal proceedings. The resource is mainly comprised of chapters summarising key research concerning the potential impacts of different forms of social and economic disadvantage, including disability and health conditions, along with strength-based supports.

Some chapters focus on experiences specific to First Nations people, such as 'Members and Descendants of the Stolen Generations', 'Cultural Dispossession', and the 'Significance of Funeral Attendance and Sorry Business for Aboriginal and Torres Strait Islander People.' However, the resource is also relevant to non-First Nations people, with general chapters such as 'Childhood Exposure to Domestic and Family Violence', 'Parental Incarceration', 'Homelessness', and 'Refugee Background.' Each chapter has a one-page executive summary, and a summary of case law from around Australia.

The chapters are subject to a rigorous review process. Once drafted by a researcher under supervision of a senior member of the legal profession, the chapters are reviewed by an expert in the field before a final review by an independent advisory panel, including an independent First Nations review.

The project has published two key expert reports: the *Significance of Culture to Wellbeing, Healing and Rehabilitation* in 2021,⁶ by psychologists Dr Paul Gray, a Wiradjuri man, and Vanessa Edwige, a Ngarabal woman, and the *Impacts of Institutionalisation* in 2024,⁷ by Dr Robyn Shields, a Bundjalung woman, and Dr Andrew Ellis. The project has also commissioned two further reports that will be published this year: *Decision-Making and Emotional and Behavioural Regulation in 18 to 25-Year-Olds: A Neurodevelopmental Perspective*, a multi-authored report led by Dr Jodi Kamminga and Dr Travis Wearne, and *Impacts of Intergenerational Trauma* by Professor Pat Dudgeon, a Bardi

woman, and Professor Helen Milroy, a descendant of the Palyku people.

The project is led by a committee constituted by representatives of key agencies and organisations in the justice sector, judicial officers, the Office of the Director of Public Prosecutions, Aboriginal and Torres Strait Islander Legal Services, Legal Aid, Public Defenders, members of the bar and private profession, academics, psychologists, and a First Nations subcommittee. The committee members are representative of most states and territories and all committee members develop and oversee the project voluntarily.⁸

The project received a grant from the Paul Ramsay Foundation in 2022 which provided for staff to be employed for the first time and allowed for a comprehensive practitioner and judicial education program to be developed and delivered in multiple jurisdictions.⁹ The resource now assists legal practitioners, decision-makers and health and psychology experts beyond its initial intended scope, with 20 chapters published, and independent research commissioned to address gaps in the literature.

The case that inspired the project

William David Bugmy, a Barkindji man from far-western NSW, grew up in an environment without the resources and basic infrastructure many are used to living with in Australia. In the context of poverty, he witnessed and engaged in alcohol and other drug use from a young age. He finished schooling at year 7 and experienced numeracy and literacy challenges. Expert reports tendered on his behalf in criminal proceedings established that he experienced disability and significant mental health issues.

Lawyers from the Aboriginal Legal Service NSW/ACT represented

Mr Bugmy in relation to charges that arose while he was serving a period of custody in Broken Hill at first instance;¹⁰ advancing argument in sentencing proceedings that Mr Bugmy's background had informed his experiences and underpinned the offending for which he was to be sentenced. The Crown appealed, challenging the adequacy of the sentence imposed, and argued that these considerations had effectively been extinguished over time by Mr Bugmy's repeated contact with the criminal courts. Mr Bugmy sought leave to appeal the Court of Criminal Appeal outcome to the High Court of Australia.

One of the founding members of the *Bugmy* Bar Book and now Supreme Court Justice Dina Yehia, was the Senior Counsel who represented Mr Bugmy in the High Court appeal with junior Gabrielle Bashir (now Senior Counsel) instructed by the Aboriginal Legal Service NSW/ACT.

The High Court's decision in *Bugmy* considered the sentencing of First Nations people, and established that a childhood of deprivation may mitigate a sentence by operating to reduce moral culpability and moderate the application of general and specific deterrence, and that as a background of profound deprivation leaves an indelible mark on a person, these effects do not diminish with the passage of time or repeat offending and must be given full weight in every sentencing decision.¹¹

The issue of whether a causal link between a person's background and the offending is required has since been considered;¹² and the legal principles well established in sentencing proceedings throughout Australia.

The application in legal proceedings

Over time, the value of the *Bugmy* Bar Book has been realised in different

legal contexts including criminal proceedings, Royal Commissions and inquiries, and civil law practice areas, family, care and protection matters, and coronial inquests.

A summary of published judgments and decisions referring to the *Bugmy* Bar Book is maintained on the website.¹³

The following examples provide an insight.

Yehia SC DCJ (as she then was) described how the materials can assist judicial decision making in *R v Tsingolas*:¹⁴

'This material should be seen as an extension of the subjective material provided in the individual case – here, the expert reports and the evidence of the offender. To an extent greater than ever before, sentencing judges are now assisted by a body of research into the impact of various forms of childhood disadvantage, deprivation and trauma that may have an ongoing and profound impact upon the individual.

Sentencing judges in the 21st Century have the benefit of that assistance. The material provided is expert research and study that

VOCATIONAL ASSESSMENTS

Suzanne George

Registered Occupational Therapist

B.Sc.; B.App.Sc(OT); Grad Cert WHS

Comprehensive Medicolegal Reports

- Workers Compensation
- TAC / Compulsory Third Party
- Medical and Professional Negligence
- Extensive experience
- Claimants of all ages
- Complex or multiple injuries

Level 13/200 Queen St, Melbourne VIC

www.suzannegeorge.com.au
info@suzannegeorge.com.au

allows for a better understanding of the potentially profound impact of an individual's childhood experiences upon, amongst other things, their capacity to mature, control impulse and self-regulate. The research complements the psychological, psychiatric and other evidence relied upon in the individual case and can be of substantial assistance in explaining the offending conduct, assessing moral culpability and/or informing the appropriate penalty.¹⁵

*Baines v R*¹⁶ dealt with an appeal by a First Nations offender sentenced for the murder of an underworld figure. The offender had relied upon his background of disadvantage in sentencing proceedings, with evidence about his low socio-economic status, exposure to violence, abuse and neglect, and childhood experience of both parents being incarcerated as matters in mitigation.

The majority allowed the appeal on the ground that the sentencing judge had erred in not applying *Bugmy* principles to reduce the offender's moral culpability, with the decision providing important commentary about how the *Bugmy* Bar Book may be used in sentencing proceedings. Simpson AJA described the *Bugmy* Bar Book as containing a 'considerable quantity of social research'¹⁷ amounting to expert evidence 'capable of assisting a sentencing Judge to understand specific evidence about the circumstances of a particular offender, placed in a wider context',¹⁸ and laying a foundation for the acceptance of relevant evidence of an offender's personal circumstances. Dhanji J observed the value of the research lay in its potential to enhance understanding of the impact of an offender's background, and in a separate dissenting judgment found that the failure of the sentencing judge

to have regard to that material was an error, although this ground was not accepted by the majority on appeal.

In *Re McLaughlin*,¹⁹ Incerti J referred to the requirement that the court is to take into account any issues that arise due to a person's Aboriginality pursuant to s3A of the *Bail Act 1977* (Vic), observing that '[t]he *Bugmy* Bar Book provides carefully researched materials that speak to the significance of this cultural identity on every aspect of the individual and their application'.²⁰ In *Re Males*,²¹ Incerti J took into account the chapter on 'Impacts of Imprisonment and Remand in Custody' and that '[t]he incarceration of a parent may impact negatively on the physical and mental health of the children of an offender, their development, education and employment outcomes', considering in that application that the historical separation of Aboriginal families, the applicant's own difficult family background, and parenting responsibilities and the objective of keeping families together, were all significant factors.²²

The *Bugmy* Bar Book was relied upon in *FYF v Commissioner of Victims Rights*,²³ an appeal of a decision pursuant to the *Victims Rights and Support Act 2013* (NSW) by the Civil and Administrative Tribunal of New South Wales. The matter related to a complex factual matrix following a murder trial. The applicant in the tribunal matter was the partner of the murder victim. Legal Aid NSW represented the applicant in the internal review and assisted pro bono in the NCAT proceedings. Senior Member Riordan summarised the applicant's submissions, stating that '[t]he *Bugmy* Bar Book is used by legal practitioners to highlight the impacts of experience of disadvantage of Aboriginal people,

and relevant considerations including childhood exposure to domestic and family violence and Fetal Alcohol Spectrum Disorders, and cultural dispossession.²⁴ The original decision to refuse payment was set aside with a finding that the applicant was eligible to a reduced recognition payment being made.

In relation to the use of the *Bugmy* Bar Book in civil administrative proceedings, Sue-Ellen Hills, a First Nations senior solicitor at Legal Aid NSW says that 'Legal Aid NSW has been using the *Bugmy* Bar Book in civil matters for several years.' The resource has been used consistently in housing matters where Legal Aid NSW's clients are at risk of homelessness, to persuade the Tribunal that termination of a lease is not justified. Additionally, Legal Aid NSW has used the resources to argue that a decision-maker should consider an individual's circumstances 'as a relevant factor in the exercise of their discretion'.²⁵

Although not yet referred to in any published tribunal decisions in Victoria, Judge Caitlin English, Vice President of the Victorian Civil and Administrative Tribunal, recently observed: 'the *Bugmy* Bar book is such a rich resource, I think its relevance to work of decision makers in civil and administrative jurisdictions will become more apparent as it is discovered and explored'.²⁶

Practitioners will need to exercise care to raise the resource at first instance, in case jurisdictional rules proscribe raising new material on appeal.

How the *Bugmy* Bar Book can be used

The resource may assist lawyers to:

- gain a deeper understanding of the nature and possible impacts of a client's early life experiences,

- make appropriate early referrals to rehabilitation and support services,
- prepare and adduce evidence by way of affidavits from clients, their family and community members,
- request medical and other records,
- engage experts to provide reports and provide comprehensive information about a client's background and experiences, supporting evidence and relevant research to consider, enhancing the depth, quality and relevance of expert reports, and
- prepare legal submissions, referring to paragraphs within the relevant chapters so that specific material that links to the evidence in a client's subjective case is identified.

The material is likely to be particularly favourably received in specialist courts and tribunals.

Trauma-informed and culturally safe legal practices

The *Significance of Culture to Wellbeing, Healing and Rehabilitation* report quotes a cultural safety definition from the Australian Health Practitioner Regulation Agency that can apply to legal settings.²⁷ This includes the 'ongoing critical reflection of [legal] practitioner knowledge, skills, attitudes, practising behaviours and power differentials in delivering safe, accessible and responsive [legal representation] free from racism.'

Reading and referencing the *Bugmy Bar Book* chapters specific to First Nations people, and the expert reports, can support critical reflection and expansion of knowledge.

The chapters and the *Significance of Culture to Wellbeing, Healing and Rehabilitation* report have now been relied upon in at least 16 published judgments, enhancing trauma-informed and culturally safe practices.

The future

The project is evolving, continuing to update and publish new online materials and provide legal education across Australia. Consultation has begun around a further collection of expert reports to improve communication and participation in legal proceedings.

The project committee is also involved in supporting an Australasian Therapeutic Courts Symposium, led by co-chair of the committee Rebecca McMahon. The Symposium will provide an opportunity to showcase the way in which therapeutic courts and restorative approaches to justice are operating in Australia and Aotearoa New Zealand and create ongoing connections between members of the legal profession and the judiciary who are involved in delivering justice.

The growing success of the project is to the benefit of all who are involved with assisting individuals navigate the complexities of the legal system in an informed and supported way.

Notes: **1** [2013] HCA 37 (*Bugmy*). **2** Ngara Yura Program (2024) <<https://www.judcom.nsw.gov.au/judicial-education/ngara-yura-program/bugmy-bar-book>>. **3** *First Nations* (2025) <<https://judicialcollege.vic.edu.au/resources/first-nations>>. **4** *Bench Books* (2025) <<https://jcdi.org.au/resources/>>. **5** *Bench Books* (2025) <<https://aija.org.au>>. **6** V Edwige and P Gray, *Bugmy Bar Book* <<https://bugmybarbook.org.au/publications/significance-of-culture-to-wellbeing-healing-and-rehabilitation/>>. **7** R Shields and A Ellis, *Bugmy Bar Book* <<https://bugmybarbook.org.au/publications/institutionalisation-2024/>>. **8** A full list of committee members can be found on the website: <<https://bugmybarbook.org.au/about/project-committee/>>. **9** The project's employed staff presently include Crystal Triggs as head of Project Strategy and Delivery and Chris McDonald, a First Nations man with rich experience working towards justice, as the Senior Project and Policy Officer. **10** Stephen Lawrence, Member of the Legislative Council, NSW Parliament and Felicity Graham, barrister at Black Chambers, Sydney. **11** *Bugmy*, above note 1, [42], [44]. **12** See *Director of Public Prosecutions v Herrmann* [2021] VSCA 160; *R v MJ* [2023] NSWCCA 306. **13** *Judgments and Decisions*

Referring to the Bugmy Bar Book <<https://bugmybarbook.org.au/about/judgments/>>. **14** [2022] NSWDC 34. **15** *Ibid*, [87]–[88]. **16** [2023] NSWCCA 302. **17** *Ibid*, [83]. **18** *Ibid*, [90]. **19** [2024] VSC 706. **20** *Ibid*, [43]. *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (ALRC Report 133)* recommended that s3A of the *Bail Act 1977* (Vic) be applied nationally. **21** [2024] VSC 802. **22** *Ibid*, [45]. **23** [2024] NSWCATAD 4. **24** *Ibid*, [31]. **25** Correspondence with the *Bugmy Bar Book* committee on 24 April 2024. **26** Correspondence following *Twilight Highlight CPD* to VCAT members, 13 March 2025. **27** Edwige and Gray, above note 6, 12.

Sophie Anderson is a Barrister who practises from the Far North Coast of NSW, and does trial work, appeal work and appearances in all courts and jurisdictions across NSW. Sophie was called to the NSW Bar in 2014 and was the recipient of the Christopher Gee Memorial Prize for Advocacy and Evidence. She started her legal career with the Aboriginal Legal Service Redfern, then moved to regional NSW. She is a member of the NSW Bar criminal law committee, wellbeing committee and *Bugmy Bar Book* committee. Sophie is also a co-host of the *5 Cases Podcast*.

Crystal Triggs is the Project Director of the *Bugmy Bar Book* and an Adjunct Professor at Southern Cross University. Her previous roles include managing lawyer for the northern region of the Aboriginal Legal Service (NSW/ACT), managing lawyer of the youth team at the North Australian Aboriginal Justice Agency (NAAJA), lawyer for the advice service for the Royal Commission into Youth Detention and Child Protection in the Northern Territory, and a teaching fellow at UNSW.

Sophie Parsons is a Partner, In-House Counsel and AccS(Crim) at Doogue + George Defence Lawyers. Sophie is an experienced advocate who provides advice and representation in a broad range of criminal law matters, regulatory investigations, and disciplinary proceedings. Sophie was previously a criminal defence lawyer and manager at NAAJA in Darwin for several years and a lawyer at private firms in the NT and Victoria practising in civil and criminal law.