



# Murri Court Reinstatement

Feedback Report | December 2015

## **CULTURE, COMMUNITY, COUNTRY MURRI COURT REINSTATEMENT ARTWORK**

“The Murri Court is an inclusive form of justice, It’s about restoring people back to their rightful place within the community.”

Connecting to culture, community and country.

This artwork represents the old ways of doing business. As we have done for thousands of years. The importance of culture being central to everything we do.

As we look at this in modern times, in reference to the Murri Court, we have an individual down the bottom left. They are on a journey.

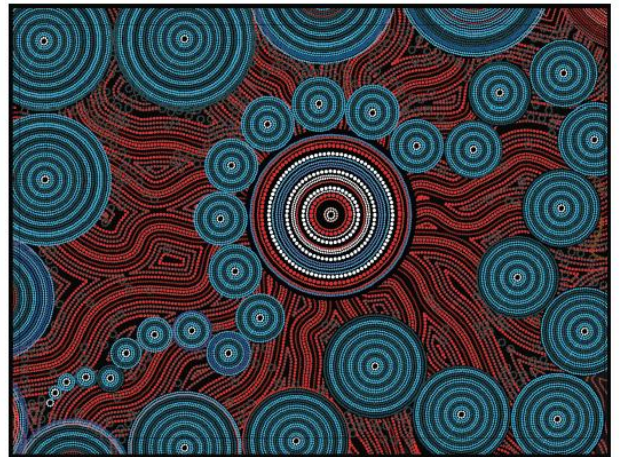
With cultural consideration in the justice process, they reconnect to their culture, growing stronger over time, with support of their community and their Elders.

This moves in a clockwise motion and at each step, It grows bigger. This moves across the landscape and central is the Murri Court itself.

With the white representing the individuals in the center, and the red and blue representing Elders and community, which are both central to Murri Court.

The circular theme also represents the continuity of culture.

The way we live our life, the decisions we make and the strength we gain with a connection to our culture, connection to our community and connection to country.



The artwork was created by Gilimbaa artist David Williams. David is a proud Wakka Wakka man born in Rockhampton now based in Brisbane.

## Murri Court Feedback Report - Executive Summary

On 14 July 2015, the Queensland Government announced the reinstatement of court diversionary processes to honour its election commitment to reinstate specialist courts, including the Murri Court. The Courts Innovation Program (CIP) within the Queensland Courts Service is responsible for leading the reinstatement of Murri Court.

To inform the model design an extensive consultation process was undertaken. Critical stakeholders were invited to participate in face to face meetings and/or to submit a written response to specific questions set out within the consultation document. CIP has also completed a literature review, cross-jurisdictional scan and review of the former Murri Court model with a view to identifying best practice and emerging practice in Indigenous courts.

This document describes the feedback and evidence collected to date, and makes recommendations regarding the key elements for possible inclusion in the reinstated Murri Court model.

Those elements identified as critical for the success of the Murri Court model include:

- **involvement of Elders and Respected Persons**, including the Community Justice Groups (CJG) and other representatives of the Aboriginal and Torres Strait Islander community, both in the court process and after court;
- **access to treatment**, intervention and rehabilitation programs that address the causes of offending behaviour, in particular health services, drug and alcohol services, and training and education;
- **culturally appropriate processes** used to facilitate sharing of cultural knowledge and information in order to improve sentencing decisions, including providing cultural awareness training for key stakeholders;
- **a specially trained magistrate, skilled in encouraging dialogue** and supporting culturally appropriate processes;
- **recognition of the expertise of, and contribution made by**, Court Elders and Respected Persons through provision of a fee;
- **clear and consistent operating procedures**, possibly through the introduction of legislation, that also allow for local flexibility.

Options for operationalising these elements in a reinstated Murri Court model will be further explored by CIP, but may include:

- Elders and Respected Persons being invited to provide advice to magistrates on cultural issues and background information on the offender;
- the CJGs performing a coordination role which may include transporting Elders, preparing rosters, organising stakeholder meetings, and other duties such as preparing bail and sentencing submissions;
- a Murri Court entry and sentence report for each Murri Court defendant that identifies personal development goals, and actions the defendant will complete to address the underlying contributors to their offending;
- encouraging the presence of Aboriginal and Torres Strait Islander artefacts and cultural symbols in the courtroom, and use of a roundtable court model;

- support for the Murri Court magistrate who is responsible for convening the Murri Court and remains the final authority for imposing bail conditions and sentences according to law; he or she will also be responsible for encouraging the involvement of all participants in Murri Court sittings;
- a standard payment of \$100 paid to Elders in recognition of their expertise and contribution to the Court; and
- drafting a practice direction to encourage operational consistency across Murri Court locations with a view to exploring options for future Murri Court legislation.

In line with the feedback and evidence collected, the reinstated Murri Court would continue to deliver on the aims of the former Murri Court and Indigenous Sentencing List (ISL). At its core, a reinstated Murri Court would ideally aim to encourage community participation, provide a culturally appropriate process, facilitate referral to support services and support improved sentencing outcomes for Aboriginal and Torres Strait Islander defendants.

In realising these aims, a reinstated Murri Court could be expected to achieve key cultural, criminal justice, and health and well-being aims and goals as shown in Figure 1. In achieving these goals, the Murri Court could reasonably hope to contribute to broader goals associated with reducing the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system.

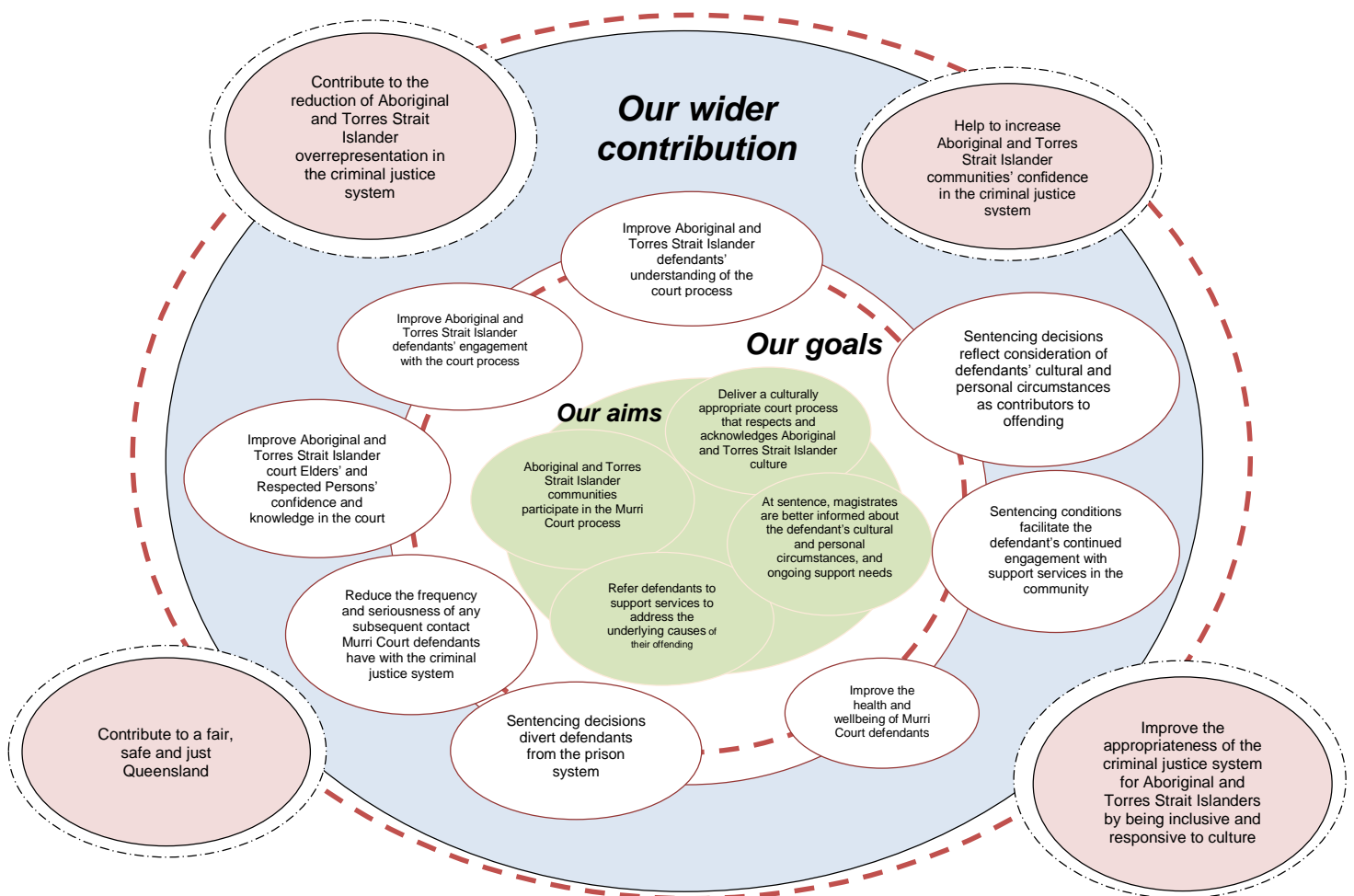


Figure 1 Proposed aims and goals of the reinstated Murri Court

Much work remains to be done in order to implement the new Murri Court model, including exploring options for providing Elders a fee, defining specific Elder selection criteria, identifying Murri Court locations, designing training and support materials for court participants, developing communication plans and promotional material, and drafting practice directions to support the consistent operation across Murri Court sites. An evaluation framework is also being developed in order to build monitoring and evaluation into the operation of Murri Court. It is expected that regular monitoring and review of the future Murri Court will support Elders, magistrates and court staff to continuously improve the model, and enable Murri Court to achieve its cultural, criminal justice, and health and well-being goals.

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## Acknowledgements

CIP respectfully acknowledges the Aboriginal and Torres Strait Islander peoples as the Traditional Owners and custodians of this land, and Elders, both past and present.

CIP wishes to thank all those who have contributed to the continued improvement of Queensland Murri Court, and in particular those Murri Court Elders, magistrates, CJGs and other stakeholders who have dedicated their time, spirit and enthusiasm to supporting Aboriginal and Torres Strait Islander defendants in the criminal justice system.

This report refers to Elders and Respected Persons as identified by the Aboriginal and Torres Strait Islander community. Where the word Elder is used this should be taken to include both Elders and Respected Persons.



# 1. Introduction

## 1.1. Purpose

The purpose of this feedback report is to provide a snapshot of the consultation data and research evidence being considered in the development of a Murri Court model.

This report reviews past and present Murri Court models in Queensland, and Aboriginal and Torres Strait Islander sentencing courts established in other jurisdictions, as well as current literature regarding best practice in Indigenous courts.

Feedback generated from the consultation process is also summarised in this report. The critical elements discerned from the feedback will be considered for inclusion in a future Murri Court model. It is currently proposed that the roll out of Murri Courts will commence in April 2016.

An overarching framework will later be developed for specialist courts and court diversionary programs (including Drug Court, Murri Court and Specialist Court Diversionary Program) to ensure the programs work together to achieve the goal of reducing offending by addressing the underlying causes of offending behaviour.

## 1.2. Background

### 1.2.1. Indigenous sentencing courts in Australia<sup>1</sup>

Indigenous sentencing courts were established in Australia in response to the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system, and the failure of the justice system to respond to the unique circumstances and disadvantage experienced by Aboriginal and Torres Strait Islander offenders and victims.<sup>1</sup> Unlike diversionary processes that aim to divert individuals from the criminal justice system, Indigenous sentencing courts 'seek to promote better outcomes than conventional courts while operating within the existing court and legal framework.'<sup>2</sup>

Australian Indigenous sentencing courts typically have two broad aims:

- to help reduce Aboriginal and Torres Strait Islander recidivism, imprisonment and deaths in custody
- to promote improved cultural awareness within the justice system, and engagement and understanding of court processes within the Aboriginal and Torres Strait Islander community.<sup>3</sup>

While Indigenous sentencing courts alter court processes and procedures to be more culturally relevant, it is important to note they operate under the same laws as other courts and do not apply Aboriginal and Torres Strait Islander customary laws. Aboriginal and Torres Strait Islander sentencing courts typically operate as divisions, lists, or special sittings within the standard court system, and are not separately constituted courts with their own court seal.<sup>4</sup>

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<sup>1</sup> Please note that throughout this report the word 'Indigenous' is used to refer to first nations peoples of the relevant jurisdiction, the term 'Aboriginal and Torres Strait Islander' is otherwise used to refer to Australia's first nations peoples specifically.

### **1.2.2. History of the Queensland Murri Court**

The Queensland Murri Court commenced operation in Brisbane in August 2002 with the support of the former Queensland Chief Magistrate Dianne Fingleton and former Deputy Chief Magistrate, Brian Hine.<sup>5</sup> It was later expanded to a further four trial sites, Caboolture, Rockhampton, Townsville and Mount Isa.

Between 2002 and 2010, the Murri Court expanded further locations around Queensland, and also commenced operation in a number of youth courts (see Figure 2). Sites outside the five trial sites remained unfunded and were supported, wherever possible, within the existing Murri Court budget.

The Murri Court ceased operation on 31 December 2012 and was replaced by the ISL.

Section 2 of this report provides a detailed description of the operation of the former Murri Court and Section 3 describes the ISL.

A timeline showing the operation of Murri Court and ISL between 2002 and 2015 is provided in [Appendix A](#).

### **1.2.3. Development of a new Murri Court model**

During the most recent election, the Queensland Government committed to the re-introduction of diversionary court processes. In July 2015 the Honourable Yvette D'Ath, Attorney-General and Minister for Justice and Minister for Training and Skills, announced funding to reinstate Murri Court and the SCCDP.<sup>6</sup>

CIP within Queensland Courts Service is responsible for leading the reinstatement of Murri Court. The development of a new Murri Court model has been based on a review of Indigenous court models currently operating in Australia (see [Appendix B](#)), a literature review of best practice in Indigenous courts (see [Appendix C](#)), and feedback from key stakeholders regarding the strengths, and opportunities for improvement, of former Queensland Indigenous court models (see [Appendix D](#)).

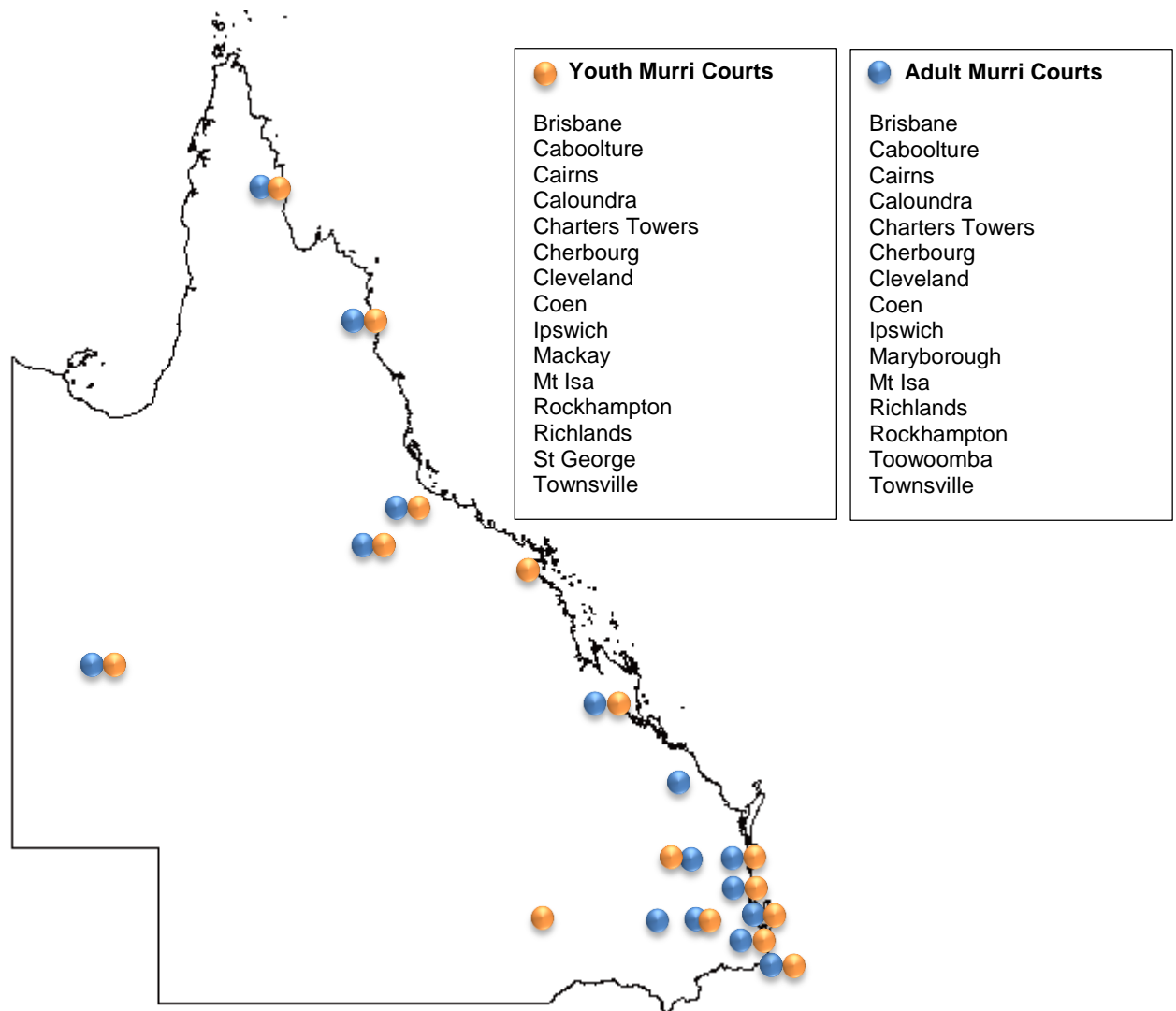


Figure 2 Murri Court sites 2002-2012

## 2. Murri Court operations 2002-2012

### 2.1. Funding for the Queensland Murri Court

Between 2002 and 2005 the Murri Court was resourced within the existing Magistrates Court budget.<sup>7</sup>

The Magistrates Court sought government assistance to fund a proposed fee for Elders, and for the appointment of a court officer to assist the Murri Court with coordinating the process in 5 pilot jurisdictions, liaising with participants and providing assessment and monitoring of the defendant before and after sentencing.<sup>8</sup> This was successful and an allowance of \$36.50 was granted to each Elder to cover the cost of transportation, parking and incidental expenses incurred in undertaking their voluntary service to the court.<sup>9</sup>

A budget allocation of \$6.1M was made to the Murri Court for the pilot period between 1 January 2007 and 30 June 2010. This enabled effective support and data capture for the operation of Murri Courts in five locations: Brisbane, Caboolture, Rockhampton, Townsville and Mount Isa.

In 2010-2011, \$1.2M was allocated which enabled full support to be provided to Brisbane, Caboolture, Rockhampton, Townsville and Mt Isa, and limited support to the remaining 12 locations.

In 2011-2012, \$1.2M was allocated (funded by the “Uniform Court Fees” initiative) to Murri Court which enabled further development of bail referral programs in Brisbane, Mt Isa, Rockhampton and Ipswich Murri Courts, a dedicated Murri Court bail program pilot in Townsville Murri Court, and continuing limited support in other established locations.

The funding allocated to Murri Court also provided for an Elder fee of \$36.50, as well as the following positions:

- 1 Murri Court manager
- 6 X Murri Court Case Coordinators
- 1.4 magistrates.<sup>10</sup>

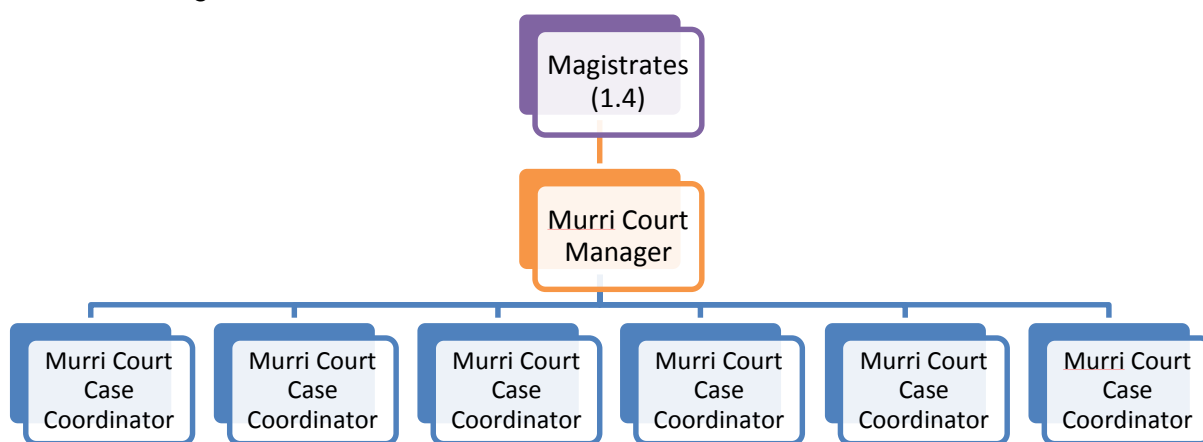


Figure 3 Structure of positions funded in Murri Court

## 2.2. Aims and objectives

The Murri Court evolved gradually, and each location slightly adapted the model to their specific needs. As such, the Murri Court did not start out with concisely defined goals.

However, the underlying objective was clear from inception: to reduce the number of Aboriginal and Torres Strait Islander people who pass through the criminal justice system. This was stretched as the court evolved and was set up in new locations to incorporate a number of sub goals such as seeking to improve court attendance rates, decrease breach of court orders which can lead to prison, and decrease re-offending rates.<sup>11</sup>

The goals were expanded and clarified over time and were captured by a 2006 Review of Murri Court to include:<sup>12</sup>

- to help reduce the over-representation of Aboriginal and Torres Strait Islander defendants who pass through the criminal justice systems who end up in prison;
- to reduce the number of Aboriginal and Torres Strait Islander defendants who fail to appear in court, which can lead to the issue of warrants for arrest and imprisonment; and

- to decrease the re-offending rate of Murri defendants and the number of court orders which are breached, which can also lead to prison.

As the Murri Court continued to expand and change to include the Youth Murri Court its goals were broadened further. By the time the 2010 Australian Institute of Criminology (AIC) Evaluation Report was delivered, the objectives of the Murri Court were to:<sup>13</sup>

- reduce the over-representation of Aboriginal and Torres Strait Islander offenders in prison and juvenile detention;
- reduce the rate at which Aboriginal and Torres Strait Islander defendants fail to appear in court;
- decrease the rate of re-offending and number of court orders breached by Aboriginal and Torres Strait Islander defendants; and
- strengthen the partnership between Magistrates Courts and Aboriginal and Torres Strait Islander communities with regards to how they deal with Aboriginal and Torres Strait Islander justice matters.

### 2.3. *The model*

Under the Queensland Murri Court model, Elders and Respected Persons were assigned clear roles and responsibilities, including:<sup>14</sup>

- providing advice to the magistrate on cultural issues
- providing background information about the defendant
- explaining the meaning of the magistrate's questions or concerns to the defendant
- acting as a liaison with local Aboriginal and Torres Strait Islander communities.

In 2002, the Murri Court model started as a sentence court and gradually grew to include a bail-based pre-sentenced program. Elders and Respected Persons sat with the magistrate during the sentencing hearing, and the magistrate was encouraged to consider the cultural and other advice provided by Elders and Respected Persons when making a sentencing decision.<sup>15</sup> When identifying potential Elders or Respected Persons to sit with magistrates, it was the intention that the Elder or Respected Person be of the community group relevant to the defendant, however this was not always possible.

Elders and Respected Persons also received training and agreed to act in a way that minimised potential conflicts. For example, Elders and Respected Persons were trained on penalties that can be imposed under the *Penalties and Sentences Act 1992* and the purposes for which sentencing may be imposed. Elders and Respected Persons were also expected to excuse themselves if a conflict of interest or perceived bias arose.<sup>16</sup>

### 2.4. *Eligibility criteria*

Participation by defendants in the Murri Court was voluntary and required the following conditions be met:

- the matter is from the Magistrates Court district where the court is sitting;
- the defendant is an adult (or a young person where a Youth Murri Court is available);
- the defendant identifies as an Aboriginal or Torres Strait Islander person;
- a guilty plea is entered;

- the offence falls within the jurisdiction of the Magistrates Court or Childrens Court of Queensland (i.e. can be dealt with summarily); and
- there is a reasonable possibility of imprisonment for the defendant (minor matters are not heard unless the defendant has a criminal record and as such a reasonable possibility of imprisonment).<sup>17</sup>

In the initial Murri Court trial sites (Brisbane, Caboolture, Mount Isa, Rockhampton and Townsville), the eligibility criteria also included that defendants be at risk of facing a prison sentence for their matters. This criterion varied across the unfunded locations.

The decision on eligibility to participate lay with the magistrate informed, in some locations, by Elders. The offences heard in Murri Court were not major or serious offences, but limited to summary offences and indictable offences able to be tried summarily. The offences most often heard in Murri Court were property offences, driving offences, drug offences and breaches of bail conditions.

## 2.5. *The court process*

Murri Court procedures followed mainstream court procedures with a few key differences, namely:

- the defendant sat next to their legal representative at the bar table even if they were in custody;
- a member of the defendant's family or support person could sit next to the defendant at the bar table;
- all advice given to the magistrate by the Elder or Respected Person would be heard by all present;<sup>18</sup>
- the defendant was encouraged to speak directly and openly to the court and Elders;<sup>19</sup>
- the magistrate and Elder or Respected Person could question the defendant and the defendant's family or support person;
- a Queensland Corrective Services representative was often present and had the opportunity to address the magistrate and the Elder or Respected Person in relation to the defendant's case plan; and
- where available, defendants were referred to rehabilitation services designed to help address the underlying causes of their offending behaviour.

The Murri Court magistrate imposed non-custodial sentences where possible which included referral to a number of support agencies to develop sentencing options that could be used in conjunction with probation, community service or intensive correction orders.<sup>20</sup> Support agencies at the time included Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service, Aboriginal and Torres Strait Islander Community Mental Health Service, Salvation Army, BoysTown Link Up, Indigenous Alcohol and Drug Service, Queensland Health Alcohol, Tobacco and Other Drug Services, Sexual Assault Services and Queensland Health.

This list had significantly expanded over the decade of operation to include 229 services across the State covering a broad range of issues across each of the Murri Court sites.

While some core components remained consistent, as the Murri Court expanded to other locations the model and operations varied somewhat in response to the needs of the local community in which it operated.

## 2.6. Roles within the Murri Court

As outlined above, there were both funded and unfunded Murri Court models.

Each of the five funded Murri Court locations had a dedicated DJAG employee in the role of **Murri Court Case Coordinator**. This role supported Murri Courts in various ways including preparing Elders' sitting rosters, transporting Elders and providing administrative support (booking meetings, taking minutes, preparing payment paperwork, coordinating catering and the distribution of court lists and reports). CJGs performed part of the role of Murri Court Case Coordinators in some unfunded Murri Court locations, assisted by Indigenous Justice Offices (IJOs) as required. IJOs are employed by DJAG and are responsible for overseeing grants to CJGs and supporting CJGs.

**Magistrates** convened the court, and court operations were supported by regular **court staff**. Magistrates were responsible for sentencing, for encouraging culturally appropriate processes within the court, and engaging with the Aboriginal and Torres Strait Islander community as required.

Murri Court Case Coordinators were also responsible for facilitating Murri Court Elders and Respected Persons induction training. The training focused on 'Operations of Court' including role playing a moot Murri Court.

**Elders and Respected Persons** provided advice to magistrates on cultural issues and background information on the offender. Elders were recruited in different ways across the different locations. Commonly the CJG coordinator would work with the community to identify suitable candidates, discuss these options with the magistrate, and then the Elder would be invited to participate. Sometimes IJOs were involved in the process.

Local **CJGs** provided support for Murri Court as well. While the role of CJGs differed across locations, they were typically responsible for conducting pre-sentence assessments and submitting Cultural Reports, and providing formal support as part of an offender's bail conditions or conditions imposed as part of a community based order.

Unfunded sites operated either through the satellite support of the existing Murri Court Case Coordinators, collaborative efforts with the CJGs and Elders, or under the voluntary support of many stakeholders. DJAG provided Elders with no fees, however Elders received \$36.50 to cover their expenses.

## 2.7. Legislative change

In Queensland, the *Penalties and Sentences Act 1992* was amended in October 2000 to compel magistrates to take into account submissions made by members of the Aboriginal and Torres Strait Islander community in relation to sentencing of Aboriginal and Torres Strait Islander offenders.<sup>21</sup> This indicates the beginning of formal recognition of the need for inclusive and culturally sensitive practices for Aboriginal and Torres Strait Islander people in the Queensland Courts system. Specifically, section (9)(2) of the *Penalties and Sentences Act* states that in sentencing an offender, a court must have regard to:

- (o) if the offender is an Aboriginal or Torres Strait Islander person—any submissions made by a representative of the community justice group in the offender's community that are relevant to sentencing the offender, including, for example—
  - (i) the offender's relationship to the offender's community; or
  - (ii) any cultural considerations; or

- (iii) any considerations relating to programs and services established for offenders in which the community justice group participates;

While Murri Court operations were supported by section 9(2)(o) of the *Penalties and Sentences Act* and sections of the *Bail Act 1980* (youth Murri Court was supported by section 7 of the *Children's Court Act 1992* and section 150 of the *Juvenile Justices Act 1992*), no specific legislation was enacted to encompass the role of the Murri Court.

## 2.8. Murri Court completion rates

In the last financial year of the former Murri Court (2011/12) 817 participants were referred to Murri Court. Of these, 658 (80%) received a final sentence.

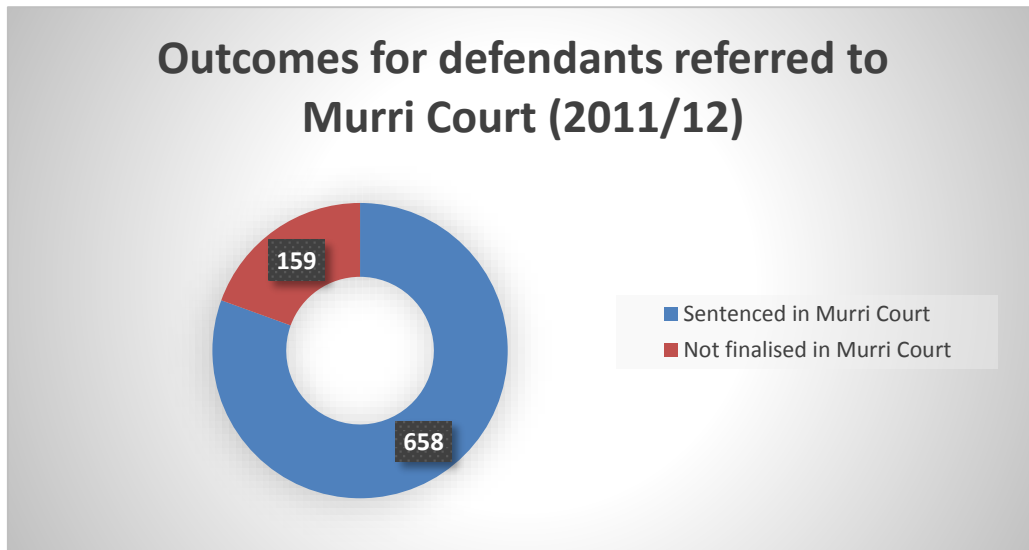


Figure 4 Defendants referred to and sentenced in Murri Court 2011/12

## 2.9. Murri Court reviews

A 2006 review conducted by the then Strategic Policy unit within DJAG, found that the objectives of the Murri Court, specifically, redressing Aboriginal and Torres Strait Islander over-representation, improving court appearance rates and decreasing re-offending were relevant and should be retained but that these objectives were not specifically affirmed by respondents during consultation.<sup>22</sup>

In a separate independent review conducted by the AIC over a two year period commencing January 2007, both adult and youth Murri Courts operating in the funded sites Brisbane, Caboolture, Rockhampton, Townsville and Mount Isa were reviewed. The review was tasked with evaluating to what extent the Murri Court was meeting its objectives:

- reducing the over-representation of Aboriginal and Torres Strait Islander offenders in prison and juvenile detention;
- reducing the rate at which Aboriginal and Torres Strait Islander offenders fail to appear in court;
- decreasing the rate of reoffending and number of court orders breached by Aboriginal and Torres Strait Islander offenders; and



- strengthening the partnership between the Magistrates Court and Aboriginal and Torres Strait Islander communities with regard to how they deal with Aboriginal and Torres Strait Islander justice matters.

The AIC worked with DJAG to enhance data collection processes to improve the quality of data available for use by the evaluation team and for future monitoring. The final report was delivered in 2010. The evaluation found that the proportion of court appearance events that resulted in a warrant being issued was lower for offenders appearing in a Murri Court than for similar participants appearing in a mainstream court, however the impact on imprisonment rates and recidivism were negligible. The most promising findings were in relation to the partnership between Magistrates Courts and the Aboriginal and Torres Strait Islander community. The evaluation found that the Murri Court had successfully increased the participation of the Aboriginal and Torres Strait Islander community within criminal justice processes leading to a number of benefits for those involved in the program, improved perception of the fairness and cultural-appropriateness of the courts, and increasing collaboration between stakeholders.<sup>23</sup>

The report made 30 recommendations across all areas of the Court's functions including the need for consistency in court practice and procedure in a number of areas, improvements to rehabilitation and diversionary programs and services, Elder selection, training and support, the role of other agencies and support persons involved in the court process, and data capture.

### 3. Indigenous Sentencing List 2013-2015

The ISL commenced operation in January 2013 following the abolition of the former Murri Court. The ISL operated in Brisbane, Caboolture, Cairns, Cherbourg, Cleveland, Mackay, Mount Isa, Richlands, Rockhampton, St George, Toowoomba, Townsville and Wynnum. As at October 2015, the ISL is operated in 13 locations in Queensland.

#### 3.1. *Indigenous Sentencing List funding*

The ISL relied on limited funding from DJAG and the goodwill of Elders and other stakeholders to operate. Due to limited funding and an unwillingness of Elders and the community to abolish the court by 2012, 13 of the 17 Murri Court sites operate as ISL sites.

#### 3.2. *Aims and objectives*

The ISL aims to assist Aboriginal and Torres Strait Islander defendants to address the underlying causes of their offending behaviour, and to provide opportunities for Elders, CJGs, and families to participate in the sentencing process.

#### 3.3. *The model*

The ISL, like the former Murri Court, engages Elders, CJGs, and families in the Court process. The ISL focuses particularly on linking defendants with government and non-government service providers and culturally appropriate rehabilitation, treatment or intervention programs while on bail.<sup>24</sup>

#### 3.4. *Eligibility criteria*

As with Murri Court, adult or youth offenders were eligible for ISL if they plead or intended to plead guilty in the Magistrates Court, were of Aboriginal or Torres Strait Islander descent, and had a criminal history appropriate for ISL participation. The offences heard in ISL, like the

Murri Court, were limited to summary offences and indictable offences able to be tried summarily. The ISL, however, saw some locations hear breaches of domestic violence orders. The decision of eligibility to participate lay with the magistrate informed, in some locations, by Elders.

### **3.5. The court process**

The ISL court process shared numerous similarities with that of Murri Court. The ISL magistrate imposed non-custodial sentences where possible which included referral to a number of support agencies. The ISL process continued and expanded on earlier efforts under Murri Court to build productive partnerships between key stakeholders and the court, and encouraged resource sharing. As a result there was increased engagement with clients throughout the court process.

### **3.6. Roles within the Indigenous Sentencing List**

In the ISL, **CJGs** have taken on the coordination role (which includes most of the duties previously performed by the Murri Court Case Coordinator (or CJG) in Murri Court such as transporting Elders, preparing rosters and organising stakeholder meetings), and other duties such as the preparation of cultural submissions and distribution of reports from referral agencies. **IJOs** continue to provide administrative support to CJGs. **Magistrates** convene the ISL and court operations were supported by regular court staff.

CJG coordinators were required to undertake court operations training, which was delivered by the IJOs. Specific ISL training was not required of any other role.

As with Murri Court, **Elders and Respected Persons** provided advice to magistrates on cultural issues and background information on the offender. As with Murri Court, Elders were recruited in different ways across the different locations. Commonly the CJG coordinator would work with the community to identify suitable candidates, discuss these options with the magistrate, and then the Elder would be invited to participate. Sometimes IJOs were involved in the process. Unlike Murri Court, ISL Elders and Respected Persons are not paid, but may have received assistance from the CJG to cover the expenses associated with their participation in the ISL.

### **3.7. Legislative Change**

ISL operations were provided for under the same legislative provisions as Murri Court.

### **3.8. Indigenous Sentencing List rates**

In 2014/15 454 participants were referred to the ISL. Of these, 218 (48%) received a final sentence.<sup>2</sup>

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<sup>2</sup> The reasons why the proportion of defendants referred and then sentenced in ISL is less than that of defendants referred and then sentenced in Murri Court are unclear. A possible explanation is that the ISL model included a stronger focus on pre-sentence support, while Murri Court operated with a sentencing focus. As a result, at July 2015 a higher proportion of ISL matters will have been ongoing, and will have continued to be dealt with after that time, not being captured in the 2014/15 statistics presented here.

## Outcomes for defendants referred to ISL 2014/15

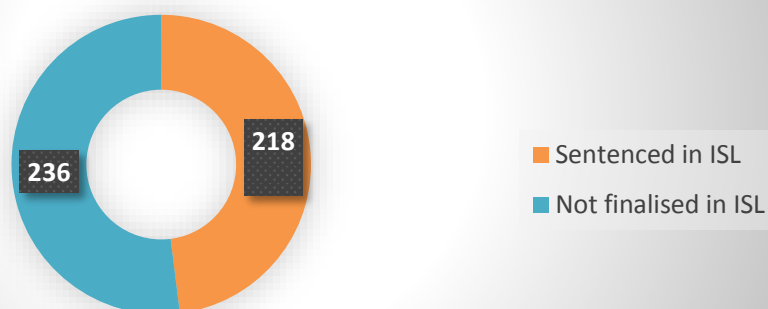


Figure 5 Defendants referred to and sentenced in ISL 2014/15

### 3.9. Indigenous Sentencing List reviews

There were no reviews of the ISL conducted in the time of its operation.

### 3.10. Stakeholder feedback regarding the Indigenous Sentencing List

Some stakeholders have said that the limitations of ISL were:

- the inconsistencies in procedure;
- lack of funding, particularly for bail programs;
- no formal recognition of Elders' participation; and
- difficulties associated with information sharing between stakeholders and CJGs (due to the lack of a policy or procedure in place to compel this sharing).

The positive aspects of ISL as identified by stakeholders include:

- greater CJG participation in program delivery;
- an increased CJG/stakeholders capacity to understand the court process;
- dedicated support of local community stakeholders;
- a greater sense of community ownership;
- improved engagement with clients throughout the court process; and
- improved relationships and resource sharing between CJGs and defendant support services.

## 4. Literature review of best practice in Indigenous courts

This section provides a brief summary of those features of Indigenous sentencing courts considered essential to success, or desirable for success. For the complete literature review, see [Appendix C](#).

According to the current academic literature, features considered **essential** to the success of Indigenous sentencing courts include:

- **Involvement of Elders and Respected Persons** both in the court process and after court is key to achieving community building aims, including growing a sense of pride among Indigenous participants and a sense of ownership in the criminal justice system.
- **Magistrates skilled in encouraging dialogue** and supporting culturally appropriate processes ensure the context of trust and mutual understanding required for improving relationships between the court and Indigenous community is developed. Skilled magistrates are also able to facilitate therapeutic conversations between the defendant and Elders which, in turn, are thought to encourage to behaviour change in the defendant.
- The **culturally appropriate processes** used in Indigenous sentencing courts facilitate sharing of cultural knowledge and information in order to improve sentencing decisions and encourage behaviour change in the defendant.
- **Access to treatment**, intervention and rehabilitation programs that address the causes of offending behaviour appears vital where Indigenous sentencing courts aim to reduce offending among defendants. This is because research suggests culturally sensitive sentencing discussions and practices alone are not enough to reduce recidivism.
- **Appropriate data capture and evaluation** is needed to improve court practices and understanding of the court's capacity to influence behaviour change and improve relations between Indigenous people and the court.

Features considered **desirable** for the success of Indigenous sentencing courts include:

- eligibility criteria that target those individuals who are ready and motivated to change
- informing Elders of the defendant's progress so they better understand their impact through the court
- encouraging a range of stakeholders to participate in the sentencing discussion in order to shift focus from punishment to rehabilitation
- making all court participants aware of their roles and responsibilities to encourage participation, manage potential conflicts of interest, and protect privacy
- providing regular training to all court participants to ensure consistency of process
- providing sufficient support (e.g. counselling, transport) to Elders to enable them to participate fully in the process
- enacting legislation to secure the long-term sustainability of the court
- increasing victim participation to promote understanding and healing.

## 5. Consultation findings

During October and November 2015, CIP consulted with a broad range of stakeholders on the operation of Indigenous courts in Queensland, and opportunities for improvement.

Face to face consultation occurred across 13 sites, including: Toowoomba, St. George, Cairns, Townsville, Caboolture, Brisbane, Inala, Mackay, Rockhampton, Cherbourg, Mt Isa, Cleveland and Wynnum. In addition to face to face consultation, written and telephone feedback was invited from stakeholders.

A total of 105 responses were submitted representing the views of the following stakeholder groups:

- Elders and CJGs (38)
- Magistrates (12)
- CIP staff (9)
- Youth Justice (10)
- Referral services (7)
- Probation and Parole (7)
- Court staff (6)
- Police (6)
- DATSIP
- Queensland Health
- ATSILS

Figure 6 displays the distribution of the stakeholder groups consulted across locations.

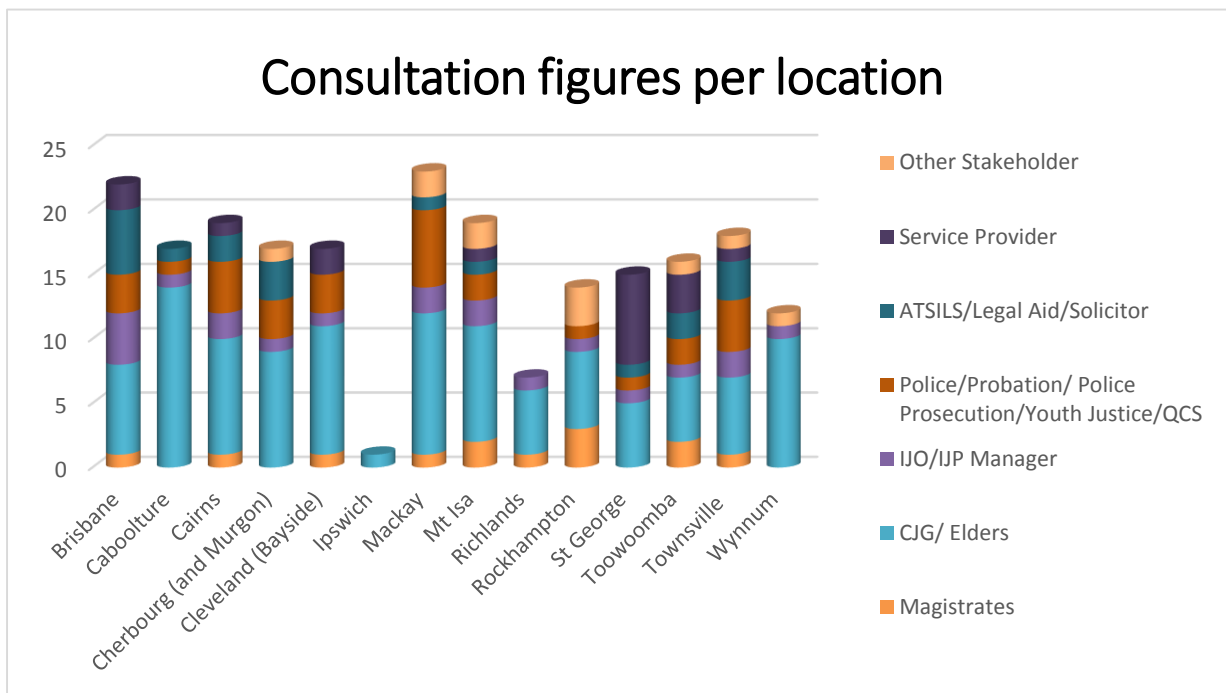


Figure 6 consultation figures per location

This section of the feedback report aims to capture and represent the stakeholder responses received during the consultation process. Feedback is set out according to the questions asked of stakeholders. For a detailed description of the feedback provided see [Appendix D](#).

It is important to note that in recording the feedback some discretion has been exercised as much of the feedback from stakeholders was qualitative in nature and collected through responses to open-ended questions. In order to report stakeholders' views for this feedback report, responses to each open-ended question were coded into key themes. One response may include multiple themes.

The proportion of the total number of respondents (i.e. 105) who referred to a particular theme in their response is then reported. Participants who chose not to respond to a particular question are included when calculating percentages.

*CIP would like to thank all those organisations and individuals who provided feedback.*

## **5.1. Overview of key findings**

The 5 key findings from stakeholder consultation are:

### **1. Murri Court Elders and Respected Persons are the defining feature of Murri Court and should be remunerated for their contribution and expertise.**

*“Cultural connection with Elders and community is vital when working with Aboriginal and Torres Strait Islander people.”*

*“Aboriginal and Torres Strait Islander defendants feel more at ease when they see Elders representing them and their culture.”*

### **2. A dedicated magistrate is important to the success of the Murri Court.**

*“Yes [a dedicated magistrate is important] to establish a consistent approach to process. To build, develop working relationships.... for best outcomes. In remote communities like Cherbourg, there is often a high turnover of magistrates .....Just when everyone gets to know him/her, they move on and a new magistrate takes over. This is often very disruptive for Elders, CJG, solicitors and stakeholders involved in any court duties.”*

### **3. Magistrates and other court staff are likely to benefit from cultural awareness training.**

*“Yes [court staff should undergo specialist Murri Court training] the focus and aims of the Murri Court will differ from a mainstream Magistrates Court. As such, there will be a need to ensure that the court is not simply a replica of the current system. If part of the aim of the Murri Court is to operate a culturally appropriate court/setting, Court staff and the magistrate will need to be advised of the particular cultural aspects of the particular jurisdiction, the role/cultural views of the CJGs and any other relevant aspect or issue impacting on the Murri Court clients within the jurisdiction. For example, a Murri Court servicing a local Indigenous shire should be aware of any linguistic needs, the history of the community, the availability of other justice initiatives and cultural or native title matters that may impact on the community/individual behaviour.”*

**4. Linking defendants to treatment services is an important role of the Murri Court, in particular health services, drug and alcohol services, and training and education were identified as key referral options.**

*“[The best way to measure the Murri Court is working is] engagement with service providers and positive outcomes to addressing the causes of offending behaviour.”*

**5. If legislation is drafted for the Murri Court it should allow flexibility for local operating arrangements.**

*“These courts are very individual. They are community and Elder driven and unless all communities agreed to the same model, then it should be individualised. Consultation might very well result in communities agreeing to consistent practices and procedures but the reality is that each community has different issues, different subtle cultural differences, different areas of need, different levels of support and community services and different court resources.”*


## **5.2. General Murri Court operations**

### **5.2.1. What worked well in the former Murri Court and ISL?**

Half of all respondents identified the involvement of Elders as an important element of both Murri Court and the ISL, while around one in five respondents (21.9%) believed Elders should be more involved.

Other elements of Murri Court and ISL respondents identified as having worked well included:

- collaboration between participants and good communication (27.5%), and
- the capacity to provide links with other support services/referral pathways (26.4%).



Engaging Elders in the court process is an important element of Murri Court.

### **5.2.2. Goals of the Murri Court**

Respondents identified a number of goals for Murri Court.

Over a third of respondents believed Murri Court should aim to:

- link offenders to treatment service/education or training to address the underlying causes of their offending behaviour (46.7%)
- reduce recidivism (46.7%)
- reduce the over-representation of Aboriginal and Torres Strait Islander offenders in prison and juvenile detention (45.7%)
- increase the engagement of the Aboriginal Community in the court (33.3%).

### 5.2.3. How can we best measure Murri Court?

Respondents also identified a number of ways in which to measure the effectiveness of Murri Court. Those measures most commonly reported were:

- recidivism rates (45.7%)
- engagement with CJG's or support services (34.3%).

Other suggested measures included:

Criminal justice outcomes	Personal outcomes	Other outcomes
• Seriousness of re-offending (13.3%)	• Education / pre-vocational training attendance (16.2%)	• Feedback from participants (13.3%)
• Number of contravention of orders (7.6%)	• Behavioural change (15.2%)	• Feedback from stakeholders (8.6%)
• Incarceration rates (4.8%)	• Health outcomes (6.7%)	• Family attendance at court (1.9%)
• Frequency of offending (3.8%)	• Reconnection with culture (3.8%)	• Child safety involvement (1.9%)
• Reduction in numbers of Aboriginal and Torres Strait Islanders before the court (2.9%)	• Quality of life (3.8%)	
• Number of failure to appear (1.9%)		
• Number of Aboriginal and Torres Strait Islanders choosing to appear before the Murri Court compared to mainstream court (1.9%)		
• Number of offences (1.9%)		

Table 1 Outcomes measures for Murri Court

### 5.2.4. Murri Court locations

Feedback overwhelmingly indicated that Murri Court locations should be chosen based on the availability of suitable referral services (67.6%). However, two respondents suggested the location of the Murri Court should inform the provision of services.

Other important considerations in choosing Murri Court locations were considered to be:



- the availability of supportive magistrates (47.5%)
- Elder/CJG and community support (33.3%)
- the number of Aboriginal and Torres Strait Islander people before the court (32.4%)
- police/probation and parole support (22.9%)
- suitable infrastructure (10.5%)
- crime rate (9.5%)
- population of Aboriginal and Torres Strait Islander people (5.7%)
- supportive legal practitioners (4.8%).



Murri Court locations should be chosen based on the availability of suitable referral services

### 5.3. Operation of the court

#### 5.3.1. Legislation/consistency of practices



Murri Court legislation should balance consistency and flexibility

There were conflicting views as to whether the model should be enshrined in legislation.

The *Bail Act 1980* and *Penalties and Sentences Act 1992* support the operation of the proposed Murri Court. Additional legislation may be unnecessary and could complicate processes. Greater certainty and consistency could be achieved through administrative means, such as a practice direction.

The consolidated feedback shows that almost half (47.6%) of all respondents wish to see the Murri Court legislated, with close to one quarter (22.9%) saying they did not want to see Murri Court legislation. Around 30% of respondents were unsure (14.3%) or did not respond to the question (15.2%).

Half of all magistrates who responded believed Murri Court should be legislated, while one third did not wish to see Murri Court legislated.

More than half of CJGs and Elders/Respected persons who responded supported Murri Court legislation (52.6%), with only 18.4% answering in the negative.

Among the wider stakeholder cohort, the Department of Aboriginal and Torres Strait Islander Partnerships representatives supported Murri Court legislation, stakeholders from the Aboriginal and Torres Strait Islander Legal Service (ATSILS) were divided in opinion with 50% in favour and 50% against.

For those supporting the need for legislation, their key reasons for support were:

- help ensure core objectives and eligibility criteria are uniform amongst regions;
- secure the place of Murri Court in the justice system legislation making it harder to repeal;
- make attendance on bail referral programs compulsory; and
- clearly define roles and responsibilities for Murri Court stakeholders.

Irrespective of whether respondents supported, or did not support legislation, there was strong support for local flexibility in the Murri Court model. Many of the respondents opposed to

legislation believed it would restrict the flexibility of the court to adapt to local needs. Many of the respondents who said they supported legislation did so on the proviso that local flexibility is retained.

### 5.3.2. Magistrate

When asked if they believed Murri Court would benefit from a dedicated magistrate:



- 71.4% of responses favoured a dedicated magistrate
- 4.8% of responses said a dedicated magistrates is not required
- 23.8% provided no response to this question.

Around one quarter of respondents (23.8%) had identified that a dedicated magistrate was one of the positives of the former Murri Court/ISL.

One respondent identified the potential to include a review process in the Murri Court model to ensure that the potential for bias to be avoided.

*“Maybe there could be a review process built in as per conventional jurisprudence practice to ensure that bias that might creep in overtime does not become problematic.”*

### 5.3.3. Cultural awareness training

More than three quarters of respondents (77.1%) identified the importance of providing magistrates with cultural awareness training.

*“Generally yes but more important for each magistrate sitting to be trained in cultural awareness and have real interest in the area and have a good working relationship with other members of the team and especially the Elders/CJG and to be prepared to work in a team environment despite members of the team having specific roles and responsibilities.”*

Similarly, the feedback was strongly supportive of cultural awareness and Murri Court training for other court participants. For example:

- 62.9% of respondents agreed all court staff should undergo specialist training in Murri Court operations and cultural awareness.



Although the question was not asked directly whether other stakeholder training was required, a small proportion of respondents (10.5%) indicated that a lack of stakeholder training was an issue with the former Murri Court / ISL.

### 5.3.4. Staff roles (CJG/IJO)

Respondents were asked to comment on how Murri Court could be best supported by CJGs, court staff and CIP staff. A wide range of suggestions were received, however the need for coordination across these groups was a consistent theme.

### 5.3.5. Defendant eligibility

Respondents were asked what eligibility criteria should be applied to potential participants in Murri Court.

- 37.1% said a **plea of guilty** should be required, while only 1.9% said the offender should be eligible pre-plea or on sentence after a not guilty plea.
- 34.5% said that the defendant should **not be at risk of jail**, 20.0% said the defendant should be risk of jail.
- 30.5% of responses suggested defendants should be **willing to engage**/accept conditions before being referred to the Murri Court.
- 9.5% of responses indicated that the defendant should have a **connection to the local community**.
- 4.8% of responses suggested that South Sea Islanders could be eligible for the Murri Court if the CJG agrees.
- 1.9% of responses indicated that non-Indigenous people with ties to the community could be eligible for the Murri Court.

Some respondents (16.2%) suggested that eligibility should be assessed on a case-by-case basis, while a small number proposed that eligibility be dependent on the defendant having a health or social need that could be assisted by the involvement of Elders or a referral to service provider.

Respondents were also asked to consider whether defendants who were in custody be considered eligible to participate in Murri Court.

- 40.4% said defendants in custody should be eligible (providing Elders can interview defendants).
- 30.6% said defendants should be on bail or eligible for bail, particularly as this would allow them access to support services.

### 5.3.6. Offence eligibility/range of matters to be heard in Murri Court

When asked what matters should be heard in Murri Court:

- 43.8% of respondents indicated all offences that can be dealt with by the Magistrates Court should be dealt with by the Murri Court
- 1% of respondents suggested only summary offences should be dealt with in the Murri Court.

Respondents also suggested some offences be excluded from Murri Court, including:

- sexual offences (23.8%)
- serious offences (12.4%) (further explanation of what offences are considered serious was not provided in the feedback)
- criminal breaches of domestic violence orders (9.5%).

### 5.3.7. Domestic violence applications

Respondents were specifically asked whether they believed Murri Court should hear domestic violence applications. As the table below shows, 43% of respondents did not think Murri Court should hear domestic violent applications.

The main reasons given for not wishing to hear domestic violence applications were the potential for conflict of interest to occur with the Elders, a significant additional burden on Elders, domestic violence legislation is too complicated, vicarious trauma and the fact that the domestic violence court is and should remain a closed court.

Table 2 Should Murri Court hear domestic violence applications?

Yes	29.5%
No	42.9%
Undecided	6.7%
No response	21.0%

### 5.3.8. Court structure and formalities

Stakeholders overwhelmingly agreed that Murri Court sittings should happen at a round table and include Aboriginal and Torres Strait Islander flags, symbols and artefacts.

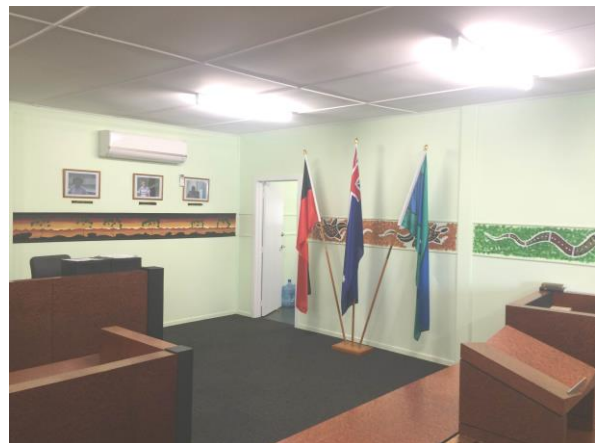


Figure 7 (clockwise) Examples of courtroom structure of the Brisbane Murri Court, Aboriginal and Torres Strait Islander flags (Cherbourg), and an artefact from the Caboolture courtroom

### *Court layout*

Overwhelmingly, respondents (65.7%) suggested all participants in the Murri Court should be seated around a table together. Of these respondents, 12.4% suggested the magistrate take the bench for sentence, whereas 5.7% of the feedback indicated that Elders should be seated on the bench with the magistrate. Only a very small amount of responses (3.8%) suggested that the Murri Court sit in the same layout as a mainstream court.

### *Number of Elders and Elder rosters*

Feedback most frequently suggested that there should be one male and one female Elder who sits in Murri Court and that the roster should be managed by the local CJG.

### *Uniforms/formality of dress*

It was clear from the feedback received that the preferred Murri Court model allows flexibility and local variation regarding the need for Elders' uniforms, magistrate robes and police uniforms.



More than half of all respondents (52.4%) believed Elders and Respected Persons should wear a uniform, although the form this should take varied across the state. Only 2.9% of respondents indicated they didn't want Elders and Respected Persons wearing uniforms, while 6.7% of responses

indicated Elders should be able to decide whether they wear a uniform or not. More than one third (38.1%) of respondents did not respond to this question.

A number of suggestions for Elders' uniforms were provided in the feedback, including polo shirts, sashes and blouses. The most favoured uniform type were sashes.

Responses were mixed regarding whether magistrates should wear robes when sitting in Murri Court. For example, 38% of respondents believed magistrates should not wear robes, 21% believed magistrates should wear robes, while 33% gave no response.



*Figure 8 Magistrate Dwyer in Murri Court robe painted by Youth Murri Court participants.*

Responses from magistrates themselves were also mixed, although a slightly higher proportion believed robes should be worn in Murri Court (33%) than thought robes were not required (25%).

Mixed responses were also received regarding police uniforms. More than one third of respondents (36.2%) believed police should appear out of uniform, while around one in five respondents (19.0%) believed police should wear their uniform.

Detailed statistics for the responses to questions about magistrate and police uniforms are provided at Table 3 and 4.

Table 3 Should magistrates wear robes in Murri Court?

	All respondents	Magistrates only
Yes	21.0%	33.3%
No	38.1%	25.0%
Indifferent	6.7%	16.7%
No response	33.3%	8.3%
Let magistrates decide	1.0%	8.3%
Let the Elders decide	1.0%	8.3%

Table 4 Should police wear uniforms when participating in Murri Court?

Yes	19.0%
No	36.2%
Indifferent	6.7%
Unsure	1.9%
No response	34.3%
Let the Elders decide	1.9%

### Court ceremonies

Feedback was sought regarding whether Murri Court should host specific ceremonies or mark significant days and events. Most respondents agreed that it would be important to include ceremonies (63.8%), although they also wanted flexibility in the Murri Court model to enable local courts to conduct ceremonies where appropriate and as required.

Suggestions for the ceremonies included:

- Smoking ceremonies
- Murri Court opening ceremonies
- NAIDOC ceremonies

While not related to ceremonies, there was support among several groups for the use of honour boards to acknowledge the service of Elders to the community.



Figure 9 participants in Caboolture smoking ceremony for the refurbished courtroom

### 5.3.9. Rehabilitation/reintegration program referral

In order of priority, the following referral services were considered important:

- Health (61.0%)
- Alcohol and drug treatment (37.1%)
- Education and training (33.3%)
- Mental health support (25.7%)
- Residential rehabilitation programs (20.0%)
- Cultural programs (21%)
- Counselling (20%)
- Housing (18.1%)
- Relationship / family support (17.1%)
- Domestic violence (16.2%)
- Life skills / financial skills (15.2%)
- Anger management (10.5%)
- Youth programs (6.7%)



7.6% of responses suggested that referral services need to be culturally appropriate.

A consistent theme in the feedback provided is a desire for service providers to provide feedback to the court in relation to the defendant's progress.

### 5.3.10. Victims' voices

Responses generally supported the use of victim impact statements with some suggestion that a process similar to youth justice conferencing could be a way for victims to participate in the Murri Court.

## 5.4. Elders' role and participation and training

### 5.4.1. Elders' roles

The involvement of Elders was considered integral to the operation of Murri Court by half of all respondents. It was however evident that the nature and extent of Elder involvement varied with location.

Around one in five respondents (21.9%) suggested that Elder involvement was too limited, and there were some inconsistencies and issues, such as:



- *"Elders need to attend pre-court meeting"*
- *"The Elder in court is not the Elder who wrote the report"*
- *"Elders do not attend court"*
- *"Elders are not confident in expressing an opinion in court"*

Although the question was not asked directly as to whether Elder training was required, 10.5% of responses indicated that a lack of training was an issue with the former Murri Court/ISL.

### 5.4.2. Payments to Murri Court Elders and Respected Persons

While Murri Court was operating Murri Court Elders were reimbursed a nominal amount of \$36.50. The reimbursement is designed to cover expenses that Elders may incur in travelling to and participating in Murri Court, such as public transport and meals. While the ISL was in operation between 2012 and 2015, Elders were reimbursed at the discretion and financial capacity of the CJGs that supported the ISL. As a result the amount received varied across locations, and usually ranged between \$30 and \$60.

Respondents believed Elders should receive a fee - \$100 was the preferred amount

When asked if Elders should be paid a fee, 61.0% of responses agreed that Elders should be paid a fee, 6.7% said they should not.

The amount considered appropriate varied from \$0 to \$414.41 per day (\$414.41 being the daily rate paid in Victoria) and was distributed as pictured below:

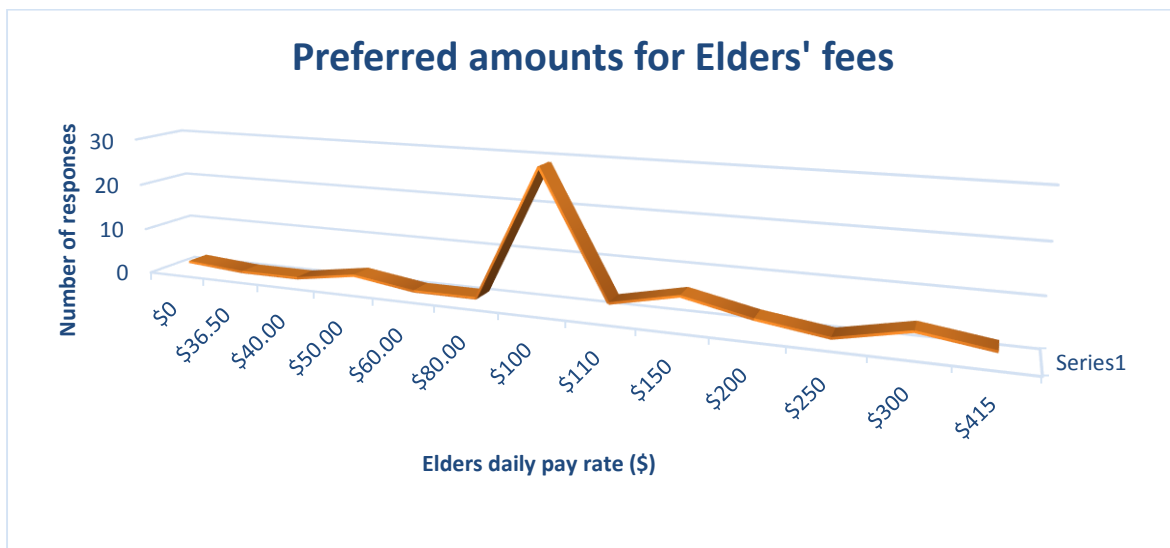


Figure 10 Preferred amounts for Elders' fees



## 6. Murri Court model

The new Murri Court will be modelled on the feedback collected during the state-wide consultation, cross-jurisdictional analysis and the comprehensive literature review undertaken to identify best practice elements of Indigenous sentencing courts.

### 6.1. Aims

The feedback indicated support for the aims of Murri Court to align with the aims of the former Murri Court and ISL.

These aim to give opportunities for Elders, CJGs, and families to participate in the sentencing process, and to link defendants with government and non-government service providers and culturally appropriate rehabilitation, treatment or intervention programs to address the underlying contributors to their offending.<sup>25</sup>

The proposed model reflects these aims across four areas: community participation, a culturally appropriate process, referral to support services and improved sentencing outcomes.

#### 1. Community participation

Murri Court aims to enable members of the Aboriginal and Torres Strait Islander community to participate in the court process, including:

- Aboriginal and Torres Strait Islander Elders and Respected Persons
- the defendant
- the defendant's support person (where present)
- other members of the Aboriginal and Torres Strait Islander community where present in Court.

#### 2. A culturally appropriate process

Murri Court aims to deliver a culturally appropriate court process that respects and acknowledges Aboriginal and Torres Strait Islander culture.

#### 3. Referral to support services

Murri Court aims to refer defendants to support services that address the underlying contributors to their offending.

#### 4. Improved sentencing outcomes

Murri Court aims to ensure the magistrate is better informed regarding the defendant's cultural and personal circumstances and needs moving forward.

[Appendix E](#) sets out the activities, aims and goals proposed under the new Murri Court model.

Unlike the original Murri Court model, the reinstated Murri Court will allow for the defendant's matter to be adjourned prior to sentence to enable him or her to be referred to, and engage with, support services intended to address the underlying contributors to his or her offending behaviour. These services will be identified in the Murri Court Entry Report. In providing defendants the opportunity to be referred to and engage with support services prior to

sentence it is expected that they will be better able to demonstrate to the Court their willingness to change their behaviour, which may, in turn, encourage magistrates to divert defendants from prison at sentence.

The pre-sentence period for Murri Court is not expected to extend beyond three months, although the time taken prior to sentence remains at the magistrate's discretion. Setting a sentence date within three months of the first Murri Court mention is expected to both provide the defendant certainty during the court process, and allow sufficient time for the defendant to be referred to, and engage with support services.

## **6.2. Goals**

If the above aims are realised it is envisioned that one or more of the following outcomes can be achieved for defendants in the Murri Court:

- Improve Aboriginal and Torres Strait Islander court Elders' and Respected persons' confidence in and knowledge of the court process.
- Improve Aboriginal and Torres Strait Islander defendants' engagement with and understanding of the court process.
- Sentencing decisions reflect consideration of defendants' cultural and personal circumstances as contributors to offending.
- Sentencing conditions facilitate the defendant's continued engagement with support options in the community.
- Sentencing decisions divert defendants from the prison system.
- Improve the health and wellbeing of Murri Court defendants.
- Reduce the frequency and seriousness of any subsequent contact Murri Court defendants have with the criminal justice system.

In achieving these goals, the Murri Court hopes to contribute to broader goals associated with reducing the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system.

## **6.3. Eligibility criteria**

Participation by defendants in the Murri Court will be voluntary and require the following conditions be met:

- the matter is from the Magistrates Court district where the Court is sitting;
- the defendant is an adult (or a young person where a Youth Murri Court is available);
- the defendant consents to participate fully in Murri Court;
- the defendant must be on bail or eligible for bail;
- the defendant identifies as an Aboriginal or Torres Strait Islander person or the CJG and assessment panel agree it is appropriate for the defendant to participate
- the accused intends to plead guilty or a guilty plea is entered;
- the offence falls within the jurisdiction of the Magistrates Court or Childrens Court (i.e. can be dealt with summarily).

### 6.3.1. Plea of guilty

All Indigenous courts currently operating in Australia require a guilty plea to participate in the Indigenous court. The feedback received indicated support for defendants to intend to plead, or plead, guilty to participate in the Murri Court. A guilty plea is thought to indicate the defendant takes responsibility for his or her offending behaviour. Taking personal responsibility is considered important when referring defendants to support services to address the underlying contributors to offending.

### 6.3.2. In custody matters

The feedback received indicated some support for in custody matters to be referred to Murri Court. The risk, benefits and opportunities attached to this approach will be further explored through the evaluation of Murri Court and considered for implementation at a later date.

## 6.4. Roles and responsibilities

The roles and responsibilities of Elders, magistrates, CJGs, IJOs, defendants' legal representatives and the Queensland Police Service Prosecutors will be similar to those performed under the former Murri Court and current ISL.

**Elders and Respected Persons** will provide advice to magistrates on cultural issues and background information on the defendant. In addition to participating in court, Elders will be expected to assess each eligible defendant's suitability to participate in Murri Court, and, with the support of a CJG representative, for preparing a *Murri Court Entry Report* and *Murri Court Sentence Report*.

The *Murri Court Entry Report* will outline the defendant's personal and cultural circumstances and include the priority actions that will be undertaken by the defendant to respond to the factors which may be contributing to their offending. This may include attending a specialist service to address substance addiction or participating in a yarning circle. The *Murri Court Entry Report* will be provided to the magistrate and relevant parties (e.g. legal representatives, QPS, probation and parole, youth justice) by the CJG Coordinator prior to the first mention of the Murri Court.

The *Murri Court Sentence Report* is conducted prior to the sentence of the defendant and will provide an update on the defendant's progress, as well as presenting to the court relevant cultural and other information intended to assist the magistrate at sentence.

The **Murri Court magistrate** will be responsible for convening the Murri Court and remains the final authority for imposing bail conditions and sentences according to law. The Murri Court magistrate also has the final say about whether a defendant is suitable for Murri Court. The Murri Court magistrate will be responsible for encouraging the involvement of all participants in Murri Court sittings, and taking steps to recognise Aboriginal and Torres Strait Islander culture in the Murri Court process. Any magistrate has the authority to refer potential Murri Court clients for an eligibility assessment.

The **CJGs** will take on a coordination role (which includes transporting Elders, preparing rosters and organising stakeholder meetings), and other duties such as preparing *Murri Court Entry Reports* and *Murri Court Sentence Reports*. CJGs will also be responsible for assessing a defendant's eligibility to participate where appropriate. CJGs will be responsible for developing networks with other agencies and service providers to ensure adequate support is available for Aboriginal and Torres Strait Islander defendants. **IJOs** will continue to provide administrative support to CJGs.

Murri Court Elders, CJGs and stakeholders will be required to undertake 'Murri Court Operations' training, delivered by IJOs.

The **defendant's legal representative** will be responsible for assessing a defendant's eligibility to participate in Murri Court. The eligibility checklist is to be completed by the legal representative prior to requesting the magistrate refer the matter to Murri Court. The legal representative will be required to advise the CJG a matter has been listed for the Murri Court. The legal representative will continue to support the defendant through the Murri Court process.

A defendant needs to be eligible for bail to participate in Murri Court. **QPS Prosecutors** will advise the court if the defendant is suitable for bail or if bail is opposed. QPS prosecutors will participate in Murri Court by providing submissions on the impact the offence has had on the victim, bail compliance and progress reports prepared by service providers to whom the defendant has been referred. The QPS prosecutor may also make recommendations regarding appropriate sentencing options.

The roles and responsibilities of other stakeholders, including the Court Innovation Program Officers, defendants and service providers, will be more fully defined during the development of implementation materials for Murri Court.

## 6.5. *Legislation*

The Murri Court does not operate under dedicated legislation. However, there is legislation relevant to the operation of Murri Court. Section (9)(2) of the *Penalties and Sentences Act 1992* and section 150 (1) of the *Youth Justice Act 1992* compel magistrates to take into account submissions made by members of the Indigenous community in relation to sentencing of Indigenous offenders. Sections of the *Bail Act 1980* also allow magistrates to receive and take into account any submissions made by a representative of the CJG in the offender's community, if the offender identifies as Aboriginal or Torres Strait Islander during bail proceedings.

A Practice Direction will be issued to encourage consistent practice across Murri Court locations with a view to exploring options for future Murri Court legislation. The Practice Direction sets out:

- the procedure for referring clients to Murri Court
- requirements of the Murri Court Entry Report and Murri Court Sentence Report
- Court protocols, including court layout, etiquette and cultural considerations
- Court processes for Murri Court mentions and sentence
- a mechanism for increased participation by victims.

## 6.6. *Resources*

In 2015-16, the Government committed \$472,000 to support the re-establishment of Murri Courts in Queensland. These funds were used to consult with stakeholders regarding former and future Murri Court models, complete literature reviews and cross-jurisdictional scans to better understand how similar courts operate and the key features needed for success, and design a new Murri Court model for Queensland with a view to re-establishing the program in April 2016.

From 2015-16, the funding allocation for the Murri Court will be \$629,000 per year. It is expected that this will cover fees for Elders and Respected Persons, staffing costs (for a court coordinator and an officer responsible for developing partnerships in relation to bail and sentence programs to support the operation of the court), and other miscellaneous costs including brokerage funds, culturally appropriate ceremonies and program administration. The way in which funds are distributed will be determined once an agreed Murri Court model has been endorsed by the Attorney-General.

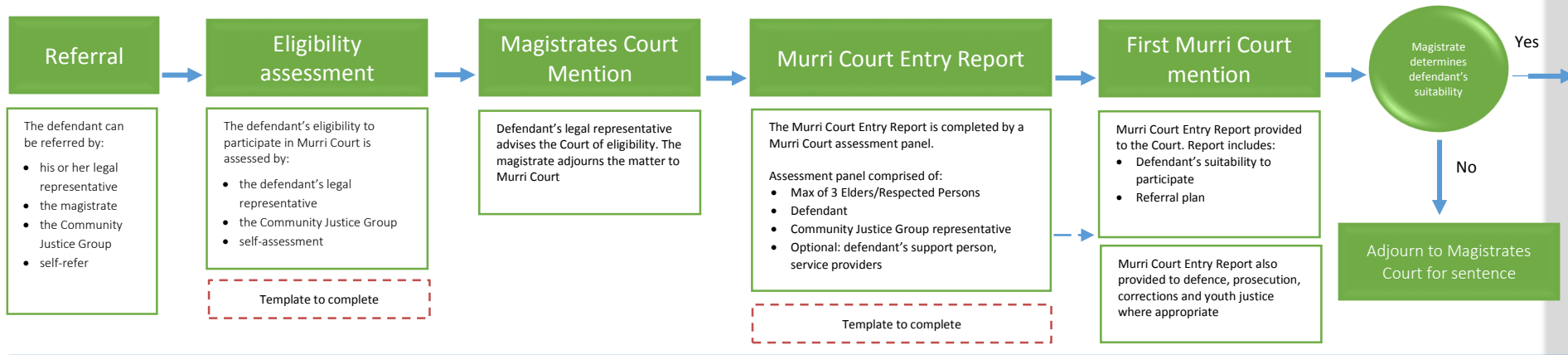
Any future program must be able to deliver services cost-effectively and provide value for money to the community.

## **6.7. Process**

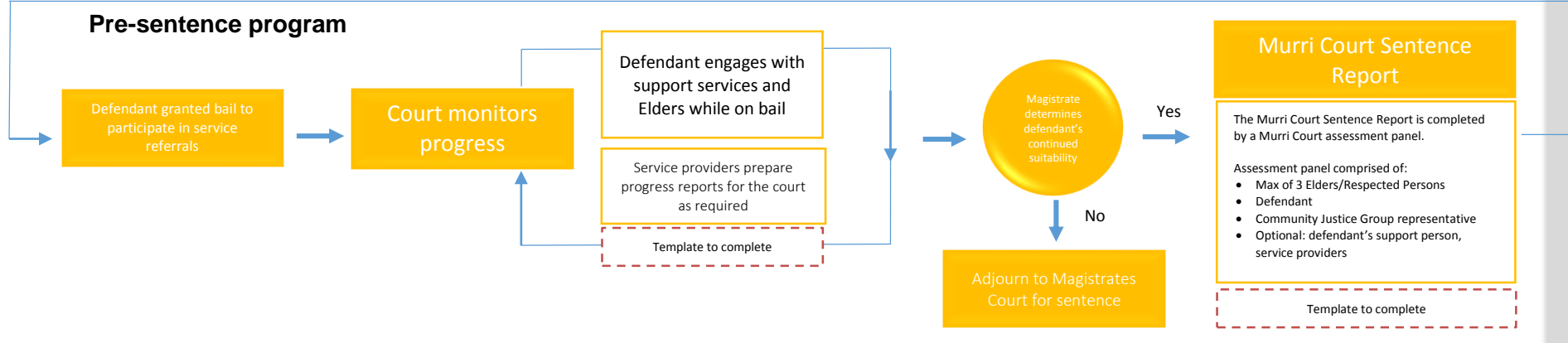
The proposed process for Murri Court is illustrated in the flow chart below.

# Murri Court Flow Chart

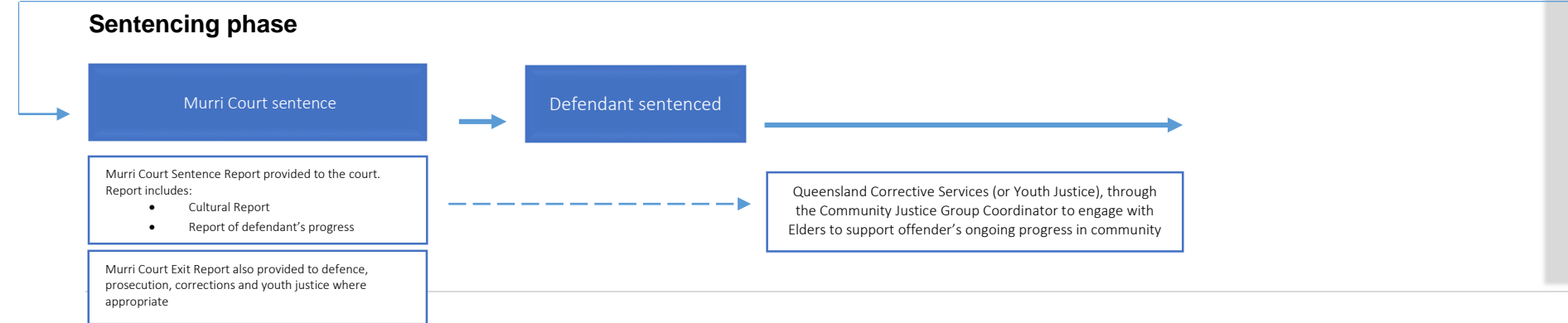
## Referral and assessment phase



## Pre-sentence program



## Sentencing phase



3 month program

## 7. Where to from here?

### 7.1. *Evaluation*

The AIC review of the former Murri Court identified the value of collecting quality data to support continued improvement of the model, and of demonstrating the extent to which Murri Court was achieving its goals. An evaluation framework is being developed in tandem with the design and implementation of the new Murri Court model in an effort to build monitoring and evaluation in to the operation of Murri Court. It is expected that regular monitoring and review of the future Murri Court will support Elders, magistrates and court staff to continuously improve the model, and enable Murri Court to achieve its cultural, health and wellbeing and criminal justice goals, and thereby contribute to broader efforts to reduce the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system.

### 7.2. *Program development*

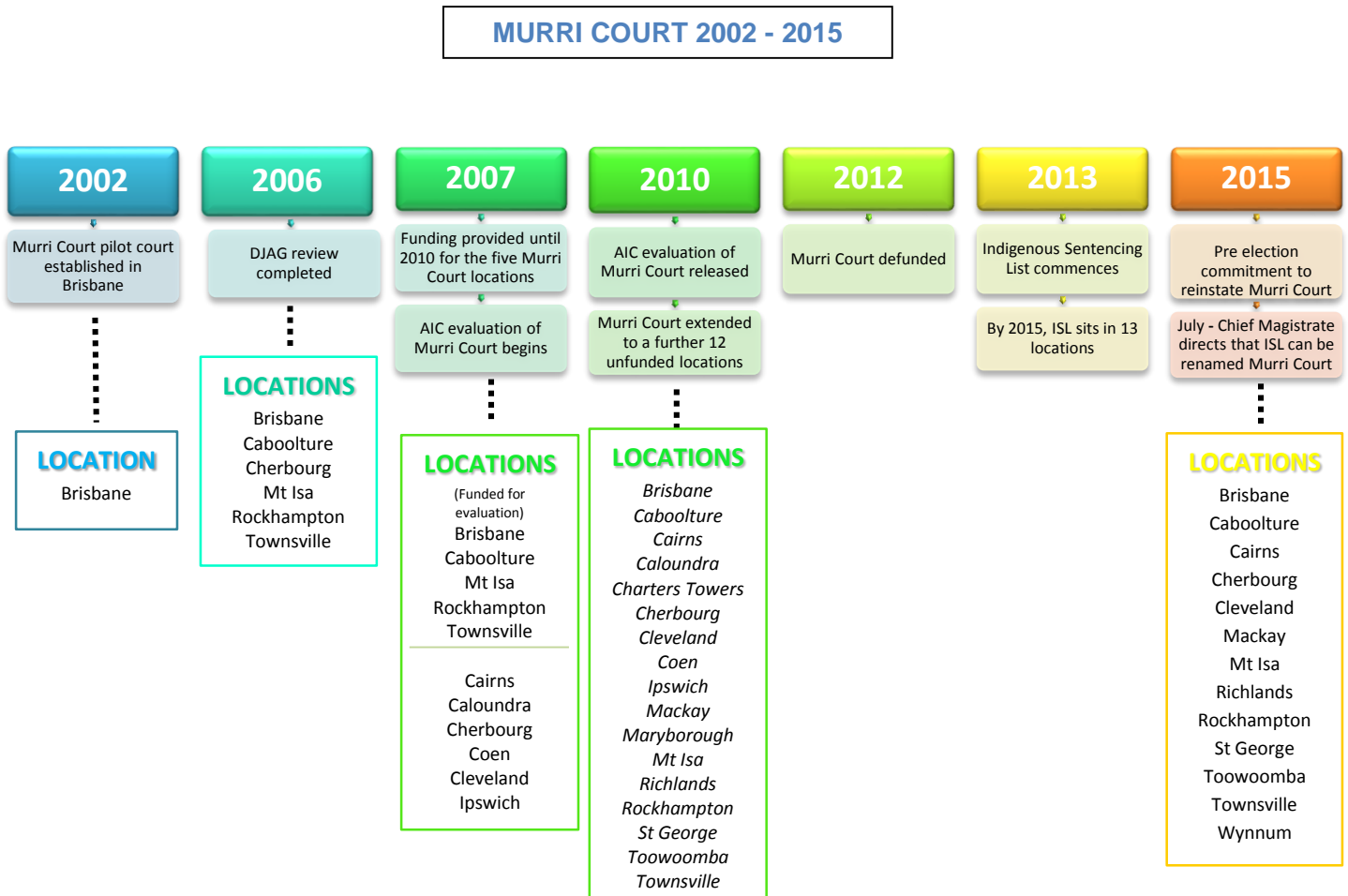
In early 2016, CIP will work to implement a new Murri Court model, including exploring options for providing Elders a fee, defining specific Elder selection criteria, identifying Murri Court locations, designing training and support materials for court participants, developing communication plans and promotional material, and drafting practice directions to support the consistent operation across Murri Court sites.

An overarching framework will later be developed for specialist courts and court diversionary programs (including Drug Court, Murri Court and Specialist Court Diversionary Program) to ensure the programs work together to achieve the goal of reducing offending by addressing the underlying causes of offending behaviour.

## 8. Appendices

### 8.1. Appendix A: Murri Court Timeline

The diagram below shows the history of Murri Court in Queensland including its defunding and replacement with the Indigenous Sentencing List between 2012 and 2015, and which locations were operating at each stage of Murri Court's growth.



Appendix A Figure 6 Murri Court timeline and locations 2002-2015



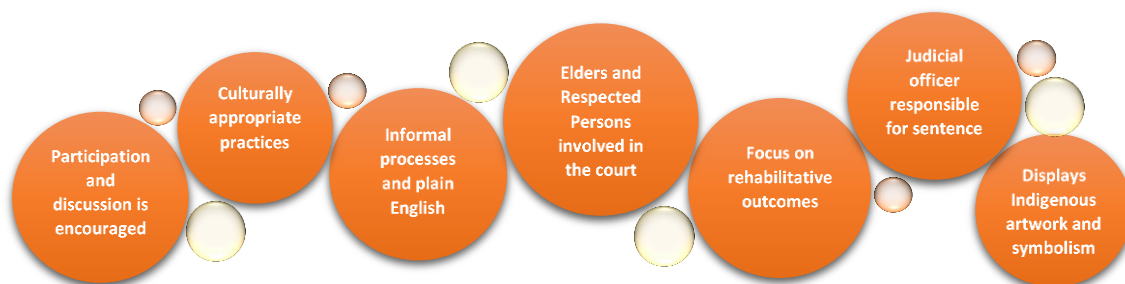
## 8.2. Appendix B – Cross-jurisdictional scan of Australian Aboriginal and Torres Strait Islander courts

### Indigenous sentencing courts

Indigenous sentencing courts were established in response to the over-representation of Indigenous people in the criminal justice system, and the failure of the justice system to respond to the unique circumstances and disadvantage experienced by Indigenous offenders and victims.<sup>26</sup> Unlike diversionary processes that aim to divert individuals from the criminal justice system, Indigenous sentencing courts 'seek to promote better outcomes than conventional courts while operating within the existing court and legal framework.'<sup>27</sup>

According to Marchetti and Ransley, Indigenous sentencing courts have two broad aims: to help reduce Indigenous recidivism, imprisonment and deaths in custody; and, to promote improved cultural awareness within the justice system, and engagement and understanding of court processes within the Indigenous community.<sup>28</sup> While Indigenous sentencing courts alter court processes and procedures to be more culturally relevant, it is important to note they operate under the same laws as other courts and do not apply Indigenous customary laws. Indigenous sentencing courts typically operate as divisions, lists, or special sittings within the standard court system, and are not separately constituted courts with their own court seal.<sup>29</sup>

Indigenous sentencing courts in Australia are most often based on one of two models: the South Australian Nunga Court, the first Indigenous sentencing court established in Australia (includes the former Queensland Murri Court, Koori Courts in Victoria); or the Circle Court model (includes New South Wales Circle Sentencing and the Galambany Court in the Australian Capital Territory).<sup>30</sup> The key differences between these two models, as identified by Marchetti and Daly,<sup>31</sup> can be broadly described as: circle court hearings are held in a place of cultural significance to the local Indigenous community (as opposed to in mainstream courtrooms), participants are seated in a circle (rather than at the Bar table), victims have a clear role in the circle process, and Elders are directly involved in framing the penalty imposed on the offender (as opposed to providing cultural and other advice to judicial officers as required). The similarities within the two court models are listed in the figure below.<sup>32</sup>



Appendix B Figure 7 Common features of Australian Indigenous sentencing courts

A summary of Indigenous courts operating in Australia is provided in Table 1.

Appendix B Table 1 Summary of key features of Indigenous courts currently operating in Australia

	<b>QLD</b> (Murri Court 2002-2012)	<b>ACT</b> (Galambany Court)	<b>NSW</b> (Circle Sentencing)	<b>SA</b> (Aboriginal Sentencing Court)	<b>SA</b> (Aboriginal Sentencing Conferences)	<b>VIC</b> (Koori Court)	<b>WA</b> (Barndimalgu Court)
<b>Type</b>	Sentencing Court	Sentencing Court	Sentencing Court	Sentencing Court	Conference	Sentencing Court	Pre-sentence court
<b>Legislation</b>	No	Gives authority to make a practice direction	✓	No	✓	✓	No
<b>Offences</b>	Offences that can be finalised in the Magistrates Court	Offences that can be finalised in the Magistrates Court (excludes sexual offences)	Any offence (the offender must be likely to receive a relevant sentence)	Any offence that can be heard by the local court	Any offence heard in the Supreme, District or Magistrate Courts	Any offence within the court's jurisdiction (excludes sexual offences and family violence offences)	Family and domestic violence matters
<b>Guilty plea required to participate</b>	✓	✓	✓	✓	✓	✓	✓
<b>Adults / Children</b>	Adults and Children	Adults	Adults and Children (1 Youth Koori Court)	Adults	Adults	Adults and Children	Adults
<b>Dedicated magistrate</b>	Depends on location	✓	No	No	No	✓	✓
<b>Objective selection process for Elders</b>	No	✓	No	✓	✓	✓	No
<b>Financial recognition</b>	✓	✓	No	✓	✓	✓	✓
<b>Other recognition</b>	Sash ceremonies	No	Year's end certificate of recognition	No	No	Sash provided in Magistrates Court	Acknowledge Elders past and present
<b>Training through the Court is available for:</b>							
• Magistrates	No	Peer support/training from previous magistrates	Magistrates provide internal training	✓	✓	✓	✓
• Elders/ Respected Persons	✓	✓	✓	✓	✓	✓	✓
• Legal reps	No	Peer support/training from previous reps	No	No	No	✓	No
• Court staff	✓	Peer support/training from previous staff	No	✓	✓	✓	✓
<b>Standardised Court operations</b>	No	Practice direction	Set out in legislation	No	Partial guidance provided in case law	No	Practice direction
<b>Treatment/support options provided</b>	Depends on location	✓	✓	Only if services are present in Court	✓	✓	✓
<b>Capacity to hear breaches</b>	Depends on location	✓	✓	✓	Returns to mainstream court	✓	✓

Note: Up until October 2015, WA also operated the Kalgoorlie-Boulder Community Court. The Community Court was a sentencing court designed to be more culturally inclusive of Aboriginal people, and with an approach targeted towards reducing recidivism among participants.

## Queensland Murri Court (2002 – 2012)

### Background

The Murri Court came together quite organically and as such did not start out with clearly defined goals. However, in 2010, the Australian Institute of Criminology evaluation report identified that the Murri Court aimed to:

- reduce the over-representation of Indigenous offenders in prison and juvenile detention
- reduce the rate at which Indigenous offenders fail to appear in court
- decrease the rate of re-offending and number of court orders breached by Indigenous offenders
- strengthen the partnership between Magistrates Courts and Indigenous communities with regards to how they deal with Indigenous justice matters. <sup>xxxiii</sup>

### Legislation

Section (9)(2) of the *Penalties and Sentences Act 1992* QLD and section 150(1) of the *Youth Justice Act 1992* QLD compel magistrates to take into account submissions made by members of the Indigenous community in relation to sentencing of Indigenous offenders. <sup>xxxiv</sup> Sections of the *Bail Act 1980* also allow magistrates to receive and take into account any submissions made by a representative of the Community Justice Group (CJG) in the offender's community, if the offender identifies as Aboriginal or Torres Strait Islander during bail proceedings.

The Murri Court did not operate under dedicated legislation.

### Eligibility

Offender participation in the Murri Court was voluntary and required the following conditions be met:

- the matter is from the magistrates district where the Court is sitting
- the offender is an adult
- the offender identifies as an Aboriginal or Torres Strait Islander person
- a guilty plea is entered
- the offence falls within the jurisdiction of the Magistrates Court of Queensland (i.e. can be dealt with summarily)
- there is a reasonable possibility of imprisonment for the offender (minor matters are not heard unless the offender has a criminal record and as such a reasonable possibility of imprisonment). <sup>xxxv</sup>

### Model

The Murri Court operated within a Magistrates Court or Children's Court framework, and provided opportunities for Elders and Respected Persons, the offender and their family, and CJGs to participate in the sentencing of Indigenous offenders.

This section describes the roles and responsibilities of key participants in the court, as well as features of the Court that are of particular interest to the re-establishment of Murri Court in Queensland. Key features of interest include:

- the process for selecting Elders and Respected Persons
- methods of recognising Elders' and Respected Persons' contributions to the Court
- the level and type of training provided to court participants.

## Key participants

Key participants in the Murri Court model included Elders and Respected Persons, a magistrate, a Murri Court Case Coordinator and CJGs.

Under the Queensland Murri Court model, **Elders and Respected Persons** were assigned clear roles and responsibilities, including:<sup>xxxvi</sup>

- providing advice to the magistrate on cultural issues
- providing background information about the offender
- explaining the meaning of the magistrate's questions or concerns to the offender
- acting as a liaison with local Indigenous communities.

Elders and Respected Persons were also expected to excuse themselves if a conflict of interest or perceived bias arose.<sup>xxxvii</sup>

The **magistrate** was ultimately responsible for deciding whether an offender was eligible for Murri Court, as well as the offender's final sentence. In sentencing an offender, the magistrate was encouraged to consider the cultural and other advice provided by Elders or Respected Persons.<sup>xxxviii</sup> The magistrate was also responsible for encouraging and supporting the participation of those present at the sentencing hearing.

The roles and responsibilities of the **Murri Court Case Coordinator** varied according to the precise operation of the court in each location. In general, Coordinators were responsible for identifying rehabilitation and program options for Murri Court clients, advising the community of Murri Court activity, completing pre-sentence reports, supporting Elders and Respected Persons to perform their role, and supporting the offender as required.

**CJGs** were responsible for supporting offenders at all stages of the legal process. They would provide the court with information regarding the offender, the effect of the offending on the local community, and advising the court on culturally appropriate programs and support available in the community. CJGs were also responsible for identifying potential Elders and Respected Persons to sit on the Court, and supporting Elders and Respected Persons to attend court as required.

## Key features of interest

### *Selection*

The selection process for Elders and Respected persons varied across the state. For example, in Brisbane and Caboolture, the presiding magistrate recruited the Elders and Respected Persons by calling for expressions of interest from the local Indigenous community. Further appointments were made by the magistrate on the advice of existing Elders and Respected Persons.<sup>xxxix</sup>

In Rockhampton and Townsville, the CJG recommended Elders and Respected Persons to the Court. In Mount Isa, appointments were made by either the CJG or the magistrate.<sup>xi</sup>

### *Recognition*

Both financial and non-financial methods were used to acknowledge and recognise the contribution made by Elders and Respected Persons to the court.

Across all locations, Elders and Respected Persons received fees to cover the cost of transportation, parking and incidental expenses incurred in undertaking their voluntary service to the court.<sup>xii</sup> Until 31 December 2012, the Murri Court Elder fee state-wide was \$36.50. After the Murri Court was abolished, CJGs were responsible for setting the value of the fee. As the fee depended on CJG resources, it ranged from \$30 to \$60, while in some locations Elders and

Respected Persons received gift vouchers. In addition to fees, Elders and Respected Persons were provided sashes to represent their special position in the court.

### *Training*

Elders and Respected Persons received training regarding the penalties that can be imposed under the *Penalties and Sentences Act 1992* and the purposes for which sentencing may be imposed. No other court participants received training through the Murri Court model.

### Process

The purpose of this section is to describe the way in which the court operates. It is important to note that Murri Courts were initiated from largely informal, joint agreements between magistrates and Elders from local Indigenous communities. These agreements identified who would be involved in the Court and the ways in which they could contribute. In some locations, the Murri Court Case Coordinator prepared a practice and procedure manual documenting the process for that jurisdiction and the responsibilities of each stakeholder involved in the Murri Court.

### *Murri Court features that were consistent across locations*

The Murri Court procedure followed the mainstream court procedure with a few key differences, namely:

- when identifying potential Elders or Respected Persons to sit with the magistrate, it was the intention that the Elder or Respected Person be of the community group relevant to the offender, however this was not always possible, particularly where a community justice group had not been established in the court location
- the defendant sat next to their legal representative at the bar table even if they were in custody
- a member of the defendant's family, or another support person, could sit next to the defendant at the bar table
- all advice given to the magistrate by the Elder or Respected Person was heard by all present<sup>xlii</sup>
- the offender was encouraged to speak directly and openly to the court and Elders or Respected Persons<sup>xliii</sup>
- the magistrate and Elder or Respected person could question the defendant and the defendant's family or support person
- a Department of Corrections representative was present and had the opportunity to address the magistrate and the Elder or Respected Person in relation to the defendant's case plan
- where available, offenders were referred to rehabilitation services designed to help address the underlying causes of their offending behaviour.

The Murri Court magistrate imposed non-custodial sentences where possible which included referral to a number of support agencies to develop sentencing options that could be used in conjunction with probation, community service or intensive corrections orders.

### *Murri Court features that were inconsistent across locations*

There are a number of operational features of Murri Courts that varied across its operational sites. For example:

- some Murri Court locations operated under one regular and consistent magistrate, whereas others could be convened by any available magistrate
- Murri Court sites varied with regard to the type of matters or offences they were willing to hear

- in some Murri Court locations the magistrate did not wear robes and police appeared out of uniform to prevent intimidation of offenders or other Indigenous people present in court, and to encourage communication between participants
- the layout of Murri Courts varied according to the physical features of the local courtrooms, for example, in some locations the Elders sat at the bench with the magistrate, in other locations all of the parties to the court process sat at the bar table, while in other courts, there was limited room, and Elders would be sitting at the witness box
- in some locations Murri Court would hear breaches, while in other locations defendants would be progressed through traditional court processes.

Murri Court operation was ceased on 31 December 2012.

Following the abolition of the Murri Court, Indigenous Sentencing Lists (ISLs) were established. The ISL is a bail-based program that allowed defendants to engage in various programs to address their offending behaviour which may be taken into account by the magistrate at sentencing. It continues the aim of the former Murri Court to give opportunities for Elders, CJGs, and families to participate in the sentencing process, but focuses particularly on linking defendants with government and non-government service providers and culturally appropriate rehabilitation, treatment or intervention programs.

There are currently 13 ISL sites operating: Brisbane, Caboolture, Cairns, Cherbourg, Cleveland, Mackay, Mount Isa, Richlands, Rockhampton, St George, Toowoomba, Townsville and Wynnum.

## Australian Capital Territory

### Galambany Court

The Galambany Court provides a culturally relevant sentencing option in the ACT Magistrates Court, and an opportunity for the Indigenous community to work collaboratively with the ACT criminal justice system to address over representation issues and offending behaviour.<sup>xiv</sup>

The Court aims to:

- involve Indigenous communities in the sentencing of Indigenous defendants
- increase the confidence of Indigenous communities in the sentencing process
- reduce barriers between the ACT Magistrates Court and Indigenous communities
- provide culturally relevant and effective sentencing options for Indigenous defendants
- provide Indigenous defendants with support services that will assist them to overcome their offending behaviour
- provide support to victims of crime and enhance their rights and participation in the Galambany Circle Sentencing Court process
- reduce repeat offending by Indigenous defendants.

### Legislation

Section 291N of the *Magistrates Court Act 1930 ACT* gives the Court the authority to make a direction in relation to the procedure to be followed for Circle Sentencing.

### Eligibility

To be eligible to participate in the Galambany Circle Sentencing Court, a defendant must:

- identify as an Aboriginal or Torres Strait Islander person and have ties to an Indigenous community, either in the ACT or elsewhere
- plead guilty to an offence that can be finalised in the Magistrates Court
- consent to participate fully in the Galambany Circle Sentencing Court.

Both adults and young people can appear before the Court. Individuals charged with sexual offences are excluded.

### Model

The Court follows a roundtable court model and aims to address the causes of a defendant's offending in sentencing.

### Key participants

Key participants in the Galambany Circle Sentencing Court include a Galambany Court Magistrate, Elders or Respected Persons and a Galambany Court Coordinator.

Between two and four Elders or Respected Persons form an Assessment Panel which is responsible for making recommendations to the Court regarding the offender's suitability to participate in the Galambany Circle Sentencing Court. Once accepted in to the Court, Elders and Respected Persons then comprise a Hearing Panel which is responsible for explaining culturally relevant details to the Court and speaking to the defendant about their behaviour, noting that they do not accept or tolerate criminal behaviour in the Indigenous community. The Hearing Panel is also responsible for speaking with the defendant to explore ways in which the criminal behaviour could be avoided in the future.

The Galambany Court Coordinator is responsible for:

- managing the referrals process
- identifying Elders and/or Respected Persons to participate in the panel
- coordinating and participating in assessments and hearing panels
- providing advice and information to the court as required
- sharing information with court participants as required.

### **Key features of interest**

#### *Selection*

The Directorate seeks nominations for the position of Indigenous Elders and Community Panel Members. Expression of Interest forms are sent to potential members including information about responsibilities and training.

Applicants for the position must complete the compulsory Statement of Attainment in Indigenous Justice, delivered by an accredited provider. Upon completion of the training applicants make application for appointment to the Chairperson of the Galambany Court Reference Group (GCRG); applicants then undergo a criminal record check.

A Recruitment Panel of 3 is convened by GCRG to consider the application and make a recommendation based on the Selection Criteria. The Recruitment Panel advises the Directorate in writing of their recommendation regarding the application. The successful applicant is then appointed as a Panel Member.

#### *Recognition*

Elders and Respected Persons receive \$50 for each assessment and \$150 for each half day sentencing (up to 4 hours) and \$300 for each full day sentencing (over 4 hours).

#### *Training*

All new panel members participate in a Canberra Institute of Technology 80893ACT - Course in Indigenous Community Justice prior to being recruited as a panel member.

Throughout the year, existing panel members also participate in training provided by service providers (e.g., Red Cross, Life Line) and other agencies as available and required.

#### *Process*

The Practice Directions set out the precise process to be followed when a matter comes before the Galambany Court.<sup>xiv</sup>

The magistrate referring a defendant remands the defendant to appear before the Galambany Court and may order a pre-sentence report or other reports the magistrate believes may be of assistance to the Galambany Court in sentencing the defendant.

The defendant, their parent or guardian (as appropriate), Elders and Respected Persons, and the Galambany Court Coordinator form an assessment panel which aims to determine the defendant's suitability to participate. The number of members must be at least two with a maximum of four. It is expected that the panel will reflect an appropriate gender and age balance based on the individual referral. The panel may consider referring the defendant to services to address the underlying contributors to offending behaviour, such as alcohol and drug dependence, anger management programs, and counselling services. The panel may also refer the defendant to supports in the community that can help the defendant work toward personal goals. The defendant's participation in these programs is voluntary and are not typically made conditions of bail. If the defendant engages with the recommended services there is, however, the option to continue these referrals post sentence.



A panel member may be asked at any time to cease participating in an assessment or hearing if their participation is considered detrimental to the aims and objectives of the Court. A panel member may also excuse him- or herself if they consider their involvement to be detrimental.

Suitable defendants are then referred for a sentencing hearing. Legal representatives, the defendant's family, and victims of the offence are invited to attend the sentencing hearing. The defendant and victim may choose a support person to join them at the hearing. Other relevant persons may also be invited by the magistrate or Elders and Respected Persons to participate.

Victim Support ACT is responsible for advising the victim of his or her right to attend the sentencing hearing, and assisting the victim to attend.

During the hearing, all participants have the opportunity to address the Court. The magistrate may choose to adjourn or terminate the proceedings at any time, and the defendant may at any time choose to withdraw from the process and be returned the Magistrates Court for sentencing.

The Hearing Panel is responsible for recommending to the magistrate what they consider to be an appropriate sentence for the defendant, achieved through consensus where possible. The magistrate may take this in to account when sentencing. Where the magistrate is not satisfied that the recommended sentence is appropriate, they will provide reasons and outline the sentence they intend to impose. The sentencing process is conducted in such a way that enables the Court to address the underlying factors contributing to the defendant's offending.

Relationships Australia attend all Hearing Panels to provide debriefing for Elders and counselling support to defendants at no cost.

Aboriginal Legal Services in the ACT have been funded to provide pre and post sentence support to defendants who attend Galambany Court. This is usually in the form of helping them to attend services and coordinate between services.

Corrective Services Officers are responsible for notifying the Court of a breach of sentence. The offender is then brought back before the court and the hearing panel may reconvene to consider what action to take in response to the breach.

## Background

- The Galambany Court has been part of the ACT Magistrates Court jurisdiction since 2004, when it was named the Ngambra Circle Sentencing Court.
- The Galambany Court operates in Canberra.

## New South Wales

### Circle Sentencing and Aboriginal Community Justice Groups

Circle sentencing is an alternative form of sentencing available to adult Aboriginal offenders.<sup>xlvi</sup>

Circle Sentencing aims to:

- include members of the Aboriginal communities in the sentencing process
- increase confidence of Aboriginals in the sentencing process
- reduce barriers between Aboriginal communities and courts
- provide more appropriate sentencing options for Aboriginal offenders
- provide support to victims of offences by Aboriginal offenders
- allow greater participation for Aboriginal offenders and their victims in the sentencing process
- increase awareness among Aboriginal offenders about the consequences of their actions
- reduce recidivism in Aboriginal communities.

### Legislation

Circle Sentencing was established under the *Criminal Procedure Amendment (Circle Sentencing) Regulation 2005* (the Regulation). The Regulation was further amended in 2009 to include as an eligibility criteria the requirement that the court consider it likely that the defendant will be required to serve a sentence of imprisonment (including by way of periodic detention or home detention) or be subject to a suspended sentence, community service order or good behaviour bond.

Circle Sentencing now operates according to Part 6 of the *Criminal Procedure Regulation 2010 NSW* which sets out:

- a summary of process for participation in the program (s. 31)
- assessment of suitability to participate (Division 2)
- describes the processes underpinning Circle Sentencing (Division 3), including the objectives of the program (s. 35), eligibility requirements (s. 36), and functions of Circle Sentencing Groups (s. 40)
- describes the role of Aboriginal Community Justice Groups (ACJGs) (Division 4).

### Eligibility

To be eligible to participate in Circle Sentencing the defendant must be:

- an Aboriginal person
- an offender
- assessed as suitable to participate by the ACJG
- willing to consent to participate
- likely to receive a relevant sentence (imprisonment, community service order, good behaviour bond).

### Model

#### Key participants

The **ACJG** is responsible for assessing a defendant's suitability to participate in the program.

A **Circle Sentencing Group** is responsible for determining an appropriate plan for the treatment and rehabilitation of a referred offender, and recommending an appropriate sentence to the presiding magistrate. The group also agrees to provide support or other assistance to the offender in completing the program and any intervention plans arising out of the program.

The Circle Sentencing Group must include: the magistrate, the offender, the offender's legal representative, the prosecutor, the Project Officer, and at least 3 Aboriginal persons who the Project Officer is satisfied belong to the Aboriginal community of which the offender claims to be, or with which the offender claims to have a close association or kinship.

A Circle Sentencing Group may include the following persons: victims of the offence/s, victim support person, offender support person, any other person chosen by the project officer with the consent of the offender and victim, and any other person chosen by the magistrate of a class specified by the guidelines.

An **Aboriginal Project Officer** is located in each site where Circle Sentencing operates. The project officer is responsible for:

- organising each Circle Sentencing Court
- liaising between the court and the Aboriginal community
- monitoring the compliance of an offender with his or her obligations under the program and reporting any non-compliance to both the participating court that referred the offender, and to the Circle Sentencing Group
- make recommendations to the Minister regarding appointments to the ACJG.

### **Key features of interest**

#### *Selection*

Elders from the community may approach members of the ACJG to seek out availability to participate in Circle Sentencing. Members from the ACJG may serve both as a member of the ACJG and participate in Circle Sentencing. Elders who participate in Circle Sentencing and are a member of an ACJG must have a criminal records check.

#### *Recognition*

Elders who participate in Circle Sentencing do so on a voluntary basis.

#### *Training*

A 2015 review of ACJGs recommended ACJG members who participate in Circle Sentencing undertake training to further their knowledge of crime and sentencing, and be better informed of their right to access the Employee Assistance Program to received adequate support and debriefing. This is still being implemented and Elders are yet to be fully informed of the service available for them to access.

Legal representatives and court staff do not receive specific training relevant to their participation in Circle Sentencing.

#### *Process*

Section 31 of the *Criminal Procedure Regulation 2010 NSW* sets out the process for participating in Circle Sentencing.

The participating court makes a suitability assessment order in respect of the offender. The Project Officer convenes a special meeting of the ACJG to assess whether the offender is a suitable candidate. The ACJG must include at least three members chosen by the Project Officer.

The ACJG meets to assess the offender's suitability having regard to certain criteria. The Group must report its finding to the court that referred the offender.

If the ACJG assesses the offender as not suitable for participation, the offender will not be eligible to participate. If the Group assesses the offender to be suitable, the participating court may then make a program participation order.

The offender enters into an agreement to participate in the program. The Project Officer will then convene a Circle Sentencing Group for the purpose of recommending an appropriate sentence and determining a treatment and rehabilitation plan for the offender. The magistrate who refers the offender will preside over the Circle Sentencing Group.

The defendant and victim have a chance to discuss the offence, its impact, what can be done to remedy damage, and the support available to the defendant and victim. The offender must comply with the program participation order and any intervention plan determined by the Circle Sentencing Group. A failure to do so may result in the offender being returned to the participating court.

The court that referred the offender may, if it agrees with the consensus of the Circle Sentencing group, impose a sentence on the offender in the terms recommended by the group.

The Project Officer may, in consultation with the presiding magistrate, reconvene a Circle Sentencing group to reconsider any matter it had previously determined or recommended (but not beyond 12 months of the matter being heard and not if another court has sentenced the offender).

## Background

- Circle Sentencing operates in Nowra, Dubbo, Walgett, Brewarrina, Bourke, Lismore, Armidale, Kempsey and Mt Druitt.
- Circle Sentencing was evaluated in 2003 (Judicial Commission of NSW; NSW Aboriginal Justice Advisory Council) and 2007 (Cultural Indigenous Research Centre Australia). The evaluations found that Circle Sentencing improved confidence in the sentencing process and produced sentencing outcomes that were considered culturally appropriate. Circle Sentencing had little impact on an individual's likelihood of re-offending and would benefit from improved access to support services.

## South Australia

### Aboriginal Sentencing Court

The Aboriginal Sentencing Court provides an opportunity for Aboriginal court users to have their voices heard in a culturally appropriate manner. In Port Adelaide and Murray Bridge the court is referred to as Nunga Court.<sup>xlvii</sup>

The Nunga Court evaluation (2004) sets out the aims of the court. A more recent statement of the aims of Aboriginal Sentencing Courts is not publicly available. The aims of the court include:

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

### Legislation

There is no legislative basis for the Aboriginal Sentencing Court. The Court relies on magistrates to champion its operation.

### Eligibility

To be eligible for the Aboriginal Sentencing Court, the defendant must:

- be Aboriginal
- be an adult
- plead guilty
- have committed the offence in the local court area
- consent to participate in the court.

### Model

#### Key participants

The Aboriginal Sentencing Court is presided over by a magistrate who is assisted by Aboriginal Elders and/or Respected Persons. The Court is also supported by Aboriginal Justice Officers (AJOs).

**Aboriginal Elders and/or Respected Persons** are expected to have a sound knowledge of Aboriginal culture and advise the court on certain issues.

An **AJO's** responsibilities include:

- undertaking an assessment of the defendant's suitability (Port Augusta Court only)
- providing information about the location and operation of the courts
- supporting Aboriginal court users and their families (e.g., providing advice regarding procedures, fines, payment options, JP services)

- advising the court regarding appropriate services and programs that may assist in the defendant's rehabilitation
- advising the Court regarding Aboriginal culture and communities
- recruiting, training and supporting Elders and Respected Persons
- delivering community education about Courts Administration Authority Aboriginal Programs and employment and the role of AJOs.

### **Key features of interest**

#### *Selection*

To become a Court Elder or Respected Person, applicants undergo a standardised assessment process led by the AJO with support from serving Court Elders. The process involves developing a good understanding of the applicant's position in the Aboriginal community, including their cultural standing and personal conduct. Applicants must be over 60 years of age to be a Court Elder, and over 40 years of age to be a Respected Person.

Successful applicants are formally contracted to the Court and expected to participate in training and other activities as required.

#### *Recognition*

Elders and Respected Persons receive \$150 for a full day and \$75 for a half day (up to 12pm).

#### *Training*

Every year, Elders and Respected Persons are expected to participate in two days of training and two days of Elder meetings. They are not paid to participate. The training sets out the goals of the court, the expectations attached to their role as Elders and Respected Persons, and relevant cases, service providers and sentencing options they should be aware of. In general, training aims to build confidence among Elders and Respected Persons.

The Courts Administration Authority delivers a two-day course on Aboriginal cultural awareness issues. Attendance is mandatory for all new staff, and new magistrates may also attend. The South Australian branch of the National Judicial College of Australia (NJCA) Indigenous Justice Committee regularly provides presentations, workshops and community visits to improve cultural competence and awareness among judicial officers.<sup>xlviii</sup>

Cultural awareness training is currently available to legal representatives outside the Court process. Opportunities to provide consistent, regular training to all court participants is currently being explored by the Courts Administration Authority.

#### Process

There is no formal process attached to the Aboriginal Sentencing Court beyond the participation of Court Elders or Respected Persons, and use of roundtable court model.

#### Background

- The Aboriginal Sentencing Court operates in Port Adelaide, Port Augusta and Murray Bridge Magistrates Courts.
- The Nunga Aboriginal Sentencing Court was established in 1999 as the first Indigenous sentencing court in Australia.

## Aboriginal Sentencing Conferences

Section 9C Aboriginal Sentencing Conferences empowers a court in any criminal jurisdiction to convene an Aboriginal Sentencing Conference. Conferences typically reflect principles of restorative justice.<sup>xlix</sup>

### Legislation

The Aboriginal Sentencing Conference operates under section 9C of the *Criminal Law (Sentencing) Act 1988* (SA). This section allows the Court, with the defendant's consent and assistance from an Aboriginal Justice Officer, to convene a sentencing conference before sentencing an Aboriginal defendant. The legislation sets out the participants required for a sentencing conference and the role and responsibilities of Aboriginal Justice Officers.

The legislation does not describe how the courts or conferences are expected to operate or what processes should apply, although some judicial guidance exists in case law.<sup>1</sup>

### Eligibility

To be eligible to participate in an Aboriginal Sentencing Conference, the defendant must:

- be Aboriginal
- be an adult
- plead guilty
- have committed the offence in the local court area
- consent to participate in the court.

### Model

#### **Key participants**

The Sentencing Conference must comprise the defendant, the defendant's parent or guardian (where appropriate), the defendant's legal representative, and the prosecutor. Where the Court considers it useful, a Sentencing Conference may also include: a person regarded by the defendant, and accepted within the defendant's Aboriginal community, as an Aboriginal Elder, a person qualified to provide cultural advice relevant to sentencing the defendant, a member of the defendant's family, a support person for the defendant, and any other person. The victim may also choose to participate.

The scheduling and operation of Aboriginal Sentencing Conferences are supported by AJOs.

An **AJO's** responsibilities include:

- undertaking an assessment of the defendant's suitability (Port Augusta Court only)
- providing information about the location and operation of the courts
- supporting Aboriginal court users and their families (e.g., providing advice regarding procedures, fines, payment options, JP services)
- advising the court regarding appropriate services and programs that may assist in the defendant's rehabilitation
- advising the Court regarding Aboriginal culture and communities
- recruiting, training and supporting Elders and Respected Persons
- assisting with family conferences for youth in Northern area
- delivering community education about Courts Administration Authority Aboriginal Programs and employment and the role of Aboriginal Justice Officers.

## Key features of interest

Comments are the same as those reported for the Aboriginal Sentencing Court.

### Process

There is not a standardised and agreed process for Aboriginal Sentencing Conferences. In *R v Wanganeen*, Justice Gray describes the process of a sentencing conference in the following way:<sup>li</sup>

- the court applies a roundtable model
- the judge introduces the sentencing conference, its purpose and informal nature
- the judge introduces those present and explains the role of each participant, including the Aboriginal Justice Officer
- the Victim Impact Statement is read to the Court
- the prosecution provides a summary of the allegations constituting the charge
- participants are invited to speak, in turn, by the Aboriginal Justice Officer
- the judge and defence counsel may prompt or questions speakers as appropriate
- the sentencing conference is adjourned for formal sentencing submissions.

The judge also notes that, 'having regard to the purpose of the sentencing conference, it is not appropriate to set out in any strict manner the way a conference should be conducted. A measure of flexibility is required in order to maximise the effectiveness of the process.'

Aboriginal Sentencing Conferences differ from Aboriginal Sentencing Courts in two ways:

- prior to attending the conference the defendant participates in a needs assessment intended to identify the underlying contributors to their offending behaviour
- service providers are invited to participate in the conference and provide recommendations to the Court regarding the defendant's needs and options for support in the community.

Aboriginal Sentencing Courts are typically only able to refer defendants to services if providers are present in the courtroom at the time of sentencing.

### Background

- Section 9C Aboriginal Sentencing Conferences empowers a court in any criminal jurisdiction to convene an Aboriginal Sentencing Conference.



## Victoria

### Koori Courts

There are three forms of Koori Courts in Victoria:

- Koori Court (Magistrates' Court)
- Children's Koori Court
- County Koori Court

The aims of each court can be broadly understood according to criminal justice and community building objectives. The specific aims of each court vary slightly as shown in Table 2.

<b>Koori Court (Magistrates' Court)</b>	<b>Children's Koori Court</b>	<b>County Koori Court</b>
<ul style="list-style-type: none"> <li>• Increase Koori ownership of the administration of the law</li> <li>• Increase positive participation by Koori offenders</li> <li>• Increase the accountability of the Koori offenders, families and community</li> <li>• Encourage defendants to appear in Court</li> <li>• Reduce the amount of breached court orders</li> <li>• Deter offenders from re-offending</li> <li>• Increase community awareness about community codes of conduct and standards of behaviour</li> <li>• Explore sentencing alternatives prior to imprisonment.</li> </ul>	<ul style="list-style-type: none"> <li>• Involve family and the Koori community in discussions about the young person's offending</li> <li>• Make it easier for the young person to participate in the court process</li> <li>• Reduce or stop the young person's offending</li> <li>• Reduce the number of Koori people going to prison</li> <li>• Make sentencing orders that are culturally appropriate.</li> </ul>	<ul style="list-style-type: none"> <li>• Encourage participation of the accused in the Court process</li> <li>• Encourage the accused to address their offending behaviour</li> <li>• Support the accused in the completion of their sentence</li> <li>• Involve the community in the Court process.</li> </ul>

*Appendix B Table 2 The aims of Koori Courts*

### Legislation

The Koori Court (Magistrates' Court) was established under the *Magistrates' Court (Koori Court) Act 2002* and subsequently incorporated in to the *Magistrates' Court Act 1989*. The Children's Koori Court was established under the *Children, Youth and Families Act 2005*. The County Koori Court was established as a Division of the County Court by the *County Court Amendment (Koori Court) Act 2008* and subsequently incorporated in to the *County Court Act 1958*.

Each Act sets out:

- the jurisdiction of the Koori Court
- the circumstances in which Koori Court may deal with certain offences
- the circumstances in which Koori Court may deal with a contravention or breach of sentence imposed by it or another Magistrates Court
- the sentencing procedure in Koori Court Division
- the power of the Secretary to appoint an Elder or Respected Person to the Koori Court.

Under each Act, the Koori Court may regulate its own procedure, subject to the Act, the regulations and the rules as set out in legislation. This means that the process for Koori Court sittings differ in each region.

### Eligibility

The circumstances in which a defendant is eligible to appear before the Koori Court vary slightly across the three Courts as shown in Table 2.

<b>Koori Court (Magistrates Court)</b>	<b>Children’s Koori Court</b>	<b>County Koori Court</b>
<p>the accused is Aboriginal</p> <p>the offence is within the jurisdiction of the Magistrates Court (other than a sexual offence, contravention of a family violence intervention order or a family violence safety notice, or contravention of a personal safety intervention)</p> <p>the accused intends to plead guilty, pleads guilty, intends to consent to the adjournment of the proceeding to enable him or her to participate in a diversion program</p> <p>the accused consents to the proceeding being dealt with by the Koori Court Division.</p>	<p>the child is Aboriginal</p> <p>the offence is within the jurisdiction of the Criminal Division (other than a sexual offence)</p> <p>the child intends to plead guilty, pleads guilty, or has been found guilty</p> <p>the child consents to the proceeding being dealt with by the Koori Court (Criminal Division)</p>	<p>the accused is Aboriginal</p> <p>the offences is within the jurisdiction of the County Court (other than a sexual offence, contravention of a family violence intervention order or a family violence safety notice)</p> <p>the accused pleads guilty to the offence</p> <p>the accused consents to the proceedings being dealt with by the Koori Court Division</p> <p>the Koori Court Division considers that it is appropriate in all circumstances that the proceeding be dealt with by it</p>

*Appendix B Table 3 The circumstances in which Koori Court may deal with certain offences as set out in legislation*

## Model

### Key participants

A Human Resources Manual has been drafted to provide employment information to **Elders and Respected Persons** who sit on Koori Courts. It identifies their responsibilities to include:<sup>lii</sup>

- providing assistance and advice to the presiding magistrate on Aboriginal culture and community matters
- reinforcing cultural values and perspectives of the Aboriginal community to the accused and/or young person in relation to their offending behaviour
- providing Aboriginal community representation in to the sentencing of the Aboriginal accused
- work with Koori Court staff, in particular the Koori Court Officer, to gain knowledge of the local services and programs available to the Aboriginal accused and/or young person.

**Koori Court Officers** exist to support the operation of Koori Courts although their roles may vary according to the specific processes adhered to by each Koori Court. Broadly speaking, the Koori Court Officer is responsible for:<sup>liii</sup>

- supporting the Court
- providing information to the Court
- assisting the offender to access appropriate support services
- engage with the local Aboriginal community and service providers to ensure their engagement in the County Koori Court process
- assist Elders and Respected Persons with administrative process.

The **County Koori Court Program Manager** has responsibility for overseeing program operation, including coordinating hearings, identifying professional development opportunities for Elders and Respected Persons as well as other relevant court users, and providing remuneration to Elders and Respected Persons.

The Chief Judge has identified a pool of six judges to sit regularly on the County Koori Court. The judges all have prior experience working in Aboriginal organisations, a demonstrated awareness of Koori cultural considerations, and have expressed a clear interest in sitting on the Koori County Court.

### **Key features of interest**

#### *Selection<sup>iv</sup>*

The Human Resources Manual sets out a clear recruitment and appointment process for Elders and Respected Persons. This includes:

- advertising the position through Koori community organisations
- interviewing candidates
- conducting reference and police checks
- referring applications to the Selection Panel (comprised of 3 people, at least one of whom must be Aboriginal) responsible for shortlisting preferred candidates.

Shortlisted candidates then undertake training, following which the selection panel makes a final recommendation to the Secretary. Under the Koori Court legislation, the Secretary may appoint a person who is a member of the Aboriginal community as an Aboriginal Elder or respected person for the purpose of performing functions in relation to the Koori Court. The Elder or respected person holds the office for the period determined by the Secretary.

Appointed applicants are then transferred to Court Services Victoria. Elders and Respected Persons are able to serve in any of the Koori Court jurisdictions and many Elders sit on multiple Courts.

#### *Recognition<sup>v</sup>*

Elders and Respected Persons are paid at a Victorian Public Service Grade 5 classification level which equates to full day sitting \$414.41, and a half day sitting \$207.20. Elders further receive a professional development/training rate of \$54.52 per hour.

Travel support is provided at Court Services Victoria's discretion.

In the Koori Court (Magistrates Court), Elders and Respected Persons also have the choice to wear sashes in recognition of their position.

Court Services Victoria may at any time elect, where there is reasonable cause, to manage the work performance of an Aboriginal Elder or Respected Person.

#### *Training<sup>vi</sup>*

Short-listed candidates are invited to participate in a two or three-day training course. Topics include:

- the philosophy and history of the Koori Court
- the role of Elders and Respected Persons within a cultural framework
- Victorian Courts, legislation and sentencing practices
- Roles and responsibilities of stakeholders participating in Koori Court
- Privacy, confidentiality and conflicts of interest.

All short-listed candidates are provided the opportunity to participate in a mock court sitting.

Elders and Respected Persons are also required to attend professional development training sessions intermittently. This may include presentations regarding the services available in the community to support Aboriginal defendants, and training to assist Elders and Respected Persons working with defendants with special needs (e.g. acquired brain injury). If they do not sit for a

period of 12 months or longer, Elders and Respected Persons will be required to repeat their pre-appointment training.

Training is also provided to relevant magistrates and legal representatives. For example, representatives from the Victorian Aboriginal Legal Service and the Office of Public Prosecutions, and Judicial Associates are involved in the induction program for Koori Court Elders where they receive cultural awareness training. The Judicial College of Victoria also provides training to the judiciary regarding cultural considerations and services available in the community to support Koori defendants.

The Employee Assistance Program (EAP) provides short term personal and confidential counselling and support for all Court Services Victoria staff, including Elders and Respected Persons. Elders and Respected Persons can access up to four counselling sessions for work and personal issues, free of charge.

### Process

Legislation sets out broad rules regarding the jurisdiction, approach and sentencing practices expected of Koori Courts (set out in the text box below). It also provides for Koori Courts to establish their own processes, except to state that the Koori Court must exercise its jurisdiction with as little formality and technicality, and in as timely a manner, as the proper consideration of the matters permit. For this reason, the approach taken to Koori Court sittings differs in each region.

Broadly speaking, Koori Courts are expected to provide an informal atmosphere, allow greater participation by the Aboriginal community in the court process, and aim to ensure sentencing orders are appropriate for the cultural needs of Koori offenders. Defendants and other court participants are encouraged to speak for themselves and contribute to the Court process. While Elders or Respected Persons, service providers and government representatives may all make sentencing and treatment recommendations to the Court, the magistrate is ultimately responsible for making the sentencing decision.

Information regarding the broadly applicable processes for each of the Koori Courts is provided by the Magistrates' Court of Victoria and described below.

**Shared features of the Koori Court as established under legislation**

The Koori Court must be conducted in a way that is comprehensible to the accused, a family member of the accused, and any member of the Aboriginal community who is present in court.

The Koori Court also has jurisdiction to deal with a contravention of a sentence imposed by it or by the Magistrates Court, Children's Court or County Court (where relevant), or a variation of such a sentence, where the matter meets the eligibility criteria set out above. The County Koori Court also has the power to hear appeals where the appeal is against the sentence imposed by the Magistrates Court (Koori Court or traditional court process).

The proceeding may be transferred to the Koori Court whether sitting at the same or a different venue.

When sentencing, the Koori Court may consider any oral statement made to it by an Aboriginal Elder or Respected Person. It may inform itself in any way it thinks fit, including by considering reports, statements or submissions from a Koori Court Officer, a community corrections officer (or youth justice worker where relevant), a health service provider, a victim of the offence, a family member of the accused or anyone else considered appropriate. The Act allows the Chief Magistrate together with two or more Deputy Chief Magistrates to jointly make rules of court for any matter relating to the practice and procedure of the Koori Court Division.

*Koori Court (Magistrates Court)<sup>vii</sup>*

Koori Court is convened at an oval table. Participants are expected to speak in 'plain' English rather than using technical legal language. The court is designed to encourage a sentencing conversation rather than an adversarial contest. The Court is decorated with Indigenous art and both the Indigenous flags. Each hearing commences with a recognition that a smoking ceremony was carried out prior to the operation of the court.<sup>lviii</sup>

The magistrate may adjourn the Court to put together a plan as part of a sentencing order. At an appropriate time, defendants will be called back to the Court to have their sentencing order explained by the magistrate, Koori Elders and Respected Persons.

The Koori Court Officer is responsible for helping the offender understand the proceedings, and for providing assistance and referrals to defendants to access support services.

*Children's Koori Court<sup>lix</sup>*

Children's Koori Court is convened at an oval table. The Elder or Respected Person sits on either side of the judge or magistrate. The Elder or Respected Person is responsible for giving cultural advice in relation to the young person's situation. They may talk to the young person about their current circumstances and why they are in court. Elders and Respected Persons do not decide the outcome of the case. Only the judge or magistrate makes the sentencing decision.

All supervised orders and those involving detention are administered by Youth Justice.

*County Koori Court<sup>x</sup>*

To enter the County Koori Court, an accused or their legal practitioner must advise the Registrar of the Magistrates Court at the completion of the committal proceedings. An application can also be made to the Judge in Charge of the County Koori Court through the County Koori Court

Coordinator. The matter is listed for a Directions hearing, where the Judge in Charge decides whether the matter is appropriate and allocates a court hearing date.

The plea hearing is conducted across three stages: arraignment; sentencing conversation; sentencing submissions and sentence.

At the sentencing conversation, the judge sits at the table with an Aboriginal Elder or Respected Person on either side. The accused, the County Koori Court Officer, the corrections officer, legal practitioner and prosecutor also sit at the table.

The accused is invited to speak to the Court about their offending and about themselves. The Elders or Respected Persons may speak to the accused, and provide information on the background of the accused and possible reasons for the offending behaviour, explain relevant kinship connections, how crimes have affected the Indigenous community and provide advice on cultural practices relevant to sentencing. At this time, a Victim Impact Statement may also be read. Where appropriate, family members, support persons or counsellors are invited to contribute to the conversation.

Where treatment or other needs are identified for the defendant, the County Koori Court Coordinator may be asked about the availability of local services and programs. The Community Corrections Officer may provide advice on programs provided by Corrections Victoria.

The Court may be adjourned to obtain additional information or reports and to prepare treatment plans.

When it comes time for sentencing submissions and sentence, the usual sentencing procedures are followed such that the judge returns to the bench and the Elders or Respected Persons may choose not to be present.

If a court order is breached, the County Koori Court can reconsider the sentence and examine the options, increase supervision of the Court order, increase the length of the Court order or send the offender to prison.

## Background

- Koori Court (Magistrates Court) is located in Melbourne, Bairnsdale, Broadmeadows, Latrobe Valley (Morwell), Mildura, Shepparton, Swan Hill and Warrnambool.
- In addition to the above locations, Children's Koori Court is also located in Portland and Hamilton.
- County Koori Court sits in Melbourne, Morwell and Bairnsdale only.
- Koori Court (Magistrates Court) commenced operation in 2002, and was evaluated in 2006 and 2009. The evaluation found lower recidivism rates among Koori court participants when compared to mainstream courts. The evaluation also found reductions in breach rates for community corrections orders, fewer failures to appear, and increased Koori participation. Koori participants reported the court to be culturally inclusive and reinforced the authority of Elders and Respected Persons. The Court process also facilitated integrated service delivery.
- Children's Koori Court commenced operation in 2005, and was evaluated in 2009. The evaluation found low rates of failure to appear, the Court was considered culturally responsive and inclusive, the court process was observed to be highly respectful and less formal, and believed to increase participation and accountability among defendants, while also promoting Koori awareness of codes of conduct. The key contributors to the model's success were identified as training, reflective practice and use of conversation, while the

ability of support services to meet demand, the complexity of family issues, and dropping referrals were identified as potential inhibitors of future success.

## Western Australia

### Barndimalgu Court

The Barndimalgu Court (Geraldton Domestic and Family Violence Court) hears family and domestic violence matters involving Aboriginal people. It is a pre-sentence court that provides offenders with the opportunity to complete programs to address their violent behaviour before the final sentence is delivered.<sup>lxi</sup>

The key objectives of the Court are to:

- to reduce the number of Aboriginal people imprisoned due to family and domestic violence related offences in the Geraldton region
- to provide a culturally appropriate court based model that assists Aboriginal offenders to address the underlying issues that affect their behaviour through:
  - appropriate prison diversion strategies
  - delivery of a culturally appropriate domestic violence program
- provide victim and family support through Victim Support Services
- improve relationships between the Aboriginal people and the Court
- to provide a model that can be used for future planning and development.

### Legislation

The Barndimalgu Court has no legislative basis and operates under a Practice Direction.

### Eligibility

To be eligible to participate in the Barndimalgu Court, the defendant must be:

- Aboriginal
- plead guilty, or is found guilty and accepts responsibility for his or her actions
- have been charged with an offence in the Magistrates Court that can be fairly characterised as being a family and domestic violence matter
- assessed as suitable for either conditional bail or a non-court supervised order
- consents to participate
- the court has the realistic option of imposing a sentence other than a term of imprisonment.

A defendant may be referred by their legal representative, magistrate, prosecutor or the Community Justice Officer.

### Model

The court proceedings are conducted using circle court practices and held around an oval table. It is held in a room other than a standard courtroom.

### Key participants

As the Geraldton Domestic and Family Court is a country court, there is only one resident **magistrate** who sits on all court matters. When the magistrate is unavailable a Justice of the Peace will sit in the court.

The magistrate is assisted by a **Case Management Team (CMT)**. The **CMT** is made up of the following people who work together to assist the offender through the court process: magistrate, two respected Aboriginal Community Court Members, Community Corrections Officer, WA Police,



Legal Representative, Victim Support Officer, Specialist Court Coordinator, Aboriginal Judicial Support Officer.

**Community Court Members** play a cultural advisory role, providing background information about the offender, their immediate family as well as their historical and cultural status. The members may also provide this information about the victim. In providing this information, Community Court Members aim to help the magistrate understand the defendant's offending behaviour in context and possible contributors to their offending.

The **Specialist Court Coordinator** co-ordinates the CMT and ensures that guidelines and protocols are in place and complied with. The Co-ordinator is responsible for building strong relationships with stakeholders in the Barndimalgu Court, including service providers. The Coordinator promotes the court to the community through information sessions and community forums. This role supports the Community Court Members including the provision of training, maintaining the monthly court rosters and confirming availability prior to court dates. This role is responsible for maintaining and reporting statistics as well as providing effective management of the support services including; managing, monitoring and reporting on resource usage and the performance of the court process.

The **Aboriginal Judicial Support Officer** (AJSO) provides judicial support to the CMT. AJSOs are responsible for preparing all court documentation and recording proceedings during sentencing. They maintain all Barndimalgu Court files, produce court documentation and distribute orders within two working days of the court sitting. The AJSO is also responsible for organising sitting fee tax invoices for the Community Members. The AJSO assists participants in assessing courts services such as Time to Pay (TTP) and provides information about court processes. The AJSO also provides assistance to the coordinator.

### **Key features of interest**

#### *Selection*

Community Court Members are recruited through informal networks and formal advertising in newspapers.

The Community Court Member Handbook sets out a Code of Conduct for Community Court Members. The Code states that Members are expected to maintain standards of conduct, both personally and publicly, that reflect the integrity and independence of their role, respect the confidentiality of all who appear before the court, disclose potential conflicts of interest, and participate in training.

#### *Recognition*

Community Court Members are paid \$100 to sit up until 12pm, if Members sit beyond 12pm they receive \$200.

At the commencement of the first sitting of any offender the Court will acknowledge and pay respect to the traditional owners and to the community court members who are sitting on that particular day.

#### *Training*

Training is provided for the Community Court Members one afternoon every twelve weeks to assist with the legal practices and procedures of Court. Ongoing training will be provided as required.

All staff involved in Barndimalgu Court are required to undergo cultural awareness training. This ensures that staff have an appropriate understanding of the issues affecting Aboriginal people

and influencing behaviour as well as insight to some of the circumstances behind Aboriginal offenders and their offending behaviour.

## Process

The court proceedings are conducted using circle court practices and held around an oval table. It is held in a room other than a standard courtroom. Barndimalgu Court is a closed court.

Defendants are first assessed via a Barndimalgu Assessment pre-sentence report (PSR).

Barndimalgu Court offers two Court processes: Court Supervised Process which involves Conditional Bail, non-court supervised process for immediate sentencing.

### *Court supervised process*

Magistrates sit at a roundtable with Aboriginal court advisors, justices of the peace, the defendant, victims and families. Elders and Respected Persons are responsible for providing information to the magistrate regarding social and cultural issues impacting on offenders. Other attendees are also encouraged to participate in court proceedings.

Each participant is placed on conditional bail for six months and is required to complete a 20 week Indigenous Family and Domestic Violence Program. Other conditions may be attached to the defendant's bail depending on their offending history, type of offences, previous performance on bail, and level of risk of re-offending.

The defendant is supervised by the CMT on a regular basis. The offender is brought back before Barndimalgu Court every fortnight. If the defendant is not meeting their bail requirements the Court will, wherever possible, help them get back on track. It is within the magistrate's power to vary bail, issue directions to the participant concerning their participation in the program, decide to take someone off the program and determine when an offender is ready to successfully complete the program and be sentenced.

Failure to comply with the conditions of the Barndimalgu Court process may result in the offender being removed from the program or have their conditional bail revoked for non-compliance and remanded in custody.

In consultation with the group the magistrate will determine a sentence to be imposed if the offender fails to comply with the agenda. Using the Barndimalgu Sentencing process the magistrate will also determine an alternative lesser sentence, as an incentive, to be imposed if the offender meets the program requirements.

### *Non-court supervised process*

Low risk offenders or first offenders can be placed under the supervision of the Department of Corrective Services (DCS). These orders can require offender participation for periods up to 2 years. Rather than reporting to the court they report to a Community Corrections Office. If they breach the order the offender would be brought back before the Barndimalgu Court.

## Background

- Established in August 2007
- Overseen by a working group (Geraldton Magistrate, Geraldton Court and Tribunal Services, Community Justice Services) and steering committee (senior Department of the Attorney General [DOAG] and DCS officers).

- A Memorandum of Understanding has been prepared between the DOAG, DCS, Department for Child Protection and Western Australia Police in relation to information sharing for the provision of services in managing Barndimalgu Court case management in Geraldton.

## International jurisdictions

Indigenous sentencing courts have been implemented across a range of international jurisdictions including, Canada, United States of America, New Zealand, Papua New Guinea and South Africa. In South Africa and Papua New Guinea, Indigenous courts typically apply customary laws and operate under informal processes or adhere to traditional protocols. Such courts typically operate alongside a civil and criminal justice system recognised as mainstream in the Australian jurisdiction.<sup>lxii</sup>

In America,<sup>lxiii</sup> the Colville Tribal Court was established to respond to the needs of Native Americans. The Court has criminal jurisdictions over Colville tribal members and Native Americans who commit offences on designated reserves, but no jurisdiction over non-native peoples irrespective of where the offence was committed. All criminal offences may proceed in the Colville Tribal Court, including serious charges such as sexual assault and homicide charges. However, under the Indian Civil Rights Act of 1968, sentencing in the Colville Tribal Court is restricted to a maximum of one year less a day. More serious charges are also subject to the federal jurisdiction and may be prosecuted in both the tribal and federal court. The Colville Tribal Court aims to include healing and restorative justice elements in its process, and has access to creative sentencing options such as directing offenders to purchase gifts for children's charities or performing volunteer services for Elders.

Indigenous courts that may be more familiar to the Australian experience operate in Canada and New Zealand.

In Canada,<sup>lxiv</sup> responses to Indigenous over-representation in the prison system has included *Gladue* Courts, *Gladue* reports and circle sentencing. *Gladue* Courts focus on criminal trials and sentencing Aboriginal offenders. Similar to Australian Indigenous courts, *Gladue* Court participants are supported by Aboriginal case workers.

*Gladue* reports are submitted for Aboriginal offenders who appear for sentencing in most mainstream courts. The reports include information about offenders' circumstances similar to that contained in pre-sentence reports in Australia, culturally relevant information such as historical and societal systemic factors that may have contributed to offending behaviour, and information regarding the offender's community, including employment and education opportunities.

A small number of courts in Canada have also adopted circle sentencing practices, especially when these courts operate in First Nations reserves. Elders and other community members, sitting in a circle, contribute to the sentencing decisions, although the responsibility for sentencing remains with the presiding judge. For example, a First Nations Court operates in New Westminster, British Columbia.<sup>lxv</sup> The judge, prosecution, defence, services providers, native court workers, Aboriginal advisor to the judge, probation officer, advocate and families of the offender participate in a sentencing discussion and contribute to a healing plan. The offender may be brought back before the Court to discuss progress. The Court aims to reflect First Nations perspectives, and take a holistic and restorative justice approach to sentencing.

There is no legislative basis for *Gladue* Courts, *Gladue* reports and circle sentencing in Canada, although the *Gladue* principles were established in Canadian case law. As in many Australian jurisdictions, these practices reflect adaptations of mainstream criminal court processes in an effort to be more responsive to Aboriginal offenders and communities. These practices have not yet been systematically evaluated.

In New Zealand, the Gisborne Marae Youth (Rangatahi) Court operates across 10 sites using a circle court model. The Court hears minor offences where the defendant has admitted guilt, and involves the judge, Elders, offender and offender's family in sentencing discussions. Elders are

responsible for discussing with the offender their connection to the marae, their Maori culture, and the impact of their offending behaviour.

In addition, the Sentencing Act 2002 New Zealand requires that the court take into account the offender's cultural background in imposing a sentence or other means of dealing with the offender with a partly or wholly rehabilitative process, and accept submissions on the offender's cultural background, how it may relate to the offence, processes available to resolve issues relating to the offence, and available support to help prevent further offending that might be relevant in sentencing.<sup>lxvi</sup> There has been no systematic evidence collected regarding the use or effect of this legislation in criminal courts in New Zealand.

The literature suggests that of all countries that operate Indigenous courts, Australia has perhaps been most successful in adapting mainstream court processes to reflect Indigenous community values, knowledge and needs.<sup>lxvii</sup>

### 8.3. *Appendix C – Best practice for Indigenous sentencing courts*

The purpose of this document is to describe Indigenous sentencing courts in the Australian context and to identify, based on existing literature and research, the features of those sentencing courts considered essential to their success. It also discusses those features considered desirable, although not essential, to the success of Indigenous sentencing courts.

Features considered **essential** to the success of Indigenous sentencing courts include:

- **Involvement of Elders and Respected Persons** both in the court process and after court is key to achieving community building aims, including growing a sense of pride among Indigenous participants and a sense of ownership in the criminal justice system.
- **Magistrates skilled in encouraging dialogue** and supporting culturally appropriate processes ensure the context of trust and mutual understanding required for improving relationships between the court and Indigenous community is developed. Skilled magistrates are also able to facilitate therapeutic conversations between the defendant and Elders which, in turn, are thought to encourage to behaviour change in the defendant.
- The **culturally appropriate processes** used in Indigenous sentencing courts facilitate sharing of cultural knowledge and information in order to improve sentencing decisions and encourage behaviour change in the defendant.
- **Access to treatment**, intervention and rehabilitation programs that address the causes of offending behaviour appears vital where Indigenous sentencing courts aim to reduce offending among defendants. This is because research suggests culturally sensitive sentencing discussions and practices alone are not enough to reduce recidivism.
- **Appropriate data capture and evaluation** is needed to improve court practices and understanding of the court's capacity to influence behaviour change and improve relations between Indigenous people and the court.

Features considered **desirable** for the success of Indigenous sentencing courts include:

- eligibility criteria that target those individuals who are ready and motivated to change
- informing Elders of the defendant's progress so they better understand their impact through the court
- encouraging a range of stakeholders to participate in the sentencing discussion in order to shift focus from punishment to rehabilitation
- making all court participants aware of their roles and responsibilities to encourage participation, manage potential conflicts of interest, and protect privacy
- providing regular training to all court participants to ensure consistency of process
- providing sufficient support (e.g., counselling, transport) to Elders to enable them to participate fully in the process
- enacting legislation to secure the long-term sustainability of the court
- increasing victim participation to promote understanding and healing.

In providing a summary of best practice in the design and operation of Indigenous sentencing courts, this document aims to serve as a resource for the re-establishment of the Queensland Murri Court. It is intended that the evidence be used in combination with feedback provided through the consultation process with key stakeholders.

## **What are the aims of Indigenous sentencing courts?**

Marchetti and Ransley (2014) describe the aims of Indigenous sentencing courts in the following way:

- to help reduce Indigenous recidivism, imprisonment and deaths in custody
- to promote improved cultural awareness within the justice system, and engagement and understanding of the court process within the Indigenous community.

That is, Indigenous sentencing courts have both criminal justice and community building aims (Jeffries & Stenning, 2014).

## **How do Indigenous sentencing courts work?**

Indigenous sentencing courts engage Elders or Respected Persons in the court process in an effort to improve cultural awareness within the justice system at the point of sentencing (Marchetti, 2009). Elders<sup>3</sup> are responsible for advising the court of cultural, historical and social issues that may be relevant to the defendant's offending and, in some court models, supporting the defendant in the community after sentence.

The courts also encourage open and honest discussion between participants in an effort to better understand the defendant and his or her behaviour, and identify where an alternative and more appropriate sentence to imprisonment might be imposed (Marchetti, 2009). In exploring appropriate alternatives to imprisonment the Indigenous sentencing court model aims to help reduce Indigenous recidivism, imprisonment and deaths in custody.

Features of Indigenous sentencing courts intended to support their key aims and distinguish them from mainstream courts include, the physical features of the court, seating arrangements, court participants, and the language used during proceedings. In particular (Marchetti, 2014; Marchetti & Daly, 2007):

- Indigenous sentencing courts display Indigenous artwork and symbolism
- participants, including the magistrate, typically sit together at a bar table or in a circle, and are not separated by an elevated bench
- court participants include the judicial officer, Elders, the offender and a support person, legal representatives, support services, and (where appropriate or possible) victims of the offence
- an informal process and plain English is used during proceedings to promote understanding and engagement across court participants.

While Indigenous sentencing courts alter court processes and procedures to be more culturally relevant, they continue to operate under the same laws as other courts and do not apply Indigenous customary laws (Aquilina et al., 2009). While Elders may contribute to the sentencing discussion, the judicial officer is ultimately responsible for sentencing an offender.

## **How successful are Indigenous sentencing courts?**

Based on the research conducted to date, it is impossible to draw any firm conclusions regarding the extent to which Indigenous sentencing courts are successful in achieving their criminal justice aims, at least in the short term (Aquilina et al., 2009; Jeffries & Stenning, 2014). For example, an evaluation of the Aboriginal Sentencing Court of Kalgoorlie found a slight increase in reoffending

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<sup>3</sup> The term Elders is used in the remainder of this document to refer to both Elders and Respected Persons.

rates (Aquilina et al., 2009),<sup>4</sup> while in New South Wales (Fitzgerald, 2008) and Queensland (Morgan & Louis, 2010), participation in an Indigenous sentencing court was found to have no impact on reoffending. Methodological weaknesses in the evaluations conducted to date also account for the limited evidence-base.

There is stronger evidence, however, that Indigenous sentencing courts are effective in promoting improved cultural awareness within the justice system, and improving engagement and understanding of the court process within the Indigenous community (Jeffries & Stenning, 2014). For example, an evaluation of the Port Lincoln Aboriginal Conference Pilot in South Australia (OCSAR, 2008) found that the conferencing process was relevant to the local Aboriginal community, and resulted in culturally appropriate sentencing. Participants in County Koori Court reported that the process was more engaging, inclusive and less intimidating than the mainstream court, and encouraged active participation by offenders in the sentencing discussion (Dawkins et al., 2011). Circle Sentencing in New South Wales was observed to break down barriers between Aboriginal people and the courts, produce culturally appropriate sentencing outcomes, and engender a strong sense of achievement among Elders as a result of their participation in the process (CIRCA, 2008).

It is the practices and procedures of Indigenous sentencing courts which are thought to account for their success in improving cultural awareness within the justice system, and encouraging engagement and understanding of the court process within the Indigenous community. Those practices and procedures considered essential to the success of Indigenous sentencing courts, and those found to be present in effective courts, are described below.

### **What features are essential to the success of Indigenous sentencing courts?**

The literature identifies five features considered essential to the success of Indigenous sentencing courts. These are:

1. involvement of Elders and Respected Persons both in the court process, and after court
2. magistrates skilled in encouraging dialogue
3. culturally appropriate processes
4. access to treatment, intervention and rehabilitation programs that address the causes of offending behaviour.
5. appropriate data capture and evaluation.

#### *Involvement of Elders and Respected Persons both in the court process, and after court*

In the Indigenous sentencing court model, Elders are often responsible for assessing the defendant's suitability to participate in the court, providing cultural, historical and other information to the court to assist in decision making, participating in court discussions, and engaging with the defendant after sentence.

Engaging Elders in the court process has been observed to produce a number of positive outcomes for offenders and community, and represents an essential element required for the success of Indigenous sentencing courts in achieving community building aims. For example, involvement of Elders in the sentencing process has been identified as promoting a sense of pride amongst Indigenous participants and a sense of ownership in the criminal justice process (Marchetti, 2009). An evaluation of the Aboriginal Sentencing Court in Kalgoorlie found that

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<sup>4</sup> It is important to note that, when compared to mainstream courts, those offenders who attended the Aboriginal Sentencing Court were younger and more likely to have prior convictions. Both these characteristics as associated with a higher risk of offending. Therefore, it is not clear if the differences in reoffending observed between those offenders who participated in the Aboriginal Sentencing Court and those who participated in the mainstream court is due to the nature of the court or pre-existing differences between the two populations.



watching Elders interact with and be respected by members of the justice system improved the relationship between the court and Aboriginal people (Aquilina et al., 2009). An evaluation of the Koori Court in Victoria identified a number of community building aims that were achieved by including Elders in the court process, including: reinforcing the role of Elders in the community, fostering respect for the judiciary through an inclusive court process, and improving Elders' skills and confidence. (Dawkins et al., 2011).

The Indigenous sentencing court model also assumes that engaging Elders in the court process has the potential to encourage behaviour change in the defendant, including a reduction in offending behaviour. Behaviour change is thought to be linked to the offender's experience of the court process, which is brought about by the engagement of Elders. These include:

- making the court process more suitable, meaningful and relevant for the offender (Marchetti & Daly, 2007; Marchetti & Ransley, 2014)
- facilitating cultural appropriateness in sentencing decisions, and improving perceptions of fairness (Marchetti & Daly, 2007; Marchetti & Ransley, 2014)
- strengthening the accountability of offenders to their community and providing offenders community support after sentence (Dawkins et al., 2011; Marchetti, 2014; Marchetti, 2009)
- renewing or growing respect for Elders and reconnecting offenders with culture (Marchetti, 2014)
- reinforcing the impact of the offending on the community, and presenting a public challenge to that behaviour (Dawkins et al., 2011).

The way in which Elders engage with, or are engaged by, the court process is an important driver of whether these outcomes are achieved. Elders are most likely to be successful in encouraging behaviour change in an offender when they:

- continue to have contact with the offender in the community, for example through participation in community justice groups or Elders' groups (Louis & Morgan, 2010)
- take a balanced approach to engaging with offenders, including reprimanding the offending, but also supporting the defendant to move forward (Daly & Proietti-Scifoni, 2009)
- draw on their own experiences to support and encourage defendants to change (Daly & Proietti-Scifoni, 2009)
- use existing relationships with the offender to encourage change and to express the impact of the offence on the community (Marchetti & Daly, 2007).

Research also suggests Elders are likely to be less effective in achieving the above outcomes when there is a mismatch between defendants' and Elders' clan or family groups (CIRCA, 2008), often because this means Elders are less able to draw from an understanding of the defendant's background or offending (Daly & Proietti-Scifoni, 2009).

It is important to remember, that the arguments above remain theoretical. That is, there is a belief that engaging Elders in the court process will produce behaviour change in offenders, however this is yet to be consistently established through evaluation. That said, the aims of Indigenous sentencing courts have meant that evaluations are largely concerned with changes in offending behaviour, and have generally not explored other ways in which offenders' behaviours may change as a result of participating in an Indigenous court.

There is some debate in the literature regarding the appropriateness of expecting Indigenous sentencing courts to change offending behaviour, particularly given the place of courts in the criminal justice system (Jeffries & Stenning, 2014; Stobbs & MacKenzie, 2009). For example, Jeffries and Stenning (2014:480) state there is 'research evidence that sentencing per se

contributes little to statistical Aboriginal over-incarceration, compared, for instance with decisions by police and prosecutors earlier in the process and, more importantly, the social conditions of Aboriginal people, over which criminal justice systems have little or no control or influence.’ The authors do not believe on this basis that Indigenous sentencing courts should be discontinued, rather they suggest that more research and rigorous evaluations be conducted to identify the true value and capacity of Indigenous courts, and that politicians and courts be better informed about the limited role that sentencing policies and practices can play in reducing Indigenous incarceration.

#### *Magistrates skilled in encouraging dialogue*

To identify culturally appropriate sentences and alternatives to imprisonment, as well as to encourage behaviour change in the defendant and demonstrate respect for culture, the Indigenous sentencing court model relies on a context of trust and mutual understanding between the court and the community in which they operate (Marchetti, 2009; Tomanino, 2004). In particular, this context is created by open and honest discussion between court participants, facilitated by the magistrate as leader of the court process. For this reason, the skills and abilities of the magistrate are crucial to the success of Indigenous sentencing courts.

Aquilina and colleagues (2009) identified that the judicial officer must have good communication skills, the ability to facilitate effective discussion between those present, and a sound understanding of Indigenous culture and concerns. In his review of the Nunga Court in South Australia, the first Indigenous sentencing court established in Australia, Tomanino (2004:12) identified the single, most critical ingredient of the court’s success to be “the free and open exchange of views and comments that are encouraged by the magistrate.”

Some authors argue that the ability to encourage open and honest discussion extends to legal representatives involved in the court. For example, Marchetti and Ransley (2014) state that unless legal representatives allow the process to honour the cultural norms and values of the community in which the court is located, the impact and outcomes of Indigenous sentencing courts will be no different from conventional court processes.

Research has identified that open dialogue between court participants helps to develop understanding and accountability between participants, and improves perceptions that the sentence is fair and appropriate (Marchetti, 2014). Both these elements are thought to encourage behaviour change in the offender. In particular, open and honest communication, being able to speak safely about the offence and its contexts, and to express oneself freely is thought to encourage an exploration of reasons underlying the offending and a self-examination by the defendant of what is required to change (Daly & Proietti-Scifoni, 2009).

Unfortunately, the literature is relatively silent regarding the value in engaging a dedicated magistrate to participate in Indigenous sentencing courts. That work which does exist reports a dedicated magistrate is likely to be an important element in achieving community building aims. For example, an evaluation of Koori Courts in Victoria identified that key to the growth in Elders’ confidence over time was the opportunity to sit with the same judge across a number of hearings (Dawkins et al., 2011), while an evaluation of NSW’s Circle Sentencing found changes in magistrates and prosecutors can put a strain on relationships and can create barriers with communities (CIRCA, 2008).

#### *Culturally appropriate processes*

Indigenous sentencing courts aim to improve cultural awareness within the justice system, as well as engagement and understanding of the court process within the Indigenous community. Implementing culturally appropriate processes has been shown to contribute to the successful achievement of this aim.

Culturally appropriate processes are those which allow cultural knowledge and information about the offender and the context of their offending to be included as evidence in decision making (Marchetti, 2014). Key features of culturally appropriate processes include taking time to talk with each offender about their circumstances, encouraging them to explain and take responsibility for their actions, and treating all court participants with respect (Aquilina et al., 2009).

Culturally appropriate processes are also achieved by modifying the court environment to include Indigenous artwork or symbolism, using plain English and language that is comprehensible to the defendant and others, and allowing court participants to interact in the court process seated together as equals (Marchetti, 2014). The way in which the court is set up in particular has been identified as a mechanism for removing barriers and developing trust, as well as demonstrating a commitment to changing social relations and legal power (Daly & Proietti-Scifoni, 2009).

Research shows the introduction of culturally appropriate processes is more effective than mainstream courts in creating an engaging, inclusive and less intimidating experience for Indigenous court participants (Dawkins et al., 2011), and helps to build trust and respect in the justice system (Aquilina et al., 2009). This was also true for those participants who chose to participate in Indigenous sentencing courts in order to avoid mainstream court. For example, an evaluation of County Koori Courts found that offenders 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 (Dawkins et al., 2011).

In addition, the increased participation of the offender in the court, driven by adherence to culturally appropriate processes, has been shown to be directly related to their perception that the sentences they received were fair and appropriate (Marchetti, 2009). Magistrates identify that culturally appropriate processes allow them to better understand the offender's background, which in turn results in more appropriate sentences (Marchetti, 2009).

*Access to treatment, intervention and rehabilitation programs that address the causes of offending behaviour*

The success of Indigenous sentencing courts in achieving their criminal justice aims, appears strongly linked to their ability to provide access to treatment, intervention and rehabilitation programs, and their capacity to support offenders to participate in treatment.

Under the Indigenous sentencing court model, reductions in re-offending are thought to be, in part, a product of culturally appropriate sentencing decisions. Culturally appropriate sentencing decisions are those which take in to account cultural knowledge and information about the offender and their offending, and seek to address the underlying causes of that offending. Marchetti and Daly (2007:437) state, therefore, 'that without appropriate services or programs that would benefit an offender in a particular community, there is little scope for courts to impose penalties that can be more effective.'

An evaluation of the Kalgoorlie Aboriginal Sentencing Court found that culturally sensitive sentencing alone was not enough to reduce recidivism (Aquilina et al., 2009). In particular, the success of the court was hampered by a lack of Indigenous-specific treatment, intervention and rehabilitation programs and support services, as well as a lack of information sharing between courts and community regarding available programs and services to Indigenous sentencing court participants. Similarly, an evaluation of the New South Wales circle sentencing program suggested that the involvement of Aboriginal community members in the sentencing process is not, of itself, enough to reduce reoffending (CIRCA, 2008).

Instead, it appears to be the combined impact of linking the accused with appropriate support services, along with advice offered by the Elders during the sentencing conversation that is most likely to change behaviour. For example, the positive effect of having an Elder recommend a service provider during court hearings was identified by participants in Koori Courts as a

significant outcome for support services themselves, and for efforts to rehabilitate and address offending behaviour (Dawkins et al, 2011). The evaluation of Koori Courts also identified that there may be some benefit in having service providers immediately available in the courtroom, as this may help to overcome the defendant's fear of engaging with service providers (Dawkins et al., 2011)

#### *Appropriate data capture and evaluation*

The sustainability of Indigenous sentencing courts relies, in part, on their ability to demonstrate to politicians, stakeholders and the community the extent to which the courts are effective in achieving their criminal justice and community building goals (Payne, 2005).

For this reason, Australian Indigenous sentencing courts have been the subject of a number of evaluations. However, all of the evaluations conducted to date have identified limitations in the way in which data was collected or analysed (Marchetti, 2014). As a result, it has been difficult for Indigenous sentencing courts to clearly demonstrate their strengths, limitations and impact.

There are a number of significant challenges in evaluating Indigenous sentencing courts, including the complexity of the program model, the inclusion of both community level and individual level goals, the difficulty in identifying appropriate comparison groups, and challenges in isolating the impact of the court from other factors that might contribute to the outcomes observed (Ross, 2015).

To have the best chance of success in evaluating the impact of Indigenous sentencing courts, it is important to ensure their goals are specific, measurable, and achievable within the scope of the court and its place in the criminal justice system. Marchetti (2009) also notes that to ensure appropriate, comprehensive and rigorous evaluations of the courts are conducted in future, the establishment and operation of Indigenous sentencing courts should include the systemic collection of meaningful and relevant data. Stobbs and MacKenzie (2009:100) argue that, "if Indigenous sentencing courts are convened for the benefit of Indigenous Australians and Indigenous communities...Indigenous people must have a voice in what gets evaluated and why."

#### **What features are desirable in Indigenous sentencing courts?**

Features are described as desirable if they have been identified by the existing literature to have contributed to the success of an Indigenous sentencing court, but do not appear consistently across most of those Indigenous sentencing courts identified as effective.

Desirable features thought to contribute to the success of Indigenous sentencing courts in achieving criminal justice aims include:

- mechanisms to identify those individuals who are ready and motivated to change their offending behaviour (Daly & Proietti-Scifoni, 2009)
- improved monitoring and follow-up of offenders to support Elders in better understanding their impact through the court (Marchetti, 2009)
- including different groups of people in the sentencing discussion in order to change its focus from punishment to rehabilitation and reconciliation (Marchetti, 2009).

Desirable features thought to contribute to the success of Indigenous sentencing courts in achieving community building aims include:

- providing all court participants a clear statement of their roles and responsibilities, including processes for maintaining confidentiality and managing conflict of interests (Aquilina et al., 2009)

- providing regular training to all court participants to ensure there is consistency in process and shared understanding of the court aims and purpose (Aquilina et al., 2009), as well as providing cultural awareness training for magistrates and other non-Indigenous court personnel (Marchetti, 2009)
- providing appropriate and sufficient support for Elders to fully participate in the court process (e.g., transport, debriefing sessions, court facilities and orientation programs) (CIRCA, 2008; Dawkins et al., 2011; Marchetti, 2009)
- enacting legislation to secure the long-term sustainability of the court and ensure consistency of processes and decision making (Aquilina, 2009)
- increasing victim participation in the process to promote understanding and healing (Marchetti, 2009).

## **Conclusions**

Indigenous sentencing courts engage Elders in the court process in an effort to deliver more culturally appropriate justice to Indigenous offenders and improve sentencing outcomes. Evaluations to date suggest that Indigenous sentencing courts are effective in increasing community participation in the court, restoring the authority of Elders, and growing trust between Indigenous communities and the court. Indigenous sentencing courts appear to have only limited impact on reducing recidivism, the over-representation of Aboriginal and Torres Strait Islander offenders in prison and deaths in custody.

Indigenous sentencing courts that are successful in achieving both community building and, to some extent, criminal justice aims, empower Elders to participate fully in the process, rely on magistrates skilled in encouraging dialogue, implement culturally appropriate processes, provide defendant's access to treatment and rehabilitation programs, and use data and evaluation to continually improve their practice and policies.

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## 8.4. *Appendix D – Detailed stakeholder responses*

# Murri Court Consultation Feedback Summary December 2015

### Responses received

A total of 105 responses were received representing the views of the following stakeholder groups:

- Elders and Community Justice Groups (38)
- Magistrates (12)
- CIP staff (9)
- Youth Justice (10)
- Referral services (7)
- Probation and Parole (7)
- Court staff (6)
- Police (6)
- DATSIP
- Queensland Health
- ATSILS

Stakeholders from the following locations provided feedback:

- |               |              |                |
|---------------|--------------|----------------|
| • Toowoomba   | • Mackay     | • Dalby        |
| • St George   | • Caboolture | • Chinchilla   |
| • Townsville  | • Brisbane   | • Oakey        |
| • Rockhampton | • Cleveland  | • Taroom       |
| • Cairns      | • Ipswich    | • Maroochydore |
| • Ayr         | • Mt Isa     | • Gympie       |
| • Wynnum      | • Cherbourg  |                |
| • Richlands   | • Murgon     |                |

### Aims and goals of the Murri Court

In order of priority feedback suggested the goals of the Murri Court should be:

- Linking offenders to treatment service/education or training to address the underlying causes of their offending behaviour (46.7%)
- Reducing recidivism (46.7%)
- Reduce the over-representation of Aboriginal and Torres Strait Islander offenders in prison and juvenile detention (45.7%)
- Increase the engagement of the Aboriginal Community in the court (33.3%)
- Improve relationship between court and Aboriginal and Torres Strait Islander Community (31.4%)
- Provide a culturally appropriate justice system (23.8%)
- Change behaviour/address underlying issues (22.9%)
- Prevent escalation in seriousness of offending (11.4%)
- Reconnection to culture (6.7%)
- Better health and wellbeing (5.7%)

- Encouraging accountability (2.9%)
- Reduce the number of deaths in custody (1%)
- Improve community understanding of the court system (1%)

## How should the effectiveness of the Murri Court be measured?

In order of priority the feedback suggests the most appropriate ways to measure the effectiveness of the Murri court are:

- Recidivism rates (45.7%)
- Engagement with CJG's or support services (34.3%)
- Education/pre-vocational training attendance (16.2%)
- Behavioural change (15.2%)
- Seriousness of re-offending (13.3%)
- Feedback from participants (13.3%)
- Feedback from stakeholders (8.6%)
- Number of contravention of orders (7.6%)
- Health outcomes (6.7%)
- Incarceration rates (4.8%)
- Frequency of offending (3.8%)
- Reconnection with culture (3.8%)
- Quality of life (3.8%)
- Reduction in numbers of Aboriginal and Torres Strait Islanders before the court (2.9%)
- Family attendance at court (1.9%)
- Number of failure to appear (1.9%)
- Number of Aboriginal and Torres Strait Islanders choosing to appear before the Murri Court compared to mainstream court (1.9%)
- Number of offences (1.9%)
- Child safety involvement (1.9%)

## Locations

Feedback overwhelmingly indicated that Murri Court locations should be chosen based on the availability of suitable referral services (67.6%), however some feedback was received that in fact it should be the location of the Murri Court that informs the provision of services.

Other important considerations in choosing Murri Court locations were thought to be:

- The availability of supportive magistrates (47.5%)
- Elder/CJG and community support (33.3%)
- The number of Indigenous people before the court (32.4%)
- Police/Probation and Parole support (22.9%)
- Suitable infrastructure (10.5%)
- Crime rate (9.5%)
- Population of Indigenous people (5.7%)
- Supportive legal practitioners (4.8%)



## Legislation / consistent practice

Should the Murri Court be legislated (all feedback)?

Yes	47.6%
No	22.9%
Undecided	14.3%
No response	15.2%

Magistrates' opinion in relation to legislation:

Yes	50.0%
No	33.3%
Undecided	8.3%
No response	8.3%

- DATSIP supports legislation
- The opinion of ATSILS was divided with 50% in favour and 50% against

Community Justice Groups'/Elders' opinion in relation to legislation:

Yes	52.6%
No	18.4%
Undecided	2.6%
No response	26.3%

Many of those that said no to legislation gave the reason as a need for local flexibility. Many of those who said yes to legislation said yes providing it allowed for local flexibility.

Reasons for desiring legislation included:

- *Ensures core objectives and eligibility criteria are uniform amongst regions*
- *Make the court more permanent / legislation is harder to repeal*
- *Legislation is more likely to bring funding*
- *Compulsory attendance on bail referral programs needs to be legislated*
- *It would ensure adequate funding of the court, including, hopefully, proper funding to operate meaningful "bail programs", and funding for beds in rehabilitation centres, just as was done in the Drug Court.*

*"A clear legislative framework that establishes the Murri Court. For discussion, this legislation could:*

- *Set out the functions and objectives of the Murri Court, the selection of members (Magistrates, Elders and Respected Persons);*
- *Set out eligibility requirements;*
- *Establish jurisdiction;*
- *Provide for the making of practice directions and Murri Court Rules;*
- *Provide for any reporting and or appeal/review rights; and*
- *If necessary provide for any interrelation with other legislation such as the Bail Act 1980, Penalty and Sentences Act 1992.*

*Stand-alone legislation may also provide an opportunity for all relevant factors to be included in the one piece of legislation. For example, the provisions that relate to the 'statutory' CJGs that exist in the Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984 and Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Regulation 1984 are administered by DJAG and could be consolidated in a Murri Court Act."*

## **Dedicated magistrate**

- 71.4% of responses favoured a dedicated magistrate
- 4.8% of responses said a dedicated magistrates it not required
- 23.8% provided no response to this question

23.8% of responses said that a dedicated magistrate was one of the positives of the former Murri Court/ISL.

*"Maybe there could be a review process built in as per conventional jurisprudence practice to ensure that bias that might creep in overtime does not become problematic."*

*"Generally yes but more important for each magistrate sitting to be trained in cultural awareness and have real interest in the area and have a good working relationship with other members of the team and especially the Elders/CJG and to be prepared to work in a team environment despite members of the team having specific roles and responsibilities."*

## **Training/clarity regarding roles and responsibilities**

The feedback is strongly supportive of cultural awareness and Murri Court training:

- 77.1% consider it important for magistrates to undergo specialised Murri Court training
- 62.9% of responses indicate a desire for all court staff should undergo specialist training

Although the question was not asked directly as to whether other stakeholder training was required, 10.5% of responses indicated that a lack of stakeholder training was an issue with the former Murri Court/ISL.

## **Elder involvement**

By far the most important factor that was considered to have contributed to the success of the former Murri Court/ISL was the involvement of Elders (50%). It was however evident that the nature and extent of Elder involvement varied with location.

21.9% said that Elder involvement was too limited:

- *"Elders need to attend pre-court meeting"*
- *"Elders do not attend court"*
- *"The Elder in court is not the Elder who wrote the report"*
- *"No elders in Woorabinda or Rockhampton"*
- *"Elders are not confident in expressing an opinion"*
- *"Elders do not speak in court"*

## **Domestic violence applications**

## Should the Murri Court hear domestic violence applications?

Yes	29.5%
No	42.9%
Undecided	6.7%
No response	21.0%

The main reasons given for not wishing to hear domestic violence applications were:

- the potential for conflict of interest to occur with the Elders
- a significant additional burden on Elders
- Domestic violence legislation is too complicated
- vicarious trauma
- the domestic violence court is and should remain a closed court

## Defendant eligibility for Murri Court

- 37.1% said a plea of guilty should be required
- 1.9% said offenders should be eligible pre-plea or on sentence after a not guilty plea
- 34.5% said that the defendant should not need to be at risk of jail, 20.0% said the defendant should be risk of jail
- 30.5% of responses suggested defendants should be willing to engage/accept conditions before being referred to the Murri Court.
- 16.2% said that eligibility should be assessed on a case-by-case basis
- 9.5% of responses indicated that the defendant should have a connection to the local community
- 4.8% of responses suggested that South Sea Islanders could be eligible for the Murri Court if the CJG agree
- 1.9% of responses indicated that non-Indigenous people with ties to the community could be eligible for the Murri Court

An alternative suggested in a couple of responses was that eligibility should be determined by assessment of the potential success of a referral. That is, does the defendant have a health or social need that could be assisted by the involvement of Elders or a referral to service provider.

## Offence eligibility

- 43.8% of responses indicated all offences that can be dealt with by the Magistrates Court could be dealt with by the Murri Court. 1% of responses suggested only summary offences should be dealt with in the Murri Court
- 23.8% want sexual offences excluded
- 12.4% want serious offences excluded
- 9.5% want domestic violence offences excluded

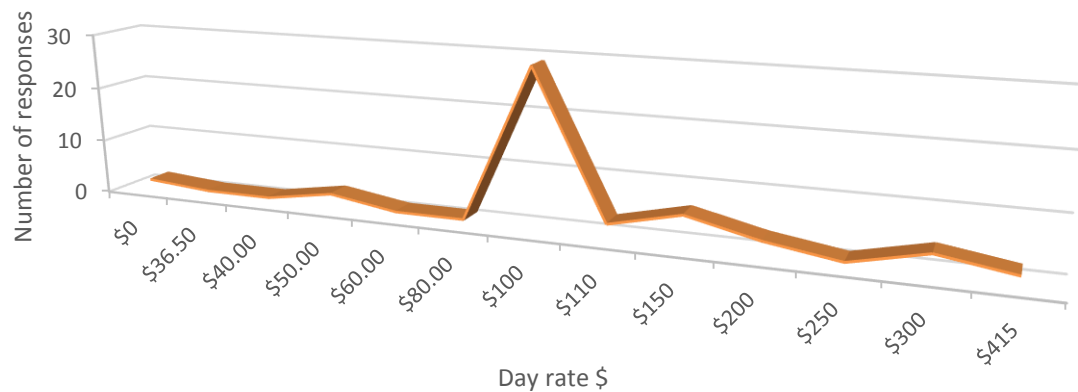
## In custody defendants

- 17.1% of responses indicated the defendant should be on bail or eligible for bail
- 40.4% said defendants in custody should be eligible (providing Elders can interview defendants)
- 13.5% said defendants in custody should not be eligible, mainly because they cannot access support services.

## Elder fees

61.0% of responses agreed that Elders should be paid a fee, 6.7% said they should not.

The amount considered appropriate varied from \$0 to \$414.41 per day (rate paid in Victoria) and was distributed as below:



Appendix D Figure 8 Preferred amount for Elders' fees

## Courtroom

- 53.3% of responses suggested all participants in the Murri Court should be seated around a table
- 12.4% of responses suggested all participants should sit around a table, with the magistrate taking the bench for sentence
- 5.7% of responses suggested Elders should be seated on the bench with the magistrate
- 3.8% suggested the court sit as it does in a mainstream

Should Elders be provided with uniforms?

Yes	52.4%
No	2.9%
No response	38.1%
Let the Elders decide	6.7%

The most favoured uniform type was a sash.

Should magistrates wear robes (all feedback)?

Yes	21.0%
No	38.1%
Indifferent	6.7%
No response	33.3%
Let magistrates decide	1.0%
Let the Elders decide	1.0%

Should magistrates wear robes (magistrates' feedback)?

Yes	33.3%
No	25.0%
No response	16.7%
Let the Elders decide	8.3%
Let magistrates decide	8.3%
Indifferent	8.3%

Should police wear uniforms?

Yes	19.0%
No	36.2%
Indifferent	6.7%
Unsure	1.9%
No response	34.3%
Let the Elders decide	1.9%

Police Prosecutions consider the not wearing of uniforms to be less formal which may be appropriate.

## Referral services

In order of priority the following referral services were considered important:

- Health (61.0%)
- Alcohol and drug treatment (37.1%)
- Education and training (33.3%)
- Mental health support (25.7%)
- Residential rehabilitation programs (20.0%)
- Cultural programs (21%)
- Counselling (20%)
- Housing (18.1%)
- Relationship/family support (17.1%)
- Domestic violence (16.2%)
- Life skills/financial skills (15.2%)
- Anger management (10.5%)
- Youth programs (6.7%)

7.6% of responses suggested that referral services need to be culturally appropriate.

A consistent theme in the feedback provided is a desire for service providers to provide feedback in relation to the defendant's progress.

## Ceremonies

Should ceremonies occur in the Murri Court for significant days/event?

Yes	63.8%
No	2.9%
Undecided	2.9%
No response	24.8%
Let the Elders decide	5.7%

The opinion was generally that each regional area should decide if ceremonies are appropriate and the type of ceremonies they should have.

Suggestions included:

- Smoking ceremonies
- Murri Court opening ceremonies
- NAIDOC ceremonies

Whilst not related to ceremonies there was support among several groups for the uses of honour boards to acknowledge the service of Elders to the community.

## **Victims**

Responses generally supported the use of Victim Impact Statements with some suggestion that a process similar to youth justice conference could be a way for victims to participate in the Murri Court.

## **Suggested alternative models**

*“Consideration may be given to establishing the Murri Court as a more formal body along the lines of the Family Responsibilities Commission that operates in welfare reform community areas.*

*This ‘type’ of Murri Court could operate as a more community based court where part of the sentencing involves some form of community conferencing, like a court/police order conferencing that previously existed under the Youth Justice Act 1992, or the conferencing under the Justice Mediation Program, part attendance at some support service and entering into a formal case management/responsibilities agreement with the Court. This type of arrangement may have the benefit of, especially in smaller remote/discrete communities by allowing victim-offender conferencing, establishing a local authority structure and may, because it is intended to be more informal and culturally appropriate allow for a more intimate relationship between the offender and the justice system.*

*A more formal ‘type’ of Murri Court could also consider acting as an advisory and/or participatory body as part of a diversionary court program. This Murri Court could act like or link into systems/programs run by previous Drug Court, Special Circumstances Court, Domestic Violence Court. This may provide offenders with links to mental health services and/or police diversionary programs.*

*Importantly, any Murri Court process or procedure should consider tailored responses to the particular needs of:*

- *women and girls (given increased over-representation of both in the prison system);*
- *family/gender issues;*
- *‘at risk’ offenders (physical or psychological issues)”.*

## 8.5. Appendix E – Proposed aims and goals of Murri Court

### Theory underpinning Murri Court

The sentencing conversation (which delivers procedural and distributive justice) and the support provided (including from Elders and support services) to address the underlying contributors of offending encourages behaviour change in the defendant (ie less offending / less serious offending).

Activities	Aims		Program Goals		Broader goals
<ul style="list-style-type: none"> <li>Elders are assigned clear roles and responsibilities within the Court process</li> <li>Elders receive training to increase knowledge and understanding of the Court process</li> <li>Inclusive and informal court process</li> <li>Magistrate invites Elders to contribute to Court proceedings</li> <li>Victims are invited to provide a Victim Impact Statement</li> </ul>	<p><b>Community participation</b> Murri Court aims to enable members of the Aboriginal and Torres Strait Islander community to participate in the court process, including:</p> <ul style="list-style-type: none"> <li>Aboriginal and Torres Strait Islander Elders and Respected Persons</li> <li>the defendant</li> <li>the defendant’s support person (where present)</li> <li>other members of the Aboriginal and Torres Strait Islander community where present in Court</li> <li>witness and victims (if desired)</li> </ul>	<p>by doing this we will...</p>	<ul style="list-style-type: none"> <li>Improve Aboriginal and Torres Strait Islander court Elders’ and Respected persons’ confidence and knowledge in the court process</li> <li>Improve Aboriginal and Torres Strait Islander defendants’ engagement with the court process</li> <li>Improve Aboriginal and Torres Strait Islander defendants’ understanding of the court process</li> <li>Sentencing decisions reflect consideration of defendants’ cultural and personal circumstances as contributors to offending</li> <li>Sentencing conditions facilitate the defendant’s</li> </ul>	<p>By achieving these goals we will contribute to...</p>	<ul style="list-style-type: none"> <li>Improving the appropriateness of the criminal justice system for Aboriginal and Torres Strait Islanders by being inclusive and responsive to culture</li> <li>The reduction of Aboriginal and Torres Strait Islander overrepresentation in the criminal justice system</li> </ul>
<ul style="list-style-type: none"> <li>Inclusive and informal court process encourages open discussion</li> <li>Roundtable signifies all participants are equal</li> <li>Aboriginal and Torres Strait Islander symbols and artefacts are represented in the Court</li> <li>Murri Court Entry Report and Murri Court Sentencing Report provided to the Court</li> </ul>	<p><b>A culturally appropriate process</b> Murri Court aims to deliver a culturally appropriate court process that respects and acknowledges Aboriginal and Torres Strait Islander culture.</p>		<ul style="list-style-type: none"> <li>Increasing Aboriginal and Torres Strait Islander communities’ trust in the criminal justice system</li> </ul>		

<ul style="list-style-type: none"> <li>• Preparation of Murri Court Entry Report (then provided to the Court)</li> <li>• Court adjourned to enable defendants to engage with community-based support services</li> </ul>	<p><b>Referral to support services</b> Murri Court aims to refer defendants to support services that address the underlying contributors to their offending.</p>		<p>continued engagement with support options in the community</p> <ul style="list-style-type: none"> <li>• Sentencing decisions divert defendants from the prison system</li> </ul>		
<ul style="list-style-type: none"> <li>• Provision of Murri Court Sentencing Report to the court</li> </ul>	<p><b>Improved sentencing outcomes</b> Magistrate is better informed regarding:</p> <ul style="list-style-type: none"> <li>• the defendant’s cultural and personal circumstances and needs moving forward, and</li> <li>• impacts on the victim (if victim chooses to disclose).</li> </ul>		<ul style="list-style-type: none"> <li>• Improve health and wellbeing</li> <li>• Reduce the frequency and seriousness of any subsequent contact Murri Court defendants may have with the criminal justice system</li> </ul>		

*Appendix E Table 1 Proposed aims and goals of Murri Court*



## Endnotes

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