

Practice Note: Operation and Management of the County Koori Court

Document Details			
Subject	Criminal Division, County Koori Court		
Reference Number	PNCR 1-2019		
Date Created	8 October 2012	Last Updated	19 April 2019
Authorised By	Judge Lawson		
Note	Supersedes reference number PNCR 1-2016		

Introduction

- 1 The Koori Court was established under the County Court Amendment (Koori Court) Act 2008. The Act was assented to on 23 September 2008 and provides for the establishment of the Koori Court as a Division of the County Court.
- 2 The County Koori Court draws on the successful implementation of the Koori Court model in both the Magistrates' Court and the Children's' Court.
- 3 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 County Koori Court Coordinator.
- 4 The County Koori Court is the first sentencing court for Aboriginal offenders in a higher jurisdiction in Australia.

Jurisdiction

- 5 The County Koori Court has jurisdiction to sentence for all offences dealt with in the criminal jurisdiction of the County Court except:
 - a sexual offence as defined in section 6B(1) of the Sentencing Act 1991.
- 6 Subject to notice in the Government Gazette specifying a venue, the County Koori Court has jurisdiction to sentence in relation to the following:
 - a contravention of a family violence intervention order or a family violence safety notice under the Family Violence Protection Act 2008, or an offence arising out of the same conduct as that from which the contravention arose.
- 7 From 1 May 2019, the County Koori Court sitting at Mildura, as part of a pilot program, will be gazetted to hear matters referred to above in paragraph 6.
 - a) For the purposes of this pilot program, the jurisdiction will only extend to the following matters:
 - The accused, at the time of being committed for trial by the Magistrates' Court of Victoria sitting at Mildura, entered a plea of guilty, or;
 - The accused lodged an appeal against sentence from the Magistrates' Court of Victoria sitting at Mildura.
- 8 The County Koori Court can hear a proceeding if all of the following criteria are satisfied:
 - a) the accused is Aboriginal or Torres Strait Islander; and

- b) the offence is within the jurisdiction of the County Court; and
- c) the accused pleads guilty; and
- d) the accused consents to the proceeding being dealt with by the County Koori Court; and
- e) the Judge considers the matter is appropriate to come before the Court.

Process for identification

- 9 Aboriginality is a jurisdictional requirement. An accused must be Aboriginal or Torres Strait Islander to come before the County Koori Court. Aboriginality is defined as a person who:
 - a) is descended from an Aboriginal person or Torres Strait Islander; and
 - b) identifies as an Aboriginal person or Torres Strait Islander; and
 - c) is accepted as an Aboriginal person or Torres Strait Islander by an Aboriginal or Torres Strait Island community.
- 10 An accused who elects to come before the County Koori Court must provide sufficient proof of aboriginality.

How to enter the Koori Court Division

- 11 To enter the County Koori Court an accused or their legal practitioner must advise the Registrar of the Magistrates' Court at the completion of the committal proceedings. Alternatively, application can be made to the Judge in Charge of the County Koori Court by contacting the County Koori Court Coordinator.
- 12 The matter is then listed for a Directions hearing where the Judge in Charge of the County Koori Court decides whether the matter is appropriate for Koori Court in all the circumstances and, if so, allocates a court hearing date.
- 13 County Koori Court Directions hearing are held every Wednesday at 10.00am.

Plea hearing in the County Koori Court

- 14 The plea hearing is conducted in a three stage process.
- 15 Stage 1 is a formal arraignment. Guilty pleas may be entered at an Initial Directions Hearing or on the plea date in the County Koori Court. Arraignment proceeds before the Judge alone.
- 16 Stage 2 is the sentencing conversation. This procedure is different from the usual plea hearing conducted in the County Court.
- 17 The sentencing conversation is carried out as a discussion around a table. The Judge sits at the table with an Aboriginal Elder or Respected Person on either side of him or her. Also seated at the table are the accused, a family member/support person, the County Koori Court officer, the corrections officer, the accused's legal practitioner and prosecutor. Each participant has the opportunity to participate in the sentencing conversation.
- 18 The first part of the sentencing conversation concerns aspects of cultural significance and is repeated with every accused. The sentencing conversation begins with an acknowledgement of country. The Judge explains to the accused that the Court respects Aboriginal people and culture and that the Court has been smoked in keeping with tradition. The Judge introduces the participants or asks them to introduce themselves and explain to the accused their role in the process.
- 19 The prosecution opening will be read out. Victim impact statements will also be read out during this stage.
- 20 The accused is then asked to speak to the Court about their offending and about themselves. This is fluid and the order of events can be changed to suit the needs of the particular matter.

- 21 The Aboriginal Elders or Respected Persons may and invariably do speak to the accused. The Elders or Respected Persons may provide information on the background of the accused and possible reasons for the offending behaviour. They may also explain relevant kinship connections, how particular crimes have affected the indigenous community and provide advice on cultural practices, protocols and perspectives relevant to sentencing. They will also speak to the accused about his or her behaviour and its effect upon the community.
- 22 Family members, support persons, or counsellors are invited to contribute to the conversation.
- 23 During the sentencing conversation the Judge may ask the County Koori Court Coordinator about the availability of local services and programs appropriate to the accused. The Community Corrections Officer can also provide advice about indigenous programs offered by Corrections Victoria, either in custody or with the accused remaining in the community. The aim of this approach is to maximise the rehabilitation prospects of the accused.
- 24 The Judge may discuss community and family considerations with the Aboriginal Elders or Respected Persons and other participants audibly and openly at the table.
- 25 Counsel for the accused will be invited to address the Court on the offender; the offending and provide submissions on sentence. The prosecution may respond.
- 26 Stage 3 is the formal sentencing. The usual sentencing procedures are followed. The procedure is formal with the Judge sitting alone at the bench to deliver the sentence. This process reinforces to the accused and other participants that the Judge is the ultimate decision-maker and that the Elders play no part in the sentence. Elders are generally not present during sentencing.

Appeals to the County Koori Court

- 27 In addition to hearing pleas the County Koori Court can hear appeals under Part 6.1 of the Criminal Procedure Act 2009 where the appeal is against a Sentencing Order made by the Magistrates' Court.
- 28 At the time of filing of an appeal from the Magistrates' Court an appellant or the legal practitioner must request that the appeal be referred to the County Koori Court. The matter is then listed for a mention before the Judge in Charge. If the appeal is appropriate to be dealt with in the County Koori Court the Judge in Charge will list the matter for a County Koori Court sitting.

Contravention of orders made in the County Koori Court

- 29 The County Koori Court has jurisdiction to hear any breach proceeding relating to an Order previously made. Breach proceedings are brought before the Court by the responsible authority liaising with the associate to the Judge in Charge and the County Koori Court Coordinator.
- 30 Judge Lawson is the Judge in charge of the County Koori Court and is responsible for the management of the Court. Her associate can be contacted on (Tel) 8636 6604 or email countykooricourt@countycourt.vic.gov.au.

Exchange of material

- 31 In every case where a matter has been listed for Plea Hearing, the Prosecution **must** file via eLodgement, and serve on the Defence:
 - (a) At least 28 days before the plea date:
 - (i) The Draft Indictment (which has a draft watermark);
 - (ii) The Criminal Record (if any);

- (iii) The Prosecution Opening upon Plea; and
 - (iv) A chronology.
 - (b) At least 10 days before the plea date, where applicable:
 - (i) A Family Violence Checklist;
 - (ii) Victim Impact Statement; and
 - (iii) Copies of any ancillary orders sought.
 - (c) At least 2 days before the plea date:
 - (i) A Prosecution Response to Defence; and
 - (ii) Submissions (if sought to be relied upon).
- 32 The defence **must** file via eLodgement, and serve on the Prosecution:
- (a) At least 14 days before the sentencing conversation:
 - (i) Any expert reports.
 - (b) At least 5 days before the sentencing conversation:
 - (i) A chronology; and
 - (ii) A Defence Outline of Submissions.
- 33 In every case where the matter has been listed for Appeal Hearing, the Respondent must file via eLodgement at least 2 days before the sentencing conversation:
- (a) Police Summary or summaries;
 - (b) Criminal Record;
 - (c) Victim Impact Statement/s; and
 - (d) Chart of Offences.
- 34 The Appellant must file via eLodgement and serve on the Respondent, at least 2 days before the sentencing conversation any reports or other material upon which the Appellant wishes to rely.
- 35 Please see the County Court Criminal Division Practice Note for further information on general filing requirements and content.

County Koori Court personnel

- 36 Terrie Stewart is the County Koori Court Coordinator and is responsible for the management of the County Koori Court. Terrie can be contacted on (Tel) 8636 6083 (M) 0407 538 059 (Fax) 8638 6002 or email countykooricourt@countycourt.vic.gov.au