

# Magistrates Courts

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## Practice Direction No. 2 of 2016 (amended)

Issued: 13 April 2016

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### Queensland Murri Court

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#### Definitions

- 1) The following definitions apply in this Practice Direction unless otherwise stated:
  - a) *Murri Court Elder or Respected Person* means a member of a community justice group who identifies as Aboriginal and/or Torres Strait Islander, who is nominated to participate in a Murri Court assessment panel, and/or to sit with the Murri Court magistrate during Murri Court mentions and Murri Court sentence;
  - b) *Murri Court magistrate* is the magistrate responsible for convening Murri Court and remains the final authority for imposing bail conditions and sentences according to law;
  - c) *Murri Court panel* means a minimum of one and a maximum of two persons comprising either Murri Court Elders or Respected Persons or a combination to sit with the Murri Court magistrate at Murri Court sittings;
  - d) *eligibility assessment* refers to the process for determining a defendant's eligibility to participate in Murri Court;
  - e) *referring magistrate* means the magistrate who determines the defendant's eligibility to be referred to Murri Court and sets the date of the first Murri Court mention;
  - f) the *Murri Court assessment panel* means a minimum of one and a maximum of three Murri Court Elders and/or Respected Persons, and the community justice group representative selected to determine the defendant's suitability to participate in Murri Court and prepare the Murri Court Entry Report and Murri Court Sentence Report.
  - g) *Murri Court Entry Report* means the report prepared by the Murri Court assessment panel identifying:
    - i) the defendant's suitability to participate in Murri Court;
    - ii) the treatment and support services to which a defendant will be referred in order to address the factors thought to contribute to his or her offending;
    - iii) the defendant's personal and cultural circumstances.
  - h) *Murri Court pre-sentence referral process* refers to the period prior to sentence during which the defendant's matter is adjourned to enable him or her to be referred to treatment and support services to address the underlying contributors to his or her offending;

- i) *Murri Court progress mention* refers to the Murri Court mention at which a defendant's progress during the Murri Court pre-sentence referral process is reported to Murri Court;
- j) *Murri Court Progress Report* means the report prepared by service providers to which the defendant was referred identifying:
  - i) the defendant's attendance and engagement with the service;
  - ii) any additional or alternative treatment services required;
- k) *Murri Court participants* refers to those individuals directly engaged in Murri Court mentions and, in addition to the Murri Court magistrate, may include, the Murri Court panel, the defendant, the defendant's lawyer, the prosecutor, the victim or his or her representative (where elected by the victim), community justice group representatives, representatives of relevant support services, Queensland Corrective Services representatives and Youth Justice representatives. It excludes individuals seated in the public gallery unless they are invited by the Murri Court magistrate to speak;
- l) *Murri Court Sentence Report* means the report prepared by the Murri Court assessment panel just prior to the Murri Court sentence. The Murri Court Sentence Report will provide:
  - i) an update on the defendant's progress with regard to the treatment and support services to which the defendant was referred; and
  - ii) an update on the defendant's personal and cultural circumstances for the purpose of providing a broader context in which his or her offending can be understood.
- m) *Murri Court sentence* refers to the Murri Court hearing at which the defendant is sentenced.

### **Purpose**

- 2) The purpose of this Practice Direction is to set out those procedures identified as best practice in the operation of Murri Court. While it is recognised that local conditions may not meet, or require adjustment to, the practices and procedures set out in this Practice Direction, adherence to this Practice Direction is encouraged, wherever possible.
- 3) Nothing in this Practice Direction is to be taken as removing or limiting the discretion of a magistrate.
- 4) For the purpose of this Practice Direction the term Magistrates Court means the Childrens Court when dealing with a young offender where a Youth Murri Court is available.

### **Application and commencement**

- 5) This Practice Direction applies to all matters heard in Murri Court after its commencement in each location.

### **Purpose and aims of Murri Court**

- 6) Murri Court provides for the pre-sentence diversion of eligible defendants to address the underlying contributors to their offending, and encourages magistrates, when making a sentencing decision, to give consideration to:
  - a) cultural and other advice provided by Elders and Respected Persons; and

- b) a defendant's engagement with treatment services and other support during the pre-sentence referral process.
- 7) The activities and processes of Murri Court aim to:
- a) engage members of the Aboriginal and/or Torres Strait Islander community in the Murri Court process;
  - b) administer a court process that respects and acknowledges Aboriginal and/or Torres Strait Islander culture;
  - c) refer defendants to services and other support in the community in order to address the underlying contributors to their offending;
  - d) ensure that, at sentence, the magistrate is informed regarding the defendant's cultural and personal circumstances, efforts at rehabilitation and his or her ongoing support needs.
- 8) Murri Court has a number of goals:
- a) to reduce the frequency and seriousness of any subsequent contact Murri Court defendants might have with the criminal justice system;
  - b) to encourage defendants to take responsibility for their offending, and increase defendants' awareness of the consequences of their actions for victims and the community;
  - c) to encourage magistrates to consider at sentence how a defendant's cultural and personal circumstances contribute to his or her offending;
  - d) to encourage defendants' attendance and engagement with support services while on bail;
  - e) to facilitate improvements in defendants' self-reported physical and psychological health, and quality of life;
  - f) to improve defendants' engagement with, and understanding of, the court process;
  - g) to improve Aboriginal and Torres Strait Islander Elders' and Respected Persons' confidence and knowledge in the court process.
- 9) In achieving these goals, Murri Court hopes to contribute to:
- a) improvements in the appropriateness of the criminal justice system for Aboriginal and/or Torres Strait Islander defendants by being inclusive and responsive to culture;
  - b) the reduction of Aboriginal and/or Torres Strait Islander defendants' overrepresentation in the criminal justice system;
  - c) increasing Aboriginal and/or Torres Strait Islander communities' confidence in the criminal justice system;
  - d) growing a fair, safe and just Queensland.

## **Objectives**

- 10) The objectives of this Practice Direction are to:
- a) provide effective and culturally appropriate processes for the criminal justice response to Aboriginal and/or Torres Strait Islander defendants, through Elders' and Respected Persons' and community justice groups' involvement in Murri Court; and
  - b) maintain transparency and consistency in the practice of Murri Court, and to ensure that all court participants are aware of, and remain focused on, the purpose of Murri Court.
- 11) Appendix 1 of this Practice Direction provides a pictorial representation of the Murri Court process.

## **Eligibility assessment and referral procedure**

- 12) The referral of a defendant to Murri Court may only be made with the defendant's consent, and may occur in the following instances:
- a) self-referral by a defendant;
  - b) referral by a defendant's legal representative;
  - c) referral on recommendation by the community justice group representative;
  - d) at the instigation of a magistrate.
- 13) An eligibility assessment form, completed by the referring party, is to be submitted to the Magistrates Court in order to seek a referral to Murri Court.
- 14) A defendant may only be referred to Murri Court if the magistrate is satisfied the following eligibility criteria are met:
- a) the defendant identifies as an Aboriginal and/or Torres Strait Islander person or has a kinship or appropriate connection to an Aboriginal and/or Torres Strait Islander community, either in Queensland or elsewhere; and
  - b) the offence falls within the jurisdiction of the Magistrates Court or Childrens Court, that is the charges can be finally determined in the jurisdiction; and
  - c) a guilty plea is entered or the defendant intends to plead guilty; and
  - d) the defendant is on bail or has been granted bail; and
  - e) the defendant consents to participate fully in the Murri Court process.
- 15) The defendant must provide written informed consent for the disclosure of personal information, and exchange of personal information between the court and any relevant government departments, non-government organisations or persons involved in the delivery of Murri Court.
- 16) Any contested charges will follow the usual progress of such matters through court processes simultaneously with matters subject to Murri Court. This clause will not apply where a group of charges is related.
- 17) Where the referring magistrate is satisfied the criteria in paragraph 14 are met, there is a presumption in favour of adjourning the matter to Murri Court.

- 18) The court may adjourn the matter and grant bail to the participant in accordance with the *Bail Act 1980* for a period between two and four weeks from the date of referral to allow sufficient time for the assessment to occur.
- 19) In determining whether to grant bail the magistrate may consider any submissions made by a representative of the community justice group pursuant to section 16(2)(e) of the *Bail Act 1980*.
- 20) Where a magistrate decides not to refer a defendant to Murri Court, the magistrate will provide his or her reasons to the defendant.
- 21) Where a defendant is not referred to Murri Court, the matter will proceed as per usual court process.
- 22) The original copy of the signed eligibility assessment form will remain on the defendant's court file. The referring magistrate's court services officer will provide a copy of the signed eligibility assessment form and the defendant's bail undertaking to the Community Justice Group representative.

### **Murri Court Entry Report**

- 23) The purpose of the Murri Court Entry Report is to:
  - a) assess the defendant's suitability to participate in Murri Court;
  - b) identify treatment and support services to which the defendant will be referred in order to address those factors thought to be contributing to his or her offending; and
  - c) outline the defendant's personal and cultural circumstances for the purpose of providing a broader context in which his or her offending can be understood by Murri Court.
- 24) To decide whether the defendant is suitable to participate in Murri Court, the assessment panel must determine:
  - a) whether the defendant is an Aboriginal and/or Torres Strait Islander person; or
  - b) has a kinship or appropriate connection with an Aboriginal and/or Torres Strait Islander community; and
  - c) whether the defendant is willing to fully participate in the Murri Court process and referrals to treatment and other support identified in the Murri Court Entry Report;
  - d) whether the nature of the defendant's offending is such that the assessment panel feel able to support the defendant, whether directly or indirectly through referrals, to address the underlying contributors to his or her offending.
- 25) The assessment panel may also have regard to:
  - a) whether the defendant accepts responsibility for his or her offending;
  - b) whether the defendant will be respectful of a victim;
  - c) whether the defendant will be respectful of the Elders and Respected Persons, community justice group members, and other Murri Court participants;

- d) whether the defendant will listen to and understand what the Murri Court participants are communicating to him or her;
  - e) whether the defendant wants to make amends for the crime he or she has committed;
  - f) the support the defendant has within the community;
  - g) the likely benefits of the Murri Court process for the defendant;
  - h) whether the defendant self-reports unresolved alcohol and drug issues, or unresolved mental health issues, to the extent that it would limit his or her capacity to fully participate in Murri Court;
  - i) whether the defendant is motivated to change his or her offending;
  - j) whether the defendant is willing and able to engage with support offered through the Murri Court referral process.
- 26) The following information should be included in the Murri Court Entry Report, except in circumstances where a defendant chooses not to disclose such information to the Murri Court assessment panel:
- a) the defendant's name, address and date of birth;
  - b) the defendant's family group and traditional homelands (if known);
  - c) the defendant's family background;
  - d) the defendant's personal circumstances, including marital status and parental responsibilities;
  - e) the defendant's employment and education history;
  - f) the defendant's current income and accommodation;
  - g) the defendant's self-reported health and quality of life;
  - h) the defendant's self-reported current and former alcohol and other drug use;
  - i) whether the defendant reports having been diagnosed with a mental illness, cognitive impairment or other disability;
  - j) factors identified by the defendant as contributing to his or her offending;
  - k) the defendant's personal goals;
  - l) services the defendant has identified as currently, or previously, providing treatment or other support to the defendant;
  - m) the treatment and/or support services to which the defendant will be referred;
  - n) whether there is a potential conflict of interest among the assessment panel and defendant.

### **Participants in the assessment process**

- 27) The following people are required to participate in the assessment process:

- a) the defendant;
  - b) the primary carer of the defendant if the defendant is a young person;
  - c) a minimum of one, and a maximum of three, Murri Court Elders and/or Respected Persons; and
  - d) the community justice group representative.
- 28) The following persons may also participate in the assessment panel:
- a) a support person nominated by the defendant and approved by the community justice group;
  - b) government agencies and service providers, when invited by the assessment panel and subject to availability.
- 29) The community justice group representative is responsible for providing the name of the defendant to those Murri Court Elders and/or Respected Persons nominated to sit on the Murri Court assessment panel. This is to enable the Murri Court Elders and/or Respected Persons to identify if they have a potential conflict of interest prior to the Murri Court assessment panel being convened.
- 30) The community justice group representative is also responsible for providing the name/s of the Murri Court Elders and/or Respected Persons nominated to sit on the assessment panel to the defendant. The defendant must notify the community justice group representative of any objection he or she may have to a Murri Court Elder and/or Respected Persons as soon as reasonably practicable, and preferably at least 48 hours, prior to the Murri Court assessment panel being convened.
- 31) If it is necessary to replace a Murri Court assessment panel member, the community justice group representative will nominate a replacement and advise the parties accordingly.

**Procedure for the convening a Murri Court assessment panel**

- 32) The community justice group representative is responsible for convening the Murri Court assessment panel. This should occur as soon as practicable and no later than 72 hours prior to the first Murri Court mention date.
- 33) The Murri Court assessment panel is comprised of a minimum of one, and a maximum of three, Murri Court Elders or Respected Persons. The community justice group representative is encouraged to consider an appropriate gender and age balance for the panel based on the individual referral.
- 34) The Murri Court assessment panel will prepare a Murri Court Entry Report outlining the defendant's suitability to participate, and including information relevant to the defendant's cultural and personal circumstances, and identifying treatment and support services to which the defendant will be referred.
- 35) The community justice group representative will provide a copy of the Murri Court Entry Report to the defendant or the defendant's legal representative (if any), the prosecutor, the Murri Court magistrate, the Murri Court panel, and Probation & Parole or Youth Justice at least 48 hours prior to the first Murri Court mention.
- 36) Where relevant and appropriate, the community justice group representative may also provide a copy of the Murri Court Entry Report to government and non-government service

providers to which the defendant is referred to assist them in understanding the defendant's personal circumstances and providing ongoing support.

### **Conduct of Murri Court**

37) Murri Court is to be conducted in a way that:

- a) enables Murri Court to address the factors contributing to a defendant's offending;
- b) enables Murri Court to take in to account personal, family and cultural considerations when dealing with the defendant, and to balance the needs of the defendant's community and the wider community generally;
- c) encourages the full participation of the defendant and enables him or her to have input during Murri Court mentions and sentence;
- d) uses simple terms and confirms the defendant's understanding of the process; and
- e) provides all Murri Court participants, including the victim when present, with an opportunity to address the court about the defendant's offending.

38) The Murri Court magistrate may terminate or adjourn the proceedings at any time.

39) The defendant may withdraw from Murri Court at any time. Where a defendant withdraws his or her consent to participate in Murri Court, the Murri Court magistrate will adjourn the matter to the Magistrates Court.

### **Court layout, etiquette and cultural considerations**

40) Murri Court should be set up such that all participants feel able to fully participate in the court process. This most typically will require the Murri Court magistrate, Murri Court Elders or Respected Persons, prosecutor, defendant, the defendant's representative (if any), and the community justice group representative to be seated at the same level and in a circle when hearing Murri Court matters. It may also allow those present at court to remain seated when making submissions, and for representatives of the Queensland Police Service to appear in civilian dress. Murri Court Elders or Respected Persons may choose to wear a Murri Court uniform, and Murri Court magistrates may choose to forego their robes when sitting in Murri Court.

41) The Murri Court magistrate, and the Murri Court panel in consultation with the Murri Court magistrate, may choose to invite government and non-government service providers to participate in Murri Court where this is considered appropriate.

42) Symbols, flags, artwork and/or artefacts of significance to the Aboriginal and/or Torres Strait Islander community should be present in the room where Murri Court is held.

43) Murri Court Elders or Respected Persons should be invited by the Murri Court magistrate to conduct a ceremonial welcome to all court participants, and to perform any other duties as required by their position as an Elder or Respected Person of Murri Court.

### **Murri Court panel**

44) A Murri Court panel will sit with the Murri Court magistrate during all Murri Court mentions and the Murri Court sentence. The Murri Court panel is comprised of a minimum of one, and a maximum of two, Murri Court Elders and/or Respected Persons.

45) The community justice group representative is responsible for:



- a) identifying Elders or Respected Persons to participate as Murri Court panel members;
  - b) notifying Murri Court panel members of Murri Court sitting dates; and
  - c) supporting Elders or Respected Persons serving as Murri Court panel members.
- 46) Wherever possible, the community justice group representative should aim to ensure a defendant faces the same Elders or Respected Persons at each Murri Court mention and the Murri Court sentence at which the defendant appears.
- 47) The community justice group representative is also responsible for notifying the Murri Court panel members of the defendant's identity before panel members are invited to participate in Murri Court mentions and/or a Murri Court sentence.
- 48) A Murri Court panel member may be directed at any time by the Murri Court magistrate to cease participating in a Murri Court mention or a Murri Court sentence if involvement of the Elder or Respected Person is considered detrimental to the aims and objectives of Murri Court.
- 49) A Murri Court panel member may excuse himself or herself from a Murri Court mention or a Murri Court sentence at any time if he or she considers his or her involvement may be detrimental to the aims and objectives of Murri Court or for any other reason.
- 50) The defendant has the right to know who will participate as Murri Court panel members. The community justice group representative is responsible for providing the name/s of the Murri Court Elders and/or Respected Persons nominated to sit as Murri Court panel members to the defendant. The defendant must notify the community justice group representative of any objection they have to a Murri Court Elder and/or Respected Persons as soon as reasonably practicable, and preferably at least 48 hours, prior to the Murri Court mention or Murri Court sentence.
- 51) If it is necessary to replace a Murri Court panel member, the community justice group representative will nominate a replacement and advise the parties accordingly.

### **First Murri Court mention**

- 52) On a defendant's first appearance before Murri Court, the Murri Court magistrate will determine the defendant's suitability to participate in the Murri Court pre-sentence referral process having regard to the Murri Court Entry Report and all other relevant facts and circumstances, and any submissions by the parties.
- 53) A finding of suitability by the assessment panel does not prevent the Murri Court magistrate from deciding not to allow a defendant to participate in Murri Court. Where the Murri Court magistrate considers a defendant unsuitable for Murri Court, the magistrate will provide his or her reasons to the defendant.
- 54) Where the defendant has been found unsuitable, the Murri Court magistrate will arrange for the defendant's matter to be listed on the next available date in the Magistrates Court.
- 55) On a defendant's first appearance before the Murri Court magistrate, and where the defendant has been found suitable to participate in the Murri Court pre-sentence referral process, the Murri Court magistrate will review the Murri Court Entry Report.
- 56) The Murri Court magistrate is responsible for endorsing the Murri Court Entry Report.
- 57) The Murri Court magistrate may choose to amend the Murri Court Entry Report. Where the Murri Court magistrate chooses to amend the Murri Court Entry Report, he or she must

provide reasons for this decision and seek the defendant's consent to make the amendment/s.

- 58) If the Murri Court magistrate decides not to endorse the Murri Court Entry Report, the Murri Court magistrate may request that the assessment panel revise the Murri Court Entry Report. The Murri Court Magistrate should identify those elements of the Murri Court Entry Report about which he or she has concerns.
- 59) Where the defendant has been found suitable, the Murri Court magistrate may adjourn the matter and grant bail or vary/extend the grant of bail to the defendant in accordance with the *Bail Act 1980* in the usual way.
- 60) The Murri Court should impose a condition under section 11(9) of the *Bail Act 1980* that the defendant participate in Murri Court.
- 61) In determining whether to grant bail the magistrate may consider any submissions made by a representative of the community justice group pursuant to section 16(2)(e) of the *Bail Act 1980*.
- 62) The Murri Court magistrate will also set a date for a Murri Court progress mention that is generally no more than six weeks after the first Murri Court mention.
- 63) The community justice group representative may, with the defendant's consent, provide a copy of the Murri Court Entry Report to those service providers to whom the defendant will be referred.

#### **Murri Court pre-sentence referral process**

- 64) Once entering the Murri Court pre-sentence referral process, the defendant is subject to the supervision and direction of the community justice group.
- 65) The community justice group is to have principal responsibility for referring the defendant to support services identified in the Murri Court Entry Report.

#### **Murri Court Progress Report**

- 66) The purpose of the Murri Court Progress Report is to update the Murri Court magistrate regarding the defendant's progress while participating in the Murri Court pre-sentence referral process, and to make recommendations regarding the defendant's continued participation in Murri Court.
- 67) Service providers to which the defendant has been referred are responsible for completing the Murri Court Progress Report and returning it to the community justice group representative. Where the community justice group is responsible for providing a service to the defendant, a community justice group representative will complete the Murri Court Progress Report.
- 68) In completing a Murri Court Progress Report, the service provider or community justice group representative is expected to identify:
  - a) the defendant's name, address, and date of birth;
  - b) the date on which the defendant was first referred to the service;
  - c) the defendant's goals and possible timeframe;
  - d) how often the defendant has attended scheduled appointments;

- e) the reasons given by the defendant for non-attendance (where this occurs) and whether the defendant has rescheduled his or her appointment;
- f) the next scheduled appointment date;
- g) whether the defendant's engagement with the service, and progress since commencement, is considered to reflect what is required to achieve his or her treatment goals;
- h) any other comments relevant to the defendant's continued engagement with the service;
- i) where there is a need to refer the defendant to alternative or additional support;
- j) whether it is recommended that the defendant continue his or her participation with the service.

69) Wherever possible, the community justice group representative will provide copies of the Murri Court Progress Report to the defendant or the defendant's legal representative (if any), the prosecutor, the Murri Court magistrate and the Murri Court panel at least 48 hours prior to the Murri Court mention.

### **Murri Court progress mention**

70) The defendant will be required to return to Murri Court for regular Murri Court progress mentions after commencing the pre-sentence referral process.

71) A Murri Court progress mention will be conducted at such intervals as determined by the Murri Court magistrate (having regard to the frequency of Murri Court sittings in the Murri Court location), and usually on a recommendation by the community justice group, but generally at least every 6 weeks while participating in Murri Court.

72) The prosecutor, the defendant's legal representative (if any) or the defendant may make submissions about the appropriate timeframes for Murri Court progress mentions.

73) At each Murri Court progress mention the Murri Court magistrate will invite the Murri Court panel to speak to the defendant. The Murri Court panel may explain to the defendant the impact that the offending has on the community and his or her family, acknowledge the steps the defendant has taken to address the factors contributing to his or her offending, and comment where further action can be taken by the defendant.

74) Other Murri Court participants will be invited by the Murri Court magistrate to provide information relevant to the defendant's offending and progress in addressing the factors contributing to his or her offending.

75) The Murri Court magistrate may then ask the defendant how the court might assist the defendant to continue to address the factors contributing to his or her offending, and support the defendant to stop offending in the future.

76) At each Murri Court progress mention the Murri Court magistrate will consider the defendant's continued participation in Murri Court. The prosecutor and the defendant's legal representative (if any) or the defendant, may make submissions about this issue, including submissions about the Murri Court pre-sentence referral process.

### **Murri Court Sentence Report**

- 77) At the conclusion of the Murri Court pre-sentence referral process, the Murri Court assessment panel is responsible for preparing a Murri Court Sentence Report.
- 78) The purpose of the Murri Court Sentence Report is to provide an update on:
- a) the defendant's progress with regard to the treatment and support services to which the defendant was referred; and
  - b) changes in the defendant's personal and cultural circumstances for the purpose of providing a broader context in which his or her offending can be understood by Murri Court.
- 79) The community justice group representative is responsible for convening an assessment panel for the purpose of completing a Murri Court Sentence Report. This should occur as soon as practicable after the conclusion of the Murri Court pre-sentence referral process and no later than 72 hours prior to the Murri Court sentence date.
- 80) The community justice group representative will provide a copy of the Murri Court Sentence Report to the defendant or the defendant's legal representative (if any), the prosecutor, the Murri Court magistrate, the Murri Court panel, and Probation & Parole or Youth Justice at least 48 hours prior to the Murri Court mention.

### **Victim involvement and participation**

- 81) Murri Court recognises that victims have a right to participate in sentencing matters.
- 82) To ensure that a victim's right to be part of the sentencing process is observed, the Murri Court magistrate will ask the prosecutor if a victim impact statement is available. The Murri Court magistrate's request will occur in accordance with s15 of the *Victims of Crime Assistance Act 2009*. This means that only those individuals who are victims of an offence committed against the person are permitted to give the prosecutor details of the harm caused.
- 83) A victim's participation in Murri Court, whether through a victim impact statement, in person, or through a representative, will be in accordance with the requirements set out in s15 of the *Victims of Crime Assistance Act 2009*.

### **Murri Court Sentence**

- 84) The Murri Court magistrate will decide the order of proceedings, having regard to any information the victim or other Murri Court participants may wish to express. It is expected, however, that at a minimum, the Murri Court sentence include the following elements:
- a) The Murri Court magistrate will explain the charge to the offender in simple terms and confirm the defendant's understanding and plea of guilty.
  - b) The prosecution will outline the facts of the charges and the defendant's legal representative (if any) is given the opportunity to address the court.
  - c) The Murri Court magistrate and Murri Court panel will encourage the defendant to speak to the court about the offending, the steps he or she has taken to address the factors contributing to his or her offending, and his or her motivation to address his or her offending, rather than talking through a legal representative.
  - d) The defendant will be encouraged to comment about the effect of the offence/s on the victim/s and acknowledge the impact the offending has had on the victim/s and/or the community generally.

- e) The Murri Court magistrate will invite the Murri Court panel to speak to the defendant. The Murri Court panel may explain to the defendant the impact that the offending has on the community and his or her family, acknowledge the steps the defendant has taken to address the factors contributing to his or her offending, and comment where further action can be taken by the defendant.
  - f) Other Murri Court participants will be invited by the Murri Court magistrate to provide information relevant to the defendant's offending and progress in addressing the factors contributing to his or her offending.
  - g) The Murri Court magistrate may then ask the defendant how the court might assist the defendant to continue to address the factors contributing to his or her offending, and support the defendant to stop offending in the future.
  - h) The prosecution and the defendant's representative (if any) will be given a further opportunity to make submissions to the court.
  - i) The Murri Court magistrate will proceed to sentence the defendant according to relevant sentencing legislation. Successful completion or the extent of successful completion of the Murri Court pre-sentence referral process is a matter which the court may take into account in sentencing the defendant with a view to consideration of mitigation of penalty.
  - j) The Murri Court magistrate will invite the Murri Court panel to address the defendant on sentence.
- 85) If the defendant does not have a legal representative, the Murri Court magistrate must explain the sentence process to the defendant at the commencement of the sentence.
- 86) In determining a sentence, the Murri Court magistrate should have regard for:
- a) information contained in the Murri Court Sentence Report, including progress made by the defendant during the pre-sentence referral process, and the defendant's cultural and personal circumstances in which his or her offending can be understood; and
  - b) opportunities to continue treatment and rehabilitation support commenced prior to sentence.
- 87) Queensland Corrective Services and Youth Justice may also provide advice to the court in determining an appropriate sentence.
- 88) Where the defendant receives a community-based order, the community justice group representative may, with the defendant's consent, provide a copy of the Murri Court Sentence Report to Queensland Corrective Services or Youth Justice in an effort to ensure continuity of the defendant's rehabilitation.

### **Participants in the Murri Court sentence**

- 89) The following people will participate in the Murri Court sentence:
- a) the Murri Court magistrate;
  - b) the defendant;
  - c) the Murri Court panel;
  - d) the defendant's legal representative (if any);

- e) the prosecutor;
- f) the community justice group representative.

90) The following persons may also participate in the Murri Court sentence:

- a) any member of the defendant's family or a support person for the defendant;
- b) any victim or a person chosen by the victim as their representative;
- c) Queensland Corrective Services representatives and Youth Justice representatives;  
and
- d) any person invited by the Murri Court magistrate, or Murri Court panel in consultation with the Murri Court magistrate, either generally or for a specific purpose.

#### **Non-attendance at Murri Court**

91) If the defendant fails to attend Murri Court when required, the Murri Court magistrate, at his or her discretion, may adjourn the matter to further explore the reasons for the defendant's non-attendance.

92) If the defendant fails to attend Murri Court without reasonable excuse, the Murri Court magistrate may make such orders and directions as the court considers appropriate.

93) Nothing in this Practice Direction will impinge on the discretion of the court to issue a warrant for the defendant.

#### **Withdrawal of consent, breaches of bail and incarceration**

94) The community justice group representative must, as soon as possible, notify the court, the prosecutor, and the defendant's legal representative (if any) should the defendant:

- a) fail to engage with the pre-sentence referral process despite sufficient opportunities to comply with the directions of the community justice group representative;

or

- b) advise that he/she withdraws consent and no longer wishes to participate in Murri Court.

95) The magistrate is to be informed and consider all minor breaches in accordance with legislation.

96) Should the defendant fail to comply with Murri Court, his or her continuation is a matter for the court's discretion following submissions made by the prosecution and defence.

97) Where a breach occurs, the prosecutor, or the defendant's legal representative (if any) or the defendant, may make an application to the court to vary the defendant's bail.

98) If an application to vary the defendant's bail is not made to the court, the defendant's bail will be reviewed by the Murri Court magistrate at the next Murri Court progress mention.

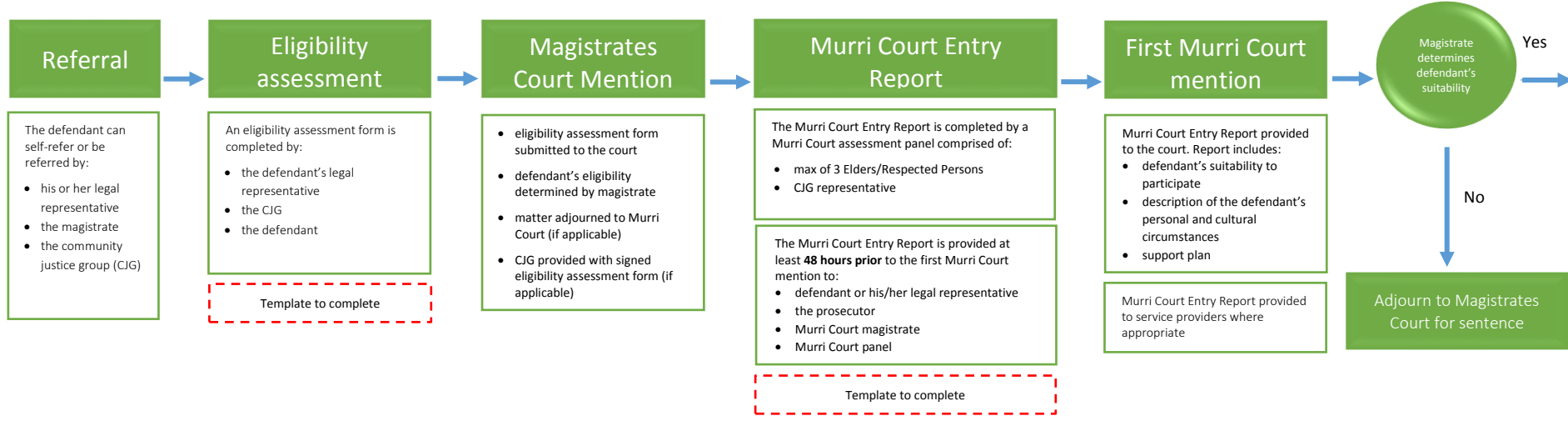
99) Where the defendant commits further offences while on bail in Murri Court, the Murri Court magistrate is to be informed. The relevant magistrate may consider transferring additional offences to Murri Court in accordance with the *Justices Act 1886*.

100) Where the defendant is sentenced to a term of imprisonment (or detention where the defendant is a young person) while in Murri Court, the defendant may be excluded from Murri Court, and his or her Murri Court matter will be listed in the Magistrates Court.

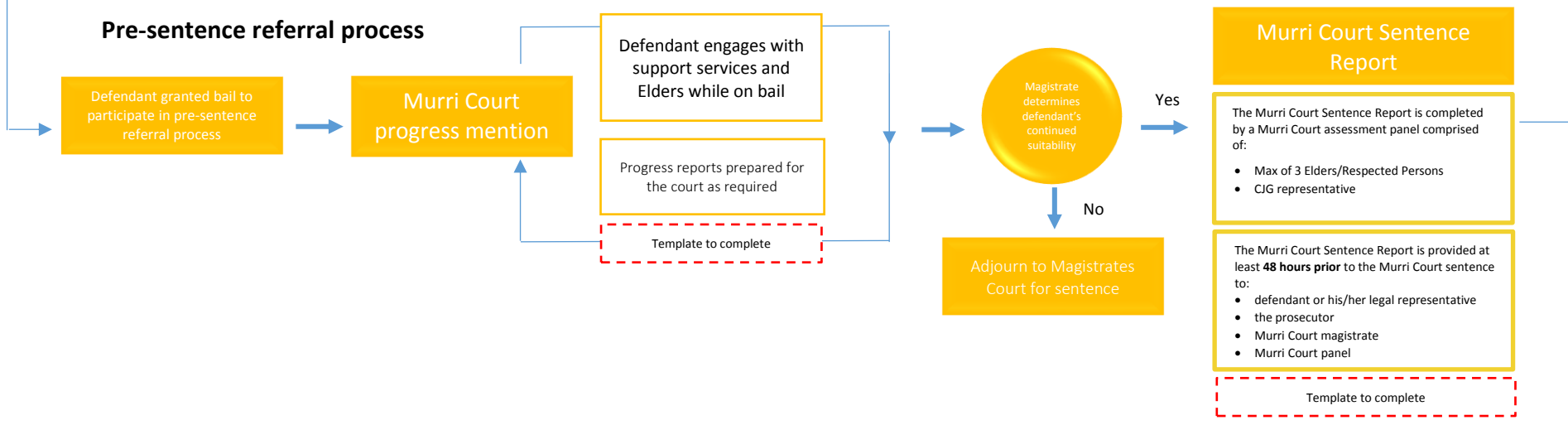
Judge Orazio Rinaudo  
Chief Magistrate  
Date: 16 May 2017

# Murri Court Flow Chart

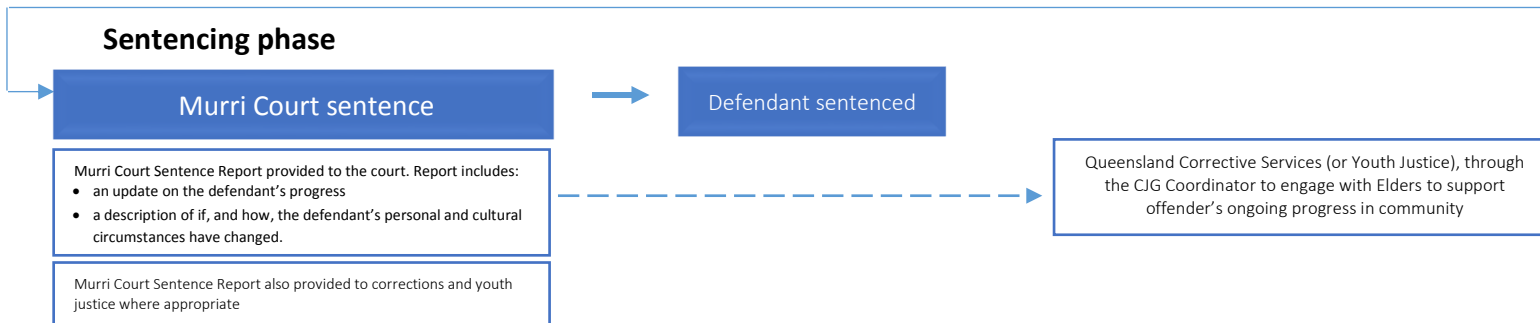
## Referral and assessment phase



## Pre-sentence referral process



## Sentencing phase



3 month program