

County Koori Court

County Court of Victoria and the Department of Justice

ANNEXES

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Annex 1: Program logic for the CKC

What is program logic?

Program logic is the rationale behind a program—what are understood to be the cause-and-effect relationships between program activities, outputs, intermediate outcomes, and ultimate outcomes. Represented as a diagram or matrix, program logic shows a series of expected consequences, not just a sequence of events.

There are two main reasons for developing a program logic model:

- to evaluate or clarify the logic of the program intervention, often when the program is in a stage of development or re-development
- to provide a framework to monitor and evaluate the performance of a program/strategy.

Development of the program logic for the Victorian Koori Courts

The program logic for the Victorian Koori Courts was developed through a participatory process. Firstly, a draft logic was developed by Clear Horizon, using defined program outcomes from different Koori Court documents. This logic was presented at the Planning Workshop held on 12th July 2010, where key stakeholders with in depth knowledge of the Koori Courts were asked to refine the logic. The final program logic is presented in Figure 1.

Narrative of the program logic for the Victorian Koori Courts

Overall goals and program outcomes

The Victorian Koori Courts have been established to work towards the achievement of two (2) key societal and criminal justice goals:

- to provide an appropriate justice system through being responsive and inclusive of culture
- to reduce Aboriginal over-representation within all levels of the justice system.

The achievement of these goals is dependent on a range of factors that are beyond the influence of the Koori Courts. It is important to make this distinction between the overall societal goals that the program is working towards but cannot achieve independently, and the program goals that are achievable within the scope of the Koori Courts program. These program goals are:

- the Koori Court provides access to fair, culturally relevant and appropriate justice
- Koori Accused do not have more serious contact with the justice system.

Court and foundational activities

The Court works towards the achievement of these program goals through a number of activities and approaches. The inclusive court structure gives an opportunity for Elders and Respected Persons (Elders) to contribute to the sentencing discussion. Others can also be involved in this process, such as support services, family, victims, and the wider community if they wish. The Koori Court also has more time allocated for the hearings of the accused. In addition the Judiciary and the relevant court

staff all receive training to assist them in being more culturally appropriate and able to work within the Koori Court principles.

This wider involvement in the Koori Courts is facilitated by the inclusive and informal court processes adopted by the Koori Court, such as using plain language and having a round table format. All of the court participants are also required to act in a more culturally appropriate and open manner, helping the defendant and other participants to feel relaxed and encouraged to contribute.

Underpinning the structure and process of the Koori Courts is the involvement of the Koori community in the development of the Courts. This helps ensure that the adopted activities and approaches are appropriate, and consider the needs of the wider Koori community.

Intermediate outcomes

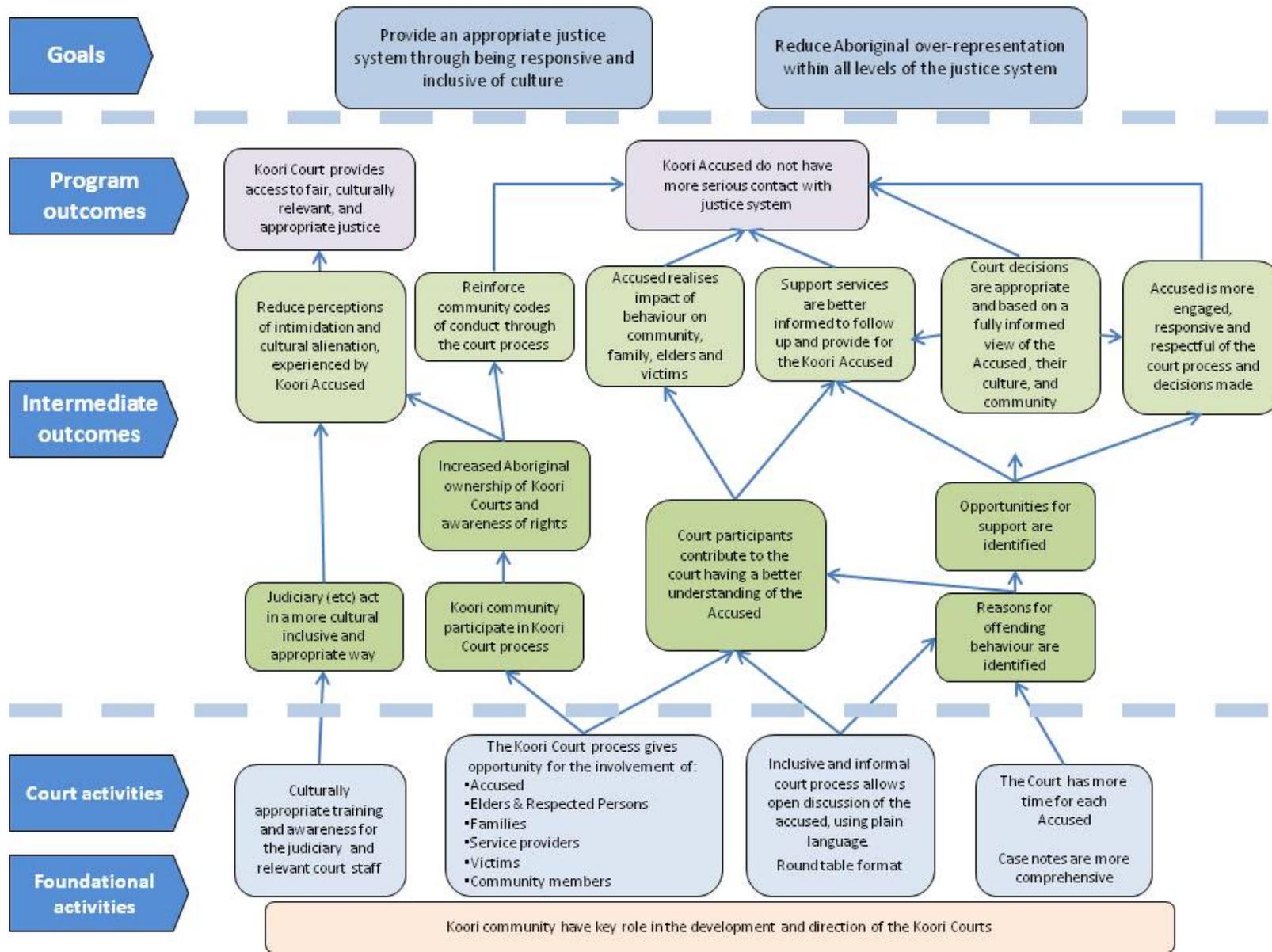
The activities of the Court help to work towards the achievement of intermediate outcomes. The participatory approach and atmosphere of the Koori Court helps achieve a more thorough and open sentencing discussion. This open discussion brings out a range of factors relevant to accused offending behaviour and support needs. This understanding of the accused allows the Judge to come to a sentencing decision that considers the personal background, culture, and community of the accused.

Any support needs that the accused may have will also be raised in the sentencing discussion, along with opportunities or services to provide that support. Through this process the support services will be better informed to follow up and provide for the Koori accused.

This open discussion, engaging the accused with a range of participants, also allows for the accused to realise the impact of their behaviour on community, family, Elders and victims. Also, the process aims to engage the participant throughout, whilst also demonstrating an effort to understand the circumstances of the accused. This helps the accused to be more engaged, responsive, and respectful of the court process and the decisions that are made.

The open and culturally appropriate nature of the court allows for greater participation of the Koori community. Koori community leaders and representatives also participate in the planning and establishment of the Courts. In addition to these community factors, the Judiciary and court staff are required to act in a more culturally inclusive and appropriate way. These factors provide for increased Aboriginal ownership of the Koori Courts and help to address experiences of cultural alienation and intimidation of the accused. In turn this provides access to fair, culturally relevant, and appropriate justice for the accused. Furthermore, the involvement of the Koori community provides an opportunity to reinforce codes of conduct through the court process.

Figure 1: Program Logic for the Victorian Koori Courts



Annex 2: Results chart

A results chart is a succinct account of program performance where actual results and outcomes are discussed in relation to what a program expected to see. Results charts are evidence-based, and include both positive and negative findings, providing a concise assessment of the effectiveness of a program with respect to its aims, objectives and anticipated outcomes. In the case of the County Koori Court, program performance has been summarised against the program logic model (see Annex 1). The results chart draws on data from interviews, focus groups, observations and sentencing remarks.

Expected results	Achievements of the County Koori Court 2009 - 2011	Data in support of findings
Court Activities		
<p>Culturally appropriate training and awareness for the judiciary and relevant court staff</p>	<p>Informants reported that the training had been effective in providing the judiciary and court staff with information on the history and culture of Aboriginal people in Victoria. In addition to the formal training provided to the judiciary, several informants reported that the process of engaging with the County Koori Court in the course of their role built their capacity in a broader sense. In this sense, the engagement of Judges and judicial staff in the Koori Court process represented an opportunity for the judicial system to be more aware of Aboriginal culture and history, as well as the impact this has on offending behaviour.</p>	<p><i>“All the Magistrates and Judges they all sat around [at the training] and said ‘this is really good for us’ because they don’t know the history of the Australian Aboriginal people” [Service Provider]</i></p> <p><i>“Judicial staff ... may not have even turned their mind to the differences between sentencing an aboriginal person with a certain history, compared to a white person with similar offences ... It sort of opens their eyes to that” [Strategic Informant]</i></p>
<p>CKC process gives opportunity for the involvement of the accused, ERPs, families, service providers, community members, barristers and victims</p>	<p>The involvement of a range of people in the County Koori Court process was highlighted as a key strength by 23 informants interviewed. The involvement of each stakeholder group, including the Accused, Elders, family members, service providers, community members, barristers and victims, was seen as a positive element of the Koori Court process. However, in particular, informants underscored the value of participation from Elders (10 informants), the Accused (4 informants) and their family members (4 informants).</p> <p>The majority of Accused interviewed reported that they valued the opportunity to speak directly about their history and circumstances impacting on their offending behaviour. The presence of family and community members in the courtroom offered emotional support, as well as the chance for additional information on the offending behaviour and its impact to be uncovered.</p> <p>In contrast to high levels of participation from some groups, there has been limited involvement of victims to date, with only one instance of a victim appearing for the sentencing conversation.</p>	<p><i>“One of the strengths of the Koori Court is that the offender by consenting to come into the process is really saying, ‘well I acknowledge that the Elders are going to play a role in the Court and they are people who I respect, and who I will listen to” [Judge]</i></p> <p><i>“I had my cousin around on the table ... and I had an uncle too in the back row ... [their presence in the court] made me feel sad, but it was good that they were there” [Accused]</i></p>

<p>Inclusive and informal court processes allow open discussion of the accused using plain language. Round table format.</p>	<p>A total of 18 informants interviewed spoke of the benefits of the informal and inclusive approach taken in the Koori Court, and this was particularly valued by Judges (4 informants) and the Accused (6 informants). In part, the court environment was credited with establishing a welcoming environment where Aboriginal culture is recognised and showcased.</p> <p>The open and inclusive approach of court participants (i.e. the Judiciary, Elders), combined with the physical environment of the Koori Court room, created a non-threatening atmosphere that encouraged participation from the Accused. The Accused said that the setting of the sentencing conversation (i.e. everyone sitting at a round table) made them feel comfortable.</p>	<p><i>“The environment is crucial to the success of the process because there is acknowledgement of people, culture and all those that are in the environment” [Service Provider]</i></p> <p><i>“In the Koori Court room ... it is a different atmosphere altogether. You are sitting together at a table, you are not sitting down and having a Judge looking down on you ... it feels like you are on a level playing field” [Accused]</i></p>
<p>Court has more time for each accused. Case notes are more comprehensive.</p>	<p>Stakeholders interviewed indicated that they appreciated the additional time allocated during the Koori Court to access information about the individual and their offending behaviour.</p>	<p><i>“In the mainstream court, it is like a sausage factory ... you go for a few minutes and you are out ... there is not the time available to access background information” [Service Provider]</i></p>
<p>Intermediate outcomes</p>		
<p>Increased Aboriginal ownership of Koori Courts and awareness of rights</p>	<p>A total of 8 informants interviewed spoke about how the County Koori Court had increased Aboriginal ownership of the judicial process, and the importance of this aspect was underscored by the Elders consulted (3 informants).</p> <p>Informants said they felt the Koori Court had made small steps in overcoming Aboriginal peoples’ historical mistrust of the judicial system and government agencies by allowing the Judge to hear matters more informally and listen to the advice and knowledge of Elders and community members. Elders valued their role in the process and the opportunity it gave them to be heard and spoke of how the Judges take into account the community knowledge they offer. As a result, they felt the Koori Court had engaged them in the justice process where they had been excluded from playing an active role in mainstream courts.</p>	<p><i>“We are seeing it differently than we have ever seen it, we are sitting opposite, we are part of this process now; before we were always excluded and ... I think we felt all along Aboriginal people weren’t being heard, weren’t being understood; because they are different ... I think we have come a little bit of the way with this system – and that is important to us as blackfellas - that we became a part of it, and the Judge actually listens to us as opposed to the old system ... we embrace it and it is great for us to be a part of this system and process” [Elder]</i></p>
<p>Judiciary (etc.) act in a more culturally inclusive and appropriate way</p>	<p>The approach of the judiciary to the Koori Court process was mentioned positively by 6 informants, including 3 Accused. In particular, the approach of Judges was recognised by informants as a critical factor in engaging the Accused. Informants characterised an appropriate approach as one that was open, allowing the sentencing conversation to flow and using informal language and conversation to engage the Accused. This interview data is supported by court observations, which note that the Judges often use very informal language and use personal information on the Accused (such as their sporting interests) to engage them in the sentencing conversation.</p> <p>Many of the Accused interviewed said they felt the Judge took time to get to know what they had been through in their lives, and discuss what they planned for their future. Several</p>	<p><i>“You hear more things from the Judge in the Koori Court system ... they want to know what you have been through in your life and where you think you are going and stuff like that, so it gives it a whole different perspective of course” [Accused]</i></p> <p><i>“He [Accused] said he remembered everything that was said and he said to me ‘that Judge, he looked me in the face like another man and we spoke to each other like men’, and he said ‘I don’t remember any of my other Judges or anything that was ever said in court at me before, but I remember</i></p>

	informants also suggested that a more personalised approach meant that the sentencing conversation had a greater impact on the Accused than in the mainstream courts.	<i>everything that was said that day” [Court Participant]</i>
Koori community participate in the CKC process	<p>The benefits of community participation the Koori Court were discussed by 12 informants interviewed. For the Accused, this mostly revolved around the benefits for them of having family members and friends at the hearing, for support as well as to speak on their behalf. The value of community participation more broadly was also discussed by several informants, who suggested it reinforced the impact of the offending on the community, and represented a public challenge to that behaviour.</p> <p>Although a lack of community participation was identified as a challenge for the Koori Court in the 2009 evaluation report, more recent data suggests that community awareness of the Court has started to gain some momentum. Hearings with the greatest level of community participation to date have been cases where the Accused have a family member who is highly respected or where the crime has been of significance to the whole community.</p>	<p><i>“It doesn’t ordinarily happen in communities, because everybody is out living their own lives, and there’s no other forum for that behaviour to be challenged” [Strategic Informant]</i></p> <p><i>“A lot of people are starting to talk about the Koori County Court ... I think the Koori grapevine, as we call it, has been out there and people are starting to take a little bit of interest ... The last one we did there was probably 25 community members here ... and I think 8 of them spoke, so they do realise ‘hang on a minute, we can actually have a say’, so I think that reflection has gone back into the community” [Court Participant]</i></p>
Reduce perceptions of intimidation and cultural alienation experienced by Koori accused	<p>A total of 12 informants spoke of the achievement of the Koori Court in reducing intimidation and alienation experienced by the Accused. This outcome draws together findings from several areas, including the approach of the Judge, the physical court environment and the inclusive sentencing conversation, which all contribute to improving the experience of the Accused.</p> <p>The data suggest that the Accused value the more personal approach of the Koori Court, and feel the process treats them as an individual by taking their history and circumstances into account. The combination of the culturally appropriate setting and more informal sentencing conversation meant the Accused felt more comfortable and accepted.</p> <p>In contrast, a minority of the Accused (2 informants) reported that they found the Koori Court to be a confronting and uncomfortable experience because they were unwilling to front their Elders. In this sense, the mainstream justice system was less confronting because it did not engender the same cultural shame of the Koori Court.</p>	<p><i>“When you go into the normal [mainstream] court room ... you are not confident at all, you just feel like that everything is against you... at the Koori Court, I am a Koori, I feel that I am already accepted in a place like that, whereas in other places I think you are just looked at as another number, just another guy coming through the system ... [in the Koori Court] you know that you are in a place where you feel the culture” [Accused]</i></p> <p><i>“I find it a lot easier to front the white justice system ... I am never going to see them again” [Accused]</i></p>
Reinforce community codes of conduct through court process	<p>The achievement of the Koori Court in reinforcing community codes of conduct was discussed by 16 participants interviewed, in addition to 21 participants who spoke of how the involvement of Elders contributed to shaming and reflection among the Accused.</p> <p>The involvement of Elders in the sentencing conversation reinforces community standards of behaviour by prompting the Accused to consider the broader impact of their offending. An overwhelming majority of the Accused (14 informants) recognise the authority of the Elders both as cultural leaders and as individuals who knew the background of the accused. The data show that Elders comments have a strong and lasting impact on the Accused, as 14 of the 15</p>	<p><i>“They [ERPs] talk to you, you feel like breaking down there and then. They know how we were raised, they know our honour side of our life and what we are as Aboriginals and what we should be representing as Aboriginal people” [Accused]</i></p> <p><i>“A lot of our Elders here have died out too young, and a lot of the grandkids have really got no vision of what they were like or how they were part of the community. And a lot of the times I think they are</i></p>

	<p>interviewed were able to recount the words of the Elders and spoke of being highly affected by their comments.</p> <p>Additionally, the Koori Court process was able to establish new connections to community for some Accused who had little knowledge of their ancestry or culture. For several Accused, this was the first time they had heard their family history, or were made aware that people from their community cared about them.</p>	<p><i>hearing it for the first time” [Elder]</i></p> <p><i>“It goes a long way actually for the Elders to show you that they care. You think that they have given you a chance, so we will take it” [Accused]</i></p>
<p>Accused is more engaged, responsive and respectful of the court process and the decisions made</p>	<p>A total of 17 informants highlighted the achievement of the Koori Court in improving the level of engagement, responsiveness and respect for the court process from the Accused. This was particularly emphasised by Judges (6 informants) and the Accused (7 informants). This interview data were corroborated through court observations, as in 10 of 13 hearings observed (2009-2010) the Accused were engaged directly in the sentencing conversations.</p> <p>An overwhelming majority of the Accused (11 of 15 interviewed) reported that they felt involved and engaged in the process of the Koori Court, even when they lacked the confidence to directly answer questions put to them by the Judge or other court participants. This was emphasised as one of the major differences for the Accused – whereas they viewed mainstream courts as a passive process, they spoke positively of the opportunity to be actively involved in the Koori Court process. For the majority of Accused, this led to a sense of ownership of the process and the sentence itself.</p>	<p><i>“I think the Koori Court was pretty fair. When you go to the other court they sit there and don’t listen to where you actually came from and your background ... but [in the Koori Court] you can sit down at the table with the Elders and express yourself and they listen to what you have to say” [Accused]</i></p> <p><i>“I think there’s more of an acceptance of the punishment at the end of it because people feel like they’ve had some kind of ownership over the process” [Barrister/Solicitor]</i></p>
<p>Accused realises the impact of behaviour on community, family, elders and victims</p>	<p>In total 13 informants, including 4 Judges and 5 Accused, agreed the Koori Court had contributed to the Accused realising the impact of their offending on the community. As a result of sentencing conversation with Elders and input from family members and community, the Accused reported that they had a fuller understanding of the impact their offending had on the broader community. This was particularly salient in cases where the Accused did not have a strong connection to community, and stakeholders reported that the sentencing conversation also provided an opportunity to explore the extent to which the Accused were engaged with their own culture. This often paved the way for connections to be developed with service providers who could trace the heritage and history of the Accused.</p>	<p><i>“I felt ashamed when the Elders were coming down on us. I didn’t realise we had let other people down ... not just ourselves ... it makes you realise how much it affects the whole community and the extended communities, not just us and our immediate families” [Accused]</i></p> <p><i>“[the discussion around community impact] is done sensitively because there is an exploration as to what extent the defendant is connected with their local indigenous community” [Judge]</i></p>
<p>Court decisions are appropriate and based on a fully informed view of the accused, their culture and community</p>	<p>This was one of the most frequently cited strengths of the Koori Court process, with 22 informants highlighting the value of the additional information that is accessed through the sentencing conversation. The value of gaining a fully informed view of the Accused was particularly stressed by Judges (6 informants), Elders (5 informants) and the Accused themselves (7 informants). In several court sessions, it was observed that the Judge openly solicited information about the history of the Accused from Elders and, in some cases, directed queries to community members present at hearings.</p>	<p><i>“It really gave me a lot more information [about the accused] ... That means that your decision is a more fully informed decision, but it also means that you get a really good sense of what is happening in the person’s life and how remorseful they are for what they have done, and what they do see for themselves in the future” [Judge]</i></p>

<p>Court participants (including Elders, Judges, legal professionals, service providers and community members) contribute to the court having a better understanding of the accused</p>	<p>The contribution of the various stakeholder groups to the court process was mentioned a total of 47 times in interviews. There was overwhelming agreement on the value of the Elders to the Koori Court, with 21 informants (including 6 Judges and 7 Accused) highlighting the knowledge they contribute about the community, culture and the Accused. Elders were seen as speaking from a position of authority, not just as leaders but as community members who had witnessed or experienced the same types of social disadvantage and disorder as the Accused.</p> <p>Legal professionals were able to contribute to the Court’s understanding of the Accused when they adopted an appropriate approach for the environment, and encouraged their clients to actively engage in the sentencing conversation.</p>	<p><i>“We have also come from similar backgrounds to some of those kids who are standing up in front of us now, we have lived around where there has been domestic violence, family violence, community violence”[Elder]</i></p> <p><i>“I think the solicitors who do work in the Koori Court go there with a different persona, and a different outlook on things” [Service Provider]</i></p>
<p>Opportunities for support are identified</p>	<p>The ability of the Koori Court to identify opportunities to support the Accused was recognised as a strength by 14 informants, including 4 Judges and 4 Accused. This achievement is also evidenced by observations, where in 5 of 13 hearings (2009-10) there was a conversation between Judges, Elders and service providers about support options</p> <p>The involvement of service providers was seen as offering significant benefit to the sentencing conversation, although a lack of involvement was identified as a challenge for the Koori Court. In observations, their presence enabled the discussion of a range of support options and the tailoring of sentences based information about what programs operated in the area. Recent data suggests that service provider involvement is increasing, due to ongoing contact and engagement by Koori Court staff.</p>	<p><i>“There has been a number of people that have gone before the [Koori Court] and they have been linked into specific programs; those programs have assisted the individuals not only to take more ownership of their own direction, but they have become more aware of their responsibilities within the community ... and as a result they have become more motivated in moving forward” [Service Provider]</i></p> <p><i>“We are getting more service providers out ... But yeah if it wasn’t for us saying ‘come on, come along’ we would not have anybody” [Court Participant]</i></p>
<p>Reasons for offending behaviour are identified</p>	<p>A total of 14 informants agreed the Koori Court process allowed reasons for offending behaviour to be identified, and the value of this was highlighted by Judges (5 informants). The interview data were also supported by the sentencing remarks analysed for 13 hearings. In each case, the presiding Judge summarised the history, background and issues facing the Accused and discussed how these factors had impacted on their offending behaviour. Across the 19 sentencing remarks analysed, there were 4 mentions of information provided by Elders, 5 mentions of service providers, and 5 mentions of community or family members. This demonstrates the extent to which the Judge referred directly to information that is unlikely to have been accessed in a mainstream court. Judges spoke of how this fostered a fuller understanding of the accused and the circumstances around their offending. Several Accused also indicated that they had valued the opportunity to discuss their issues with the Court.</p>	<p><i>“He said ‘I want to know from when you were a kid to now’. So I just told him everything, like me whole life. Brought up around alcohol, parents’ abuse and what-not ... I don’t really like to talk too much, or tell anyone about me bullshit. But yeah, I opened up to him, and it was kind of refreshing for me to get certain things out” [Accused]</i></p> <p><i>“It enables you to have a deeper understanding of him, and not feel antagonistic ... to be able to sort of relate to him as a person who does have history” [Judge]</i></p>
<p>Support services are better informed to</p>	<p>Support services interviewed reported that they benefited from their participation in the sentencing conversation, as it provided them with detailed information on the background of the</p>	<p><i>“I think [being present] improves the service, in that right from the start we can be speaking to the</i></p>

follow up and provide for the Koori Accused	Accused and their level of connectedness to their community. They also highlighted that the sentencing conversation, particularly the involvement of the Elders, resulted in better engagement from the Accused as the comments from Elders motivate the Accused to follow through with the support options identified.	<i>offender about the expectations and the consequences if they were to get an order ... Saying this in front of the Judge and Elders ... can be very positive” [Service Provider]</i>
Program outcomes		
Koori Court provides access to a fair, culturally relevant and appropriate justice	<p>Overwhelmingly, the evidence demonstrates that the experience of the Accused was vastly improved in the Koori Court system. Of the 15 Accused interviewed, 14 agreed that the process was more engaging, inclusive and less intimidating than the mainstream court. This was the case even when the Accused aired grievances regarding the sentence they had received.</p> <p>By involving ERPs, community members and the Accused themselves in a more informal sentencing conversation that takes place around a table, the Koori Court offers a process that is far more culturally appropriate and relevant than the mainstream system, where there is little reflection on the background of the Accused, their culture or their community.</p> <p>This improved experience was found to not only contribute to an equitable and culturally appropriate system, but also to improved outcomes for the Accused. These outcomes include being more engaged and respectful of sentencing decisions, which in turn facilitate adherence to court orders and motivations to address causes of offending behaviour.</p>	<i>“We find that we are engaging a lot more and we are bringing them to the table and hopefully we are changing the way they think. We are not particularly happy the way they are doing things and we want them to change their ways, and so we don’t get that opportunity to say that in the mainstream Court where we are provided to go in the Dock and hold the Bible in our hand, and to us that is traumatic ... but in this one it is around the table and the sentencing conversation is the way we like, we prefer it that way, it goes back to the old days when people sat around the camp fires and talked with Elders” [Elder]</i>
Koori accused is diverted from more serious contact with justice system	<p>Of the 31 Accused included the analysis of reoffending data only one (1) was found to have reoffended for the low level offence of ‘being drunk in a public place’. In addition, there has only been one (1) breach of a court order, where the Accused breached the conditions of their CBO. There has also been one (1) failure to appear in court.</p> <p>The qualitative data collected as part of this evaluation also indicates that the Koori Court process has some benefits in promoting deterrence (intention to change behaviour on behalf of the Accused) and the potential for rehabilitation (through the participation of support services in the Court).</p> <p>For many Accused (11 of 15 interviewed) the Elders had a considerable deterrent effect. The majority of the Accused reflected that the prospect of re-offending and returning to face their Elders in the Koori court was more daunting than fronting the mainstream system. At the same time, the sentencing conversation with Elders and Judges prompted many Accused to reflect on their offending behaviour and consider their future in a different light.</p> <p>The involvement of service providers and the development of tailored support options for each Accused was seen as critical in providing the practical support necessary to address underlying causes of offending behaviour.</p>	<p><i>“When they are out [of custody] there is nothing. There is no housing, no education, no employment, so they just jump back on the same treadmill again and away they go again” [Elder]</i></p> <p><i>“I won’t be going back to my old ways, I am making a difference while I am in here ... I am not going to re-offend mate ... I don’t want to go back to Koori County because I told them I wasn’t ... this time I promised them when I get out I am going to pull my head in and I said to [Elder] I will prove to him when I get out ... I am well and truly over it - when I get out I will start afresh” [Accused]</i></p> <p><i>“You can see and hear the emotion of the Elders talking to you, they were sort of upset seeing their young ones in there facing jail, sure they made us feel bad as well about that, so it made us take a step back and gave us opportunities to move forward” [Accused]</i></p>

Annex 3: Literature review

A literature review of previous evaluations of Indigenous sentencing courts in Australia was undertaken as part of the evaluation. The literature review provides background information on the court jurisdiction, location and establishment date, as well as describing the court aims, history and process. Where evaluations of sentencing courts were available, these were summarised in terms of their objectives, methodology, recidivism findings, other key findings and recommendations.

1. Victoria: Magistrate’s Koori Court

Court jurisdiction	All offences able to be heard in the Magistrate’s Court, except sexual offences, contraventions of family violence intervention orders and contraventions of stalking intervention orders. For the Court to hear a matter the accused must be an Aborigine, the accused must plead guilty/ intend to plead guilty and the accused must consent to the matter being heard in the Koori Court ¹
Location	Magistrate’s Courts of Shepparton, Broadmeadows, Warrnambool (circuit court), Mildura, Latrobe Valley, Bairnsdale, Swan Hill ¹
Establishment date	First established as a pilot in Shepparton 7 October 2002, followed by Broadmeadows on 1 April 2003 ¹
Evaluation date	March 2006 ² ; March 2009 (Warrnambool circuit court) ³

Description

In contrast to Indigenous courts in other states, the Magistrates Koori Court (MKC) was established by legislation (the *Magistrates’ Court (Koori Court) Act 2002 (VIC)*), which provided for the formation of the court, its jurisdiction and some procedural aspects. Since the pilot of the Court in Shepparton and Broadmeadows, it has been rolled out across several regional and metropolitan courts.¹ The MCK has both community building and criminal justice objectives:

Criminal Justice	Community Building
<ul style="list-style-type: none"> • reduce Indigenous overrepresentation in custody by directing indigenous offenders away from prison, through the use of alternative sentencing options • decrease the rate of offending and reoffending • decrease the number of accused persons failing to appear in court • reduce the number of breached court orders • incorporate Indigenous people in the sentencing process • create a more accessible, culturally appropriate and comprehensible criminal justice system, with and for Indigenous people 	<ul style="list-style-type: none"> • develop culturally relevant and responsive court processes and outcomes • increase positive Koori participation in the criminal justice system, including in sentencing and corrections processes • enhance the understanding of the accused and the Koori community in the criminal justice system and in required standards of behaviour • increase the accountability of the accused in relation to crimes committed

Procedurally, the MKC is required to operate with minimal technicality and formality, taking the time necessary to understand the matter in a way that is comprehensible and culturally appropriate. Operationally the implementation of these procedural guidelines is largely left to each Koori Court and the presiding magistrates, allowing each court to tailor its processes to suit the local context. The court is designed to encourage a ‘sentencing conversation’ rather than an adversarial contest.¹ The walls are furnished with Indigenous art and both the Aboriginal and Torres Strait Islander flags, and the hearing commences with a recognition that a smoking ceremony was carried out prior to the operation of the court.

Harris, Mark. 2006. 'A Sentencing Conversation': Evaluation of the Koori Courts Pilot Program October 2002 – October 2004. Melbourne: Department of Justice Courts and Programs Development Unit ²

Objectives	Methodology	Recidivism findings	Other key findings	Recommendations
<ul style="list-style-type: none"> To determine effectiveness in relation to the stated aims of the MCK pilot program To gather information to support future policy development and decision making To review the policy and where appropriate legislative framework underlying the program to inform the development of future initiatives Determine whether the establishment of the court has i) reduced over-representation ii) improved Aboriginal access to justice-related services iii) Promoted greater awareness in the Aboriginal community of their civil, legal and political rights 	<ul style="list-style-type: none"> Case records collected by Koori Court Officers Data re corrections orders, court records Data on the rates of arrest of Indigenous defendants Interviews with: <ul style="list-style-type: none"> Magistrates (5) Elders/RPs (7) Koori Court Officers (2) Police prosecutors (2) Defence solicitors (3) Community corrections (3) RAJAC exec/staff (4) Aboriginal community orgs (3) Support services (1) Court staff (3) Victim representative (1) DoJ (1) 	<p>Recidivism measure in this evaluation as the conviction of the defendant for a subsequent offence within Oct 2002 – Oct 2004 for Shepparton; and Apr 2003 to Oct 2004 for Broadmeadows.</p> <p>* note: defined as re-conviction not re-arrest</p> <ul style="list-style-type: none"> Recidivism rates for Shepparton: 12.5% (21 re-offenders from 167 matters) Broadmeadows 15.5% (14 re-offenders from 90 matters) Recidivism rate for all Vic defendants: 29.4% <p>* Note: Victorian rate excludes persons who receive a fine/ are discharged without any correctional sanctions. Possible that these cases were included in the figure for the Koori Court recidivism rates – no distinction made in the data.</p>	<ul style="list-style-type: none"> Reductions in the breach rates for community corrections orders and rates of Kooris failing to appear for court dates Increased level of Koori participation and ownership Less alienating for defendants – allowed them to give their account of reasons for offending Provided mechanism where sentencing process takes account of cultural considerations Particularly effective means of integrating various service providers who might be involved in the tailoring of community based orders Reinforced status and authorities of ERPs – strengthening the Koori community Pilot effectively broadcast vision of MKC such that they have received support from some sceptics. 	<ol style="list-style-type: none"> Vic Govt should enact legislation to ensure that the Koori Courts continue to operate beyond the period specified by the sunset clause in original legislation (30/6/2005) Establish an integrated computerised information system, make the COURTLINK Indigenous identifier mandatory Procedures of the MCK ensure that statement of recognition of traditional owners is made at the commencement of each individual matter Magistrates should have some previous experience working with Indigenous people/ have cross-cultural training DoJ and Magistrates Court examine the possibility of creating a bench-book for the MKC to assist newly created courts and ensure a level of consistency in all courts All Koori courts have access to Indigenous Community Corrections Officer DoJ should persevere with goal of establishing the Koori Justice Panel Should consider a Koori Court Registrar for Broadmeadows and all other Koori Courts Review should be undertaken of the programs and services currently being utilised by MKC, e.g. drug and alcohol treatment programs Koori Court legislation should not be amended to include contested matter or 'not guilty' pleas, but defendant should be given the option of having the sentencing phase heard in the Koori Court after a guilty verdict has been given If 10 is enacted, eligibility of defendants could be assessed by Elders and RPs, and magistrate Exclusion of sexual and family violence offences be retained Criminal Justice Diversion Program legislation be incorporated into MKC proceedings as component of the pre-sentencing phase MKC model should be extended throughout Victoria Position of coordinating Magistrate for the Koori Court Division be created MKC be extended to service unmet demand in the metro area MCK be established at Echuca to sit as part of circuit with Shepparton DoJ should undertake cost analysis to determine the actual cost of maintaining Koori Courts, to ensure all future courts are adequately funded Steering committee should be formed to oversee the ongoing administration and development of Koori courts

Objectives	Methodology	Recidivism findings	Other key findings	Recommendations
<ul style="list-style-type: none"> • Determine the effectiveness of the Warrnambool Circuit Koori Court (WCKC) in terms of process and outcomes • Determine and analyse community confidence in the WCKC model • Address and analyse recidivism rates for offenders 	<p>(none given – executive summary only)</p>	<p>Listed as one of the objectives of the evaluation, but nothing about it in the report. Not listed as a limitation.</p>	<ul style="list-style-type: none"> • <u>Koori Court model issues</u> (relevant to all Koori Courts) – availability of data; training across all roles; clarity of ERP roles; sufficient access to services; operational issues (incl. support of the Koori Court Officer, operational manual, staffing issues); clarity of roles (exacerbated by staff changes) • <u>Circuit Court issues:</u> (common to all Circuit Courts across Victoria) – travel, timetabling, facilities (incl. amenities, courtroom space), access to staff and information. • <u>Service providers:</u> needed to be better integrated into the WCKC with an improved brokerage model • <u>Lack of community engagement:</u> can be partly attributed long vacancy in Koori Court Officer role. • <u>ERPs:</u> in some cases are not drawn from the local community (i.e. reside in other areas). Although there is funding to engage more ERPs, there is a lack of engagement in the local area. • <u>Police prosecutors:</u> there was some dissatisfaction with the police prosecutors, and some representatives of the Koori community did not see a role for them in the process as the defendant had plead guilty 	<ol style="list-style-type: none"> 1. a) that the current model of the Koori court remains as it is and continues to sit in Warrnambool, Portland and Hamilton b) A designated day or set start time is agreed; arrangements are made for a Registrar Officer position to be available to Koori defendants; a <i>Koori Plan Language Legal Guide</i> document be prepared and distributed c) arrangements be made to recruit more Koori ERPs 2. All courts should be set up in accordance with the Koori Court model, inclusive of oval table, Aboriginal flag, Smoking Ceremony etc. 3. Koori Court Officer and other Koori Court staff have a presence in the community in each of the locations of the Circuit Court. Should build partnerships with key community stakeholders and service providers. 4. DoJ develop a Needs Analysis Model for the implementation of future courts, to address physical infrastructure, court location, Indigenous population growth, offending rates, access to services etc. 5. Cultural Awareness Training should be provided for all staff. Training program should invite Koori elders and local community members to participate and engage. Quarterly follow up sessions should be held. 6. Magistrates should attend a culturally based training program implemented by the Indigenous Issues Unit before presiding over Koori Court matters. Important to ensure all Magistrates have a profound understanding of culturally based issues of the Koori Community 7. Koori Court Elders and Respected Persons: <ol style="list-style-type: none"> a. Should receive additional training and information sessions b. Individual ‘Professional Development Action Plans’ developed for ERPs c. Decision made on day-to-day management of ERPs d. Support person to be provided for ERPs – provided on a needs basis, could include transport/ assistance for ERPs with medical needs 8. Koori Court Unit MCV and DoJ develop ongoing training strategy for all roles 9. Koori Court Integrated Services Program (KCISP) <ol style="list-style-type: none"> a. Should be established as part of the WCKC b. Arrangements should be made to convene a meeting of key stakeholders and decision makers who can allocate funds c. KCISP Action Plan prepared d. Services could include family violence, housing services etc.

2. Victoria: Children's Koori Court

Court jurisdiction	Offences must be within the jurisdiction of the Criminal Division of the Children's Koori Court of Victoria, and not a sexual offence. Defendant must be between 10 and 18 at the time of the alleged offence(s), and under 19 at the time of being brought before the CKC; must intend to plead guilty and must consent to matter being heard by CKC. ⁵
Location	Melbourne, Mildura
Establishment date	2005 (Melbourne), 2007 (Mildura)
Evaluation date	3 August 2009 (DoJ/Clear Horizon), October 2009 (Borowski)

Description

The Children's Koori Court was established by the *Children and Young Persons (Koori Court) Act* in late 2004, and the Court began operating in Melbourne as a two year pilot program in October 2005.⁴ The concept of a Children's Koori Court was first raised at the Koori Juvenile Justice Program forum, and in October 2003 the Aboriginal Justice Forum (AJF) decided that a joint project between DoJ and DHS should be established to consider establishing a children's court. The development of the court was overseen by a state-wide Reference Group drawn from members of the justice sector such as VALS, existing Magistrate's Koori Courts, Victoria Police and the Victorian Aboriginal Justice Advisory Committee (and others).⁴

Like the Magistrates Koori Courts, the Children's Koori Court has both criminal justice and community building objectives.⁵

Criminal Justice: reduce overrepresentation of Koori youth in Victoria's juvenile justice system

- Reduce the failure-to-appear rate at court by Koori youth
- Reduce the rate at which court orders are breached
- Reduce the rate and seriousness of reoffending
- Build a culturally responsive juvenile justice system for Koori youth

Community Building: increase Indigenous ownership of the administration of the law

- Increase positive participation by Koori youth, their families and their community in the Court
- Increase accountability of the Koori community for Koori youth
- Promote/ increase Koori community awareness about community codes of conduct/ standards of behaviour

The Children's Koori Court sentencing options are equivalent to those in the mainstream Children's Court. All supervised orders and those involving detention are administered by the DHS Youth Justice Section. The court process includes involvement from Elders and Respected Persons (ERPs) who provide advice to the sitting magistrate.⁴

Key personnel for the Children's Koori Court were provided with training. ERPs received two days training to introduce them to the criminal justice system. A further two days training was provided to all Children's Koori Court participants and focused on legislation, policies and mock trials. A fifth day of cultural training was provided for non-indigenous stakeholders.

Objectives/KEQs	Methodology	Recidivism findings	Other key findings	Recommendations
<p><u>Outcomes</u> 1. To what extent have the Children's Koori Court's (ChCK) objectives been realised?</p> <p><u>Process</u> 2. Does the ChCK serve its target population? 3. Has the ChCK been implemented in accord with its design? 4. How do court actors and defendants and their families experience the Children's Koori Court?</p> <p><u>Improvement</u> 5. What improvements should be made to the ChCK?</p>	<p>– Data from Courtlink, LEAP (Law Enforcement Access program) – used to determine failure to appear rate and track re-offending</p> <p>– Observation of trials (19 hearings over 11 sittings)</p> <p>– 18 semi-structured interviews</p> <p>– Information on defendants from ChCK worker files on the population of Kooris who appeared during the 1st 2 years of its operation (n=62)</p>	<p>(Evaluation tracked 62 Koori youth who appeared in the first 2 years of the ChCK as a means of ascertaining recidivism rates)</p> <p>Overall, 49 members of the study population (79%) were found to have reoffended. <i>NOTE: A DHS study covering 1997 – 2001 put the Indigenous recidivism rate at 65%, a second study put the rate at 78.4%</i></p> <p>The Research Advisory Committee advised that it was possible that subsequent appearances related to offences committed prior to the initial ChCK hearing and thought the actual recidivism rate was probably around 57%.</p> <p>The seriousness of offences was rated using the National Offence Index – evaluation found that in the majority of recidivism cases the offence was either less serious (43%) or no more serious (24%)</p>	<ul style="list-style-type: none"> • There was a low rate of failure to appear – suggests Koori ownership. • Observations and interviews confirmed the cultural responsiveness and inclusiveness of the ChCK – ERPs engaged with magistrates, service providers and defendants. • Interviews and observations indicated that the ChCK increased participation, increased accountability and promoted Koori awareness of codes of conduct • There was more time to 'properly' process cases – more meaningful than mainstream courts. ChCK experienced as highly respectful and less formal 	<p><i>Evaluation presents 'Areas for Improvement' rather than recommendations</i></p> <ol style="list-style-type: none"> 1. Strenuous efforts need to be made (perhaps most appropriately by the CKC Worker) to try to ensure that defendants do not appear in court without at least one supporting family member 2. Where practicable, members of the defendants mob or community should be encouraged (perhaps most appropriately by the ChCK worker) to attend the hearing. 3. Representatives of Indigenous community service agencies need to be present at all hearings of the ChCK 4. Indigenous community service agencies that service the often complex needs of the ChCK clientele require much more adequate resourcing 5. Formalized service relationships between the ChCK and service provider agencies in order to implement case plans should be considered 6. Greater effort needs to be made by the magistrates to facilitate the engagement of defendants in the conversation that occurs around the oval bar table, for example, through posing questions directly to the defendant, at least in the first instance, rather than to the defendant's lawyer 7. Both magistrates and ERPs require further ongoing training, e.g. in communicating with young people of various ages 8. Indigenous culture needs to feature much more prominently in the interactions between magistrates and defendants and especially between the ERPs and the defendants 9. The selection process for ERPs may require refinement 10. The adequacy or suitability of the waiting area for ChCK defendants, their family members and other community members may warrant consideration.

Objectives/KEQs	Methodology	Recidivism findings	Other key findings	Recommendations
<p><i>Goal:</i> To ascertain the impact of the CKC in achieving intermediate outcomes linked to its overall objectives and inform strategic decisions around the applicability of the current model to expansion state-wide</p> <p><u>KEQs</u></p> <ol style="list-style-type: none"> 1. What do defendants and family think of the CKC process? 2. Are Indigenous service providers appropriately resourced? What is the impact on the objectives of the court? 3. To what extent are ERPs and KCOs supported in the process? 4. To what extent has the CKC contributed to increased Koori participation in the court system? 5. How actively are the key players engaged with and supportive of the model? 6. To what extent does the participation and role of ERPs influence defendants and their families? 7. What has been the impact of the CKC on defendants' relationship with their Koori community? 8. To what extent has the CKC contributed to a change in practice of those participating? 	<p>Performance Story Reporting technique (modified to 3 steps)</p> <ol style="list-style-type: none"> 1. <u>Scope</u> Program logic/ planning workshop 2. <u>Data trawl/ synthesis of data</u> Existing data; 15 semi-structured interviews 3. <u>Evaluation summit</u> 22 stakeholders, selection of vignettes 	<p>N/A</p>	<ul style="list-style-type: none"> • Overwhelming support for the ChCK – seen as contributing positively by providing forum for Koori values, better way of dealing with young offenders • Sense that children coming before the ChCK are getting younger – raised issues around how well the process worked for very young offenders • Complexity of needs of children before the ChCK, meaning court is often faced with children who require high-level intense and long-term support – addressing complex needs requires more input and interaction with families and children. <p><u>Factors that support success:</u></p> <ul style="list-style-type: none"> • Ongoing training and development of ERPs and judiciary • Reflective practice • Strength of conversation <p><u>Factors that impede model:</u></p> <ul style="list-style-type: none"> • Ability of support services to meet demand • Complexity of family issues • Maintaining numbers through the ChCK <p><u>Key achievements include:</u></p> <p>High levels of support for ChCK, defendants taking responsibility, meaningful engagement, identifying underlying issues, opportunity to listen, reinforced importance of culture, more inclusive and supportive process, change in attitude toward justice system, role of elders, impact on families, support services for defendants, increase coordination, Koori friendly.</p>	<ol style="list-style-type: none"> 1. Ongoing training and support to ERPs, Judiciary and KCOs be strengthened to ensure ongoing maintenance of high standards 2. ChCK should develop a coordinated and comprehensive promotion strategy to raise awareness in the Koori community and other stakeholders 3. Enhance support services available to ChCK – services play a crucial role but are not always able to meet demand. Formalised service agreements between the ChCK and service providers should be developed to help achieve this. 4. ChCK should be expanded throughout Victoria – participants in this evaluation consider there to be a strong demand across Victoria, could potentially be co-located with existing Magistrates Koori Courts. <p><u>Recommendations were based on the key issues identified by evaluation:</u></p> <ul style="list-style-type: none"> • Resourcing of support services • Family context and complexity – family involvement is critical • Getting kids into ChCK – ensuring numbers were maintained, improving awareness • Children getting younger • Limited access/ jurisdiction – sense that some communities felt disadvantaged not having access to the ChCK • Ongoing training – strong process overall but needed improvement in some areas.

3. Queensland: Murri Court

Court jurisdiction	Defendant must be Aboriginal or Torres Strait Islander; must have pleaded guilty or intend to plead guilty to an offence in the Magistrates court; and must have consented or requested to be sentenced in the Murri Court. All offences that fall within the jurisdiction of the Magistrates Court can be heard in the Murri Courts
Locations and establishment dates	Brisbane Adult (2002) and Youth (March 2004) Rockhampton Adult (June 2003) and Youth (October 2004) Mount Isa Adult (pilot - February 2004, reconvened - December 2005) and Youth (July 2006) Caboolture Adult (July 2008) and Youth (February 2006) Townsville Adult (March 2006) and Youth (February 2006) Also located in: Coen, Cherbourg, Caloundra, Cleveland, Ipswich, Cairns, St George, Mackay, Richlands (no establishment dates found)
Evaluation date	2006 ⁷ (Department of Justice and Attorney-General, internal review) 2010 (Morgan and Louis) ⁶

Description

Queensland's first Murri court was established in 2002, based on the Nunga Court model in South Australia. Murri courts are instigated through partnerships between local Magistrates and Elders from local Indigenous communities. Currently, Murri courts operate in fourteen locations across Queensland.⁶ The objectives of the Murri court are:

- to reduce the overrepresentation of Indigenous offenders in prison and juvenile detention
- to reduce the number of Indigenous offenders who fail to appear in court, which can lead to the issuing of warrants for arrest and imprisonment
- to decrease the re-offending rate and number of court orders breached by Indigenous offenders, which can lead to prison
- to strengthen the partnership between the Magistrates Court and Indigenous communities to deal with Indigenous justice issues appropriately⁸

The role of ERPs in the Murri Court process is authorised under the *Penalties and Sentences Act (1992)*, which provides a court must have regard to submissions made by community justice groups in the sentencing process for Aboriginal and Torres Strait Islander offences.⁷ The role of ERPs in the court process includes advising the Magistrate about cultural issues, assisting the offender in understanding the court process, assisting the Magistrate decide on a sentence and acting as a connection between the court and local Indigenous communities.

The Murri Court processes are intended to be less intimidating and more informal than the mainstream Magistrates Court. The offender is not handcuffed or placed in the dock, and instead sits at the bar table with the other court participants. The offender is encouraged to speak directly to the court and ERPs are invited by the Magistrate to address the offender in turn. The Magistrate is responsible for the court orders and any sentencing decisions made in the Murri Court.

Objectives/KEQs	Methodology	Recidivism findings	Other key findings	Recommendations
<p>Commissioned by AG/ Minister for Justice to:</p> <ul style="list-style-type: none"> • Understand and assess MC objectives, functions and processes • Determine whether objectives are being met • Identify how much it costs to operate • Determine whether new laws are needed for continued operation • Determine whether it is adequately resourced • Identify what changes would improve it 	<p><u>Process:</u></p> <ul style="list-style-type: none"> • free phone number established so people could make telephone submissions • call for submissions via email and post • face-to-face consultations with key stakeholders e.g. Magistracy, community justice groups, Indigenous community leaders/ members, Indigenous legal groups, government departments, service providers • Observations of 34 MC sittings • Quantitative data provided on court workload, offender demographic and court outcomes <p><u>Data:</u></p> <ul style="list-style-type: none"> • 42 telephone submissions • 74 written submissions • 128 organisations participated in face-to-face interviews or meetings • Overall 478 people participated in the review 	<p>N/A – insufficient data</p>	<ul style="list-style-type: none"> • ERP involvement in the court process assists the offender in developing trust • Court’s problem solving focus assists offenders to undertake rehabilitation • Presence of offender’s community in the court assists the offender to be more responsible for their behaviour and increases their awareness of impact of victim and community • MC is more effective because offender is acknowledged in process and encouraged to change/reintegrate • MC an effective mechanism for increased participation and ownership of Indigenous community in justice process • Limited data collection processes available to report on impact on imprisonment rates and reoffending 	<ol style="list-style-type: none"> 1. Recommended that further objective be added: ‘strengthening partnership between Magistrates Court and indigenous communities’ 2. JAG develop an information system/database to in consultation with government agencies. Court staff should be trained to operate the database 3. Conduct an independent qualitative and quantitative evaluation 4. Appoint an MC liaison officer in each location and a state-wide MC coordinator 5. MC Magistrates be relieved of usual court duties as required to build and maintain relationships 6. Daily expense allowance be paid to ERPs 7. JAG arrange transport for ERPs and for court liaison officer to engage with indigenous community and rehabilitative service providers 8. JAG explore possibility of allowing Indigenous public sector workers to take paid special leave for hours spent supporting MC outside role 9. Room be provided to ERPs/ community groups on MC sitting days where they can meet prior to court, read documentation etc. 10. Provide training to community justice groups and ERPs 11. Provide training for all MC stakeholders including biennial conference 12. CEO Committee on Law and Justice consider undertaking 2 year research project to examine rehabilitative needs/ diversionary programs 13. QLD Government make submissions to Commonwealth for funds 14. Legislative base be developed for MCs for consistency 15. MC be included in the QLD Wide Interlinked Courts system 16. ‘Murri Court’ name be retained, or alternatives suggested by communities 17. JAG State-wide Murri Court Coordinator explore and report to government on options/ mechanisms to include victims 18. Future development of MCs considered following results of external evaluation in 2009-10.

Objectives/KEQs	Methodology	Recidivism findings	Other key findings	Recommendations
<p>Purpose: to review and report on the operation and outcomes of the Murri Court system over a 2 year period (2007 - 09)</p> <p>KEQ: To what extent is the Murri Court meeting its objectives?</p> <p>Aims of evaluation:</p> <ul style="list-style-type: none"> • Document the model of operation • Assess potential impact of MC models on sentencing outcomes and reoffending behaviour • Determine criminal justice impacts of MC on rates of imprisonment, reoffending, completion of court orders, court appearance rates • Determine the health and social impacts of MC on participants • Determine impact of MC on relationship between court and community • Estimate cost savings • Outline recommendations 	<p>Five sites selected: Brisbane, Caboolture, Rockhampton, Townsville and Mt. Isa.</p> <p>4 key components:</p> <ol style="list-style-type: none"> 1. Development of data collection systems: created new database to capture data. Offender profile questionnaire created and implemented 2. Assessment of operation of the MC: development of systems model (mapping court process) for each of the 5 sites. Supplemented by interviews with key MC stakeholders focussing on court processes. 3. Qualitative assessment of MC impact: individual and group interviews with a focus on partnership between court and community. Also included observations of court sittings at all 5 sites. 4. Quantitative assessment of impact: descriptive statistics of MC participants, attendance rates, sentencing outcomes, post-MC recidivism analysis. 	<p>All statistical recidivism measures were compared to a control group of Indigenous defendants sentenced in mainstream courts.</p> <p>3 measures of recidivism:</p> <ol style="list-style-type: none"> 1. Time taken to reoffend: found no significant difference between offenders sentenced in MC compared to mainstream for either Adults and Youth 2. Seriousness of re-offence: found no significant difference (both Adult and Youth) 3. Frequency of offending (before and after each offender's first matter): no significant difference for either MC or control group in Adult group. Found juveniles were significantly more likely than the control group to offend less frequently – due primarily to the difference in regional courts 	<ul style="list-style-type: none"> • Proportion of offenders subject to warrant is lower for offenders appearing in a MC than for Indigenous offenders in mainstream courts • Adult MC participants slightly more likely to receive custodial penalty, but with immediate parole/suspended sentence/ a form of community order • For recidivism objectives to be achieved, strategies required to enhance the capacity of rehabilitative programs to address social issues • MC successful in increasing participation of Indigenous community, improving perceptions of fairness and cultural appropriateness and increasing levels of collaboration between stakeholders. Many stakeholders regarded this as the most important objective of the MC • Cost effectiveness findings were mixed 	<ol style="list-style-type: none"> 1. Key features of the MC program should continue 2. Decisions to modify operation of a MC should be based on collaborative agreement between key partners 3. Develop practice and procedure manuals 4. Changes to process should be documented 5. Adequate resources need to be made available 6. Training and mentoring should be provided to new staff 7. Consider more consultative approach to assess eligibility of offenders 8. Review sharing of information protocols 9. Adult and Youth offenders should have opportunity to meet ERPs and support groups prior to sentencing 10. Expansion of bail programs should be supported 11. Strengthen relationship between MC and other court-based programs 12. Offenders should be able to meet legal/community groups after sentence has been imposed 13. Clear define role of Indigenous and community groups 14. Improve availability of rehabilitative/ diversionary programs 15. Review availability of programs for offenders in custodial settings 16. Develop an overarching framework to guide MCs 17. Clearly define roles and responsibilities of stakeholders 18. Provide opportunity and support for Elders to debrief 19. Implement strategies to increase pool of ERPs 20. Establish additional guidelines to assist in identification of offenders 21. Encourage involvement of family members in MC 22. Provide additional training for Magistrates 23. Establish processes to support victim participation 24. Provide training to ERPs 25. Clearly define role of Police Liaison Officers 26. Strategies for Magistrates to preside for an extended period of time 27. Establish dedicated MC Coordinator in each location 28. Conduct capacity assessment before establishing new MCs 29. Strengthen relationship between MC and culturally appropriate programs and services 30. Improve data quality for future research

4. South Australia: Nunga Court

Court jurisdiction	As for the Magistrate's Court Offender must be Indigenous and have entered a guilty plea
Locations and establishment dates	Port Adelaide Nunga Court (Jun 1999), Murray Bridge Nunga Court (Jan 2001), Port Augusta Special Aboriginal Court (Jul 2001), Port Augusta Youth Aboriginal Court (May 2003), Ceduna Aboriginal Court (Jul 2003) ⁹
Evaluation date	None available

Description

The development of the Aboriginal Courts of South Australia was spearheaded by Magistrate Chris Vass, resulting from several years of discussions with Aboriginal community groups, government agencies, the Aboriginal Legal Rights Movement, police prosecutors, solicitors and Aboriginal community members.¹⁰ During the consultation, the overwhelming view was that Aboriginal people mistrusted the justice system and felt they had limited input into the judicial process and sentencing decisions. As a result, the first Aboriginal court in Australia was implemented on a trial basis in June 1999, and became known as the 'Nunga Court', a name given to it by the Aboriginal community.¹⁰

The aims of the court, developed through consultation with Aboriginal Justice Officers, are to:

- provide a more culturally appropriate sentencing than mainstream courts
- reduce the number of Aboriginal deaths in custody
- improve court participation of Aboriginal people
- break the cycle of Aboriginal offending
- make justice proactive by seeking opportunities to address underlying crime-related problems with a view to making a difference
- recognise the importance of combining punishment with help so that courts are used as a gateway to treatment
- involve the victims and the community as far as possible in the ownership of the court process
- ensure that the court process is open and transparent to victims and the community at large¹⁰

In the Nunga courts, the magistrate sits with a member of the Aboriginal community who provides advice on cultural and community issues. The courts are largely offender focussed, and make use of pre-sentencing information (such as Bail Enquiry Reports) to shape sentencing decisions. Government and non-government support agencies can attend and provide information to the offender.¹⁰

Aboriginal Sentencing Conferences (ASCs), 2005 onwards

In late 2005, legislation was introduced to legitimise the Nunga court by creating special provisions for Aboriginal sentencing conferences and developing a new position of 'Aboriginal Justice Officers' to organise the court process. An alternative model of Aboriginal Courts has been trialled in Port Lincoln, and incorporates elements of circle sentencing and restorative justice conferencing with the Nunga court method.¹¹ Any matter that is eligible to be heard in the Nunga court may be eligible for an Aboriginal Sentencing Conference.

The aims for the ASC process are to:

- comply with the requirements of the *Criminal Law Sentencing Act (1988)* in a way that is compatible by different visiting Magistrates

- include members of Aboriginal communities in the sentencing process so that the Aboriginal community has more confidence in the sentencing process
- provide an appropriate sentencing environment for Aboriginal offenders
- provide opportunities to victims of offences by Aboriginal offenders to express their concerns about the harm that has been done to them
- bring to the attention of the defendant the harm done to the victim and the community and to encourage appropriate responses to remedy that harm
- assist the sentencing Magistrate by enhancing the information before her or him about the causes of the crime, the views of the victims and the available sentencing options
- reduce recidivism by Aboriginal defendants who participate in the process.¹¹

5. Western Australia: Kalgoorlie Court

Court jurisdiction	As for all matters that can be heard in the Magistrate’s Court Defendant must be Aboriginal and have entered a guilty plea Defendant must not be before the court for a solely indictable, family violence or sexual assault matter and must not suffer from any mental health or intellectual disability
Location	Kalgoorlie
Establishment date	2006
Evaluation date	October 2009 ¹²

Description

The Kalgoorlie Community Court was established within the Magistrates Court jurisdiction after extensive consultation with Kalgoorlie’s Aboriginal community. The court was trialled as a pilot, operating with culturally specific processes and procedures within the Magistrate Court’s existing legislation.¹³

The development of the Community Court (CC) was based on a five-month consultation process, incorporating meetings of magistrates and court staff with non-Indigenous community members and businesses, as well as consultation with the Aboriginal community.

The aims of the court, identified in the *Kalgoorlie-Boulder Community Court (Aboriginal Court Pilot) Procedure and Philosophy Statement* are to:

- deliver culturally appropriate sentencing for local Aboriginal people
- improve access to and equity of court services for Aboriginal people
- increase the openness and inclusiveness of court services for Aboriginal people
- improve relationships between the Court and Aboriginal people
- reduce Aboriginal imprisonment numbers and recidivism rates in the Eastern Goldfields
- enhance safety for all members of the local community¹²

As part of the court’s aim to be culturally appropriate, ERPs are included in the sentencing process to ensure Magistrates were better informed of the social and cultural issues impacting on offenders. Through this, the court aims to develop tailored sentences that best address the underlying issues behind the offender’s behaviour, while building relationships between Aboriginal communities and the justice system.¹²

Panel members (ERPs) for the Kalgoorlie CC have been recruited through informal networks and formal advertising in newspapers. A local Reference Group was established to discuss issues around Aboriginal justice, service delivery and other emergent concerns prior to the commencement of the court. Members included: WA Police, Departments of Corrective Services and Community Development, City of Kalgoorlie-Boulder, Centrecare and representatives of the Aboriginal community. The Reference Group was also developed as a means for local agencies to connect their services with the community and to coordinate service delivery related to the CC.¹²

Hearings in the CC take place around an oval table and include the Magistrate, offender, family members and panellists (ERPs). The process is designed to be informal, encouraging the participants to be relaxed and increase their involvement in the hearing.¹²

Objectives/KEQs	Methodology	Recidivism findings	Other key findings	Recommendations
<p>Overall: to determine the extent to which the CC met objectives</p> <p><u>Evaluation Questions:</u></p> <p><u>Outcomes</u></p> <ul style="list-style-type: none"> • Is court process more meaningful to Aboriginal people? • Has experience of accessing court services improved? • Has relationship between court and Aboriginal people improved? • Has court contributed to reducing imprisonment and recidivism and enhanced community safety? • What factors supported achievement of outcomes? <p><u>Process</u></p> <ul style="list-style-type: none"> • What improvements could be made? • How appropriate are processes? • How appropriate are roles? • How is community building role executed? <p><u>Design</u></p> <ul style="list-style-type: none"> • WA compared to other jurisdictions <p><u>Sustainability</u></p> <ul style="list-style-type: none"> • Issues and opportunities for expansion • Costs and benefits of pilot, sustainability of model 	<ul style="list-style-type: none"> • Literature review of courts in other jurisdictions • Document review • Program data: court appearances, demographics of offenders • Consultation: 46 interviews, incl. individual, group interviews, community forum settings. • Observations of CC • Offenders stories: statements gathered from offenders, stakeholders shared defendant's stories 	<p>Strong perception among stakeholders that the CC had an impact on recidivism</p> <p><u>Reoffending</u></p> <p>Data showed that a higher proportion of CC participants reoffended (compared to mainstream Kalgoorlie Court).</p> <p>A) Juvenile offenders: – 51% CC offenders compared to 41% mainstream</p> <p>B) Adult offenders: – up to the age of 25 20% higher than mainstream after 6 months, and 11% higher after 2 years – Older adults: 13% higher than mainstream after 6 months, and 6% after 2 years</p> <p>Recidivism rate for offenders with no priors was only slightly higher than mainstream court</p> <p><u>Seriousness</u></p> <p>Offences less serious in 49% of CC recidivism cases compared to 43% of mainstream court</p>	<ul style="list-style-type: none"> • <u>Achievement of Outcomes</u> • Overwhelming majority felt CC process led to more meaningful and culturally appropriate process • Positive effect on relationships <p>Better access to court services. More uptake of CC process seeing respect staff showed</p> <ul style="list-style-type: none"> • <u>Issues and opportunities</u> • Links to services/programs difficult – lack of support services, knowledge and information sharing. Resources had only been partially applied. • Issues of confidentiality and conflicts of interest when selecting ERPs • Staff turnover and shortage • Cross-cultural training has not been repeated • ERPs are strong advocates for CC in communities • Reference Group ceased operation when community court commenced • Stakeholders wanted to see CC expanded, but main concern about expansion was resourcing. 	<ol style="list-style-type: none"> 1. Provide juvenile justice training for stakeholders involved in juvenile cases 2. Review and clarify eligibility criteria and develop guidelines based on evidence re offenders showing best outcomes 3. Recognise importance of programs to alternative court designs and fund community programs 4. Provide panellists with ongoing skills training e.g. counselling 5. Develop code of conduct for panellists 6. Develop clear roles and responsibilities for all positions 7. Refocus project manager role on promotion of the court, community outreach and education, community network building and increasing stakeholder base 8. As a priority, project manager focus on developing comprehensive resource list of available programs and service providers for offenders 9. Court support officer (CSO) role refocus on supporting operation of the court, including supporting defendants, their families and community members 10. Develop mechanisms for collaboration between project manager and CSOs 11. Use specific Community Justice Services Officers (CJS) and Juvenile Justice Officer (JJ) positions for the court and develop Job Description Forms 12. Facilitate a discussion re the roles CJS/JJ and Magistrates carry out in relation to offender management to clarify what each agency can contribute and improve the interagency relationships 13. Panellist recruitment and selection principles be made explicit 14. Develop and provide ongoing schedule of training to panellists to address court procedures, policies and local resources 15. Develop and deliver cross-cultural training in conjunction with local organisations on a regular basis (mandatory for all court stakeholders) 16. Provide training and information relating to the philosophy, process and procedures of the court to court staff and staff from other agencies (DCS, CJS, JJ, Police) on a regular basis 17. Re-convene the Reference Group, and refocus specifically on the court 18. Develop and expand strategic, process, policy and procedural guidelines and manuals of court operations

6. New South Wales: Circle Sentencing

Court jurisdiction	<p>Offence is eligible if it can be finalised in a Local Court, carries a term of imprisonment and a term of imprisonment is judged by a magistrate as a likely outcome</p> <p>Strictly indictable offences, sex offences or strictly indictable drug offences ineligible</p> <p>Must have entered a plea of guilty or have been found guilty¹⁴</p>
Locations and establishment dates	<p>Nowra (2002), Dubbo (2003), Brewarrina (2004), Walgett (2004), Bourke (2005), Armidale (2005), Lismore (2006), Mount Druitt (2006), Kempsey (2006), Nambucca Heads (2009), Moree (2010), Ulladulla (2010), Wellington (2010), Blacktown (2010), Coonamble (2010)</p> <p>From http://www.creativespirits.info/aboriginalculture/law/circle-sentencing.html#ixzz1JGG9rdUB</p>
Evaluation date	October 2003 (Nowra pilot) ¹⁴ , May 2008 ¹⁵

Description

Circle sentencing began in NSW as a pilot in the Nowra local court, and has since expanded to a further eight locations.

The objectives of circle sentencing are set out in Schedule 4 of the *Criminal Procedure Regulation (2005)*. The process aims to:

- include members of Aboriginal communities in the sentencing process
- increase the confidence of Aboriginal communities in the sentencing process
- reduce barriers between Aboriginal communities and the courts
- provide more appropriate sentencing options for Aboriginal offenders
- provide effective support to the victims of offences by Aboriginal offenders
- provide for the greater participation of Aboriginal offenders and their victims in the sentencing process
- increase the awareness of Aboriginal offenders of the consequences of their offences on their victims and the Aboriginal communities to which they belong
- reduce recidivism in Aboriginal communities.¹⁵

The Circle Sentencing (CS) courts in NSW are based on an adaptation of the Canadian model, which has been in operation since 1992.¹⁵

Objectives/KEQs	Methodology	Recidivism findings	Other key findings	Recommendations
<p>Evaluation of the first 12 months of the pilot's operation at the Nowra Local Court.</p> <p><u>Purpose</u></p> <ul style="list-style-type: none"> • Describe the nature of circle sentencing • Describe how it operates in practice • Impact it has had on the cases dealt with by circle court 	<ul style="list-style-type: none"> • Analysis of documents and court transcripts from 8 matters to document how system works in practice • Survey of key participants (including defendants, victims, support persons for defendants and victims, defence solicitors, police prosecutors, magistrates) to determine what they think of the process and gauge level of satisfaction 	<p>N/A</p>	<ul style="list-style-type: none"> • Findings from survey: <ul style="list-style-type: none"> • CS participants had a high level of satisfaction, including victims – all participants stated that they were either satisfied or very satisfied with the process. • Understanding of procedure: half defendants were confident they knew what would occur, majority of victims said they were not sure of process – many participants were not prepared for the level of discussion that occurs during sentencing or the emotional intensity of the process. • Circle make-up: overall, participants (86%) felt level of participation and those attending were appropriate. Need to consider gender make-up of circles, particularly for female victims and offenders • Common theme that emerged was importance of having a shared goal – seen as one of the most important and significant aspects of the process. • All offenders except one felt the outcome was fair, and of the other participants 77% were very or greatly satisfied that outcome was fair • Generally participants were overwhelmed by the impact the CS had on them – offenders overwhelmingly described the impact of being with people from their own community who they respected and being sentenced by them • All except two participants surveyed felt they were able to openly communicate and that their concerns were listened to and taken into account • One of the strong themes that emerged was that participants felt the consensus decision-making approach was a strength • Role of ERPs important – strong advice and cultural knowledge the greatest strength of the CS process • All except one defendant said they received support from services – support received once CS process completed was important in gaining access to services and staying out of trouble • All defendants said their behaviour had changed in some way since completing the CS process • Majority of victims reported a positive experience 	<p>No recommendations made</p>

Objectives/KEQs	Methodology	Recidivism findings	Other key findings	Recommendations
<ul style="list-style-type: none"> • Assess whether the program is achieving the stated objectives • Assess the program's effectiveness in reducing reoffending • Identify any unintended positive or adverse effects of the approach • Identify any factors influencing acceptance and non-acceptance within local Aboriginal and non-Aboriginal communities • Suggest ways to improve the effectiveness and cost-efficiency of the program 	<ul style="list-style-type: none"> • Literature review on Indigenous crime prevention and justice programs • Site visits to 9 CS locations • 10 CS matters observed • Face-to-face and telephone in-depth interviews with 115 people, including ERPs, CS Project Officers, Elders, Offenders, Victims, Magistrates, Police Prosecutors, Police, Legal representatives and community-based services • Analysis of NSW Bureau of Crime Statistics and Research data to determine recidivism rates * Control group of Indigenous offenders not sentenced in CS 	<p>Common perception in qualitative study that CS reduced recidivism</p> <p><u>Frequency of offending</u> 46% of CS group reoffended in the 15 months following sentence, compared to 38% of control group 78% of CS group had fewer offences in the 15 months following sentence than in the 15 months prior (almost identical to control group)</p> <p><u>Time to reoffend:</u> CS group takes longer to reoffend than control when controlled for age and sex. CS has no relationship to time to offend when information about prior offending is introduced</p> <p><u>Seriousness of reoffending:</u> For CS group 52% committed a less serious offence, compared to 45% of control group, but result was not statistically significant.</p>	<ul style="list-style-type: none"> • <u>Achievement of objectives:</u> • Participation varied across locations, involvement of ERPs significant and beneficial. • ERPs have a high level of confidence in CS because process takes offender's circumstances into account. Offenders responded positively to level of engagement and interaction. Magistrates and court staff had high levels of confidence in the process • Legal literacy has increased. Positive relationships formed between ERPs, POs, Magistrates and court staff. Strained relationships can undo benefits of courts. • Most participants felt CS resulted in more culturally appropriate sentencing – takes into account offender's circumstances and cultural knowledge. Support services to address underlying issues (e.g. substance misuse) not adequate, limiting effectiveness of sentencing. • Victims felt they had been supported • Level of participation and engagement of offenders is greater compared to mainstream courts • Involvement of the victim provides direct account of impact of offender's actions – key benefit. ERPs play very important role in emphasising impact of offender's actions on community more broadly <p><u>Unintended outcomes:</u></p> <ul style="list-style-type: none"> • Positive: positive impact on ERPs (sense of achievement and confidence), perceptions that community members take more responsibility for offender's actions, several stakeholders highlighted benefit of CS as community-based approach to domestic violence • Negative: concerns that ERP views are 'pushed' onto the offender (only raised in 1 location), resource intensive approach <p><u>Factors influencing acceptance</u></p> <ul style="list-style-type: none"> • Skills and commitment of PO, support and attitude of Magistrate • Nature of factions within community (positive and negative effects) • Concerns about resource intensity and 'soft-option' perception limited acceptance in non-Aboriginal communities 	<ol style="list-style-type: none"> 1. Assist Project Officers (POs) to increase number of ERPs involved in CS, ideally this should be responsibility of POs and Magistrates 2. Provide support for POs with regard to debriefing or counselling. This support should also be available to ERPs 3. Provide additional administration and process support for POs, e.g. standardised forms, information-sharing, consistent approaches for tasks such as updating ERPs and monitoring 4. Develop formal and consistent orientation program for ERPs 5. Cover out-of-pocket expenses of ERPs 6. Improve data collection and ongoing monitoring of CS, including participation of victims and monitoring of offenders post-sentencing. Could be assisted by establishing formal communication mechanisms between the community sector, POs, Probation and Parole officers. ERPs should be informed of progress of offenders 7. Improve availability of support services for offenders

7. Australian Capital Territory: Ngambra Court

Court jurisdiction	As for the Magistrate's Court Offender must be Aboriginal or Torres Strait Islander, consent to have their matter heard in the Court and have pleaded guilty. Offender must not be suffering from an unresolved addiction to illicit drugs (other than cannabis)
Locations and establishment dates	Canberra (2004) ¹⁶
Evaluation date	None

Description

The Ngambra court is modelled on the NSW Circle Sentencing Court and has seven primary aims:

- to involve Aboriginal and Torres Strait Islander communities in the sentencing process
- to increase the confidence of Aboriginal and Torres Strait Island communities in the sentencing process
- to reduce barriers between Courts and the Aboriginal and Torres Strait Island communities
- to provide culturally relevant and effective sentencing options for Aboriginal and Torres Strait Islander offenders
- to provide the offender with support services that will assist the offender to overcome his or her offending
- to provide support to victims of crime and enhance the rights and place of victims in the sentencing process
- to reduce repeat offending in Aboriginal and Torres Strait Island communities¹⁶

The court aims to provide effective and restorative processes for Aboriginal and Torres Strait Islander offenders, with a consistent and transparent process. The court matters involve a magistrate, the offender, the Director of Public Prosecutions, the Ngambra Circle Sentencing Coordinator and a minimum of four members of the community panel (ERPs).

During the proceeding, the Magistrate outlines the sentencing options to the Elders Panel, who discuss what options might be adopted. The sentences recommended by the Circle Court must:

- contain goals that are realistic and appropriate and that are not more punitive than those that might have been imposed by a Court when sentencing the offender in the usual way for the offences
- set out times for the implementation and completion of those goals
- not recommend community service or detention that exceeds the period prescribed by legislation
- provide for its monitoring and review

If the offender does not consent to the sentence recommended by the Elders Panel, the Magistrate determines the sentence. Ultimately, the Magistrate may accept or reject recommendations made by the Circle and is responsible for guiding the Elders panel as to the appropriate sentence that should be imposed according to legislation.¹⁶

8. Northern Territory: Darwin Community Court

Court jurisdiction	<p>Not limited to Aboriginal offenders. Offenders may be juvenile or adult. Defendant must meet the following criteria:</p> <ul style="list-style-type: none"> – Offence must be within the jurisdiction of the Court of Summary Jurisdiction of the NT – Offender must plead guilty or have been found guilty – Offender must consent to being assessed and agree to participate fully in the court – Offender has sufficient community ties so as to ensure the effectiveness of any court decision – Offender must not be suffering from any serious mental disorder <p>The court does not hear matters of sexual assault.</p>
Locations and establishment dates	Darwin (2005) ¹⁷
Evaluation date	None

Description

The concept of the Darwin Community Court (CC) grew out of discussions between the Yilli Rereung Council and the Magistrates Court of the Northern Territory. The court is not limited to Indigenous offenders, but it was envisaged that this group would make up the majority of defendants appearing in the CC.¹⁷

The CC has both criminal justice and community aims:

Criminal Justice Aims	Community Aims
<ul style="list-style-type: none"> • Provide more effective, meaningful and culturally relevant sentencing options • Increase community safety • Decrease rates of offending • Reduce repeat offending and breach of court orders 	<ul style="list-style-type: none"> • Increase community participation in the administration of the law and sentencing process • Increase community knowledge and confidence in the sentencing process • Increase the accountability of the community, families, and offenders • Provide support to victims and enhance the rights and place of victims in the sentencing process • Enhance the offender’s prospects of rehabilitation and reparation to the community

The premise of the CC is that taking into account the social, community and cultural factors will result in better outcomes for offenders. For Indigenous offenders, CC hearings involve Indigenous cultural or community representatives, who assist the Magistrate by discussing the background of the offender and explaining how the offending behaviour has breached the community code of conduct. The hearings also include participation from the offender, the victim, prosecutors, the Community Court Officer and correctional services.¹⁷

CC hearings take place around a circle table, and follow an order of proceedings determined by the Magistrate, which may include the victim, community members and prosecutor making submissions and discussion sentencing options. At any time, the Magistrate may refer the matter back to the Court of Summary Jurisdiction.¹⁷

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Annex 4: Yarns

As part of the data collection process for the evaluation, a modified version of the Most Significant Change technique (MSC) was used. The MSC technique is a form of qualitative, participatory monitoring and evaluation, which involves the collection and selection of stories that describe significant change that has occurred in the lives of individuals or communities. The stories provide information about program impact (both intended and unintended impacts) and become the basis for discussion about program activities and future directions.

In the evaluation of the County Koori Court, MSC stories were collected from Judges, Elders, the Accused, service providers, legal professionals and court staff. At the Evaluation Summit workshops (in 2009 and 2010) a facilitated story selection process was conducted. In groups, stakeholders at the workshop discussed the stories and selected those they felt best captured the 'change' that had occurred as a result of the County Koori Court process.

The stories from 2009 and 2010 are presented below. It is also noted which stories were selected at the summit, and the reasons for these choices.

Yarns 2009

Story 1

I was in the Koori Court in the Magistrates and the case was linked up to the Koori County Court. That is how I heard about it. Before that I didn't think it was there. I knew about the Magistrates Koori Court but not the County.

[My solicitor]...knew about it, he talked about it and told what it involved and how it was, and how different it was to mainstream. And we thought yeh, we will go that way.

...I can't say it has been a life changer because it was the Koori County Court. At that time in my life there had to be a change or I would have been heading down the track that would have took me nowhere. But I think I would have changed either way if I went through. But had I been sent to jail, which I reckon I would have been if I had have been in a normal Court, I don't know what would have become of me now. Maybe I would still be there, but having gone through there, I don't know, I see things a little bit different. I think that change was coming anyway, I don't know if the Koori County Court had anything to do with that. But it was there when I was going through a point in life where there needed to be a change made. It could have very well been a part of this though, I can't really pin it down to one point in time.

Well there is a part in there with the Elders where they get up and they talk to you, like they are talking to you and nobody else. Everybody else in the courtroom, it is only the Elder and you and they are doing what they are supposed to do. I was feeling so bad. I have been in courtrooms before and have done something wrong and felt bad for it, but never, always had the feeling oh that's alright if I get off that is cool, I won't do it again, but it doesn't impact you as much as being talked to by one of the Elders. When they talk to you, you feel like breaking down right there and then, because they are saying all the things that you have been told all your life, and they know how we were raised, they know our honour side of our life and what we are as aboriginals and what we should be representing as aboriginal people. That is not what we were representing, we were in a Courtroom because we weren't, and just have that reminder again by somebody like a Koori Elder, the Koori Elders that knew my grandparents, and spoke highly of them, it was something else. It was

something else, that stayed with me that is for sure, that is something I hadn't heard before. I have had me Nanna's stuff, and other people tell us, but when you are really, really being told off by one of the Elders it is something else and I don't think a Judge can really hit home as hard as that can, with me personally anyway. So I suppose that is what I can take away from the Koori County Court is the words that were spoken by the Elders is something that really, the biggest thing about it, that is what I took on board. The Elders really do make you feel small, but you have got to.

You knew what they were saying, everybody is saying it, but when it came from them it was different, they have lived our life, they have been there, and they know we are going through a hard time. But they also know that there is a light at the end of the tunnel, those are the things that they said, they said "you don't have to live this life". I mean you hear it from everybody — your friends, your family — and you will listen to it, but sometimes it just goes to the wayside a fair bit, and you let it go. But having it drummed in, and I suppose in front of everybody else hearing it as well. My brother was there, I had family members there, I had work colleagues there as well, I had a lot of people in there as well. And in front of all those people, it wasn't like they were just singling you out and you are feeling like you are being singled out in front of a group of people. You knew you had it coming. You knew that everything they were saying needed to be said. And you listened and took it in because like they said, they have been there before and nobody else can say that except one of those guys... In another courtroom, they can't tell us that they have been there before because they don't know us and that.

Story 2

I first heard about it through my Solicitor. Around about the time of the Magistrates Court, because we had a couple of different cases around the same time it happened. The first one went through the Magistrates Court and was dealt with, and that was when we found out that if we pleaded guilty we can go through the County Koori Court system. I reckon part of it was because it hadn't been held before and it was around a good time for us to try it out, it was just starting at that time, which was a good opportunity, just to test it out I suppose.

We were more comfortable with the idea of going to the Koori Court than the Magistrates. As we knew that there was going to be Elders and stuff in there to talk to us, a more laid back atmosphere, sitting around the table with the Judge instead of sitting out in front of the Judge. Even just the positioning of it made it more comfortable. We had more hope of being able to walk out of there. From my understanding it is about for the Koori people, they broke down the English a bit more, to how we understand it.

They more or less gave us the opportunity to run with it I suppose, just told us that it is not acceptable and stuff in the community and sort of helped you take a step up. You can see and hear the emotion of the Elders talking to you. They were sort of upset seeing their young ones in there facing jail. Sure they made us feel bad as well about that, so it made us take a step back and gave us opportunities to move forward.

It goes a long way actually for the Elders to show you that they care. They do care about what happens with communities and stuff and the sentencing and stuff like that, so it sort of gives a more stability when you walk out of there. You think that they have given you a chance, so we will take it... Well going through County mainstream Court wouldn't have given us the opportunity to better ourselves. We might have just been thrown into custody sentence, which would have made us not care more about the outside world. So when we came back outside we probably wouldn't have been better off, we would have been worse off than anything. It would be like I have been there [to jail] before, what is another couple of months?

...yeh it changed my mind about how I party and things like that, about getting drunk and fighting around. It is not happening. It just got me to thinking where I would like to be in 20 years and I wouldn't like to be in jail and I would like to have my own business. Because normally when we went out, we would stay until it closes, and stand around out on the street afterwards. But now it is like, you just want to go home. You can't say 2 am is a reasonable time but compared to 5 in the morning it feels like it.

Like I said before these Elders are concerned about us. If we don't think they care, we don't care either. It is just like if we tell the little kids that it is okay to do that, we don't care, just go and do it, you will be alright, it is just not going to work. So for them to give us feedback about negative stuff that we have done will encourage us to be more positive. It goes a long way in the small minds.

Story 3

I felt ashamed when the Elders were coming down on us. Didn't realise that we had let other people down, not just our own person if you know what I mean, not just ourselves. It makes you realise how much it affects the whole community and the extended communities, not just us and our immediate families. They make you feel in a way bad about what you have done.

It was hard to listen to and it is kind of powerful you know. These days us young people don't sit around the Elders much, we don't even sit opposite at a table and just have a general discussion if you know what I mean, with grandmother or grandfather. But just to be put into that perspective through the Courts helps a lot and when you are talking to them it eases your feelings, and then when the Judge starts talking you sort of get shaky again.

But if I got in trouble again I would definitely choose to sit in front of the Elders again, just to know, just because they have been through that process. It could be that there are more reasons as to why you did what you did, and that is what they want to know and if there is any way they can help that situation. They might give you that chance to do it, depending on how bad it is, they might give you a chance to make it better.

Going in front of them again you would feel like that you had let them down, you are back again, you didn't even take into consideration what they said, so you would just be feeling bad about it. You would be feeling shit about yourself for letting it get to that point of stage to get back there to front again to that Court again.

But it is easier to be told off by an Elder than told what to do by the "screws" or guards if you know what I mean, I would always go back to the Koori Court if we needed too.

You look at the Elders different, and you know that they have more power in what happens to yourself. But you don't treat them different like: "stuff them they almost locked me up and I am not going to talk to them". It is not like that, and you know that they are there to do their job, to assist the Judge. So whatever the outcome would be it wouldn't be their fault, it would be ours in the first place for ending up there.

And they look at us different, they would see and hear our emotions in the Court, when they see us out on the street they know more of what we are about, how we think. It would just be more mutual understanding between the young ones and the Elders.

..... One day we are going to be Elders in the community and we realise that by sitting in front of them and having them come down on us. Before all that we didn't have a particular aim of what we wanted to do, it was only through going through all that process, that I realised what I wanted to

start doing if I get the opportunity. And since being able to walk out of the Court House without getting a custodial sentence, it sort of pushed me towards what I should do which is where I am at now, youth worker and stuff.

This story was selected by participants at the 2009 Summit as the one that best embodied the achievements of the County Koori Court pilot program for the following reasons:

- The story showed a level of mutual understanding between the defendant and the Elders - “so whatever the outcome would be it wouldn’t be [the Elders’] fault, it would be ours”. This shows that the defendant has an understanding and respect for the Elders.
- In the story there is a quote: “It would be just more than a mutual understanding between the young ones and the Elders”. By saying this, the defendant had a real insight into the Elders understanding of him and his peers. He showed an understanding of the role Elders had and what they were trying to achieve.
- There was a dramatic shift in the defendant’s thinking over the course of the story, and at the end a desire to do something positive (i.e. youth work) and contribute to building up the community in the future. He also showed respect for the Elders, and acknowledged he will be an Elder in the future.
- The story shows that the defendant understands the importance of the opportunity to listen and respect the Elders. He also accepts own responsibility for behaviour.
- The story had a great outcome—the defendant turned his life around, he is a role model for the community. It was also a great outcome for the Elders.

Story 4

It was something to think, like the Judge telling you good luck on your journey, good luck and we hope you find what you want to do. You don’t just walk out the door. Knowing the Judge just helped you, they actually tell you, you know, we really hope you find what you’re looking for out there and we are giving you this opportunity to do that. Instead of locking you away and thinking and that is going to change that. By experience and knowing other people that have been in the system, it doesn’t change that at all, it puts more hate in you inside the system. The Elders and the Judge really want you to change yourself. They wanted you to.

They worked out also what you could do, we listened to them... It is not just because they wanted you to change, of course they want us to, but they have given us enough opportunity. And they showed that they care the way they were talking to us and that helped.

And that included the Judge. You hear more things from the Judge in the Koori Court system than what you hear ... in the mainstream. They wouldn’t get into the details and stuff, but in the Koori Court they actually, they want to know, what you have been through in your life and where you think you are going and stuff like that, so it gives it a whole different perspective of course.

You are able to look at the Judge like a human being. Having to look at them in that other way sort of helps you, helps you want to change because you know that they are giving you a chance... Probably it was just the way they spoke that helped me see [them] as a human being. When they spoke they were down to earth with us and that.

You can just see in the Koori Court that they want to help you and in mainstream Court nobody thinks the Judge wants to help them. They only think the Judge is going to go against them. Only that they get more of a chance to understand that person as an individual, not just what he has done, but more as to why he did it, and how we can prevent it next time.

To make someone want to change, you have to show them that you want them too. You can't just throw them in the deep end of the ocean and tell them to get back by themselves. They are not going to get back. But give them a boat, and they will get back, or a bark canoe.

And wanting to help them change which was another thing about that Judge in that Koori Court system. They have to want to find ways to help you rather than think they know the ways, and then take into consideration about how you think you can help yourself. Just all around the County Koori Court it is much easier to deal with, even though in your own mind, in your own feeling ... it is something you can prepare yourself for at least to a certain extent.

Yarns 2010

Out of the system

Have there been any cases this year that have really stood out, where you can see that the work that you are doing is having a good or negative impact?

It has been a mixed bag. We have been getting some [Accused] in that unfortunately came into the [County] Koori Court but should have gone to the Magistrates Court. So they have never had a conviction or anything but they have just for some reason got bumped up into the County Court. Some of those [Accused] don't come back and they have been good.

But I think it is sort of mixed... We have had a couple [of Accused] I think that are institutionalised. That was disappointing when they come into the Court again and again, and they sit there and they are sorry, they are going to change, and they are going to do all the courses in jail, then [they] come out and they are back in again. So that is disappointing. It is always disappointing when somebody comes out and you think you are doing well, and you think they are listening and they are understanding, and for the first week they are good, and then bang! They are off the rails. Because when they come into the Court, the ones that walk out the door, that's the finish [of the involvement] of this Court... It shouldn't be. There should be something put in place. We just say go and that is it. There [are] no resources after it, there is no follow up. It is up to them individually and they have got to put their hand up and volunteer to do things I suppose. You can't sort of say "look you still need to see a counsellor, you still need supervision"... I think if it was [like that] it would help a lot, but once they think that's it, they are free, they have a clean slate and they walk out, they think they can start from scratch again—"it doesn't matter if I get caught because I have a clean slate, and I will only get this and I will only get that"—and that is the way a lot of them think around here. I have seen and heard a lot of them talk like that. So there is no follow up on them. We put a lot of resources in when they are in, there is anger management and they do all the certificates that they can get in there, which for me, I don't think really means a lot. Those certificates, they are not forced but obliged to do [them]...when they are in the system, but when they are out, there is nothing. There is no housing, no education, no employment, so they just jump back on the same treadmill again and away they go again.

Getting ripped

When you like go into Court and that and see the Elders and that... and then they tell you don't do this again, going through those doors and what not, that makes you shit yourself even more... You know you are going to get scoot. They have their say and that, and you know you are going to get ripped and that, but it is good being told by your Elders, especially when you have got the Elders around.

... me uncle was there and he grew up with me old man and that, yeah it was Uncle ... actually, and he was tearing strips off me, and I thought f...k and I nearly started crying you know. I have never been ripped like that for years. It was a good feeling getting ripped, it was bad from the Elders, because I have grown up and nobody had told me off or "don't do that, it's wrong", or "you will get yourself in trouble doing that shit". But when you have the Elders telling you, me old man passed away about 10 years ago, and yeah f...n went downhill, me and me brother. Yeah just haven't had anyone, any role models to force us and what not, that is why I reckon the Koori Court is good and that in that way.

... pretty much it showed me that the family cared for me, like they are willing to stand up and tell me off in front of strangers and what not in a court house. And in front of the Judge, and you know the Judge looks at it and thinks "oh yeah, this is sweet, this kid you know takes something from this Court, and I won't see him here again". I don't want to go back there. I haven't been to Court since...

What has helped you not go back to Court?

Just taking in what the Elders said and like trying not to mess up like I did prior to what happened. Sort of give me a bit more sense, look at things in a different way, and ways of doing it a couple of different ways and see how you can get around it, instead of trying to run short. Pretty much yeah that is the way I see it... and I have a couple of kids to worry about, and I don't want to be in and out of Court for a day or whatever, I want them to grow up. With a lot of the cousins they don't get a chance to see their kids or what-not, and they are always in and out of jail.

So can you remember what it was that the Elders said to you that changed the way that you look at things?

Pretty much that my old man would be disappointed, that is not the way that he raised us. And that made me think then, if Dad was alive we would get our heads kicked in ... or that we are heading the way of welfare and that, and I thought I had better f...n snap out of that. And Uncle said—"yeah, you know you have got kids, f...n start looking after them, stop being a teenager, you are a man now you are 30 in a couple of years, snap out of it. Me and your old man used to do this shit like you and your brother and what not, we changed, now you two have to break the cycle. Put your mind to it and you will get it done, it is just willpower"—and yeah ... I took all that in and trying to do their ways to help me, it has helped me a fair bit.

The words of the Elders

Well I suppose the client I was talking about a little bit before. So he was a man... He's spent a great deal of his life in jail. He comes from a really proud family in the area, and the Elders, who sat on his case, grew up with his father and his uncles. But he has a serious problem with alcohol... It was in many ways a very silly pointless crime, but he had priors for similar kinds of things, so we knew that he was looking at a number of years. But one of the things that I did do was have a psychological assessment done, which turned up that he actually had an intellectual disability, and the

psychologist thought that it was probably from the years of serious alcohol abuse ... which hadn't come up in previous cases...

... And almost from the start we started talking about [the] County Koori Court, and he was on remand for the whole time before the matter was heard. So I went and visited him in prison, a number of times before the case was heard, and for him I spent, I guess a fair bit of time talking to him. He was initially quite suspicious about going to County Koori Court. He was the client who said to me "Will I get a discount if I go? That's probably the only reason why I will go". And he was quite sad in a way, because his family didn't come to court with him, so they weren't there, but as I said, the Elders knew him so well, and knew his family so well that it overwhelmed him a little. I think that he had people who were saying positive things about him in Court. One of the Elders pointed out his father's [achievements in sport]... So these things started to come out through the process, and then my client started speaking, and then he started speaking about the hopelessness of his life, and he didn't use the word "institutionalization", but that was what he was talking about. About getting out of jail and doing okay for a little bit, and then things getting difficult, and then drinking, and that leads to offending again. And he spoke about that cycle that his life seemed to be. And the Elders really gave him a lot of encouragement about trying to change that, and the Judge also said to him "if you don't change that, you're going to be dead soon, you know". So it was kind of, I think, it obviously resonated with him... when I spoke to him afterwards, he said he remembered everything that was said, and he said to me "that Judge, he looked me in the face like another man, and we spoke to each other like men", and he said "I don't remember any of my other Judges or anything that was ever said in court to me before, but I remember everything that was said that day".

... so I think ... it was really such an incredibly positive experience. Now whether he comes out of jail in a couple of years and can make those changes or not, certainly that experience, of going through that court, had a huge impact on him. He felt a lot better about himself in a lot of ways. He felt pride that the Judge knew who he was and who his family was, but also that people were interested in his problems, and understood that he did have problems, and that ... he needed help with those problems. So for him, I don't know, I just think that you would never have a client going through mainstream court, having that kind of experience. But for him, it was really huge turning point, that court appearance for him. It was the only one that he remembers, and it's just resonated so deeply with him.

I think for him, the biggest thing was being connected with those Elders again, and that's what he said to me—"Oh I didn't think that I could speak to these Elders, but they said to me that I can go and speak to them now, and they said that they know who I am and they care about me"—and to him, I think, that helped reconnect him with his community in a sense, because he had just been hiding in his flat drinking. And I think it really reminded him that there are Elders in the community that do know who he is, and do care about him, and are there to help him when he comes out. So that's what he said to me. I think that made a huge difference

This yarn was chosen as the most significant by two groups at the Evaluation Summit for the following reasons:

- It covered all aspects of what the CKC is all about.
- These were the most significant stories as the CKC acted as a turning point for the Accused. They also highlighted the Accused's sense of connection to community, like he had a voice, instilling a sense of dignity and belonging (this group also chose *'Your head is up high'*).

Your head is up high

I wanted to go through the Koori Court and say, because I knew the Elders and that were going to be there, and listen to them, and I would say what I had to say and hope that I would get something back out of it. The Elders felt that, you know, and the Judge too...

... but I was frightened to go through the Koori Court because of the Elders knowing my background, and if I go through the white man's Court, they don't know nothing, can't help me, you know, a long time they don't know anything about my background.

... I think the Koori Court was pretty fair you know and when you go to the other court, they sit there and don't listen to where you actually come from and your background and that. They just know your solicitor and looking at the computer and that is about it, and [they] send you straight to jail, no question you know. But when you can sit down at the table with the Elders and then express yourself and they listen to what you have to say, they talk back to you and rip you and that... I needed it, the reasons and to wake up to myself and I took it, you know, on the chin.

The Judge, I didn't mind the Judge. He was fair too you know. He actually had a bit of a joke and that with you ... And I don't think in the other court you would get a smile you know, or wink, or something. You don't get nothing out of them, but in the Koori Court they had a laugh and that.

You are more relaxed in the Koori Court. In the other court they tell you to "f...k off" and you tense up and that you know. And you are sitting in there with your head down. In the Koori Court you were relaxed and smiling and your head is up high. ... It made me relaxed, happy. [I] have a lot to think about now, what they all said, and it is still with me to this day, yeah ... and when you're in the Koori Court, it makes all of us feel relaxed. You have a voice ... when I go to the other courts, like before that, the ... County Court in Melbourne and I know what is going to happen because I feel the vibes. I would just sit and look at the ground, maybe he looks at me and that is it.

... I reckon that courthouse, that room, was amazing you know, something new in a courthouse.

... for us sitting around the table you respect each other, and what they said was pertinent and hopefully it teaches me so by the time I get out hopefully I am on the right path, still taking notice of what they said ... [They] just tell me, you know, that you have got other family out there. Your mum, you know, is sick, and you know just go and get a job, or go xx like your brother, or go back to xx, because [the Elder] was saying that my grandfather was a good xx ... do something with your life, you are not going to back and forth to jail until your dying days. I am probably 35 now and the first time I went to jail was when I was 18, yeah ... that is the first time I have been in [that] Court, and that is going to be the last too.

This yarn was chosen as the most significant by three groups at the Evaluation Summit for the following reasons:

- It represents what we are trying to achieve: the significance of the Koori Court process on this person compared to other court experiences.
- These were the most significant stories as the CKC acted as a turning point for the Accused. They also highlighted the Accused's sense of connection to community, like he had a voice, instilling a sense of dignity and belonging (this group also selected *'The words of the Elders'*).
- It represents what the CKC is all about – what it should achieve.

That bloke, that Judge

The first day, we sat down and we had a chat, a good long chat... And they got to know me, like ... the Judge wanted to know, he said "eh I want to know who you are"... He said, "I want to know from when you were a kid to now". So I just told him everything, like me whole life... I'm a pretty private person. I don't really like to talk too much, or tell anyone about me bullshit. But yeah, I opened up to him, and it was kind of refreshing for me to get certain things out ... But it was actually a lot better to actually talk, instead of keeping things inside, and trying to cover up, and walk around like ... everything's okay and proud and all this crap, when really I'm not. Inside I'm a little bit down and out. So he brought that out in me.

... I told the Judge ... I told him the truth. I said, "I just bullshitted to everyone and lied to myself more or less". I said, "I don't wanna f....g bullshit no more, I don't want to lie about it". I said, "I just want to fix my life", and I said "can you give me another day, instead of gaoling me? I'll never have another drink in me life. I don't wish to now". I said, "I don't think really that that's the right way for me to go. If you can give me one more chance at it, I'll be quite happy to grab it". And he had a good look at me and he said, "righto", and adjourned it, "I want you to go away for a couple of months and think about it, and I'll see you in two months".

I went away, and all I continued doing was what I was doing—drug and alcohol, and anger management ... and I have the kids now in my custody. Yeah so I had to have urine tests, and I've passed all that shit. So I have me kids now, and that [was] one of me goals when I first went in there. And I told the Judge, I said—"look, my goals are, I get the kids back first, get a job, get back to me footy and back into life"... And I was fair dinkum, and I think he knew that I was fair dinkum, and I wanted to have a go at it... I have got me kids. I have got another little girlfriend. She has a couple of kids of her own, so we have a real family happening there. Got a house. Not far from getting me job back. I have been doing a bit on and off, part-time concreting, and next year I will get back into my footy, and get back into life. It is slowly working, and I have had me ups and downs somewhat still. That is life. Instead of f....g getting all crazy and that, I just kind of deal with it.

And so of all these things, which one of those is the most important?

The kids for sure. I can't imagine them being harmed or going through life the way I went through. They kind of keep me right on track, they are the major point where I make sure, or they make me not want to f...k up.

How do you reckon going through that Court has helped you in what you want to do with your kids?

Just hearing me out and giving me a go ... giving me a second chance. That bloke, that Judge, kind of changed my life, that Court has changed me quite a bit. They could have quite easily just let me do xx months [in gaol] ... but where would I be? I would be in there now, and what would happen xx months later? That is no good ... Gaol would have ... made me worse. So it was good that he actually sat down and had a good chat to me.

This yarn was selected as the most significant by one group at the Evaluation Summit, because:

- It produced very positive outcomes as a result of the Koori Court process. In particular giving the offender a voice and the Judge a chance to assess the person and to find out any particular needs that if addressed may help to break the cycle.

This group also selected 'Different Ballgame' for the same reason (see below).

We need to go further

... I have had a couple that have come into the Court and three days later I am pulling them out of the lockup for drunk and disorderly. I give them another serve, but they are drunk and you really can't give them a lot of a serve... They don't have work and if you don't have a job, you have left the Court, you go out there—and they do, they go across and have a drink with their mates—and then they don't have a job, they get a dole form for the day, they might make some dough and then that is it ... drug and alcohol spend millions of dollars on this and nothing changes... So nothing really happens. They go back to what they always do, and some of them are just petty things that lead to big things. And of course it is like the drugs. A lot of them around here, quite a few who started off chroming, and they go from chroming to marijuana ... they drink the cheap wine, then they will go to speed and that is where all the trouble starts ... but we don't have resources after they leave here, we don't. We have a lot of Aboriginal networks, but no one picks them up. Because where do they go, what do they do? Back to what they do, back on the treadmill. So then who knows in six months they are back again because they think I have a clean slate now I can do that. One of them will say, "I have a car", and he will say—"I have a clean slate I can drive, I can cop the driving without a licence and cop the drink driving that's fine, I have a clean slate"—they think and that is how it works for them. It is an unfortunate way of thinking and we need to change that. But they need to have work, they need to be doing something constructive. But once they walk out nothing can be done for them, unless it is up to them and they would like to do things.

...we have a good Court system but we need to go further, and it is after that, it is then you can take them to the trough, but they can't drink, you can't force them to drink. That is the sad part. We need to make some changes because it is frustrating to see that, because you don't want them to come back into Court. And you keep telling them every time you run into them around here, you know when you shake hands—"stay out of trouble, I don't want to see you again"—and you keep saying that to them. Not a lot of it sinks in. Some of it does, with some of them ... I think one or two of them that came out of the riot ... when we first started, I think they had jobs to go back to. And I haven't heard from them so they must be doing alright. I haven't heard anything about that mob.

Fine to talk

The [Elders] just made me feel really fine to actually talk ... they were just upfront. They were upfront with me about their lifestyles, and a few of the Elders, they even went into even their own experiences, and had a chat to me about it ... the [Elder] that was actually on the panel ... said, "well, look, I f...d up, like I used to be on the piss when I was young and I've done the same, not the same, but I've done stupid shit, and you don't really want to be like that do you?" And I said, "no I don't". It's not me. So we kind of all had a heart to heart yarn, which made me open up a lot more...

They were good, like I said, they weren't judgmental. They were more supportive ... even if they had have gaoled me that day, they still would have made an impression on me. They had experience and you could see it too about what I was doing with my girlfriend, it was easier to just walk away, and at the time you have got alcohol in your system, and they had seen it, and I have seen it, and they said to me, "you have got to change". And I could see that they knew where I was coming from, they weren't bullshitting like me. They weren't just sitting there and getting paid for the day. They actually wanted to know about me. I thought that was quite interesting.

Blew me away

Have there been any cases, over the year, that have been stand out cases where you have seen a real change in someone, either a positive or a negative change?

...One positive, was at the start of the year. It was the most emotionally draining for me and for the Elders, and he had to go to jail no matter what. Grandma was sitting with him, he'd lost his mum and he thought he'd killed her, he was only four at the time, and has lived with this. [He is] 28 now ... but I've seen him twice through RAJAC and we go and see [him] in prison, and he looks absolutely fantastic. He's got a positive outlook on life, and I will bet my bottom dollar that he'll get out and do well. And he speaks of the Koori Court process as something that stays with him, exactly what [the Elders] said to him, and he said you know that he needed to be pointed in that right direction... That one, to me, has just stuck, because the offence was quite, not good. He did recklessly cause injury, but he was protecting his relative ... and what she had to say, in all my experience in the County Koori Court, as a support person, blew me away. Absolutely blew me away. And for her to have the confidence, because knowing [her] out in the community, she's very quiet ... but this day she, you know, and I just thought that was the comfort that she had in the County Koori Court, and the atmosphere for her to open up and say the stuff that she did, and I thought, this is working.

There's an idea!

... because of the Koori Court and that, and they sent us to Wulgunggo Ngalu. We ended up going to Cairns for a couple of weeks for a men's Koori outreach ... program and it was f...king unreal.

I love dancing and that. Not Koori dancing, don't do that. But me brother wanted to join in with me and have R&B dancing, and Koori dancing and stuff. Ever since I come back from Cairns, and [I] have wanted to do that for a while. [I] did all the planning and that. Because they said—"what do you want to do when you get back for the community? How can you improve it? How can you change it and what not?" And yeah, what did you want to do up there was part of the course ... which was good.

It was unreal, and [I] got asked to go back to the one in Adelaide a couple of months ago there, but I wasn't around.

... if I didn't go through Koori Court I wouldn't have had the chance to go to ... Queensland and, you know, find out all that shit about myself and me own community. It didn't even phase me about the kids and all the young ones around and that, the way they are. But when I went on up there and get to hear the others talking and I got up and said my piece about my community, and they said—"you help them mate, the younger generation and like that, they are looking up to you, you know a few years down the track"—and yeah fuck you have me thinking now. The thing that I love most and that kids can relate to and I thought sports, yeah not many kids fit into sport because they are lazy and that, and then I thought kids love dancing and I thought you see kids dancing around and I thought there's an idea.

Different ballgame

It was my first experience in the CKC – and it was beautiful because you know, the set up here is pretty good and the people were just amazing. [When] I first got told to do it I was a bit overwhelmed to do it, I didn't know what to expect, I was a bit unsure, didn't know what role I could play. I'd spoken with the Elders before hand, and the thing that I found amazing was how the whole environment, the feeling changed as soon as the Judge came down and sat at the table. It's almost as if the whole situation changes...

The client was a bit cagey, didn't open up to start with but the Elders came in and he knew one of them reasonably well, and they let out a couple of comments about seeing you grow up and that was it, it was just a floodgate of information after that. If I'd done this plea on my own in the normal court I would not have had the depth of information from my client; I wouldn't have gotten that. All the Elders needed to do was talk a little bit and this boy was opening up, he was discussing his issues and in a lot of ways everyone else had an insignificant role.

The thing that blew me away the most was that this client had an intellectual disability, he was [a young man], and he had been diagnosed 5 years before but none of that information had come through to me, and none of that information had actually been recorded within the system. So the judge didn't know, I didn't know, nobody knew about it, except Corrections. But what had happened was the Judge said 'I want him assessed', then they came back and said 'Oh he has an intellectual disability', from this passing comment in their report, and then we all went, "What?!"

And the thing that I liked about this system was that as soon as this issue was identified, both the Judge, myself and the client then sat down and started discussing where to go with it. Because all of a sudden the ballgame changes doesn't it? I mean here's a kid with an intellectual disability so he needs to be dealt with quite differently to an ordinary punter who's committing offences. The Judge came back down and said I understand how angry and frustrated you are about not finding out about this information - I am too.

So we came up with a formula together to sentence him, and I reckon this whole thing would never have happened in an ordinary court, we would never have been able to get the information out, which is why my one experience in the CKC has really highlighted how the ordinary system is so inconclusive in that it doesn't allow information to come out. But by having this discussion a very relevant piece of information came out which is going to affect this kid for the rest of his life. But no one knew about it, not his mum, no-one, and for 5 years nothing was being done for him, he was committing serious offences; and he had an intellectual disability; and it was this system that found it out.

This yarn was selected as the most significant by one group at the Evaluation Summit, because:

- It produced very positive outcomes as a result of the Koori Court process. In particular giving the offender a voice and the Judge a chance to assess the person and to find out any particular needs that if addressed may help to break the cycle.

This group also selected '*That bloke, that Judge*' for the same reason.

Annex 5: Summary of 2009 evaluation report

This document presents interim findings of the evaluation of the County Koori Court pilot program following one year of implementation. Clear Horizon has been engaged to undertake the evaluation of the County Koori Court on behalf of the Department of Justice (DoJ). Specifically, the purpose of the evaluation is:

- to assess the implementation and intermediate outcomes of the Koori Court model in a County Court environment over a four (4) year period
- to identify key success factors to assist the Department of Justice in identifying transferable success factors for any future County Koori Courts.

This report is the first of three (3) evaluation reports to be delivered over the evaluation period from 2009 to 2011. The final report due in 2011 will bring together data from all three evaluation years.

The County Koori Court was established under the *County Court Amendment (Koori Court) Act 2008* [1] and began implementation in 2009. The pilot program will run for four (4) years at the Latrobe Valley Law Courts in Morwell. The model was developed to help reduce the rate of recidivism in the Aboriginal community by providing a culturally sensitive court environment [2]. The objective of the County Koori Court is:

“to ensure greater participation of the Aboriginal community in the sentencing process of the County Court through the role played in that process by the Aboriginal Elders or Respected Persons and others such as the Koori Court officer” [1].

The Court convenes around an oval table, and avoids the formal language of a traditional court, allowing for contributions from Aboriginal Elders and Respected Persons (Elders), victims, support people and the defendant [3]. Sentencing is determined by the Judge as in the traditional court process, following discussions held at the table with Elders.

The data collection process for this evaluation began in September 2009, and ended in early December 2009. Interviews were conducted with a range of key stakeholders and court participants, including Judges, Elders, court staff, and staff of service provider organisations. In total three (3) defendants were interviewed, Observational court data was also collected through observations undertaken of eight (8) court cases held across six (6) days. An Evaluation Summit workshop was held in December 2009 at the County Court in Melbourne. The workshop was attended by 27 stakeholders. The Evaluation Summit involved the presentation of data collected; with discussion undertaken by participants working in small groups to give their perspective and interpretations of the data presented. The discussions and outputs gained through the Evaluation Summit process have guided the interpretation of results, and informed the findings presented in this evaluation report.

Court profile

At the time of analysis of court records (December 2009), 21 defendants had attended the County Koori Court in 2009. The defendants were predominately male (18 out of 21) and aged 25–29 (11 out of 21). Most of the defendants in this period resided in Bairnsdale. In relation to previous offences, the highest proportion of defendants were in the bracket of having 20-49 previous offences; and around half were found to have had a previous prison episode. Of the defendants who had information recorded regarding their previous breaches, more than half had breached a

previous court order. The majority of cases heard at the Court to date have been for crimes of a violent nature and/or theft/burglary. This is reflective of offences heard within the County Court jurisdiction.

Court setting

This evaluation found that the physical setting and the process of the County Koori Court provides a culturally appropriate environment for the sentencing discussion to take place. The use of clear and accessible language and the round-table sentencing discussion fosters a sense of equality and respect, and secures the engagement of the defendant in the process and outcomes. There is significant value in the way that the model places the defendant at the centre of proceedings and allows the Court sufficient time to explore the underlying reasons for offending behaviour.

The Court encourages the participation of the community and service providers, however their involvement has been limited for a number of practical reasons and due to a lack of awareness. Those service providers and community members that have been involved are seen to have been providing valuable input into the development of appropriate Court decisions.

Overarching strengths

The evaluation found that Elders made a significant contribution to sentencing decisions reached within the Court, through their contribution to ensure there is understanding of the defendant and their background. Their knowledge of community and culture helps to inform the Judge, whilst their words and presence leave a strong impression on defendants. There is evidence that the presence of these prominent community members gives a sense of justice being delivered by the Aboriginal community, both to defendants and the Elders themselves.

A key finding of the evaluation was that sentencing decisions are tailored to prevent reoffending; and that the time dedicated to understanding the underlying behaviour of defendants is a key part of this. The involvement of Elders and service providers immediately informs the Judge of appropriate sentencing options. This inclusive process of reaching a decision helps to engage the defendant in decisions reached, and motivates them to address their own offending behaviour. Service providers present in the court room are also better informed of their client's support needs through the sentencing discussion.

In general the first year of the four (4) year County Koori Court pilot program is positively viewed by the majority of respondents. However, absence of any data on recidivism or breach rates prohibits any statement of longer-term success at this stage. With improved data collection and consultations with higher numbers of defendants, the final evaluation report will be able to draw firmer conclusions than is possible at this stage.

Areas for improvement

A key issue of the pilot program identified is the inadequate involvement of service providers. This is of particular concern when considering the valuable role they play in the court process. Reasons given for this suggest that the County Koori Court needs to raise awareness of their potential role, and assist in overcoming practical barriers to their participation. Similarly, the evaluation found a lack of community awareness of the Court, which also constrains wider community participation.

The evaluation also highlighted that the County Koori Court process requires a different approach is taken by the Judiciary than in mainstream courts. It was found that Judges are adapting well to the role, but the flexibility of the Koori Court model has resulted in some inconsistencies between

different Judges. On occasion these have been a source of frustration for the Elders who are also adapting to their new positions within the Court.

The evaluation raised other issues relating to the Elders. These include the lack of male Elders on the panel, the need to develop Elders confidence through training, and the emotional pressures that they may experience participating in some hearings. An issue of concern to the local Elders is the lack of inclusion of local Elders in the selection process of Elders and Respected Persons who sit on the Court. The selection process and the reasons why local Elders are not actively involved in the selection of other local Elders is explained in further detail in the report.

Recommendations

Recommendations have been developed to support the implementation of the County Koori Court in 2010. Participants at the Evaluation Summit were invited to select key issues they considered to be priorities. For each of these key issues participants developed recommendations on how they should be addressed. The following four (4) recommendations are a result of this process:

Recommendation 1: Education and awareness sessions – with Judges and Elders

It is recommended that a group of stakeholders from within the County Koori Court deliver education and awareness sessions to the Koori community and other stakeholders in the catchment area of the Gippsland region. The sessions should promote and raise awareness of the processes and benefits of the County Koori Court. The group should consist of Elders, Judges, the Koori Court Officer and potentially representatives from the DoJ.

Recommendation 2: Develop more partnerships with community-based organisations

It is recommended that more partnerships are established with Koori community organisations to help promote the Court and facilitate a greater understanding of the County Koori Court process and benefits. The aim of this recommendation is to encourage community based organisations to play a greater role in the Court. In helping to develop these partnerships it is recommended that funding is provided to develop a training and education program.

Recommendation 3: Ongoing training for the Elders and Respected Persons

It is recommended that a range of training options be developed and provided to the Elders and Respected Persons. The training options should help the Elders develop their own personal skills in terms of confidence building and public speaking. Other training should give the Elders greater knowledge of sentencing processes and principles, and the different sentencing options available.

Recommendation 4: Establish a greater pool of male Elders and Respected Persons

It is recommended that more male Elders and Respected Persons be recruited. More community awareness regarding the County Koori Court will assist this process. Consideration should be given to the sensitivities and influence of criminal histories amongst male members of the Koori community and their willingness to apply.

Annex 6: Summary of 2010 evaluation report

This document presents interim findings of the evaluation of the County Koori Court pilot program following two (2) years of implementation. Clear Horizon has been engaged to undertake the evaluation of the County Koori Court on behalf of the Department of Justice (DoJ). Specifically, the purpose of the evaluation is:

- to assess the implementation and intermediate outcomes of the Koori Court model in a County Court environment over a four (4) year period
- to identify key success factors to assist the Department of Justice in identifying transferable success factors for any future County Koori Courts.

This report is the second of three (3) evaluation reports to be delivered over the evaluation period from 2009 to 2011. The final report, due in mid 2011, will bring together data from all three (3) evaluation years.

The County Koori Court

The County Koori Court was established under the *County Court Amendment (Koori Court) Act 2008* [1] and began implementation in 2009. The pilot program will run for four (4) years at the Latrobe Valley Law Courts in Morwell. The model was developed to help reduce the rate of recidivism in the Aboriginal community by providing a culturally sensitive court environment [2]. The objective of the County Koori Court is:

“to ensure greater participation of the Aboriginal community in the sentencing process of the County Court through the role played in that process by the Aboriginal Elders or Respected Persons and others such as the Koori Court officer” [1].

During the sentencing conversation, the Court convenes around an oval table and avoids the formal language of a traditional court, allowing for contributions from Aboriginal Elders and Respected Persons (Elders), victims, support people and the Accused [3]. Sentencing is determined by the Judge as in the traditional court process, following discussions held at the table with Elders.

Evaluation methodology

The data collection process for this evaluation began in June 2010, and ended in November 2010. Interviews were conducted with a range of key stakeholders and court participants, including Judges, Elders, court staff, and staff of support service organisations. In total twelve (12) Accused were interviewed, as well as 25 other court stakeholders.

An Evaluation Summit workshop was held in November 2010, where 23 stakeholders discussed and analysed the evaluation data. The outputs gained through the Evaluation Summit process, as well as additional data analysis undertaken by the evaluators, have guided the interpretation of results, and informed the findings and recommendations presented in this evaluation report.

2010 Findings

Findings from the evaluation in 2010 are presented in the report by court participant. These include the Accused, Elders, Judges, legal professionals, community and family, victims and support services.

The Accused

The evaluation found that Accused in the County Koori Court in 2010 include many coming through to the County Court for the first time. There are also some Accused with a longer history with the justice system and numerous prison episodes. The range of sentences given by the County Koori Court reflects the differing criminal histories and offence types of the Accused. Most commonly the Accused are sentenced to custodial sentences.

The evidence suggests that the inclusive and open sentencing conversation and the participation of the Elders allow a deeper consideration of the Accused's individual situation in the County Koori Court. This process generates feelings of fairness, being understood, and being connected with their community. From this the Accused is engaged in both the discussions and decisions of the Court. This inclusive and fair process also helps to address perceptions of prejudice and unfairness that the Accused may feel within the justice system.

There are two (2) main outcomes of the County Koori Court that were found to have some influence on reoffending. First is the deterrent effect that Elders have on the Accused. The evaluation found that all Accused consulted do not want to face the Elders again in court, or let them down. Second is the rehabilitative effect of a sentencing discussion that provides appropriate support to address identified causes of offending behaviour. The words of the Elders also help to motivate and empower the Accused to address their issues.

However, the efforts to understand the Accused's individual circumstances leave the Court prone to accusations of inconsistency of sentence from the perspective of the Accused and community. Furthermore, Accused on remand might be at a disadvantage as they are unable to engage with programs relevant to addressing their offending behaviour prior to sentencing.

Elders and Respected Persons

The Elders are integral to the County Koori Court, and in particular to the engagement of the Accused in the sentencing discussion. The Accused see the Elders as role models and representatives of the community, and they also help to reconnect the Accused to community. The Elders challenge the Accused's behaviour by outlining the impact on their community or family, and also offer encouragement for them to change. The Elders also provide a deterrent to the Accused to reoffending, as appearing in front of the Elders again was found to be a daunting prospect for all Accused.

In 2010 the evaluation found there is a growing confidence amongst Elders as they gain more experience. However, all Elders still welcome training and support to undertake this difficult and sometimes distressing role. The evaluation also found there is a lack of male Elders participating in the Court. The involvement of Elders from outside the community may assist in overcoming this issue, however their involvement is an area of contention for a few court stakeholders. The involvement of Elders from outside the community may also help overcome accusations of bias from some of the Accused.

Judges

The Judges successfully adopted an appropriate approach to managing the sentencing discussion in 2010, helping to ensure the participation of all stakeholders. An additional benefit for Judges participating in the County Koori Court is that they are able to learn from their experiences and apply this in the mainstream courts.

Legal professionals

The legal representatives mostly adopted an approach and mindset that was appropriate for the sentencing discussion. However some barristers tried to maintain the approaches and techniques adopted in mainstream courts, resulting in a stifling of the sentencing discussion. There are also some concerns that this lack of knowledge could result in some clients not being adequately prepared, or not even being aware of the option of going through the County Koori Court.

Community, family and victims

The participation of community and family was found to help the Accused speak up in court and contribute to the discussion. The informal court environment, processes, and approach of participants helped to facilitate input from community. This brings in community values, ancestry connections, as well as a better understanding of the impact of the crime on community. Hearing of the impact on community from respected persons or family had a greater impact on the Accused.

Some Accused reported a community perception that going through the County Koori Court was likely to end in a custodial sentence, or that the Accused's existing relationship with the Elders would influence the severity of sentence. Whilst this is not the case and Judges use the sentencing discussion to construct their own views as they would in any court, a community perception such as this could be damaging to the County Koori Court and to the Elders. However, it does highlight that the Koori Court is not considered to be a 'soft' option by community.

The reading of the Victim Impact Statement in such an intimate setting was also found to have a powerful effect. However, the experience of having a victim in the sentencing discussion presented many difficulties for the open nature of the sentencing conversation.

Support services

In 2010 there has been limited participation of support services, despite recent increases in the number and variety of services present. The contribution of these support services helps to provide information on the Accused's current and future capacity to overcome identified issues. They also provide valuable suggestions regarding appropriate sentencing options. Through their participation in the sentencing discussion, support services can also benefit by learning more about the Accused and what motivates them.

Identified barriers to the participation of support services include: limited knowledge of their role within the Court; lack of awareness of court dates and hearings; and a lack of time and staff resources required to participate. These issues are more acute for the East Gippsland based support services, and these services are less likely to be present in court. The Latrobe Valley Community Health Service (LCHS) referral system will potentially help to increase participation of support services, and also allow Accused to demonstrate their willingness to address their offending behaviour prior to court. However it is too early to discuss the impact of this initiative.

Conclusion

While it is too early to assess the impact of the County Koori Court on precise reoffending rates, evidence from the evaluation suggests the Court may be having some influence on reoffending. This is largely a result of the participation of Elders in sentencing conversations, as well as the provision of appropriate support services and programs that address offending behaviour. Every Accused consulted spoke of their motivation to address their offending behaviour as a result of their positive experiences in the County Koori Court. However, whether this translates into an actual reduction in reoffending is unclear at this stage.

In addition, overwhelmingly the evidence suggests that the experience of Koori Accused in the justice system is vastly improved by the availability of the County Koori Court. This was the case for every Accused interviewed, including those who aired significant grievances regarding the sentence they received. This improved experience was found to not only contribute to an equitable and culturally appropriate system, but also to improved outcomes for the Accused. These outcomes include being more engaged and respectful of sentencing decisions, which in turn facilitate adherence to court orders and motivations to address causes of offending behaviour.

Recommendations

The following recommendations have been developed to support the implementation of the County Koori Court in 2011. Participants at the Evaluation Summit were invited to identify priority issues and develop recommendations on how they should be addressed.

The following eight (8) recommendations are a result of this process:

- Recommendation 1:** Improve public awareness of the County Koori Court
- Recommendation 2:** Run 'mock Court' sessions for key stakeholders
- Recommendation 3:** Provide ongoing training for the Elders and Respected Persons
- Recommendation 4:** Explore the development of a Courts Integrated Service Program (CISP) for the County Koori Court
- Recommendation 5:** Include relevant information for Elders in Corrections reports
- Recommendation 6:** Clear and supported career paths for Koori Court staff
- Recommendation 7:** Develop/fill service gaps
- Recommendation 8:** Expand the County Koori Court to Bairnsdale