

County Koori Court fact sheet



Background

The County 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.

The objective of the County Koori Court is to ensure greater participation of the Aboriginal community in the sentencing process through the role played in that process by the Aboriginal Elders or Respected Persons and others such as the Koori Court Officer. However, it is only the Judge who determines the sentence that is to be imposed.

The County Koori Court is the first sentencing court for Aboriginal offenders in a higher jurisdiction in Australia. It currently sits in the Latrobe Valley, Mildura, Shepparton, Warrnambool and Melbourne.

An independent evaluation of the first two years of the Court concluded that the County Koori Court has been successful in achieving its objectives.

Why have a Koori Court?

- Koori people are over-represented within the criminal justice system, more so than any other cultural group
- Numerous reports, such as the Royal Commission into Aboriginal Deaths in Custody and the Bringing them Home Report, have recommended that the legal system be modified to make it less culturally alienating and more tailored to the needs of Aboriginal offenders and their community
- The Victorian Aboriginal Justice Agreement, an agreement developed between the State Government and the Victorian Koori community, recommended the establishment of a Koori Court

Some of the objectives of the County Koori Court

- To encourage participation of the accused in the Court process
- To encourage the accused to address their offending behaviour
- To support the accused in the completion of their sentence
- To involve the community in the Court process

THE COUNTY COURT



KOORI COURT

County Koori Court process

The plea hearing is conducted in a three-stage process:

Stage 1 is a formal arraignment. A formal guilty plea is entered. This is done with the Judge on the Bench. The prior convictions are admitted. The Crown opening is then read.

Stage 2 is the sentencing conversation. This procedure is different from the usual plea hearing conducted in the County Court.

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, the Koori Court Officer, the Corrections Officer, the Legal Practitioner for the accused and the Prosecutor. All have the opportunity to participate in the sentencing conversation.

The sentencing conversation begins with an acknowledgment of country. The Judge explains to the accused that the court respects Aboriginal people and culture and that the room has been smoked. All the participants are introduced and explain their role. Family members and support persons are also invited to participate in the conversation.

Stage 3 is when the Judge delivers the sentence. This is conducted as a formal proceeding: The Judge will be seated at the bench and the accused will be in the dock. It is the Judge who decides the sentence.

Sentencing can often occur on another day, depending on the complexities of the case.

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Jurisdiction

The County Koori Court has jurisdiction to sentence for all offences dealt with in the criminal jurisdiction of the County Court except sexual offences. Offences that involve family violence or a breach of an Intervention Order or Interim Intervention Order can only be heard at the County Koori Court sitting at Mildura.

The County Koori Court can hear a proceeding if all the following criteria are satisfied:

- the accused is an Aboriginal or Torres Strait Islander; and
- the accused pleads guilty; and
- the accused consents to the proceedings being dealt with by the Koori Court; and
- the Judge considers the matter is appropriate to come before the court.

Appeals

In addition to hearing pleas the County Koori Court can hear appeals under section 254 or 257 of the *Criminal Procedure Act 2009* where the appeal is against a Sentencing Order made by:

- (a) the Koori Court Division of the Magistrates' Court; or
- (b) the Magistrates' Court other than the Koori Court Division of that court.

Sentencing

As in any other case in the Criminal Division of the County Court, the Judge determines the appropriate sentence and exercises the same sentencing powers.

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Role of Aboriginal Elders and Respected Persons

The *County Court Amendments Act* 1958 provides for the appointment of Aboriginal Elders or Respected Persons to sit with the County Koori Court Division and advise the Judge on cultural issues relating to the accused and his or her offending behaviour. The voices of Aboriginal Elders and Respected Persons are a powerful cultural aspect of the County Koori Court and their participation sends a clear message to the accused that the offences committed is not condoned by either Koori or non-Koori communities.

The contribution made by Elders and Respected Persons will vary from case to case, however they are encouraged to speak with the accused about their offending behaviour, their knowledge of the accused family circumstances and background, and where appropriate, offer positive encouragement to the accused.

The Elders and Respected Persons may be required to offer advice to the court regarding cultural practices, protocols and perspectives. The Elders and Respected Persons may also choose to reflect on their personal experiences in the context of the case.

In some cases, the Elders and Respected Persons may explain the offending behaviour in the context of the Koori Community Code of Conduct. This involves describing to the accused how the offending behaviour breaches Indigenous concepts of Justice.

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