

COUNTY KOORI COURT

This fact sheet is about the County Koori Court – the first Australian sentencing court for Aboriginal offenders in a higher jurisdiction. The County Court of Victoria is the major trial court in Victoria. It is a higher court that sits in the middle of the court hierarchy, above the Magistrates' Court and below the Supreme Court and the Victorian Court of Appeal (**see Fact Sheet 1**).

WHAT IS THE COUNTY KOORI COURT?

The County Koori Court is a specialist court that aims to achieve more participation of the Victorian Aboriginal (**Koori**) community in the sentencing process in the County Court. It seeks to achieve this through the inclusion of **Aboriginal Elders** or **Respected Persons** from the Aboriginal community and **Koori Court Officers** in the sentencing process in the County Court.

The County Koori Court respects Koori culture and the processes of the court are less formal than regular process in the County Court. Legal jargon is avoided and plain English used so that accused people understand the proceedings better and the environment is more culturally appropriate and sensitive.

The Court was established by reform to the law in 2008. The *County Court Amendment (Koori Court) Act 2008* (Vic) established the County Koori Court as a Division of the County Court. The Court started as a trial pilot program in 2009 and has continued since then.

One judicial officer of the County Court is in charge of the County Koori Court. Following a successful pilot program in Morwell and Bairnsdale, the Court now sits in different locations around Victoria:

- Melbourne County Court;
- LaTrobe Valley (Morwell Law Courts and Bairnsdale Law Courts); and
- Mildura Law Courts.

There are also Koori Courts operating in the Magistrates' Court (which hears less serious criminal matters) and the Children's Court (which hears criminal matters involving children and young people). The Koori Court in the County Court draws on the success of these other Victorian Koori Court models.

WHOSE MATTERS CAN BE HEARD IN THE COUNTY KOORI COURT?

The County Koori Court is not open to any accused person who is charged with a criminal offence who appears in the County Court. There are certain eligibility criteria. To be eligible for entry into the Koori Court, an accused person must:

- be Aboriginal and/or Torres Strait Islander;
- be charged with an offence that can be heard in the County Court;
- be charged with an offence that does not involve family violence, a sexual offence or breach of an Intervention Order or Interim Intervention Order;
- plead guilty to the offence and consent to having his or her matter heard in the Koori Court Division;
- be willing to come to Court and talk about his or her story.

Further, the judge must consider that the matter is appropriate to come before the Court.

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WHY WAS IT INTRODUCED?

In 1991, the Royal Commission into Aboriginal Deaths in Custody published its landmark report. The Commission was established by the Australian Government to investigate the high proportion of deaths in custody where the deceased person was Aboriginal. A campaign called *Committee to Defend Black Rights* that started in 1987 to count Aboriginal deaths in custody reported that one Indigenous person died in custody every 11 days. The Commission investigated the individual cases where Aboriginal people had died in custody, and it also investigated the broader issues and the social, cultural, and legal factors that were related to these deaths.

The Royal Commission found that Indigenous Australians were significantly over-represented in custody in the criminal justice system (including police custody, prisons, and juvenile detention centres). This means the number of Indigenous people in custody was significantly disproportionate to the number of Indigenous people in the general population; that is, Indigenous people were more likely than non-Indigenous people to be in custody. The Commission identified the impacts of British colonisation, loss of culture and resultant inter-generational trauma on Aboriginal Australians, as well as Indigenous disadvantage in the way that the criminal justice system applied to Aboriginal people. The Royal Commission made recommendations that were aimed at breaking the cycle of over-representation of Aboriginal people in custodial settings, including:

- measures to divert Indigenous people away from police custody, and more appropriate sentencing options as alternatives to custodial sentences;
- more involvement in the sentencing process and input into sentencing courts by Indigenous people, communities, and organisations;
- measures to make court processes more culturally appropriate, relevant, and accessible for Indigenous people, and less likely to alienate and intimidate them.

In response to the Commission's recommendations, the Victorian Government developed the Victorian Aboriginal Justice Agreement, which the establishment of the Koori Courts in Victoria was part of.

WHAT DOES THE KOORI COURT SEEK TO ACHIEVE?

The Koori Court has a number of objectives. Participation in the Court is based on the accused admitting guilt to the offences that he or she has been charged with and taking responsibility for their actions. The objectives of the County Koori Court are to:

- include Elders and Respected Persons in the Court process;
- encourage the accused to think and speak about his or her offending behaviour;
- ensure the accused understands he or she is responsible for his or her offending behaviour;
- encourage the accused not to offend again;
- encourage the accused to use appropriate supports (if necessary) to assist him or her to change behaviour.

A number of evaluations of the Koori Court have found there is strong evidence that shows it is making justice for Indigenous people fairer and more culturally relevant and appropriate. The evaluations identified that the commitment and cooperation of the Elders, judges, court staff, and support services were critical to the success of the Court in improving the experience of Koori accused people in the County Court process.

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HOW DOES IT OPERATE?

There are three stages to the County Koori Court process. A key part of the process is the different and special seating arrangement during the **sentencing conversation stage**.

Every sentencing conversation begins with an acknowledgement of country to the Gunai/Kurnai country. There is an explicit statement by the judge to the accused that the Court respects Aboriginal people and that the room has been smoked (an ancient custom among Indigenous Australians).

Everyone introduces themselves and explains their role, and the case against the accused is presented. Everyone is involved in the discussion of the accused's offending behaviour. The Koori Court officer can advise on the availability and facilitate the provision of services and programs for the particular offender.

Instead of the usual courtroom layout (where there is a division between the prosecution and defendant; where the accused sits in the dock; and where the judges sits at the bench higher up than the rest of the court.

1. ARRAIGNMENT

This is a formal stage of the process. The judge is robed (as is usual in regular court processes). Elders and Respected Persons are not present. The charges are read out to the accused and he or she enters a formal plea of guilty.

2. SENTENCING CONVERSATION

This is a less formal process which is conducted in a special courtroom with special seating arrangements. The focus of the sentencing conversation is to ensure cultural significance in the discussion of the accused's behaviour and the consequences that should follow.

3. PASSING SENTENCE

The sentencing stage is also conducted as a formal proceeding. The judge delivers his or her sentence from the bench and the accused sits in the dock. The judge alone decides what the sentence is.

