

# County Koori Court

County Court of Victoria and the Department of Justice

## FINAL EVALUATION REPORT

27<sup>th</sup> September 2011



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## Disclaimer

This evaluation report has been produced using information supplied to Clear Horizon by the County Koori Court and the Victorian Department of Justice, along with information collected from interviews held with key stakeholders and from observations of the County Koori Court. While we make every effort to ensure the accuracy of the information contained in this report, any judgements as to the suitability of information for the client's purposes are the client's responsibility. Clear Horizon extends no warranties and assumes no responsibility as to the suitability of this information or for the consequences of its use.

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## Recommended referencing

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## Executive summary

On the 23<sup>rd</sup> September 2008 the County Koori Court pilot program was established under the *County Court Amendment (Koori Court) Act*. The pilot program commenced in early 2009 and will continue for four (4) years at the Latrobe Valley Law Courts located in Morwell. 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”* (County Court of Victoria, 2008). Since its establishment in 2009, 49 Accused have accessed the Court.

This report is the final of three (3) evaluation reports developed as part of the evaluation of the County Koori Court pilot program undertaken from 2009 to 2011. The purpose of the evaluation was to investigate the impact of the County Koori Court (the Court), and to conduct an action learning evaluation on the implementation of the Court. Specifically, the purpose of the evaluation was:

- 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.

The focus of the evaluation was formalised with the development of a set of Key Evaluation Questions which were used as the ‘organising construct’ of the evaluation. The Key Evaluation Questions focussed on reoffending, the experience of Koori Accused in the Court, as well as the participation of service providers, the Accused and the broader Koori community within the Court. The evaluation involved collecting evidence around these Key Evaluation Questions. The evaluation adopted a mixed method approach and triangulated the findings from different methods to gain a robust assessment of outcomes. The tools used to collect data in each of these methods were designed in collaboration with key stakeholders to ensure they were relevant and appropriate.

### Impact on reoffending

In the absence of a mainstream comparison group, it was difficult to determine whether the County Koori Court process diverted the Accused from subsequent and/or more serious offending behaviour. However, of the 31 Accused included in 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, and one (1) failure to appear in court. The evaluation also found 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).

### Improved experiences within the justice system

Another core aim of the County Koori Court is to provide access to fair, culturally relevant and appropriate justice. Overwhelmingly the evaluation found that the experience of Koori Accused in the justice system is vastly improved by the availability of the County Koori Court. 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.

## Support from service providers

Service providers play an important role in the County Koori Court, as the sentencing conversations provide an opportunity to identify underlying causes of offending behaviour and link the Accused with appropriate support services (drug and alcohol services etc.). Data collected in 2009 and in 2010 found that the level of service provider participation in court hearings has unfortunately been insufficient. While there was an increase in service provider participation in 2010 and again in 2011, there remain barriers to the ongoing participation of service providers which include funding limitations, time constraints and poor communication. These challenges are largely outside the influence of the court.

## Participation of Koori Accused in the Court

The participation of the Accused in the County Koori Court is an integral component of the sentencing conversation. The model is designed to acknowledge and respect Aboriginal culture, and avoid the formal language of a traditional court, allowing for contributions by the Accused. The majority of Koori Accused actively participated in the Court process, including verbal contribution to sentencing conversations as verified through a review of court transcripts of sentencing remarks.

The Accused reported that they valued the opportunity to speak directly about their history and the circumstances relating to their offending behaviour in the Court, corroborated through court observations undertaken.

The evidence demonstrates that the Accused are encouraged to participate in the Koori Court largely as a result of the informal and inclusive model adopted, using plain language and involving Elders and community members in the sentencing conversation. When the principles of the Koori Court are adhered to, the Accused's experience has been positive. On occasions when the principles of the Court (in terms of openness, informality and inclusiveness) have not been adhered to, this has resulted in a negative experience for the Accused.

## Koori community participation in the Court

The involvement of a range of stakeholders in the County Koori Court is a key strength of the Court. The involvement of each stakeholder group, including the Accused, Elders, family members, service providers, community members and victims, is a positive element of the Koori Court process. However, informants particularly underscored the value of participation from Elders, the Accused and their family members.

## Conclusion

In conclusion, there is strong evidence that the County Koori Court pilot program is making significant achievements in the program outcome area of providing *'access to fair, culturally relevant and appropriate justice'*. There is also evidence that the Court has some impact on the program outcome area of *'Koori Accused do not have more serious contact with the justice system'*. However, at this stage it is too early to definitively say whether the Court will have a long term impact on reoffending.

The successful implementation of the County Koori Court was found to be reliant on a number of internal and external factors. Internal factors include the meaningful participation of Elders and community in the sentencing conversation, and adherence to the principles of the Koori Court model. It is also essential for court orders to link the Accused to services or activities to address causes of offending behaviour that have been identified during the sentencing conversation.

Although external to the influence of the Court, it is important to ensure that local services are available to assist in the rehabilitation of the Accused through attendance in court or provision of services. In addition, the sentencing options available to the Court must be flexible enough to assist in the rehabilitative processes that are identified as appropriate for the Accused.

## **Recommendations**

In light of the findings presented in this report, it is highly recommended that the County Koori Court be retained by the Department of Justice and the County Court.

Based on the significant impact the Court has made on Koori Accuseds' experiences within the justice system, it is recommended that the County Koori Court continue to be made available to Koori Accused accessing the Latrobe Valley and Bairnsdale Law Courts. It is also recommended that the Department of Justice and County Court look into extending the availability of the County Koori Court to other areas in Victoria. However, any expansion of the County Koori Court needs to be undertaken in close partnership with the Aboriginal Justice Forum, and representatives from the broader Victorian Koori community.

The major elements underpinning the success of the Court are the commitment and cooperation of the Elders, courts officers, judicial officers and support services. It is therefore important that the process elements that facilitate this participation and commitment be retained and supported.

It is evident from this evaluation that support services can play a key role in addressing offending behaviour identified through the Koori Court process. It is therefore important that service providers are both supported to participate in the County Koori Court, as well as ensuring sufficient funding is available for service provision. It is recommended that support is provided for service providers to attend court hearings through the work of the Koori Court Officer, and arrangements such as the referral system developed with the Latrobe Valley Community Health Service. In addition, sufficient funding needs to be made available for service provision that goes some way to addressing the social and economic factors that underpin Indigenous contact with the criminal justice system.

To ensure the County Koori Court continuously works to achieve its stated aims and goals, and can readily demonstrate its impact, it is recommended that ongoing monitoring and evaluation of the Court is maintained and includes the active utilisation of findings. In particular attention should be paid to accurately measuring recidivism.

## Section 1: Background and context

### Aboriginal over-representation in the justice system

In 1987 the Commonwealth Government of Australia established a Royal Commission into Aboriginal Deaths in Custody. The Royal Commission found that Indigenous Australians were significantly over-represented in police custody, prisons and juvenile detention centres across Australia (Royal Commission, 1991).

The Royal Commission made 339 recommendations to address the underlying causes of the over-representation of Indigenous Australians in custody (Sentencing Advisory Council, 2010). Of particular relevance to the Victorian Koori Courts, the Royal Commission recommended that:

- steps be taken to divert Indigenous people from police custody (particularly for drunkenness and non-payment of fines) and from custodial sentences, through the development and application of more appropriate sentencing options
- Indigenous persons, communities and organisations be more involved in sentencing processes, as court staff and in advising sentencing courts
- measures be adopted to make court processes less alienating and intimidating, and more accessible, culturally sensitive and relevant to Indigenous people (Royal Commission, 1991).

The establishment of the Victorian Koori Courts is one of the strategies set out in the Victorian Aboriginal Justice Agreement (VAJA) developed in response to these recommendations (Victorian Department of Justice, 2008).

In 2011 Aboriginal and Torres Strait Islanders remain over-represented throughout the Australian justice system. According to the Australian Bureau of Statistics, Aboriginal and Torres Strait Islanders represented 26% of the total Australian prison population in 2010. Given that Indigenous Australians represent 2.5% of the total population, this is 14 times higher than the imprisonment rate of non-Indigenous Australians. In Victoria, Aboriginal and Torres Strait Islanders represented 6% of the total prison population in 2010, approximately 11 times higher than the imprisonment rate of non-Indigenous Victorians.

### The Victorian Koori Court model

The Victorian Koori Court model is a response to Indigenous alienation with the traditional court sentencing process (Victorian Department of Justice, 2008). The model was developed to help contribute to reducing the rate of recidivism amongst Aboriginal Accused<sup>1</sup> by providing a culturally sensitive court environment (Victorian Department of Justice, 2008). All jurisdictions in Australia, with the exception of Tasmania, operate an Indigenous sentencing court. The procedures in these courts endeavour to be culturally appropriate and inclusive of both the Indigenous community and the Accused (Fitzgerald, 2008).

Victoria now has ten (10) specialised Koori Courts covering three (3) jurisdictions, incorporating seven (7) Magistrates' Koori Courts, two (2) Children's Koori Courts and the County Koori Court. In

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<sup>1</sup> In this report the term 'Accused' is used to refer to all Accused who came before the County Koori Court, including all those with subsequent convictions. The term 'Accused' is used to ensure consistency with the Victorian Koori Courts program logic model.

contrast to Indigenous sentencing courts in other states and territories, the Victorian Koori Courts are the only sentencing courts in Australia to be established by legislation.<sup>2</sup>

The Koori Court model adopted in Victoria convenes around an oval table, and avoids the formal language of a traditional court, allowing for contributions from Aboriginal Elders and Respected Persons, 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. For the Court to hear a matter the Accused must (a) be an Aboriginal or Torres Strait Islander, (b) plead guilty or intend to plead guilty, and (c) consent to the matter being heard in the Koori Court (Sentencing Advisory Council, 2010).

## County Koori Court pilot program

On the 23<sup>rd</sup> September 2008 the County Koori Court pilot program was established under the *County Court Amendment (Koori Court) Act*. The pilot program commenced in early 2009 and will continue for four (4) years at the Latrobe Valley Law Courts located in Morwell. The jurisdiction of the County Koori Court is the same as the traditional County Court except for sex offences, which follows the model used by the Magistrates' Koori Court. The sentencing options are the same as for the County Court jurisdiction (Victorian Department of Justice, 2008).

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"* (County Court of Victoria, 2008).

The County Koori Court is also guided by the Program Logic (developed in 2010) for all Victorian Koori Courts. The Program Logic was developed using a participatory approach involving a range of stakeholders from across the Department of Justice and with representatives from all Koori Courts. The Program Logic model, including a narrative description, is presented in Annex 1. As set out in the Program Logic, the Victorian Koori Courts have been established to work towards the achievement of two (2) key societal and criminal justice goals. The achievement of these goals is dependent on a range of factors, many of which are beyond the influence of the Koori Courts.

### Overall societal and criminal justice goals of the Victorian Koori Courts:

- 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 Koori Courts also have two (2) key program outcomes detailed in the Program Logic.

### Program outcomes of the County Koori Court Pilot Program:

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

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<sup>2</sup> *Magistrates' Court (Koori Court) Act 2002 (VIC); Children and Young Persons (Koori Court) Act 2004 (VIC); County Court Amendment (Koori Court) Act 2008 (VIC)*.



It is important to distinguish between the overall societal goals that the program is working towards but cannot achieve independently, and the program outcomes that are achievable within the scope of the Koori Courts program.

## Establishing the Court

In 2006 the Chief Judge of the County Court, Michael Rozenes, and the Director of the Indigenous Issues Unit (now known as the Koori Justice Unit) Andrew Jackomos, discussed the possibility of applying the Koori Court model to the County Court (Victorian Department of Justice, 2008). A workshop was held to bring together key stakeholders to discuss the application of Koori Court principles within the County Court.

The County Koori Court Reference Group was established in late 2006 to develop the Court. The group had a wide membership which provided the opportunity for all stakeholders to contribute to the development of the new County Koori Court model. For the first time, Elders were directly involved in the development of a Koori Court as members of the Reference Group. The County Koori Court model developed by the Reference Group was then approved by the Council of Judges.

The Reference Group also considered the choice of pilot site, using information from the extensive local consultations that were carried out by the County Koori Court Project Manager in each of the sites. Training packages for the County Koori Court model were developed by this Reference Group, and were later delivered to Judges, Court Staff and Elders [5]. The training and professional development of Elders is an ongoing activity, with additional training periodically delivered.

Once the pilot site was selected, there were extensive consultations undertaken with local Aboriginal communities. Service providers across Gippsland were also consulted due to the close relationship between the County Koori Court and social and justice services. The County Koori Court Program Manager was also responsible for ensuring extensive local consultation with the Aboriginal community in the Gippsland region as part of a recruitment drive for Elders. This process engaged with local organisations and sought the guidance of Aboriginal leaders to identify suitable Elders that might apply for the role of Elder and Respected Person within the County Koori Court.

After this substantial recruitment drive for Elders, a Selection Panel met to assess applications that were submitted. The Selection Panel was made up of director-level representatives from the Koori Justice Unit, the County Court and other advisors. In making their decision they reviewed application forms from the applicants themselves, as well as police checks and additional information that the County Koori Court Project Manager had collated through consultations with high-standing members of the Aboriginal community. Successful applicants were then approved to undertake the Elders' training. After the training was completed, a final assessment was conducted which informed the Selection Panel's final decision.

The same Selection Panel has responsibility in overseeing any ongoing recruitment of Elders, with the County Koori Court Program Manager informing the panel of the views of the community through consultation. This selection process is designed to ensure independence and separation from community loyalties, whilst ensuring every opportunity to capture community views on applicants and feed these into the process.

## Key stakeholders in the County Koori Court

In line with the recommendations made by the Royal Commission, the County Koori Court involves members of the Koori community and organisations in sentencing processes. The approach adopted by legal representatives and the Judge during the sentencing discussion is intended to make the process less alienating and intimidating through the use of less formal language and processes.

The sentencing discussion brings a range of stakeholders together to consider the Accused, the offending behaviour, and how the Accused has impacted on the victim and the broader community. The purpose is to try to understand the cause of the offending behaviour and identify an appropriate sentence and/or services in relation to the offending behaviour—in a way that is culturally sensitive and relevant to the Accused. A description of the key stakeholders involved in the County Koori Court, and the role they play within the Court, is provided in Table 1.

**Table 1: Key stakeholders and their role within the County Koori Court**

Stakeholder	Role within the County Koori Court
<b>Elders and Respected Persons</b>	Elders contribute to the sentencing discussion, bringing their knowledge of community culture, values and kinship. The presence of high standing individuals drawn from the local Aboriginal community is intended to directly engage the Accused and fosters community participation in the delivery of justice. Elders may provide information on the background of the Accused and possible reasons for the offending behaviour. They may also explain relevant kinship connections, and provide advice on cultural practices, protocols and perspectives relevant to sentencing. They may also speak directly to the Accused about their behaviour and its effect upon the community.
<b>County Koori Court Officer</b>	The County Koori Court Officer has a responsibility to support the Court, to provide information about the Court, and to assist the Accused to access appropriate support services. The Officer is often the point of contact for the Accused and their families coming into the Court. Other duties of the Officer are to engage with the local Aboriginal community and service providers to ensure their engagement in the County Koori Court process. The Officer has strong ties with the local community and assists the Elders in the court process and with any related administrative issues.
<b>County Koori Court Program Manager</b>	The Program Manager was involved in the development of the County Koori Court model, ensuring the model considered the views of the Justice community, support services and the Koori community. The Program Manager was responsible for producing the original discussion paper that was taken up and developed by the County Koori Court Reference Group, and later endorsed by the full Council of Judges and the Aboriginal Justice Forum. This position also assists in the ongoing development and maintenance of the relationship between the County Court and the Koori community. In doing this, the Program Manager

	liaises with stakeholders, coordinates and supports working group meetings and Reference Group meetings, and provides quarterly reporting to the Aboriginal Justice Forum on the Court.
<b>Service Providers</b>	Service providers (drug & alcohol services, health services etc.) have two roles within the court process. They are able to contribute to the sentencing discussion by giving the Court an account of the Accused's participation and progress in any support services that they may currently be enrolled in. Service Providers can also inform the Court of possible support service options that may be suitable in addressing any issues affecting the Accused. Service providers are encouraged and invited to participate. Those who have been providing close support to the Accused are also invited to sit at the table.
<b>Community</b>	Community members are welcome to participate in the Court, and are given the opportunity to contribute to the sentencing conversation. This allows members of the Koori community to discuss the impact of offending behaviour on their community, and also to provide support to the Accused and/or victim.
<b>Others</b>	The roles of the Judge, defence counsel, prosecuting counsel, associate and tipstaff remain unchanged in the Court.

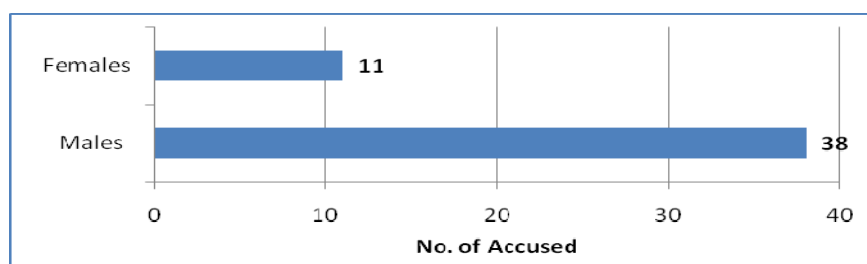
## Profile of County Koori Court

Since its establishment in 2009, 49 Accused have accessed the Court. The County Koori Court jurisdiction is the same as the County Court criminal jurisdiction, except for sex offences (Department of Justice, 2007). The sentencing options are also the same as for the County Court jurisdiction. Demographic and sentencing data relating to the Accused accessing the Court is provided here. This data has been drawn from three (3) main sources; the Platypus Koori Court system, the Case Legal Management System (CLMS), and the manual paper records of the Koori Court Officer.

### Profile of the Accused

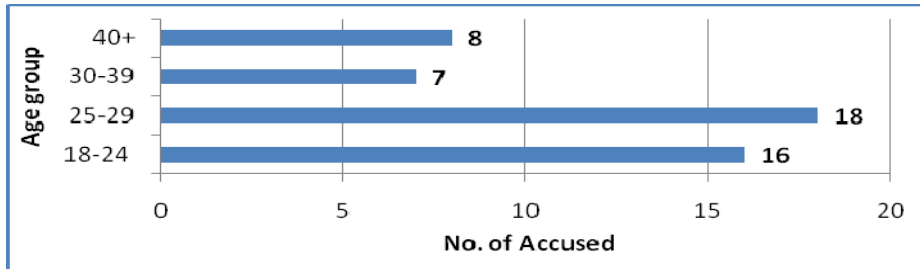
A total of 49 Accused have accessed the County Koori Court between the first court hearings in February 2009, up until the 31<sup>st</sup> June 2011. Of those Accused, the majority were male, accounting for around three quarters of all the Accused (77%).

**Graph 1: Gender of the Accused**



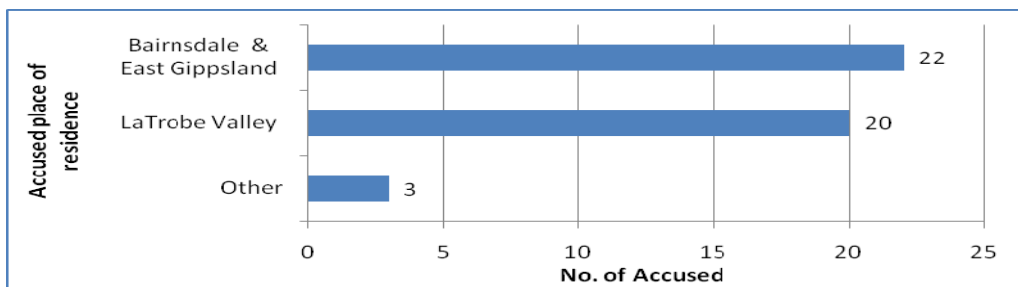
The demographic data shows a young age distribution of Accused, with around one third in the 18–24 age group (33%). The 25–29 age group also accounts for around a third of the Accused.

**Graph 2: Age distribution of the Accused**



There is an even distribution of Accused coming from Latrobe Valley or East Gippsland, with each accounting for just under half. The remainder of the Accused resided in Melbourne or the Hume region at the time of their hearing. It should also be noted that the number of Accused coming from East Gippsland is inflated due to the eight (8) Accused that accessed the Court after being involved in two (2) affrays in that region in early 2009.

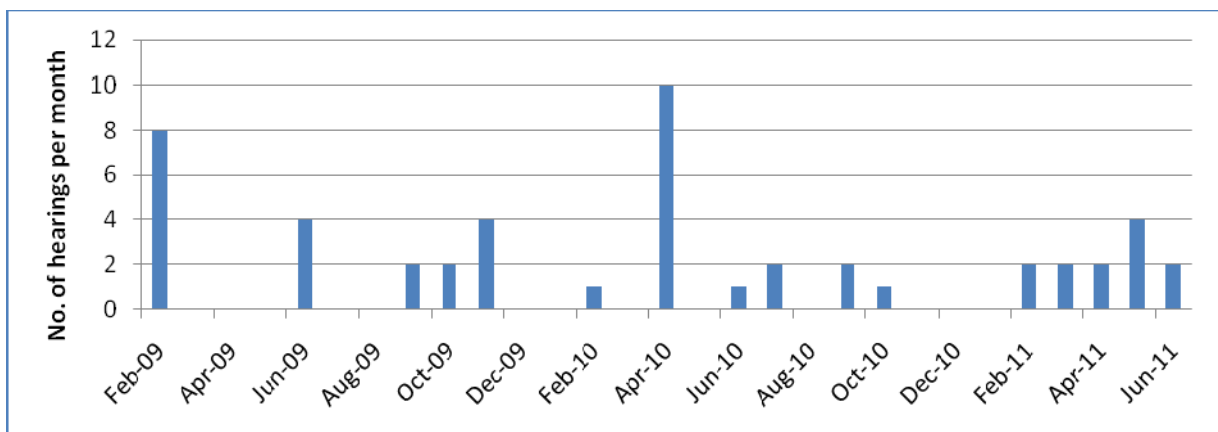
**Graph 3: Accused place of residence**



### Profile of Court hearings and outcomes

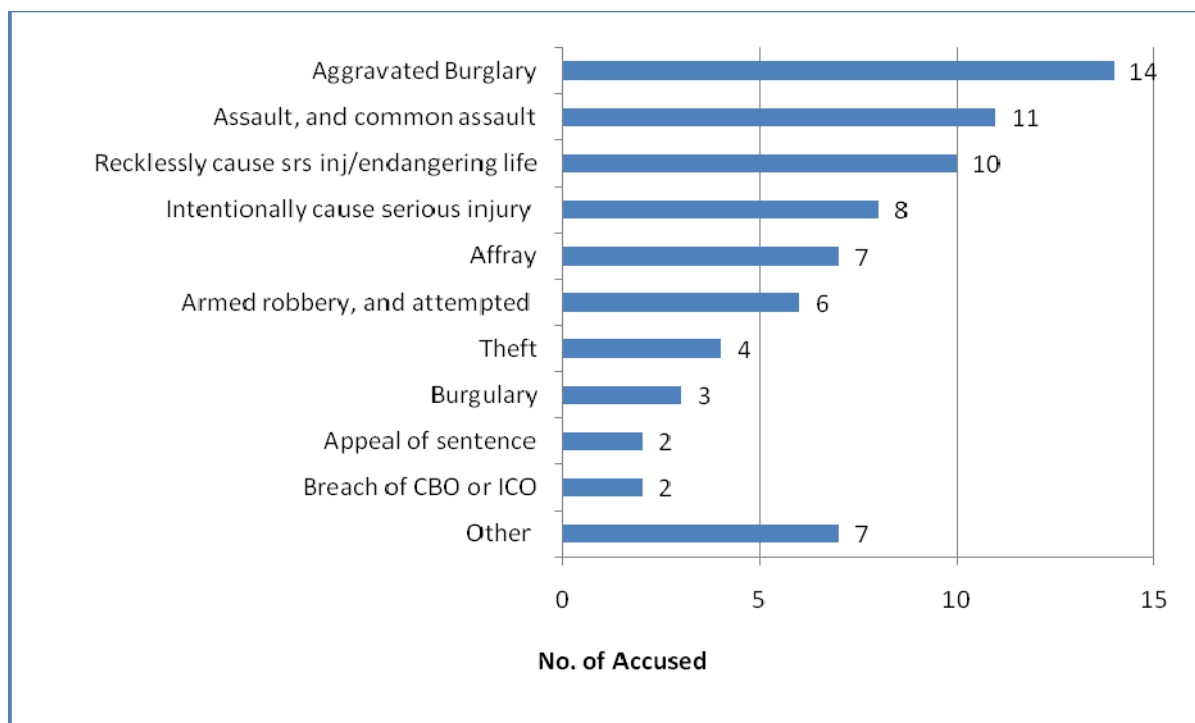
The scheduling of the County Koori Court is dependent on eligible Accused pleading guilty and electing to go through the Court. As a result court hearings do not have a discernable pattern of use. The graph below illustrates this point by showing the number of hearings per month since the establishment of the Court.

**Graph 4: Number of hearings per month (Feb 2009 – Jun 2011)**



As expected with the County Court criminal jurisdiction, the Accused that appear before the Court have committed a range of serious offences against the person and against property. The graph below shows the frequency of offences that are sentenced by the Court. Please note that a number of different offences may be dealt with in one (1) hearing. The most common offence heard in the Court is aggravated burglary, with 14 hearings that featured this offence. This is followed by the serious offences against the person, such as assault and common assault (11), and recklessly causing serious injury or endangering life (10). Two (2) appeals of sentence were heard, and two (2) breaches of court order.

**Graph 5: Offences sentenced in the County Koori Court**



Looking to the types of sentences the Accused received from the Court, the table below shows that the most common are custodial sentences or Community Based Orders, given to ten (10) Accused each. For the ten (10) Community Based Orders the average length is close to 13 months.

**Table 2: Sentence types and average lengths**

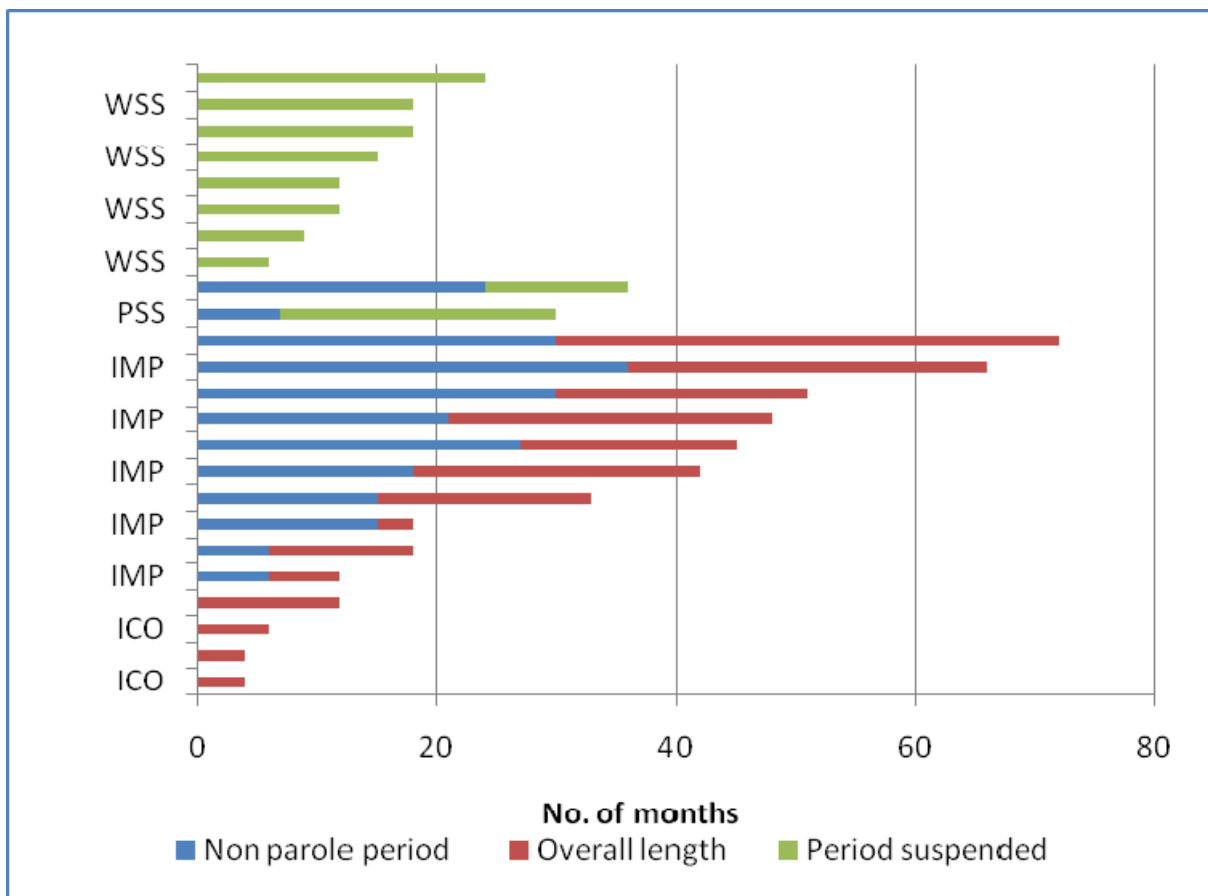
Sentences		# of Accused	Average (months)
Imprisonment	Total length	10	40.5
	Non parole period		20.4
Community Based Order (CBO)		10	12.8
Wholly Suspended Sentence (WSS)		8	14.3
Intensive Corrections Order (ICO)		4	6.5
Partly Suspended Sentence (PSS)		2	33
Adjourned undertaking		2	-
Fine		1	-

Eight (8) of the Accused received a Wholly Suspended Sentence (WSS), on average these were of 14 months duration. Only one (1) of the Accused was given a fine.

The Graph below illustrates the length of custodial sentence, in the context of the suspended and non-parole periods. The average length of the ten (10) custodial sentences is 40 months, with 20 months the average non-parole period. The longest custodial sentence given by the Court to date is 72 months, with 30 of those months that must be served before being eligible for parole. The longest non-parole period is 36 months of a 66 month prison sentence.

These sentences are visually represented in the graph below for those on Intensive Corrections Orders (ICO), Wholly Suspended Sentences (WSS), Partly Suspended Sentences (PSS), and Imprisonment (IMP).

**Graph 6: Sentence length for WSS, PSS, IMP and ICO**



## Section 2: Evaluation purpose and methodology

### Purpose of the evaluation

This report is the final of three (3) evaluation reports developed as part of the evaluation of the County Koori Court pilot program undertaken from 2009 to 2011. The purpose of the evaluation was to investigate the impact of the County Koori Court (the Court), and to conduct an action learning evaluation on the implementation of the Court. Specifically, the purpose of the evaluation was:

- 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.

The focus of the evaluation was formalised with the development of a set of Key Evaluation Questions which have been used as the 'organising construct' of the evaluation.

#### Key Evaluation Questions for the evaluation of the County Koori Court

1. To what extent has the County Koori Court process reduced reoffending?
2. How has the County Koori Court improved the experience of Indigenous Victorians involved with the justice system?
3. To what extent did service providers support the County Koori Court process?
4. To what extent did Indigenous Accused participate in the County Koori Court process?
5. To what extent did the Koori community participate in the County Koori Court process?
6. What were the unexpected outcomes of the process?

### Evaluation methodology

The evaluation of the County Koori Court was an action research evaluation, adopting a mixed methods approach. The evaluation was conducted in a participatory manner that involved key stakeholders (Elders, Judges and court staff) in the design of the evaluation, as well as inviting members of the Reference Group and other key stakeholders (such as local service providers, prison liaison officers, defence lawyers etc) to take part in a facilitated analysis of the data collected in 2009 and 2010.

#### Planning

In the initial planning phase, a planning workshop was convened with key stakeholders for the County Koori Court) and other groups associated or concerned with Indigenous justice issues in the locality. Participants at the 2009 planning workshop developed a Program Logic for the County Koori Court pilot program, and identified informants whose opinions and perspectives would contribute to the evaluation. They also provided information on existing sources of data that could be interrogated to help capture any impacts of the pilot.

The outputs from this workshop were then distilled into an Evaluation Plan which set out the methodology, Key Evaluation Questions, data collection processes and tools, alongside the Program Logic for the County Koori Court. The Program Logic was revised in 2010 following the development of an overarching Program Logic for the Victorian Koori Courts. The current Program Logic for the County Koori Court is provided in Annex 1.

## Data collection

The evaluation involved collecting evidence around the Key Evaluation Questions. The evaluation adopted a mixed method approach and triangulated the findings from different methods to gain a robust assessment of outcomes. The tools used to collect data in each of these methods were designed in collaboration with key stakeholders to ensure they were relevant and appropriate. In order to capture a range of perspectives on the County Koori Court, the following eight (8) forms of data collection were undertaken:

- interviews with Koori Accused (both in prison and in the community), including a collection of Most Significant Change<sup>3</sup> stories
- case study analyses of Koori Accused, based on individual’s prior exposure and contact with the Victorian justice system, as well as their experiences in the County Koori Court
- observations of court hearings held in the County Koori Court in 2009, 2010 and 2011
- review of court transcripts for all Koori Accused interviewed or observed in Court
- interviews with service providers, community members and court participants (Elders, defence lawyers, Koori Court Officer, Prosecutors, Judges etc.)
- interviews with other stakeholders from the Department of Justice, Victoria Police, Corrections Victoria and the County Court
- annual data trawl and analysis of relevant statistical data, including demographic profiles of the Accused, criminal history of the Accused, distribution and number of hearings, offences sentenced, and sentence types and duration
- literature review of evaluation reports and academic reviews of Indigenous sentencing courts from across Australia.

In total, 49 people were consulted as part of the evaluation. Some informants were consulted more than once as they were interviewed in both 2009 and again in 2010 or 2011.

**Table 3: Informants consulted**

Informants (by stakeholder group)	#
Koori Accused (in prison)	7
Koori Accused (in community)	8
Court participants (Elders, defence lawyers, prosecution, Koori Court Officer, Judges)	19
Service providers	10
Other stakeholders	4

<sup>3</sup> MSC is a form of qualitative, participatory monitoring and evaluation. Utilising an action research process, MSC involves the ongoing collection and selection of stories which describe significant change that has occurred in the lives of individuals or communities.



Informants (by stakeholder group)	#
Victim representative	1
<b>Total</b>	<b>49</b>

**Table 4: Court observations undertaken**

Year	Court location	#
2009	Latrobe Valley Law Courts, Morwell	8 cases
2010	Latrobe Valley Law Courts, Morwell	5 cases
2011	Bairnsdale County Court, Bairnsdale	4 cases

**Table 5: Case study groups**

Group	# of Accused	Description of case study group
1	3	Accused who were given community based orders, with relatively low levels of prior offending (for County Court Accused), and who spoke positively about their County Koori Court experience.
2	2	Accused who were given custodial sentences of more than two years, who had significant prior offending and prison episodes, and who also spoke positively about their County Koori Court experience.
3	3	Accused who were given custodial sentences of more than two years, who had significant prior offending and prison episodes, and who were less positive in their reflections on their County Koori Court experience.

## Data analysis

### Qualitative data analysis

Qualitative data analysis was conducted in three (3) parts. First, in both 2009 and then again in 2010, a preliminary independent analysis of all data sources was conducted. All interview data was analysed by the evaluation team, including thematic analysis of interview data. From this process, a range of draft findings were prepared, including the preparation of Most Significant Change (MSC) stories and key issues.

Second, a participatory analysis of the data was undertaken by project stakeholders in 2009 and in 2010. To ensure that learnings from the evaluation were reflected on and incorporated into the ongoing implementation of the Court, an Evaluation Summit workshop was held at the end of 2009 and again in 2010. This reflection workshop allowed key stakeholders in the Court to add their own perspectives to the interpretation of the data. The key purposes of the Evaluation Summit were to involve partners in reviewing the data collected, to make sense of the findings and to jointly develop recommendations to inform the implementation of the Court throughout the pilot.

Finally, all data collected was reanalysed in 2011 using NVivo9 qualitative data analysis software. NVivo9 analyses were undertaken to code all data to develop the Results Chart against the Program Logic (see Annex 2), and to undertake the case study analyses of Koori Accused (see Section 4). Observational data from court observations and court transcripts were also analysed using NVivo9.

## Quantitative data analysis

Quantitative data analysis was undertaken in two (2) parts. Firstly, a data trawl and analysis of relevant statistical data, including demographic profiles of the Accused, criminal history of the Accused, distribution and number of hearings, offences sentenced, and sentence types and duration was undertaken on an annual basis. Secondly, reoffending figures and breach rates were developed using available datasets.

From the outset the evaluation methodology included the development of reoffending and breach measures for two (2) comparable groups: the Accused using the County Koori Court, and Aboriginal Accused using the mainstream County Court. However, data issues did not permit the development of any measures relating to Aboriginal Accused in the mainstream County Court (see the limitations section below).

Data relating to the Accused that have been through the County Koori Court was extracted from the Platypus (County Court) dataset. This data included identifying details such as name, date of birth, and court hearing date. Data on the type and length of sentence received was also extracted. This identifying data was used to search the records of the Magistrates, County and Higher Courts of Victoria and identify subsequent appearances of these Accused in any Victorian court. The matching process was undertaken by Business Analysts within the Department of Justice.

Where Accused were identified as re-appearing in any court since their appearance in the County Koori Court, details of this court appearance were recorded. These records were used to provide information relating to the reasons for their court appearance (i.e. breaches or reoffending) and the timing of any offence or breach. Any instances of reappearance in court were checked to ensure these were regarding an offence that took place after their appearance in the County Koori Court. Court appearances that concerned an offence prior to their appearance in the County Koori Court were not classified as reoffending events.

## Reporting

Evaluation reports were provided to the County Koori Court on an annual basis following the Evaluation Summit workshops held in 2009 and 2010. This is the final of three (3) reports prepared for the evaluation of the County Koori Court pilot program.

## Expert review

Following the completion of the final data analysis in 2011, a draft evaluation report was submitted to two (2) expert reviewers. The expert reviewers are Professor Arie Freiberg AM, Dean of the Faculty of Law at Monash University; and Rod Wise, Deputy Commissioner of Corrections Victoria. Additional expert reviewers were requested from academia and the Supreme Court. However due to busy schedules, a third expert reviewer was not able to participate.

The expert reviewers provided feedback on various elements of the report, including a review of the evidence presented and comments regarding conclusions drawn, key success factors, suggested recommendations, as well as general observations of the evaluation report. The feedback provided by the expert reviewers has been incorporated into the report, and was utilised in the development of recommendations included in this report.

## Limitations of this evaluation

There are a number of issues that limit the accuracy of the data search and match process for the County Koori Court group of Accused in the development of reoffending figures. These issues present some potential for reoffending not to be identified through this process. Issues include difficulties matching data across different datasets and potential inaccuracy in the recording of the identifying data (i.e. spelling of names), which means that the matching process may not have been entirely comprehensive. However, to overcome this risk a number of different combinations of the identifying data were used to search and match courts data. This included using different spellings of names, and checking both name and date of birth. Whilst, as a potential limitation it is important to mention this issue, the analysts and evaluators involved in the data search and match process are all confident that the process was able to identify any re-appearances in court. Another issue was the need for offences to have been heard and finalised in court in order to appear in the courts datasets. Therefore it is possible for an Accused to have reoffended or breached a court order, but if they have not yet appeared in court then they do not appear in the data search and match process.

Problems were also encountered in the development of the mainstream comparison group, as County Court data does not record Aboriginality. These data limitations prohibited the development of mainstream reoffending data that is directly comparable to the County Koori Court data. However, the Department of Justice is currently undertaking the development of an information system for all Koori Courts in Victoria. This system will also provide a mainstream comparison group for the County Koori Court. These data were intended to be incorporated into this report, but due to delays in the development of the Koori Court Information System this was not possible within the current timeframe of the County Koori Court evaluation. It is anticipated that recidivism data for the mainstream comparison group will become available later this year.

## Section 3: Overview of main findings

This report brings together the findings from the evaluation reports prepared in 2009 and 2010, together with additional analyses undertaken of the data in 2011. The findings are divided into key strengths and key challenges, and presented through a discussion of findings under the six (6) Key Evaluation Questions:

- impact of the Court on reoffending for Koori defendants
- experiences of Koori Accused within the justice system
- participation of Koori Accused in the Court
- Koori community participation in the Court, including Elders and Respected Elders
- support from service providers within the Court
- unexpected outcomes of the Court.

The case studies are presented in Section 4 of the report. In addition, excerpts from Most Significant Change stories are presented throughout the discussion of findings as illustrative examples.

### Impact on reoffending

A key aim of the County Koori Court is to divert Koori offenders away from more serious contact with the justice system. Through the achievement of this aim, it is hoped the Court will contribute to reducing the over-representation of Aboriginal people in the justice system.

When assessing reoffending and offence data, it is important to acknowledge the array of factors that influence offending behaviour, such as Indigenous socio-economic disadvantage and the frequency of police contact (Sentencing Advisory Council, 2010). A recent Federal Parliamentary Committee report on Indigenous justice also identified a number of social and economic factors that underpin Indigenous contact with the criminal justice system. These include social norms and individual family dysfunction, connection to community and culture, health, education, employment and accommodation (Standing Committee on Aboriginal and Torres Strait Islander Affairs, 2011). The limited influence the County Koori Court has over these social and economic factors needs to be recognised in the context of reoffending.

### Considerations in measuring reoffending

Although the term 'recidivism' is widely used to refer to the general concept of reoffending, there is no common measurement for the term. In part, this is due to the enormous variation in the context, purpose and parameters of research studies that have attempted to define and measure it (Payne, 2007). For the purpose of this evaluation, recidivism was taken broadly to mean "a return to reoffending behaviour" (Corrections Victoria, 2007), manifested in a subsequent re-conviction (either imprisonment or community-based) for a separate criminal episode following the initial County Koori Court appearance. This evaluation used the Corrections Victoria time period which is a re-conviction within two (2) years of discharge or order completion. As the Court has only been running for three (3) years, conventional measures of recidivism such as this exclude some of the Accused from consideration (i.e. Accused still in custody). This limits the sample size available in measuring reoffending amongst Accused from the County Koori Court.

There are several considerations impacting on the choice of measures for reoffending, which means the data must be interpreted with some caution. A central issue is the length of the follow-up observation period.

Measures of reoffending need to consider the context within which Accused are 'eligible' to reoffend or breach (such as when custodial Accused are released from prison). The American Advisory Commission on Criminal Justice recommends a follow-up period of three (3) years, whereas the definition of recidivism developed for the *Report on Government Services* in Australia uses a two (2) year follow-up period (Corrections Victoria, 2007). Studies have shown that recidivism rates increase with the length of follow-up. However, data on recidivism in Victoria found that almost 40% of those who reoffend do so in the six months following their release, and close to 70% reoffend within 12 months. This means that a relatively short observation period (up to one year) may still yield usable data on the immediate effects of an intervention.

There are two time periods in which County Koori Court Accused are eligible to reoffend. Firstly the time period since completion of their sentence; and secondly the total time period the Accused are in the community. Traditional measures of recidivism focus on the former, the time since completion of sentence, as this controls for the deterrent role of sentences that would incur immediate punishment such as CBOs or Suspended Sentences.

In the case of the County Koori Court evaluation, the Accused were followed for varying lengths of time. This means that the prevalence of reoffending (the overall percentage of those who reoffend) cannot be used as an absolute measure of recidivism, as some Accused were followed for longer periods of time than others, and some may have spent time in custody (limiting their capacity to offend). This has been a common issue in evaluation studies that have attempted to measure recidivism rates for Aboriginal sentencing courts. For example, the evaluation of the Queensland Murri Courts used three (3) measures of recidivism, in recognition that prevalence rates were relatively meaningless as a result of the varied follow-up time periods. These measures were time taken to reoffend, change in seriousness of offending among those who did reoffend, and the frequency of reoffending pre- and post-sentence (Morgan and Louis, 2010).

The analysis of reoffending for the purposes of this evaluation therefore looked at the length of time since completion of a prison sentence or CBO, and also assessed the length of those sentences or order. This provided the analysis with an 'exposure time' within which the Accused were 'eligible' to reoffend. This information on length of community orders was provided by Corrections Victoria, and therefore only contains information on 'eligible reoffending time' of those Accused under a Corrections administered sentence (thus excluding the time of one (1) individual from this analysis).

### **Reoffending findings**

Data available for the analysis of reoffending included a total of 35 Accused, of which nine (9) received custodial sentences and 19 received sentences served in the community (CBO, ICO or Suspended Sentence). Only four (4) of the nine (9) Accused in custody were released within this study period. In addition, four (4) of the 35 Accused were given sentences that made them eligible for reoffending immediately, such as adjourned undertakings or fines. Three (3) Accused had insufficient or conflicting data and could not be included in this analysis. In total, of the 31 Accused we have data for, there were 22 who were able to offend at some point since their appearance in the Court (i.e. they were not in prison and we have sufficient data for them).

Of the 22 able to offend at some point since their appearance in the County Koori Court, there were 11 Accused that had completed their sentence and became eligible for the category of reoffending

since *finishing a sentence*. These Accused had a total of 9.4 person years that they were eligible to reoffend within (without being under any deterrent effect of sentence).

In the alternative (and less reliable) measure of 'Accused being eligible for reoffending since *residing in the community*' (including those on CBOs and Suspended Sentences) there was a total of 20 Accused that had spent some or all of their time since their Court appearance in the community. In total, this group had 27.5 person years spent in the community during which time they were eligible to reoffend.

Of the total 31 Accused, only one (1) was found to have reoffended. The offence was a low level offence of 'being drunk in a public place', committed by an Accused who had been given a six month CBO by the County Koori Court. The offence happened 14 months after the completion of their CBO.

In summary, using the Corrections Victoria definition of recidivism, there was one (1) offence that occurred in the 9.4 person years in which the 11 Accused were eligible to reoffend. 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 of the Accused to appear before the Court.

### **Mainstream comparison group**

In the absence of a mainstream comparison group, the evaluation has drawn on a Victorian study of recidivism to put the reoffending data in context. The Corrections Victoria study found that, overall, 34.7% of a sample of 3,352 individuals returned to prison within two (2) years of release. Of this cohort, nearly one quarter had reoffended within 12 months of release. An analysis of the demographic characteristics of the sample found that Indigenous prisoners returned to prison at higher rates than non-Indigenous prisoners, with 50% of Indigenous prisoners reoffending within two years compared with 34.7% of non-Indigenous prisoners. The study also found that Indigenous prisoners are more likely to return to prison in the early months following their release.

Although the study found that Indigenous Accused return to prison at higher rates than non-Indigenous Accused, it also found that Indigenous status was not a significant predictor of returning to prison when other variables (age at release, type of offence, gender and criminal history) were taken into account. The findings demonstrated that the number of prior terms of imprisonment, age at release and having a property offence were the most likely predictors of recidivism. The County Koori Court study population included in this evaluation are particularly at risk of reoffending based on the findings of the Corrections Victoria study, given that around one third of the Accused have prior prison episodes, and two thirds have received court orders previously.

Indigenous prisoners represented only 5% of the cohort in the Corrections Victoria study, which may explain the lack of influence of Indigenous status as a predictor of recidivism. It is also important to note that the study limited recidivism to the rate of re-imprisonment of ex-prisoners due to the availability of data, which excludes any Accused who were reconvicted of a subsequent offence but did not receive a custodial sentence.

### **Strengths**

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Based on the qualitative data there are two (2) main identified ways in which the County Koori Court may have an influence on offending behaviour. The first specifies a deterrence approach, the second a rehabilitative approach. These approaches are:

- Koori Accused going through the Court feel 'shame' and responsibility for their behaviour
- Koori Accused feel more motivated and supported to address offending behaviour.

Evidence for these findings comes from interviews held with the Accused, as well as interviews with other stakeholders who have observed short-term impacts on the Accused. Therefore the statements included in this section represent an intention to change (or perceptions of behaviour change) on behalf of the Accused, rather than quantitative measures of reoffending.

Firstly, the intention not to reoffend was found to be influenced by the deterrent effect Elders have on the Accused. This is where the Accused considers the prospect of returning to face their Elders in court, and determines that this is more daunting than returning to face a system (the 'white man's' court) with which they have little connection or for which they feel little respect. A number of the Accused also spoke of a similar deterrent effect in returning to see the same Judge. This was due to the respect they had developed for the Judge through engaging in the process of the Koori Court sentencing conversation.

Stakeholders consulted who have observed court proceedings commented on the visible 'shame' they have observed in the Accused, as a result of being reprimanded by Elders and when held accountable for their actions. Accused also commented on this feeling of 'shame' when appearing in front of Elders, the Judge and others present in the courtroom.

*"I felt ashamed when the Elders were coming down on us. I didn't realise that we had let other people down, not just our own person if you know what I mean, not just ourselves". [Accused]*

In total 13 informants, including four (4) Judges and five (5) Accused, agreed the Koori Court had contributed to the Accused realising the impact of their offending on the community. As a result of the sentencing conversation with Elders, as well as input from family members and community, the Accused reported that they had a fuller understanding of the impact of their offending and were more likely to take responsibility for their behaviour.

#### **"I remember everything that was said that day"**

"... I went and visited him in prison, a number of times before the case was heard ... He was initially quite suspicious about going to County Koori Court ... 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 'institutionalisation', 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'. 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*'." [Barrister]

Secondly, the rehabilitative effects of the sentencing conversation and court orders also have the potential to impact upon reoffending. This is achieved through linking the Accused with appropriate support services, along with advice offered by the Elders during the sentencing conversation. Identifying and providing appropriate support to overcome the underlying causes of offending behaviour provides practical assistance to the Accused. The depth of information regarding the

Accused presented during court proceedings also provides service providers with essential information. Comments from Corrections workers indicated the information on the individual circumstances and family history of the Accused gave them a greater understanding of not only the individual, but also Koori society and culture. In addition, through the sentencing discussion the Accused is potentially more motivated and empowered to address these issues. The words and advice of the Elders and (re)connecting with community are an integral element of this process.

The emphasis within the Court on reaching sentencing decisions based on a greater understanding of the Accused was found to influence behaviour change to some extent. Koori Accused who were consulted spoke frequently of the way they viewed court outcomes as an opportunity and impetus to change offending behaviour.

*“The Judge looked at what he thought we needed rather than just lock us away. Instead of thinking lock them away ... they gave us opportunity of what to do, and what they think will help us.” [Accused]*

In addition, the positive effect of having an Elder recommend a service provider during court hearings was identified as a significant outcome for support services themselves, and for efforts to rehabilitate and address offending behaviour. The presence of service providers in the courtroom allows them to engage with defendants immediately. Some informants mentioned that this immediate contact with service providers may help overcome non-engagement of the Accused with services.

*“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 within the family unit. If they hadn’t have gone through the Koori Court process, it is clear in my mind that those successes wouldn’t have occurred.” [Service provider]*

It is important to note this strength of the Court is dependent on the ongoing engagement of service providers in the court process. This participation of service providers in the Court is discussed in more detail below.

## **Challenges**

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In addition to the influence of social and economic factors on addressing offending behaviour, the County Koori Court faces internal challenges to divert Koori offenders away from more serious contact with the justice system. These include the different motivations of Koori Accused for attending the County Koori Court, and the reluctance of some Accused to face their Elders in court. The Accused consulted stated different reasons for wanting to go through the Court. The most common reasons cited were:

- they wanted the opportunity to speak for themselves
- they wanted people who knew their community and background (i.e. the Elders) to be involved in the sentencing conversation
- they were advised to attend by their solicitor
- they wanted a lighter sentence.

Informants consulted discussed the difference between those Accused who want to engage and get the most out of the County Koori Court and those who are avoiding the mainstream courts.

*“I think that people that come to the Koori Court either think that they are going to get a softer option, and have been told by the community what to say when asked why are you coming here. Then you’ve got the other half that come because they seriously want to be pointed in the right direction. They seriously need to be told by someone who is not an alcoholic, someone who is not a drug taker,*



*someone who gives them a lecture but also gives them that spirit of 'hey, you're a blackfella and be proud of it'. That's where I think there's a difference." [Court participant]*

However, examples given by informants and the Accused illustrate that despite this initial attitude towards the Court, the Accused who were there simply to avoid the mainstream courts often left the courtroom fully engaged with the process and motivated to act on the messages from the sentencing discussion. In addition, the recent findings of the Sentencing Advisory Council's report on the Magistrates' Koori Court (2010) suggest that the Koori Court is not a 'soft option' as sometimes believed by the Accused.

Another challenge facing the County Koori Court is the reluctance of some Accused to face the Elders again if further offending occurs. Two (2) of the Accused reported that they found the Koori Court to be a confronting and uncomfortable experience and they were unwilling to front their Elders again should they return to court. In this sense, the mainstream justice system was less confronting because it did not engender the same cultural shame experienced in the Koori Court. One Accused in particular, who had a long history of prison episodes, spoke more generally about the Koori Courts and a previous reluctance to participate.

*"I kept refusing to go there because of that reason, going and sitting in front of the Elders. I know that I am going to reoffend. I don't want to go back and sit there in front of them, and then bring shame on them. I don't want to do that. Where I find it a lot easier to front the white justice system ... I am never going to see them again, I am not obligated to see them again." [Accused]*

As a serial offender, the Accused felt reluctant to go through the Koori Court as this would inevitably lead to facing the Elders a second time.

### **"Out of the system"**

"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." [Elder]

## Improving experiences within the justice system

Another core aim of the County Koori Court is to provide access to fair, culturally relevant and appropriate justice. Overwhelmingly the evidence collected as part of the evaluation suggests that the experience of Koori Accused in the justice system is vastly improved by the availability of the County Koori Court. 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. A summary of the strengths and challenges associated with the Accused's experiences in Court is presented below.

### Strengths

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The evidence clearly demonstrates that the County Koori Court improves experiences within the justice system for Koori Accused through the provision of a culturally appropriate court setting and process, the involvement of Elders and community members in the Court, and the adoption of an inclusive approach by Judges and legal representatives. A total of 12 informants consulted as part of the evaluation discussed the achievement of the Court in reducing intimidation and alienation experienced by Koori Accused in the justice system.

*"I think it is important that everybody gets to speak, gets to say what happens ... so [the Judge] could see pretty much my side of the story. The way that the lawyers represent you, they talk too big with the words you know. You say 'mate, I don't know what that means'." [Accused]*

A key strength of the Court is the engagement of the Accused in the sentencing conversation. Consultations held with informants suggest that Accused felt engaged in, and had a sense of ownership of, the process. A total of 18 informants interviewed spoke of the benefits of the informal and inclusive approach taken in the Court, and this was particularly valued by the Accused (six informants) and Judges (four informants). In part, the court environment was credited with establishing a welcoming environment where Aboriginal culture is recognised and showcased.

Further to this, the majority of Accused consulted felt their participation in the sentencing conversation gave them a sense of ownership of the sentence itself. Key to this perceived ownership of the Koori Court was the way in which the sentencing conversation considers and explores individual motivations and circumstances.

*"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 come 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]*

Data collected in 2010 provided evidence that Judges also play a key role in the County Koori Court. They guide both the discussion of important legal issues, as well as playing a central role in ensuring the engagement of participants in the sentencing conversation (including the Accused). The approach of the judiciary to the Koori Court process was mentioned positively by six (6) informants, including three (3) Accused. Court staff and service providers also noted that the experiences Judges gain in the Koori Court equips them with a better understanding of Aboriginal history and culture, which they then take with them to the mainstream court.

*"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]*

These findings of the County Koori Court are consistent with findings presented in evaluations undertaken of the Murri Court in Queensland, the Kalgoorlie Community Court, the Sentencing

Circle in NSW, as well as evaluations undertaken of the Victorian Magistrates' Court and Children's Court. For example, an evaluation undertaken by the Australian Institute of Criminology found the Murri Court had improved perceptions of fairness and cultural appropriateness. Many stakeholders regarded this as the most important objective of the Murri Court (Morgan and Louis, 2010). The evaluation of the Victorian Magistrates' Court found that the Court was less alienating for defendants, allowing them to give their account of the reasons for offending, as well as providing a mechanism where the sentencing process takes account of cultural considerations (Harris, 2006).

### **"Your head is up high"**

"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 ... I have a lot to think about now, what they all said, and it is still with me to this day ... You have a voice ... When I go to the other courts, like ... 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 back to footy, because [the Elder] was saying that my grandfather was a good footy player ... 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." [Accused]

## **Challenges**

Challenges identified by the evaluation in ensuring the County Koori Court improves experiences with the justice system for Koori Accused, included (i) perceived biases, (ii) perceptions of harsher sentences, and (iii) the approach adopted by some legal representatives.

Four (4) of the 15 Accused interviewed felt that in some instances Elders may bring pre-existing biases into the courtroom, and may be able to influence the decision of the Judge. These perceived biases were felt to originate from community or family politics, be informed by rumours on the 'Koori grapevine', or represent personal grievances. It is important to note that one such comment was made in reference to a different Koori Court (not the County Koori Court), and all of these comments were made with reference to cases where the Accused had been given a custodial sentence. Therefore it seems likely that these comments are more a reflection of grievances with sentences rather than with the Court itself.

By contrast, some of those consulted were surprised by their experience in the Court and the way in which it differed from their expectations as to how the interaction with the Elders would take place:

*"Yeah [others] were telling me you are better off going to the white courts—'Don't go to the Koori Court because you are going to face an Elder who might not like you'. And I ended up facing one, and yeah, he was really good. He was the one who knew me all my life." [Accused]*

Two (2) Accused who felt aggrieved at the length of the sentence they received thought they had received a harsher sentence as a result of having their case heard in the Koori Court. On further

discussion with these Accused, it became clear that they did not have full knowledge of the mainstream court cases with which they were making comparisons, and therefore did not know the full extent of the mitigating circumstances. A recent report prepared by the Sentencing Advisory Council on sentencing in the Magistrates' Koori Court in Victoria, found differences between the severity of sentencing within the mainstream court and the Koori Court (Sentencing Advisory Council, 2010). The report found that fines made up over 60% of all sentences within the Magistrates' Court, while in the Koori Magistrates Court sentences comprised community-based orders (24.9%), adjourned undertakings (22.9%), fines (18.9%) and wholly suspended sentences (16.7%) (Sentencing Advisory Council, 2010). This was largely attributed to the different offences commonly sentenced by each court and the prevalence of prior convictions in the Koori Court (Sentencing Advisory Council, 2010).

Another significant challenge for perceptions of fairness within the system (and this is applicable to both the mainstream court and Koori Court) is that Accused who are held on remand are unable to access courses and/or services that would demonstrate their willingness to address offending behaviour. The Court, like all courts, uses evidence of the Accused's involvement with therapeutic and rehabilitative services (e.g. drug and alcohol counselling, anger management etc.) when making sentencing decisions. Therefore those on remand are disadvantaged, to some extent, in being able to demonstrate their commitment to addressing their offending behaviour prior to sentencing.

*"... if [the Koori Court] don't want to believe us, what more can we do, apart from sitting there telling them. That we are in jail as it is, we are on remand, we can't get out and prove to them 'look, we are trying to change'." [Community member]*

The final challenge identified that is related to improving the experience of Koori Accused in the justice system, is the approach of legal representatives. While the majority of legal representatives have adopted an open approach consistent with the Koori Court model, some informants provided examples where this has not occurred. This included an occasion where a barrister interrupted a conversation between the Accused and Elders. Participants involved in the conversation felt this was because the barrister did not think this was relevant. Situations like these arise from a lack of understanding of the sentencing conversation and the role the Elders play in engaging the Accused in the discussion.

## Support from service providers

Service providers play an important role in the County Koori Court, as the sentencing conversations provide an opportunity to identify underlying causes of offending behaviour and link the Accused with appropriate support services (drug & alcohol services etc.). Data collected in 2009 and in 2010 found that the level of service provider participation in court hearings has unfortunately been insufficient. While there was an increase in service provider participation in 2010 and again in 2011, there remain barriers to the ongoing participation of service providers which include funding limitations, time constraints and poor communication. These challenges are largely outside the influence of the court.

## Strengths

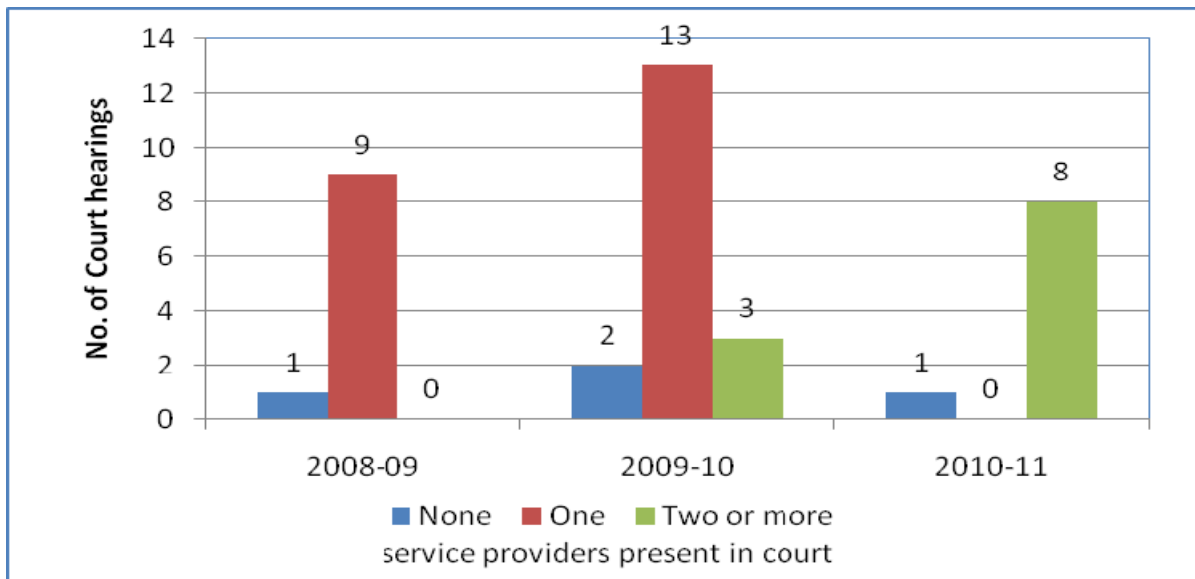
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It is clear from consultations held with court participants, such as legal representatives, that support services make an important contribution to sentencing conversations. Firstly, their involvement allows the Court to pursue a deeper exploration of the Accused's ability to engage with services (providing information on the Accused's progress) and to engage the Accused with rehabilitative or

behavioural support. They are also able to contribute to discussions regarding sentencing options that would go some way to addressing offending behaviour.

The graph below illustrates the increasing involvement of service providers in the Court. The first two (2) years of the court mostly had one (1) service provider in attendance. Only on three (3) occasions were there two (2) or more service providers present in the Court. However, over the last year the Court has frequently had two (2) or more service providers present during court hearings. Likely reasons for this are discussed below.

**Graph 7: Number of support services present per hearing**



Court participants, including legal representatives and service providers, stated that having Corrections or other service providers present during court hearings provides more sentencing options and the opportunity to respond to questions directly. For example, if during a sentencing conversation Elders or other court participants discuss training and employment issues with the Accused, service providers present can then ensure programs that the Accused are referred to include activities or options to address these factors and break the cycle of reoffending.

In 2010, the evaluation team met with some men and women undertaking court orders with the “Kommall” Koori Gathering Place in Morwell, as part of the Koori Offender Support and Mentoring Program. Those Accused consulted compared their experience working for “Kommall” with previous community-based orders, which largely comprised mowing lawns around the community.

*A: “I started cleaning up the train lines, and I done that, and I was very stressed out ... You get dropped off out there, and somebody would pick you up, I just walked the train tracks on my own. But here it was fun you know, cleaning up, because we are all together. We were doing things together. Not like they throw you out of town and you go to that town.” [Community member]*

*B: “We are a team now that is it. That is what I like. We are a team. We don’t see each other when we are not at work.” [Accused]*

According to the Koori Justice Unit, the restoration of “Kommall” as a community gathering place has assisted offenders to complete their orders and at the same time gain skills. Offenders on community-based orders at “Kommall” have worked alongside Elders, local community members and tradespeople to re-roof, re-wire, re-clad and re-paint the building, as well as install a new

kitchen. Based on the interviews with the Accused at “Kommall” it is evident that Corrections Officers and Parole Officers play a pertinent role in identifying such opportunities.

Support services also benefit from participation in the Court. Service providers who have been involved with the Court spoke of how their presence in court helps to secure better engagement from the Accused in their services. This is the result of both court-mandated participation in services, as well as Elders’ encouragement of Accused to fully engage with support services.

### “The ballgame changes”

“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 five (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 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 County Koori Court 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 five (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.” [Barrister/solicitor]

In 2010 an initiative was developed by the County Koori Court to increase the participation of support services has been the development of the Latrobe Valley Community Health Service (LCHS) referral system. This system is widely seen to offer huge potential benefits to the Court and the Accused. It provides a system whereby the LCHS worker is alerted to a Koori Accused at a bail hearing. The LCHS worker is then able to provide an assessment of their needs and refer them to appropriate services. This system has the potential to go some way in overcoming issues around the limited participation of support services, and also allows the Accused to demonstrate their willingness to address their offending behaviour prior to court.

*“It allows the client to have access to services that they need sooner rather than later. It allows them to demonstrate to the Court their willingness and ability to engage with these services, therefore helping them to address their offending behaviour.” [Service provider]*

The findings of the evaluation of the County Koori Court in relation to support service participation are inline with findings from studies undertaken of the Kalgoorlie Community Court, Circle Sentencing in NSW, as well as the Victorian Magistrates’ Koori Court and the Children’s Koori Court. All four evaluations and studies identified the participation of support services in sentencing conversations as an effective means of addressing underlying causes of offending behaviour.

## Challenges

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Due to a number of external and internal constraints, there has been inadequate participation of support services in most hearings conducted in 2009 and 2010. One constraint to service provider participation in particular could be addressed by the Court, by ensuring the appropriate services are aware of court dates and hearings. . Almost all service providers consulted stated that a reason for their lack of participation was that they were not aware of court dates.

*"I go every so often. It comes down to knowing what dates. They mail us out the monthly dates for the Magistrates' Koori Court, but for the County Koori Court I'm not sure when it's on and stuff ... But it's word of mouth about the County Koori Court." [Service provider]*

However with the introduction of the LCHS referral system there is hope that this issue will be addressed over time.

The participation of service providers in sentencing conversations is also constrained by factors outside the control of the Court. For example the main barrier identified by service providers is the lack of specific funding for services to attend hearings, and the time commitment required. Often the impression of many support services is that their involvement in a half-day hearing for one person is not an appropriate use of time. This attitude is better understood in context of the limited number and/or scope of Indigenous and generalist support services available in the Latrobe Valley and Gippsland areas.

*"I get constantly confronted by service providers that say we can't do this, we can't do that because we're not funded to do that ... It's just the dilemma that every Koori Court has faced." [Strategic informant]*

Findings from the evaluations of the Kalgoorlie Community Court in Western Australia (2009) and of Circle Sentencing in NSW (Potas et al, 2003) found that a lack of support services limited the effectiveness of the sentencing. The main cause identified by the evaluation conducted in Western Australia was a lack of resources for the participation of services in the Court (Aquilina et al, 2009). Support services were also identified by these evaluations as being vital in addressing the underlying issues associated with offending behaviour.

## Participation of Koori Accused in the Court

The participation of the Accused in the County Koori Court is an integral component of the sentencing conversation. The model is designed to acknowledge and respect Aboriginal culture, and avoid the formal language of a traditional court, allowing for contributions by the Accused.

The majority of Koori Accused interviewed actively participated in the Court process. This participation includes verbal contribution to the sentencing conversations. This was verified through a review of court transcripts of sentencing remarks.

## Strengths

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The participation and engagement of the Accused in the sentencing discussion was mentioned positively by 17 informants, particularly valued by Judges (six informants) and the Accused (seven informants). The Accused reported that they valued the opportunity to speak directly about their history and the circumstances relating to their offending behaviour in the Court. This interview data was corroborated through court observations undertaken. In 10 of 13 hearings observed between 2009 and 2010, the Accused were observed engaging directly in the sentencing conversations.

An overwhelming majority of the Accused (11 of 15) reported that they felt involved and engaged in the process of the Koori Court, even if some 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 between the Koori Court and the mainstream courts. The Accused considered the mainstream court to be a passive process, compared to the Koori Court. They spoke positively of the opportunity to be actively involved in the Koori Court process. For the majority of Accused, their participation led to a sense of ownership of the process and the sentence itself.

*“This time I actually felt that I was involved in the case in the courtroom. That was the good thing about it.” [Accused]*

A key contributing factor to the participation of the Accused in the sentencing conversation was the presence and role of Elders in the Court, and also the approach adopted by the presiding Judge. For example, many of the Accused interviewed felt that the court participants wanted to know their story. This gave them encouragement to speak up, and contributed to a greater level of engagement by the Accused in the sentencing process.

*“One of the most disempowering things that I think about mainstream is that when you have a solicitor talking on your behalf, it’s that they get the facts and things wrong. Where [at County Koori Court] you can tell your own story at the table.” [Service provider]*

Legal representatives also play an important role in ensuring the active participation of Koori Accused in hearings, through their adherence to the principles of the Court. A key factor is the ability of defence lawyers to make space for the Accused’s voice to be heard. This is quite a divergence from the role defence lawyers traditionally play in the mainstream court.

Findings from the evaluation of Circle Sentencing in NSW also found that offenders responded positively to the high level of engagement in that court, and that the participation of offenders is much greater compared to the mainstream courts (Potas et al, 2003). The evaluation of the Children’s Koori Court in Victoria also found the approach adopted was more inclusive and supportive (Brophy, 2009).

#### **“Just made me feel really fine to actually 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 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 s\*\*t, 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 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.” [Accused]



## Challenges

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The Accused is encouraged to participate in the Koori Court largely as a result of the informal and inclusive model adopted, using plain language and involving Elders and community in the sentencing conversation. As discussed above, as long as the principles of the Koori Court are adhered to, the Accused's experience has been positive and the process respected. On occasions when the principles of the Court (in terms of openness, informality and inclusiveness) have not been adhered to, this has resulted in a negative experience for the Accused.

There was one (1) occasion identified by the evaluation where the principles of the Koori Court were found not to be adhered to, which resulted in negative experiences reported by the Accused and legal representatives, as well as by Elders and Respected Persons. In this instance, the presiding Judge failed to ensure that an inclusive approach and atmosphere was maintained throughout the sentencing conversation. Instead, participants involved felt that the Judge's efforts appeared to focus on following formal court procedure. This incident highlights the importance of the overall manner and approach of the presiding Judge in ensuring that everyone feels comfortable to participate in the sentencing conversation.

*"It's a difficult thing for them to be drawn out and that's a skill pretty much of the presiding Judge I guess. To be able to engage the accused person in the conversation. I would think the Judge has a significant effect on the Koori Court." [Barrister/solicitor]*

Interviews with informants also identified that the Accused had some misunderstandings of elements of the Court. For example, one Accused mistakenly believed that if they reoffended they were not 'wanted' back in the Koori Court. This instance appears to be a result of a misunderstanding of the words used in the sentencing discussion.

*"You wouldn't go back to the County Koori Court. Go straight to the [mainstream], because they wouldn't have you back. That is what they said to me. Well the impression I got, they don't want me back here. They want me to go through mainstream." [Accused]*

Unfortunately there is no data available to calculate the number of Koori Accused who chose not to have their cases heard in the County Koori Court. This is a limitation of data available from the courts, as well as a problem related to the identification of Aboriginal and Torres Strait Islanders throughout the justice system.

## Koori community participation in the Court

As stated previously, 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"* (County Court of Victoria, 2008).

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 and victims, was seen as a positive element of the Koori Court process. However, in particular, informants underscored the value of participation from Elders (mentioned by 10 informants), the Accused (mentioned by four informants) and their family members (mentioned by four informants).

## Strengths

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The contribution of the various stakeholder groups to the court process was mentioned positively a total of 47 times during interviews held. There was overwhelming agreement on the value of the Elders and Respected Persons to the Court, with 21 informants (including six Judges and seven Accused) highlighting the knowledge they contribute to the Court regarding 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 as the Accused. The key impacts of the participation of Elders in the courtroom include:

- engaging the Accused in the Court process
- bringing community knowledge and values into the courtroom
- acting as role models for the Accused.

An overwhelming majority of the Accused (14) recognise the authority of the Elders both as cultural leaders and as individuals who understand the background of the Accused. The data show that comments made by the Elders have a strong and lasting impact on the Accused, as many of the Accused were able to recount the words of the Elders and spoke of being highly affected by their comments. Elders themselves also spoke about the pride they feel having Aboriginal people sitting in the courtroom contributing to the court process.

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.

The involvement of Elders in the sentencing conversation also reinforces community standards of behaviour by prompting the Accused to consider the broader impact of their offending. The achievement of the Koori Court in reinforcing community codes of conduct was discussed by 16 participants interviewed. In addition, 21 participants spoke of how the involvement of the Elders contributed to shaming and reflection among the Accused.

*“My grandmother got up, and didn’t actually rip me, or rip the boys, but she was saying she didn’t like what was happening in this community – ‘Broken the community what you fellas have done’ – and putting the real blame on us.” [Accused]*

The benefits of broader community participation in the Koori Court were discussed by 12 informants interviewed. For the Accused, this mostly revolved around the benefits of having family members and friends at the hearing, providing support and speaking on their behalf. For example, those Accused whose family members were present in the courtroom commented on the feelings of support and confidence that their presence gave.

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.

*“Anyway I said their grandfather would be horrified if he had seen you boys in here, and then I told them about him and about the land rights and that ... And they said: ‘No-one said anything at home about this and [our family history]’. So I suppose in a way I was there supporting them.” [Elder]*

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. 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.

### “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 s\*\*t yourself even more ... 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 ... 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 s\*\*t’. But when you have the Elders telling you, me old man passed away about 10 years ago, and yeah 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 ... 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...” [Accused]

Reviews undertaken of the Murri Court in Queensland, Circle Sentencing in NSW, and both the Victorian Magistrates’ and Children’s courts also emphasise the importance of Elder and community participation in Aboriginal sentencing courts. The evaluation of the Murri Court found the presence of the offender’s community in the court assisted them to be more responsible for their own behaviour, and also increased offender awareness of the impact on both victims and community (Parker and Panthé, 2006). The evaluation of Circle Sentencing in NSW found the strong advice and cultural knowledge contributed by the Elders was the greatest strength of the process (CIRCA, 2008).

### Challenges

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. Challenges regarding the participation of Elders and the broader Koori community in the Court include:

- a lack of community awareness of the Court and their ability to participate
- complexities related to the participation of Elders and Respected Persons
- the emotional impact on Elders as a result of their participation
- the limited involvement of victims in the Court.

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.

*“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 eight (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]*

There are evident benefits of broader community participation in the Court (see the discussion above and Case Study 1). Unfortunately, however, in some instances the Elders and the Accused are the only members of the Koori community present in the courtroom. In the 2010 evaluation report it was suggested that the Accused’s solicitor could play a role in securing increased participation of relevant members of community in Court.

*“A lawyer that is used to dealing with Koori clients will generally have an idea of how to contact that client’s family and get them along. Lawyers that aren’t so well versed may not, which is unfortunate.” [Strategic informant]*

The evaluation team was unable to measure the full extent of community awareness of the Court. Broader community awareness of the Koori Court and the support role community members can play may increase the participation of community. It was also suggested in the 2010 report that community awareness and involvement in the Court may need to be better articulated by the Court. For example, does community awareness in this context refer to the entire Koori population of the Latrobe Valley and Gippsland? Or rather is community awareness and participation represented through the participation of the Local Aboriginal Justice Advisory Committee (LAJAC) or the Regional Aboriginal Justice Advisory Committee (RAJAC) in the Reference Group?

In 2009 there were some challenges regarding the participation of Elders in the Court, largely as a result of the limited number of male Elders available to sit and the limited experience of some Elders new to the Court. However in 2010, court participants noted that Elders who sit regularly in the Court had gained confidence in their roles over time. Key to this change was experience, and also the opportunity to sit with the same Judge across a number of hearings.

*“I kind of see them growing more comfortable with the process as time goes by. I think one of the challenges initially was the Elders building their confidence in speaking and knowing the right things to say. But ... the more they watch, or participate in the Koori Court, they develop those skills.” [Strategic informant]*

In addition, it should be noted that participation in the Court has at times negatively impacted on Elders. For example in consultations held with Elders in 2009, some Elders noted the emotional pressure they sometimes feel when dealing with members of the community in the Court. Cases that involved Accused who have had a difficult family background, no chances in life, and were likely to go to gaol were mentioned by Elders as the most emotionally difficult cases.

*“We do take it home with us. We do get emotional when we see a young kid that comes from a dysfunctional family ... That is the hard part.” [Elder]*

Whilst there are evident benefits of including the voice of victims in the sentencing conversation, only one (1) victim has participated in the Court since its inception. As detailed in the 2010 report, there were some issues regarding the participation of the victim in the Court. A number of informants commented on the conduct of the victim, stating that the victim became antagonistic towards the Accused and did not participate in the spirit of the Court. Despite this, two (2) of the Accused commented on being strongly affected by the Victim Impact Statement when read out in court. While not unique to the Koori Court, reading out the Victim Impact Statements when the Accused is more engaged in the court process has an impact on the Accused. Some of the Accused

recounted that the Elders used these statements as prompts, relating this to expectations of conduct in the Koori community.

## Unexpected outcomes

There were a number of unintended, and significant, outcomes identified through the evaluation of the County Koori Court. These include:

- reinforcing the role of Elders in the community
- fostering respect for the judiciary through an inclusive court process
- improving Elders and Respected Persons' skills and confidence.

In addition to making the court process more meaningful and representative through bringing the community into the process, some stakeholders interviewed felt the Elders' role within the Koori community had been reinforced. Some Indigenous service providers stated that having the Elders as key contributors in the Court enhances and reinforces their position in the community. The Victorian Magistrates' Koori Court evaluation also found the court had contributed to the reinforced status and authority of Elders, strengthening the Koori community (Harris, 2006).

*"We are seeing it differently than we have seen it. We are sitting opposite [the Judge], we are part of the process now. Before we were always excluded and we felt among Aboriginal people that we were not being heard or understood." [Elder]*

The Court has also contributed to fostering more respect for the judiciary on behalf of the Accused. As stated previously, the approach of the judiciary to the Koori Court process was mentioned positively by six (6) informants, including three (3) Accused. This interview data is supported by court observations, which note that Judges often use very informal language and use personal information about the Accused (such as their sporting interests) to engage them in the sentencing conversation. 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 to discuss what they planned for their future. Several 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.

### **"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 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\*\*king 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 s\*\*t. 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...

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." [Accused]

As noted in the discussion of participation of Elders in the Court, Elders have gained skills and confidence through their involvement in the Court. The Court has provided training and support to Elders in their role within the Court. This finding is consistent with the results of a study of the NSW Circle Sentencing which noted the positive impact on Elders and Respected Persons, including their confidence and sense of achievement (CIRCA, 2008).

## Section 4: Case studies

This section provides detailed accounts of the experiences of some of the Accused, bringing together perspectives from different court participants and the Accused themselves. There are three (3) case study groups, defined by their level of past offending and experience with the County Koori Court. Each case study group contains one or more accounts of an Accused's court experience.

The case studies serve to provide a better understanding of how the key findings outlined in Section 3 play out in actual court events. These case studies illustrate how the different Accused characteristics, court processes and the decisions of the Court combine and impact upon the Accused.

The three groups are:

**Case Study 1:** Three (3) Accused who were given community based orders, with relatively low levels of prior offending (for County Court Accused), and who spoke positively about their County Koori Court experience. Three (3) individual accounts are provided in this case study group.

**Case Study 2:** Two (2) Accused who were given custodial sentences of more than two years, who had significant prior offending and prison episodes, and who also spoke positively about their County Koori Court experience. Three (3) individual accounts are provided in this case study group.

**Case Study 3:** Three (3) Accused who were given custodial sentences of more than two years, who had significant prior offending and prison episodes, and who were less positive in their reflections on their County Koori Court experience. These Accused provide a combined account covering a few key themes.

These case studies have been developed through an analysis of Accused and other stakeholder interviews, court observations and court transcripts of sentencing remarks.

### Case Study 1: Low levels of prior offending

The Accused included in this case study were all aged between 20 and 30 years; and all had some previous low level offending, with a couple of prior court appearances. Much of the Accused's offending histories were associated with alcohol intake, however they were able to demonstrate a reduction in alcohol consumption prior to their court appearance. The group of people at the focus of this case study had experienced many previous traumatic events throughout their young lives, and were struggling to see a fulfilling future for themselves. Each of the Accused had a domestic or family history that had been implicated in their alcohol intake. Deaths of parents and friends, experiences of childhood domestic abuse, periods of living in different foster and care homes, and a lack of appropriate parental role models all demonstrated difficult family and childhood backgrounds. A couple of the Accused were estranged from their former partners and had limited access to their children.

Employment prospects were often limited due to lack of suitable jobs in the area, or lack of skills. With the exception of football or basketball clubs, there appeared to be little to keep the Accused occupied in their community. Most left school early, and many adult training or learning schemes were also incomplete despite showing some initial potential in these roles.

In their interviews after their County Koori Court experience, the Accused had a strong focus on their feelings of responsibility for and expectations from their own local Koori community. In particular, these individuals showed a strong sense of respect for their Aboriginal heritage and a duty to their community. They are young men who are seen by their community to have the potential to grow to be community leaders.

### **Accused 1: “You know your case is going to be heard with the input from our Elders”**

This account illustrates the impact that the participation of the Aboriginal community in the sentencing conversation had on the Accused. The open court setting also helped to demonstrate to the Accused that the process acknowledged the culture and history of Aboriginal people, and sought to treat everyone equally.

The Accused first discussed how the round table and culturally appropriate setting helped him to feel that people were there to understand him as an individual. The Accused then discussed the benefits of having other community members speak to give the Court a better perspective of his background, potential and life challenges. These factors all played a role in the Accused’s offending and responsiveness to any sentencing conditions.

Some of the people in court that day didn’t know the Accused, but were able to speak up on behalf of the community to make the Accused realise the impact their offending behaviour had on the community. They were also able to inspire the Accused by talking about the Accused’s ancestors and family history.

*“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 ... Compared to the mainstream court you are sitting at a table and you are sitting beside each other and it is almost like a round table. Everybody is sitting around and it feels like a better environment. It is different but it is a good difference for you, because you know that is your culture, and you know they are going to look at it as much as they can through your culture.” [Accused]*

*“[My brother] got to speak about where he thinks I was headed, what sort of person I am and all that stuff that I did to get myself in the Koori courtroom. And that I wasn’t the person I was raised to be, I sort of went wayward there for a while. [Another local community member] got up to speak on our behalf, and he done well. My employer, they even let him get up and say his piece.” [Accused]*

*“We had one young man whose grandfather was a very significant leader of the Aboriginal community. One of the Elders spoke to the offender about his grandfather, and there was also another person in the body of the Court who spoke very movingly about this man’s grandfather and what a significant person he was and he would be incredibly disappointed to see his grandson in the position that his grandson was in. I thought the young man responded really well to that and it was an example of how the Elders and the community bring a knowledge to the process that the Judicial Officer just doesn’t have and so the Elder made a really strong connection with this young man ... I think the young man himself was also very impressive because he had obviously thought about why he should elect to come into the Court, but there was a very good conversation that went on around family and around the leadership that people can take in a community and how people can change their lives and rebuild their lives, and become significant people in the community themselves.” [Judge]*

*“I didn’t know these young men but I knew their grandfather, I knew him years and years ago, he was the one that started the land rights here years ago ... these were his grandchildren ... I said their grandfather would be horrified if he had seen you boys in here, and then I told them about him and about the land rights and that.” [Elder]*



*"[The Elders] know our honour side of our life and what we are as Aboriginals and what we should be representing as Aboriginal people ... and just to 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." [Accused]*

Comments from the presiding Judge demonstrate how contributions made by the community and Elders, and the way that the Accused responded to them, provided the Judge with a better understanding of the Accused. In turn, the comments from the Accused show that the individual feels more responsive to the decisions of the Court, as he knows these have been reached with the input from respected persons from their community.

Senior community members have reported that this individual responded positively to the issues raised in the Koori Court hearing, and that this was a factor in the individual's decision to take stock of his life at that point. The court hearing is reported to have prompted the individual into thinking long and hard about his life and assess where he was headed. As a result of the Accused's experience in Court, he decided to use his existing building skills and strive for a long-term career position in an Australian Government agency, aspiring to enter at a technical level.

*"I have been in Courtrooms before and have done something wrong and felt bad for it, but 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." [Accused]*

*"We know that we are in there because we have done something wrong so we are not looking for a ticket out ... you know you are still going to cop whatever you are going to get. But you just know that your case is going to be heard with the input from our Elders. They have got input from our respected people in the community, they got to stand up and speak for us. They get all of that. So you know that you are still going to get it, but you are going to get something from the people who have heard it from a different point of view, not just the point of view from your solicitor and the prosecutor." [Accused]*

The individual was employed at the time of the court hearing, and continued to be for a long time after. The Accused enrolled in appropriate TAFE courses that would help develop the professional qualifications required for entry at that level and is now going through the selection process for a long-term career position in an Australian Government agency.

## **Accused 2: "Your role as a man"**

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This second account of an Accused's experience in the County Koori Court demonstrates how the Elders' strong words during the sentencing conversation had a lasting impact on the Accused. The account begins with notes of an exchange between the Elder and the Accused, taken during Court observations.

### **Observations of the court case**

Uncle intervenes, very directly and strongly, "You have a problem – alcohol. Your partner said enough is enough. When will you stand up and say that?" The Accused mumbles an indecipherable response. "Just need to ...."

Uncle prompts him again, “You said you understand that alcohol is the problem?” The Accused agrees. “You must understand your role is to look after your family as the breadwinner, your role as a man. It’s difficult to find work in [the town]. You need to put things in place to change your life. You are a brilliant footballer, like your father. He was a great man. I’d like to chat with you, to tell you stories. But you are a good kid”

Uncle summarises to the Accused, “it’s alcohol getting you in trouble. Serious [offences] and chances are you can go to jail. People die, or are seriously injured from assault. Think of the consequences: who will be in trouble if I keep drinking?”

The Accused was interviewed 18 months after the court case, but was still able to recount with detail how the words of the Elder made him feel. This had a significant and lasting impact on the Accused, who felt both reprimanded and encouraged. This was important, especially in the context of a lack of male role models for the Accused to learn from and aspire to.

From this exchange the Accused was able to reconnect with family and community, and recognise the importance of turning his life around. The Accused talked about how the Elders inspired him to address his issues, and gave him the self-belief to live up to his potential.

*“[Uncle] 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 ... Because I have grown up and nobody had told me off or said don’t do that it’s wrong, or you will get yourself in trouble doing that s\*\*t. My old man passed away about 10 years ago, and yeah fucking went down hill ... 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 ... Yeah 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.” [Accused]*

*“Just taking in what the Elders said and like trying not to do 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 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 ... 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. [The Elder told me] ... 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 out heads kicked in like – 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 ... Put your mind to it and you will get it done, it is just willpower’. I took all that in and trying to do their ways to help me, it has helped me a fair bit ... Pretty much give me another look at how life is, not this drinking, arguing fighting around and all that, when you can do something that is constructive with your life, better ways than flushing it down the drain. Probably the best thing about the Koori Court, they make you look at yourself and see you are f\*\*n up mate, you are not bad, you are a better person than that, so f\*\*n get your head screwed on and bang, do something with your life, stop being a drunken bum.” [Accused]*

### Accused 3: “It helps you want to change”

This third account illustrates how the decisions of the Court are built upon a better understanding of the Accused and of their potential rehabilitation and role in community. The Accused reflects how, had this not happened, a custodial term may have been applied which would have impacted upon the individual’s prospects for fulfilling community and professional potential.

The Accused discussed how they were more engaged in the County Koori Court than they would have been in the mainstream. This was helped by greater feelings of trust in the process and the knowledge that his own community leaders were involved in the discussions. The Accused explained how the sentencing discussion is more appropriate to finding ways to assist Koori Accused in preventing further involvement with the justice system.

*“Well in the mainstream Court we would have been sitting there with our head down and listening to what they are saying and taking everything in what they are saying, because a lot of Koori people do not like to look eye to eye, as long as someone else would, and in there talking to the Elders we did have our heads up and we was looking at them, showing them if they give us a chance then we will, but in the mainstream I think we would just sit there and take it all in. We would have walked in and thought stuff it they are going to lock us up anyway, let us just go in and get it done anyway.” [Accused]*

*“That is what we actually noticed sitting there, that other people do care, so it goes a long way as far as – the Judge that we had was really good, really understanding for both of us and the Elders ... To me it seemed like the Judges don’t necessarily want to lock you up if they can see that you can do something. I think in the mainstream, there is a possibility that they read what they read, and see what they see, and make their own decision. [The sentencing conversation could uncover] 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 ... make it better.” [Accused]*

The sentencing remarks from the Judge describe how the wider context of the Accused’s life situation and potential were considered in deciding the sentence. This motivated the Accused to act upon that potential and begin to play a role in their local community. This individual knows they have been given a second chance and is keen to make the most of it. The Accused also reflected that had they been given a custodial sentence they would have been more resentful of the sentence and would not have had the motivation to change.

*“Mr [xx], you have been given this opportunity because you do not have any prior convictions, your plea of guilty and acceptance of responsibility, and your excellent prospects for rehabilitation. I must also state that in the absence of a plea of guilty to the charge of recklessly causing serious injury, you would have been convicted and sentenced to an immediate term of nine months’ imprisonment and, working on the assumption that you would have presented very good material on rehabilitation, four months of that sentence would have been wholly suspended for two years. Basically, you would have served an immediate gaol time of five months.” [Accused]*

*“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... Instead of locking you away and thinking that is going to change [them]. By experience and knowing other people that have been in the system, it doesn’t change you at all, it puts more hate in you being inside the system... [You get to] look at the Judge like a human being – having to look at them in that other way sort of helps you, it helps you want to change because you know that they are giving you a chance.” [Accused]*

*“It gave me a little bit more understanding of the Court system, and how possibly to help younger youth prevent them from going there, so that is why I have ended up [working in] Koori Justice now. ... 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... 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... Whereas if we were sitting in a yard or a prison or something, we would be more or less still thinking about the trouble we were thinking before.” [Accused]*

When following up on the progress of this individual with senior community members it was found that they have been very engaged in their community and have been actively working in Koori Justice for some time. The individual worked in the field for some 18 months after their court appearance. Whilst that employment position has expired, the individual has continued to show ambition for working in this sector. It is clear from discussions that this individual's experiences being a young Koori in trouble with the law has helped them understand and look to provide for younger people in similar situations.

This person continues to be engaged in community activities, using interests of music and sports to engage with younger people in the community and in local schools. Some of this has included demonstrating cultural practices to audiences in their wider community.

## Case Study 2: Prisoners who spoke positively of their experience

This case study group includes two (2) Accused who both had substantial prior arrests and convictions. Both Accused had spent significant amounts of time in custody, and the risk of them becoming (or already being) institutionalised was mentioned at both of their hearings. Their reflections on previous mainstream court appearances were extremely negative and they were resentful of court processes and outcomes. It seems that prison had lost its deterrent effect on these individuals prior to them coming to the County Koori Court.

Both Accused came from traumatic and difficult childhoods, with substantial levels of abuse and alcoholism. They also suffered from numerous substance and alcohol abuse problems, which had been a factor in much of their offending. They had limited, if any, family or community support networks, and had felt minimal connection to community throughout their adult lives.

In addition to the Accused's similar criminal and social backgrounds, they both had a positive experience in the County Koori Court, where their engagement in the sentencing conversation assisted in providing them with inspiration or rehabilitative assistance to address their offending behaviour.

### Accused 4: "I have been thinking heaps about what they said to me"

The first account from this case study group illustrates how the Elders and the court setting engage the Accused. As a result of this engagement, the Accused is able to take something from their court appearance, rather than just receive punishment. The effect that this has on the Accused encompasses both deterrence and rehabilitation.

The Accused first discussed the feeling of being reprimanded by the Elders, and went on to describe how the Elders were also able to contribute to a better understanding of the Accused's past and reasons for current offending behaviour. The Accused commented on the respectful atmosphere of the sentencing discussion, and how this facilitated a problem-solving approach to their offending and resulted in punishment that they are more likely to engage in and respond to.

The Accused then reflected on how—in discussing a future role for the Accused in their community and by virtue of being positive role models themselves—the Elders gave him a new perspective on his future. That some of the Elders had overcome difficult times in their own lives was an important factor in the Accused's hopes for turning his life around.

*"When I went to Koori County my Elders lectured me and spoke to me ... It felt like a big load of bricks dropped on me. That's how scary it felt. Not so much the Judge ... mostly what my Elders were saying to me. And they didn't go easy on me. They have to show to the Judge that they can take up their role in life - in court or out of court."*

*"[The Judge] was taking it all into account like it was all my past history and that. I didn't really want to hear all that, because it is still sad and all that stuff, getting bashed when I was little, cigarette burns all over me when I was a baby, and all that ... Talking about my history, it lifted a bit of weight off me, getting it out there what had happened in my life before ... bringing it up in the Court and the prosecutor who don't even know you, and you have been on remand, looking on and knowing and there are only 4 people in there who knows me and knows my history... [The mainstream courts] don't talk about any of that stuff, they don't want to know." [Accused]*

*"I didn't ark up in Court this time, not because I was in the County Court or because of the Judge or the Court it was nothing to do with that, but it was out of respect for my Elders ... Now I am older I respect all Elders whether related or not, when you meet on street or in the community, I respect the Elders, and they show respect.*

*When they are sitting around the table, you don't feel like you are getting looked down by the Judge, because you are all sitting around the table and having eye contact, eye level, across the table, not in the high thing and looking straight down at you ... That is important because Judge is willing to show you respect too, you have to be respectful of the Judge if he does that, if he is sitting down at table. You don't see that in normal court. ... You are talking like normal people and solving problems and if you have a disagreement, you are talking like normal people, solving the problems.*

*With my Elders talking to me about what I can do, like what I can volunteer to do this and I don't have to be a worker, I can volunteer, I can do these things through volunteering ... I wouldn't have even thought about all this stuff that I could help others, my own relations, non-relations.*

*I have been in and out of institutions since that age of 13. I was age 12 when I was in welfare, put behind big wooden walls, so it made me think how much I have just wasted you know. I compare that since I have been in here, I have been thinking heaps about what they were saying to me, about that I could do better, or I could help my community.*

*I have seen them [the Elders] at their lowest, but it was good to see them in this position where they can help change. If they can change we can change, that is the good thing that came out of it.*

*I have been thinking ... once I saw my Elders, working in the justice system like that, it is big step for them and to be even trusted working for justice system and all that. Seeing them getting all that trust shows how much we can get it too if we want to make the change.*

*I am not going to re-offend mate ... I have said so many times that I am not going to do it, but this time I promised them when I get out I am going to pull my head in and I said to Uncle I will prove to him when I get out, look I will prove to you when I get out, proof is in the action ... This is going to be the final chapter for me - this life is not for me anymore ... I will be 25 when I get out, right now I am well and truly over it when I get out I will start afresh, get a new missus and a new dog." [Accused]*

## **Accused 5: "Have a lot to think about now"**

This account from the second Accused included in this case study group illustrates the importance of the sentencing conversation in terms of engaging the Accused in the process, uncovering relevant issues, and providing the Accused with a positive outlook.

This Accused commenced by discussing his mixed feelings of going through the Court, holding both hopes and fears of how the Elders' knowledge of his background would work. The Accused also reflected on his experiences within the mainstream court, discussing how those courts did not seek an understanding of him as an individual. The Accused does not feel engaged in the processes of the mainstream courts and has no understanding of how a mainstream sentence is determined.

*"I knew for a fact that I was going to get time, but on the other hand I was happy to go to the Koori Court ... because I knew the Elders and they 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 ... 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 ... they don't know anything about my background. [The Elder] has seen me growing up and that since I was a kid."*

*"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*

The Accused appreciated the informal atmosphere of the Court, which helped him to engage in the process and acknowledge the importance of the issues discussed during the sentencing conversation. The individual spoke of how he listened to words of encouragement and guidance from the Elders, which he still remembered a year after the court hearing.

*and looking at the computer and that is about it, and send you straight to jail, no question you know, but when you can sit down at the table with the Elders and then expressed 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.” [Accused]*

A court participant described some of the issues that were discussed during this sentencing conversation. Key factors were the Accused’s sense of hopelessness and a cycle of reoffending that was putting the Accused at risk of becoming institutionalised—if this had not occurred already. The Elders and the Judge made a significant impact on the Accused as they discussed the future, offering him encouragement to change and warning of what would happen if he didn’t.

*“He was initially quite suspicious about going to Koori County Court ... His family didn’t come to court with him, so they weren’t there, but the Elders knew him so well, and knew his family so well that it overwhelmed him a little that he had people who were saying positive things about him in court ... Things started to come out through the process, and then [the Accused] started speaking, and then he started speaking about the hopelessness of his life ... about getting out of jail and doing OK for a bit, and then things getting difficult, and then drinking, and that leading to offending again.” [Barrister]*

*“The Elders really gave him a lot of encouragement about trying to change that, and the Judge also said to him that if you don’t change that, you’re going to be dead soon, you know. It obviously resonated with him, because 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 ... I don’t remember any of my other Judges or anything that that was ever said in court to me before, but I remember everything that was said that day.’ [Barrister]*

A key factor that came out of the court process was the level of intellectual disability of the Accused, which had not been identified in prior court appearances. This subsequently formed the basis of discussions around the Accused’s circumstances and level of reoffending, as well as potential approaches to assist the Accused in dealing with his disability. The Judge was able to record this in the sentencing remarks to ensure the justice system provides services that are appropriate for the Accused’s situation.

*“[the Judge] got my psych report and he read through that, he had my psych report and he looked in that; and [the solicitor] had a few words to him and that, and plus you know he knows Aunty [x] – that was alright and it worked for the sentence I got.”*

*“Well you can’t get that in the other courts ... but 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, and hopefully I am on the right path, still taking notice of what they said.” [Accused]*

### **Court transcript of sentencing remarks**

*“You were given, I suspect, for the first time, proper intellectual testing ... All sorts of problems come from having that sort of intellectual disability [described in court transcripts] ... You were able to discuss ... the negative effects from most of the above substances ... You suffer from a great anxiety and I suspect that that may be ultimately linked with the matter that you talked to Uncle [x] about during the course of the sentencing conversation ... For the first time, the Parole Board, in your situation will be able to, if they choose to, release you with proper supports in place, bearing in mind, the mental state I have described.” [Judge]*

### Case Study 3: Prisoners who spoke negatively of their experience

This case study involves a group discussion with three (3) Koori prisoners. These prisoners all received custodial sentences from the County Koori Court, and harbour some resentment towards the decisions made by the Court. While some criticisms are made, these criticisms are conversely viewed by others as strengths of the Koori Court model. When pushed to make a comparison between their experiences in the Koori Court and their experience of the mainstream courts, they were broadly in support of the Court. Nonetheless, this case study illustrates the complex ways in which the Court is experienced and understood by Accused who have mixed views of the process.

Two (2) of the Accused highlighted the impact of the Elders as a reason why they might not go back to the Koori Court. The Accused reported experiencing feelings of shame appearing in front of the Elders, and they even thought that re-appearing in front of the same Elders if they reoffended may also 'bring shame' on the Elders. For these Accused, the mainstream courts were 'easier' as they involved engaging with people in a system they did not respect and towards which they have no sense of obligation. An important point here is the level of obligation felt towards the Elders to the point where going back to see them on the same matter was seen as 'lying' to them and letting them down.

*"...You feel more of an obligation to go through, say you have a suspended CBO or whatever, it is going to be more, just to finish it rather than just go back and face the Elders and be ripped again ... That respect thing. Where in the mainstream court and the white fellow saying go through and go to jail, the attitude is so ... 'I don't have to respect you if you are not my Elder' if you know what I mean. You are nothing to me. You are just a person sitting in a wig or whatever. Whereas when it is the Elders and you have known them all your life, and you know they know you in the courtroom and outside in the community, it is that shame factor." [Accused]*

*"I kept refusing to go ... sit front of the Elders. I know that I am going to reoffend. I don't want to go back and sit there in front of them, and then bring shame on them ... Where I find it a lot easier to front the white justice system, because ... I am never going to see them again, I am not obligated to see them again ... In a few years to come ... if I am going back in front of them on the same matter, it is like I lied to them, then I am going to cop it a lot worse. But [that] doesn't bother me. It is more about the respect if you know what I mean? It is on a personal level, I know them and I should try more I know ... I got a 12 month suspended sentence out of it, in those 12 months when I get out, if I reoffend then ... I have no choice I have to go back there and front them, so I am not looking forward to doing that if I reoffend. Whereas if it was mainstream, yeah, like I was saying before it wouldn't really bother me." [Accused]*

While feeling that the Koori Court is a positive development, one (1) individual felt that the Elders could also be a negative influence depending on what they knew about you or had heard about you.

*"I reckon it depends more on if the Elders know you too. If they know you they can give you good influence or bad. They can say 'he was great kid when he was younger' – or 'don't expect this from him he is this type of person', rah, rah, rah. And that could go against you and then even with the Elders who don't even know you ... The thing is the Koori Court is a great idea..." [Accused]*



Another challenge that some of the Accused discussed based on their experiences in the Court, was the notion that the Elders can also be seen as part of the older generation that some of the Accused felt were responsible for the contexts within which they were raised.

*“For me personally I think it hurt my pride, and I accepted that and as I said I see my Elders in the street, and then when you look at something like that, and then [the other Accused] got a pretty harsh sentence too, for something. At the end of the day we break the law, but I thought the Koori Court they were going to listen to our problems more from a background of knowing where we come from. The majority of us have grown up around violence and alcohol and we don’t know anything better...” [Accused]*

*“They should have taken the stories into consideration but like I was saying, it is hard to change things that you have grown up with, and that is the main thing. They can’t really crucify us for something that we don’t know anything else, we only know this. We think that is what life is supposed to be, you grow up, you drink, you fight, you have kids and that is it. Whereas other people grow up, go through school, off to university, and get good jobs and that, if you know what I mean? That is why we want to get out into the community and do something, and yet because times are changing we are just supposed to change with them. But then they give us the stories of how hard life was on the Mission, they think we don’t know, f\*\*k it is not our fault, don’t blame us for your hard life.” [Accused]*

## Section 5: Conclusion

In conclusion, there is strong evidence that the County Koori Court pilot program is making significant achievements in the program outcome area: *the Koori Court provides access to fair, culturally relevant and appropriate justice*. There is also evidence that the Court has some impact on the second key program outcome area: *Koori Accused do not have more serious contact with the justice system*. However, at this stage it is too early to definitively say whether the Court will have a long term impact on reoffending.

### The Koori Court provides access to fair, culturally relevant and appropriate justice

Overwhelmingly, the evaluation found that the experience of Koori Accused in the Victorian justice system is vastly improved by the availability of the County Koori Court. Of the 15 Accused interviewed as part of the evaluation, 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.

By involving Elders, community members and the Accused themselves in a more informal sentencing conversation that takes place around a table, the Court offers a process that is culturally appropriate and more relevant than the mainstream system, where there is little reflection on the background of the Accused, their culture or their community.

This improved experience was found to not only contribute to the perception of 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 facilitates an intention to adhere to court orders and motivation to address causes of offending behaviour.

### Koori Accused do not have more serious contact with the justice system

In the absence of a mainstream comparison group, it is difficult to determine whether the County Koori Court process diverted the Accused from subsequent and/or more serious offending behaviour. However, of the 31 Accused included in 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.

The evaluation also found 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).

Firstly, for many Accused the Elders provide a considerable deterrent effect in returning to the County Koori Court. The majority of the Accused stated that the prospect of reoffending and returning to face their Elders in the Koori Court was more daunting than fronting the mainstream system, where they had no connection to the judiciary. However, the intention to change one's behaviour may not equate to changes in actual offending behaviour. As discussed in the report, the Court is merely one aspect impacting on the Accused, and therefore cannot be examined in isolation from the broader social, economic and personal factors that contribute to reoffending.

Secondly, the sentencing conversation prompted many Accused to reflect on their offending behaviour and consider their future. Respect for the process and outcomes facilitated a sense of fairness, which in turn helped Accused to engage with and benefit from the support and positive perspectives of the sentencing discussion. The involvement of service providers and the development of tailored support options for each Accused were identified as critical in providing the practical support necessary to address underlying causes of offending behaviour. Again, whether this equates to changes in offending behaviour longer term cannot be assessed at this time.

These findings need to be considered in the context of the role of the County Koori Court as a judicial court. Furthermore, there are considerable external factors that contribute to offending behaviour which are beyond the influence of the Court.

## **Identified success factors**

The successful implementation of the County Koori Court is reliant on a number of factors. These factors can broadly be defined as internal and external to the influence of the Court.

Internal factors include the meaningful participation of Elders and community in the sentencing conversation, and adherence to the principles of the Koori Court model. It is also essential for court orders to link the Accused to services or activities to address causes of offending behaviour that have been identified during the sentencing conversation.

External factors include insuring that local services are available to assist in the rehabilitation of the Accused through attendance in court or provision of services. In addition, the sentencing options available to the Court must be flexible enough to assist in the rehabilitative processes that are identified as appropriate for the Accused.

## Section 6: Recommendations

In light of the findings presented in this report and the recommendations made by the Royal Commission into Aboriginal Deaths in Custody, it is highly recommended that the County Koori Court be retained by the Department of Justice and the County Court.

Based on the significant impact the Court has made on Koori Accuseds' experiences within the justice system, it is recommended that the County Koori Court continue to be made available to Koori Accused accessing the Latrobe Valley and Bairnsdale Law Courts. It is also recommended that the Department of Justice and County Court look into extending the availability of the County Koori Court to other areas in Victoria. However, any expansion of the County Koori Court needs to be undertaken in close partnership with the Aboriginal Justice Forum, and representatives from the broader Victorian Koori community.

The major elements underpinning the success of the Court are the commitment and cooperation of the Elders, courts officers, judicial officers and support services. It is therefore important that the process elements that facilitate this participation and commitment be retained and supported.

It is evident from this evaluation that support services can play a key role in addressing offending behaviour identified through the Koori Court process. It is therefore important that service providers are both supported to participate in the County Koori Court, as well as ensuring sufficient funding is available for service provision. It is recommended that support is provided for service providers to attend court hearings through the work of the Koori Court Officer, and arrangements such as the referral system developed with the Latrobe Valley Community Health Service. In addition, sufficient funding needs to be made available for service provision that goes some way to addressing the social and economic factors that underpin Indigenous contact with the criminal justice system.

To ensure the County Koori Court continuously works to achieve its stated aims and goals, and can readily demonstrate its impact, it is recommended that ongoing monitoring and evaluation of the Court is maintained and includes the active utilisation of findings. In particular attention should be paid to accurately measuring recidivism. A reliable mainstream comparison group will be available by the end of the year through the development of the Koori Court Information System. The Information System should provide both the Court and Department with access to reoffending data and breach rates on an ongoing basis.

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