



Aboriginal and
Torres Strait Islander
Research Unit




Summary Report

Evaluation of Murri Court

Prepared for the Queensland Department of Justice and Attorney General

June 2019



The Ipsos consortium team, include the Ipsos Aboriginal and Torres Strait Islander Research Unit (ATSIRU), Brisbane Public Affairs Unit and Michael A Guerzoni. The Ipsos consortium conducted the Murri Court evaluation and the development of this interim report.

Contact: Sharon Barnes
Director, Ipsos Aboriginal and Torres Strait Islander Research Unit
Mobile: +61 429 770 597
Email: sharon.barnes@ipsos.com

The evaluation of Murri Court is funded by the Department of Justice and Attorney General.

Acknowledgement

We would like to thank the participants and their families, Community Justice Group Members, and Community Justice Group coordinators who graciously welcomed us into their world, so we could observe and learn. We would also like to thank the members of the Evaluation Cultural Reference Group, Elders, local research teams and the four communities who took part in the research, without whose input the research would not have been possible and would not have had the authenticity of their voices. A number of Aboriginal and/or Torres Strait Islander people worked hard in their communities to make this research and report happen. We would like to thank the local researchers for their insight and wisdom and for keeping the integrity of the voices in our research findings.

Ipsos consortium acknowledges the Traditional Owners of the water, land and sea. Aboriginal and/or Torres Strait Islander peoples and/or communities that contributed to this research shared with us accumulated knowledge which encompasses spiritual relationships, relationships between people, relationships with the natural environment and the sustainable use of natural resources. This knowledge is reflected in language, narratives, social organisation, values, beliefs and cultural laws and customs. We respect that this knowledge is not static like the written word but responds to change through absorbing new information and adapting to its implications. Therefore, we wish to acknowledge Indigenous communities as joint custodians of their research findings.

Acronyms

ATSILS	Aboriginal and Torres Strait Islander Legal Service
ATSIRU	Aboriginal and Torres Strait Islander Research Unit
CJG	Community Justice Group
DJAG	Department of Justice and Attorney General
QPS	Queensland Police Service
QWIC	Queensland- Wide Inter-linked Court (database)



Table of contents

1. Understanding Murri Court	4
2. Key Roles within Murri Court	6
3. Evaluation purpose and approach	10
4. Summary of Results from the Main Report:	11
5. Concluding remarks: Is Murri Court working as intended?	24
6. Recommendations: How to strengthen the Murri Court program to improve outcomes	25
Bibliography	31

1. Understanding Murri Court


Murri Court is a network of Queensland Courts operating at the Magistrate level which specialise in hearing criminal matters pertaining to Aboriginal and/or Torres Strait Islander people. Murri Court, originally established in 2002 in Brisbane, was abolished after 10 years due to a withdrawal in government funding. Notwithstanding this, a number of the Murri Court sites continued to operate through the efforts of community volunteers and Magistrates through a similarly formed operation known as Indigenous Sentencing Lists. In 2015–16, the Queensland Government committed \$8.7 million to reinstate courts such as the Murri Court and specialist courts. In 2015, extensive consultation was undertaken to determine the model for the new reinstated Murri Courts. The first Murri Courts commenced operation in 2016.

Murri Court now operates at 14 centres across Queensland: Brisbane, Caboolture, Cairns, Cherbourg, Cleveland, Mackay, Maroochydore, Mt Isa, Richlands, Rockhampton, St George, Toowoomba, Townsville, Wynnum. The Queensland Government initiated the Murri Court as a way to rectify the over-representation of Indigenous people in the criminal justice system. The Murri Court would provide sentencing that was more culturally aware and sensitive to the overarching structural disadvantages that perpetuate criminality and deviance among Indigenous Australians. In doing so, the courts recognise and adhere to the principles of rehabilitative justice and therapeutic jurisprudence in seeking to address the underlying factors of a person's offending within their personal and community context.

According to the Murri Court Procedure Manual (Queensland Courts, 2015 p. 9), the objectives of the Murri Court are to:

- reduce the frequency and seriousness of any subsequent contact Murri Court defendants might have with the criminal justice system;
- encourage defendants to take responsibility for their offending and increase defendants' awareness of the consequences of their actions for victims and the community;
- encourage Magistrates to consider at sentence how a defendant's cultural and personal circumstances contribute to their offending;
- encourage defendants' attendance and engagement with support services while on bail;
- facilitate improvements in defendants' self-reported physical and psychological health, and quality of life;
- improve defendants' engagement with, and understanding of, the court process; and
- improve Aboriginal and Torres Strait Islander Elders and Respected Persons' confidence in and knowledge of the court process.

Uniquely, Murri Court operates in a manner distinct to traditional Magistrate Courts, both stylistically in being more informal (i.e. verbal terms of address and speech, attire) and functionally (i.e. inclusion of Indigenous Elders during sentencing alongside the Magistrate and at other times during the court process such as mentions). As such, it is designed to be less intimidating for Indigenous people in the procedure and environment of the court, yet, notwithstanding this, more authoritative and reformative through the inclusion of respected community members (Elders) in the judicial process. Murri Court partners with a number of government and non-government entities in seeking to facilitate lasting change for offenders, including drug and alcohol treatment programs, employment and housing services, health and wellbeing services, legal services, Queensland Police Service (QPS)



and Queensland Corrective Services. Between 1 July 2016 and 30 June 2018, 1077 Aboriginal and/or Torres Strait Islander people were referred to Murri Court. Almost three-quarters (73%) of defendants were male (790). Just over half of the male defendants were aged 18–34 (437), with more than a third aged 35 years and over (301), and there were 52 youth under the age of 18. A quarter of the defendants were female (287). Just over half of the female defendants were aged 18–34 (159), with more than a third aged 35 years and over (110) and there were 18 youth under the age of 18. Some referred to Homelands in Queensland (373) and identified that their clan/nation was situated within the south-east and south-west of Queensland.

In 2017, Ipsos Aboriginal and Torres Strait Islander Research Unit (ATSIRU) was commissioned by the Queensland Government's Department of Justice and Attorney-General (DJAG) to evaluate the Murri Court program. This evaluation is one of several reviews that have been undertaken, both internally and externally, on the Murri Court system in Queensland (Parker & Pathé, 2006; Morgan & Louis, 2010; Queensland Courts, nd). This evaluation complements these existing reviews in providing valuable qualitative empirical research: the acquired views at the 'coalface' from Elders, offenders, legal practitioners and judicial officers that provide rich detail and contributions to knowledge.

The review occurred between May 2018 and May 2019 and comprised five aims:

- Investigate if Murri Court is operating as intended (this includes commenting on the availability of support services in the community and how this availability impacts on the operation of Murri Court)
- Determine if Murri Court is achieving program outcomes:
 - Improving Aboriginal and Torres Strait Islander 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
 - Encourage defendants to take responsibility for their offending and increase defendants' awareness of their actions for victims and community
 - Increase Aboriginal and Torres Strait Islander access to support services that may increase their health and wellbeing, reduce the likelihood of reoffending and assist them to build ties with family and community
 - Sentencing decisions that reflect the cultural and personal circumstances of Aboriginal and Torres Strait Islander people before the court.
- Understand if Murri Court is cost-efficient
- Assess if Murri Court supports a reduction in participant reoffending
- Identify ways to improve the operation of Murri Court.

This review is unique in providing an evaluation of the Murri Court from the 'coalface'. Rather than scrutinising budgets and criminological statistical figures, the review utilises a mainly qualitative sociological approach to receive and analyse stories and perspectives from those who work in or have otherwise experienced Murri Court. This perspective permits not only the prioritisation of Aboriginal and/or Torres Strait Islander voices, but also a re-presentation from experienced insight into the system's strengths and limitations. Finally, in recognising the slow and incremental nature of rehabilitative justice and therapeutic jurisprudence, the qualitative approach enables the showcasing of positive results of Murri Court that cannot necessarily be found from criminological statistics. Such stories of hope and incremental growth are prioritised throughout this report.

2. Key Roles within Murri Court

The following section identifies and explains the key roles involved in the Murri Court program, including those of the Elders and Respected Persons, CJGs, Indigenous Justice Officers (IJOs) and the Magistrates.

Elders and Respected Persons

Elders and Respected Persons are widely recognised as central to the appropriateness and effectiveness of the Murri Court program. Elders and Respected Persons are held in high esteem among participants for the wisdom acquired from their life experiences and the status afforded by Aboriginal and/or Torres Strait Islander people and communities. This is true even though participants may not be from the same community as the Elder or Respected Person. Holding largely an honorary role within the Court, Elders and Respected Persons have a collection of responsibilities, including:

- assessing a participant's eligibility and suitability to participate in Murri Court
- yarning with / interviewing participants to prepare the Murri Court Entry Report and Sentence Reports
- advising the Magistrate in relation to the participant's personal and cultural circumstances (as a member of the Murri Court Panel)
- supporting and encouraging participants to meet bail conditions as they progress through Murri Court procedures.


Murri Court Elders and Respected Persons often find themselves in the role of supporting Aboriginal and/or Torres Strait Islander people who are in dire and, at times, emotionally distressing circumstances. This difficulty requires the custody of honed care skills to provide adequate support and cultural counsel to Murri Court participants. This emotional labour raises concerns for the physical health, spiritual strength and cultural wellbeing of Elders and Respected Persons in the Murri Court.

One or both of the participants and the Elders/ Respected Persons may be living and working away from their own Country. This complexity is they often work with participants who are not from the local area and may be living and working away from their own Country.

Elders and Respected Persons are nominated by the CJG from the local community. The CJG assigns Elders and Respected Persons to the Murri Court assessment panels and coordinates and supports them to attend court and meetings.

Community Justice Groups

The CJG program provides funding to Aboriginal and/or Torres Strait Islander organisations dedicated to supporting Aboriginal and/or Torres Strait Islander people who have come into contact with the criminal justice system. CJGs were first established in 1993 in North Queensland, and the program has since expanded across the state to 39 groups. DJAG funds the CJG program, supporting these groups to work with their local community to develop strategies for dealing with justice-related issues and reduce the over-representation of Aboriginal and/or Torres Strait Islander people in the justice system. Some CJGs operate within their own right as independent incorporated entities; others operate under the auspices of an overarching entity, although all are funded by DJAG. The main activities of CJGs are to make cultural submissions to the Magistrates Court on behalf of participants and refer participants to treatment and support programs. CJGs encourage diversionary processes, and they develop networks with government and non-government agencies to ensure issues affecting Aboriginal and/or Torres Strait Islander communities are addressed.



In Murri Court locations, the CJG also assists and directs participants on bail as they progress from a guilty plea to sentencing, which is critical to the operations and success of the Murri Court program. CJGs have a diverse role, providing cultural support to engage with and oversee the interaction of participants in court and supporting the participants to understand the court process. CJGs collaborate with other key agents such as Magistrates, legal officers and support service providers (e.g. health and accommodation services) and the local Aboriginal and/or Torres Strait Islander community to help address the participants' underlying criminological factors or social problems. As part of the CJG program, the CJGs are funded to deliver Murri Court program activities in the 14 locations. Ten CJGs provide support only to Murri Court, whereas four CJGs provide support to both Murri Court and the mainstream Magistrate Court.

The structures of the CJGs differ across the 14 sites but broadly they fall into three groups:

- a) small Aboriginal and/or Torres Strait Islander community-controlled organisations
- b) those sponsored by a larger Aboriginal and/or Torres Strait Islander community-controlled organisation (e.g. Aboriginal and Torres Strait Islander Community Health Service)
- c) those sponsored by a not-for-profit organisation (e.g. Catholic Social Services).

The organisational (and governance) structures influence how the CJG operates in terms of:

- how it is constituted
- the length of time it has been operating
- how Elders and Respected Persons are selected and supported
- how traditional leadership structures guide it
- contract management with DJAG and the relationship it has with IJOs
- other funding / government support that it attracts
- training and support it provides to its CJG Coordinator outside the funded training within the DJAG contract
- infrastructure and resources available within it and how this may complement and support the Murri Court program where this funding is not covered in the contract.

The workload, of the CJG Coordinators are large and complex, which is compounded by the varying participant caseloads and requisite administration tasks. The CJG coordinator is pivotal to the success of Murri Court as their role contributes to the cultural safety of the overall Murri Court program. The CJG coordinator is remunerated under the Community Services Award.

The role of the CJG Coordinator is predominately between referral and pre-sentencing stages of the Murri Court program with no specific role with the defendant post sentencing.

1) Pre-sentencing phase:

- Convening Elders/Respected persons to interview the defendant and assess suitability;
- Completing the Entry Report;
- Attending Murri Court;
- Referring defendant to support services / treatment programs;
- Providing support to the defendant to meet bail conditions.

2) Sentencing phase:

- Completing Sentencing Report.



Murri Court Magistrates

There are about 99 Magistrates in Queensland and at least 14 of whom currently sit in Murri Court. The Magistrate is responsible for convening Murri Court and has the authority to impose bail conditions, warrants and sentences. The Magistrate serves as the judicial officer in the Murri Court with all of the power and responsibility of a 'traditional' Magistrate (hearing the trial, sentencing, granting bail) and the additional role of determining eligibility into Murri Court. Magistrates are encouraged to participate in cultural training and to engage with the Elders and Respected Persons and local community so that everyone understands the impact of legal processes on participant wellbeing and its implications for attaining justice system objectives.

Murri Court is an example of therapeutic jurisprudence (Spencer, 2012), where the processes used by courts, judicial officers, lawyers and other justice system personnel aim to promote outcomes connected with participant wellbeing, in particular the cultural safety of participants and sentencing approaches that seek to address the underlying causes for offending. Magistrates in Murri Court aim to achieve therapeutic jurisprudence by engaging the Aboriginal and/or Torres Strait Islander community in the court process, having culturally relevant and respectful processes and ensuring that at sentencing they have information about the participant's culture, personal history and efforts at rehabilitation.

There is flexibility in regard to the wearing of formal uniforms, language and the seating arrangements in Murri Court. QPS representatives may choose to wear civilian clothes, and Magistrates may choose to de-robe. Elders and Respected Persons may choose to wear a Murri Court uniform or sash. Alternatively, a Magistrate may choose to wear specially painted robes featuring the artwork of Aboriginal and/or Torres Strait Islander individuals. This is to present as a more personable and encouraging figure than she/he otherwise would in traditional Magistrate Courts. Magistrates are to speak in more conversational language and directly with the participants throughout, for instance to confirm that the participant understands the court process and are to permit the Elders to talk with the defendant in the court room. Magistrates also receive information from the panel about the personal circumstances of the defendant.

Ideally, to encourage communication and participation, the Murri Court Magistrate, the prosecutor, the participant, the participant's legal representative and the CJG representative will all be seated at the same level and in a circle when hearing Murri Court matters. Whether this seating is possible will depend on the physical features of each courtroom and the needs and wishes of participants. Regardless of the seating arrangements, less formal set-ups are encouraged to support open communication between all parties.

The layout of Murri Court is intended to reflect the Court's aims of delivering a process that is culturally appropriate, that respects and acknowledges Aboriginal and/or Torres Strait Islander culture and that encourages all parties to fully engage in the court process. Wherever possible, symbols, flags, artwork and artefacts of significance to the Aboriginal and/or Torres Strait Islander community will be present in the room where Murri Court is held. The Courts Innovation Program has supplied each location with one or two sets of three flags – an Aboriginal flag, a Torres Strait Islander flag and an Australian flag: one small set for positioning on the bench and/or one tall set to be placed where practicable in the court room.



Indigenous Justice Officers

IJOs are employed within DJAG and assist the CJG Coordinator to conduct their duties and facilitate the operations of the CJG overall. At present there are 10 serving IJOs, each assigned a portfolio of several CJG across the 39 funded entities. Two managers and one executive manager support the IJOs. The responsibilities of the IJO are rather extensive, including but not limited to:

- Provide advice and support to the Community Justice Group members to assist in their support of Aboriginal and Torres Strait Islander victims and offenders in contact with the criminal justice system.
- Provide assistance to the Community Justice Groups and other organisations and monitor compliance and accountability in the preparation of reports, records and accounts as required under the Service Agreement.
- Organise, facilitate and deliver education and program specific training to stakeholders.
- Build and maintain effective working networks and information sharing mechanisms with government and non-government contacts with the aim of addressing community justice group needs, as well as representing the Department at Interdepartmental meetings and on working groups dealing with Indigenous justice issues.
- Facilitate the efficient progress of Aboriginal and Torres Strait Islander offenders through the Murri Court, promote assessment processes to identify appropriate responses to address offending behaviour, and monitor and report on the outcomes of case intervention strategies developed in the Murri Court.
- Support, contribute and cultivate cultural capability within the operations of other programs established under the Courts Innovation Program to assist vulnerable people coming into contact with the justice system.

3. Evaluation purpose and approach

The purpose of the Evaluation was to provide an early evaluation of whether there are initial indications of the effectiveness of the newly implemented Murri Court program. The evaluation sought to provide an *impact assessment* in measuring the changes that have occurred and the relationship between program inputs and outcomes, thereby to identify whether the investment to the program was sufficient to deliver services as per its aims. Guided by a *realist ontological perspective* (see below) the evaluation report comments on what has happened to date, and how this can be improved in realising the complexity of crime and deviance.

That which follows has been written in acknowledging that the Murri Court operates within a complex and multi-faceted criminal justice system, encompassing multiple stakeholders (e.g. Magistracy, Murri Court program staff; community and non-government service providers; community members; and government staff in multiple agencies) across a number of locations. It is recognised that the Murri Court operates on principles for cultural courts established in other jurisdictions (see literature review in the Main Report) and involves program participation whilst awaiting sentencing with considered bail conditions (e.g. support service referral), each guided by the aim to achieve meaningful and lasting personal and communal change.

Governance and communication

The evaluation project had two governance structures: Stakeholder group and Cultural Reference Group. A Stakeholder Group was convened by the Department of Justice and Attorney-General. Its membership was comprised of government and non-government stakeholders.

The Evaluation Cultural Reference Group (CRG) was convened by Ipsos ATSIU as a main mechanism to ensure the cultural integrity of the evaluation. The CRG co-designed the interview/focus group schedule and provided advice in three meetings throughout the life of the program.

The Department of Justice and Attorney-General facilitated the communication and correspondence between relevant stakeholders on behalf of the Research Team for this evaluation.

Ethics

An ethics review was required for the undertaking and completion of the evaluation. A submission was made to and approved by the Australian Institute of Aboriginal and Torres Strait Islander Studies, Research Ethics Committee in August 2018. Updates were provided to the Ethics Committee in September 2018 which finalised approval to conduct the research (HREC Reference Number: EO92-19072018).

Research team

The Ipsos research team for this project included personnel from Brisbane, Mt Isa, Cherbourg, Cairns and Hobart.

4. Summary of Results from the Main Report:

Is Murri Court operating as intended?

The report finds that the Murri Court is operating as intended in providing a culturally informed specialist court to assist in the rehabilitative efforts of Indigenous offenders within Queensland. Whilst further changes could be made to the program to improve its efficacy and efficiency, the widespread community respect for the Murri Court and the accounts of lives being changed through the program is demonstrative of its fruitfulness for Indigenous people in Queensland.

'Positive. They have connected back with their family and they are working now and living a normal life. Contributing to the community'

'Keeping them busy and productive has kept them sober long enough to develop life goals and build recovery towards achieving'

Investigate and comment on the availability of support services in the community and how this availability impacts on the operation of Murri Court

There were mixed beliefs across community as to whether support services were readily available to defendants. Whilst at some sites the support services were within close distance to the Murri Court, and some services provided transport or alternative means of receiving care (i.e. telephone counselling) this was not experienced for all sites. Regional or remote sites, or persons from such regions, were unable to access the services they required. Where support services were accessible to defendants this benefitted the Murri Court and its operations.

No. They are there, we can't access it whenever we want though so in answering this question the services are THERE but not always ready; therefore, people fall off and we cannot help participants to a high degree due to funding, etc'

'Housing is the big thing – housing is the first priority. Hard to do much of anything when you are not safe, nowhere to shower etc.'

'Not all of them, the (...) are more accessible than the other health service. They provide pickups for those who don't drive or can't get in to town. The transport system here is pretty bad and doesn't run all the time'

Determine if Murri Court is achieving program outcomes

Determination of outcome achievement was evaluated from the perspectives from staff and offenders of the Murri Court and was approached through several lines of review matching the goals of the Murri Court, each briefly outlined below.

Reduce the frequency and seriousness of any subsequent contact Murri Court defendants might have with the criminal justice system.

When examining the efficiency of problem-solving criminal justice programs, it is typical that attention is drawn to how criminogenic needs have been resolved and whether people desist from criminal activity. This is a difficult measure to apply to Aboriginal and/or Torres Strait Islander offenders in recognising the entrenched systemic inequality they experience and the subsequent criminogenic needs this produces. In light of this, it can

be said that courts can only do so much to contribute to desistance of Queensland Aboriginal and/or Torres Strait Islander people. An examination of desistance requires relevant data about recidivism and desistance over greater lengths of time to determine if Murri Court has contributed to their reduction in the criminal justice system.

'It's about trying to assist Aboriginal and Torres Strait Islander people in every way I can, within the court system, a lot of people get in to trouble and not many of them know the processes. It gives them confidence if there are Elders there with them, talking to Magistrate on their behalf'

'The defendants feel shame facing the Elders, they get into a cycle of reoffending and can't break it, but the Elders make them shame and this works. People can see that it works'

Interestingly, when asked how the success of Murri Court should be analysed, participants often suggested criteria such as decreases in deviation, incarceration and recidivism among Aboriginal and/or Torres Strait Islander people. Almost half of stakeholders (47%) and 12% of sampled community members suggested that recidivism should be the yardstick for the success of Murri Court. Both groups similarly viewed improvements in the lifestyles and wellbeing of participants as outcomes for Murri Court (24% and 27% respectively). The qualitative interviews revealed that Stakeholders felt that Murri Court had instigated change within the participants. Participants identified that Murri Court had led to a reunification of families; the instigation of a will for self-improvement and character change; the acquiring of employment/training and licences (e.g. car); and a reinvigorated respect for community, culture and the Eldership.

'Murri court has given [me] a better way of dealing with my offence instead of sending me to gaol'

'Positive because I haven't really reoffended since coming through, I've got accommodation and baby inside me, Elders have given me the best chance, if it wasn't for them I wouldn't last 2 weeks outside'

'Positive, I'm with my kids, he is going to school, I've also completed a course since finishing Murri court as well'

'Referring me to programs, making me see that I need to be more responsible for my family'

It was found that within the Murri Court Sentencing Reports of participants between 2016-2018, the vast majority said that they believed the specialist court had assisted them to avoid deviant and criminal behaviour. The provision of mentoring, having to appear before Elders and Respected Persons as well as before the Magistrate, access to rehabilitative options, and the prompting of reflection/awareness were cited as the means by which this was achieved. It was acknowledged that this was and could not be the case for all participants, and that such results should not discredit the overall efficacy of the Murri Court.

'Well to me I'm glad that we have the Murri Court it helps all our people'

'I feel more comfortable and respect [given] that the Elders are involved'

'It suits me better. I don't feel comfortable talking in front of white people'

Encourage defendants to take responsibility for their offending and increase defendants' awareness of the consequences of their actions for victims and the community.

Data gathered from Sentence Reports and qualitative interviews suggest that the Murri Court program has contributed to defendants both taking personal responsibility for their criminal conduct and increasing awareness of how their acts/omissions affected victims and their community. The presence of Elders and Respected Persons and the ability of defendants to interact more openly with the court was shown to be

efficacious in stimulating change. Participant responses suggest a recognition of harm (especially to community), with themes of shame and the need for reparation present in participant responses.

'It caused physical, emotional and psychological harm to my partner and concerns with other family members'

'My actions had the potential to cause harm to myself and other members of the community'

'It has affected myself, my family and those who care about me'

'It has impacted on me and my immediate family'

Encourage Magistrates to consider at sentence how a defendant's cultural and personal circumstances contribute to their offending.

Stakeholders and community members commented that there are varying degrees of interest, understanding and empathy among the Murri Court Magistrates. While some Magistrates expressed a desire to harness Aboriginal and Torres Strait Islander knowledge and perspectives to facilitate therapeutic outcomes for offenders, the execution of this remains at their discretion. Enabling the consistency of serving Magistrates was identified as a way to create more efficient outcomes for offenders, as was more regular implementation of therapeutic jurisprudence across the Murri Court program overall.

'Absolutely – I take notes of different people, and I can ask questions and get that personal thing going so that it becomes a real community – when people feel that they are cared about and loved, that's where their self-esteem increases, build that rapport – and you see that their face lights up...and that's where I think we have the ability to get the change, and those one on one chats with everybody.'

'There could be better guidance for Magistrates in particular if they don't or are unwilling to fully support the Murri Court process. Then it will not work'

The barriers to changing the culture of the courts are:

- When the Magistrates approach is not one of therapeutic jurisprudence and culture of the court remains traditional and mainstream;
- Where the Magistrates are not culturally competent or have not undertaken cultural safety training;
- Where the Magistrate and the Elders and Respected Persons do not have a reciprocal relationship built on respect for each other's knowledge.

The enablers to changing the culture of the courts are:

- Where IJOs and CJG co-ordinators as a facilitator can support Magistrates and Elders and Respected Persons and community to build better relationships.
- When outcomes from the Magistrates Reconciliation Action Plan (RAP) increases the cultural competency and empathy of Magistrates.

Murri Court program inputs and activities alone cannot increase the confidence in the court process, however where increased cultural capacity is supported through mechanisms like the RAP, and relationships are facilitated through individual Magistrates desire for therapeutic jurisprudence approach, then the culture of the court will change to improve confidence in the court processes and outcomes for Aboriginal and Torres Strait Islander defendants.

Encourage defendants' attendance and engagement with support services while on bail.

The unique structures of the Murri Court, with the presence of the Elders and Respected Persons, was found to encourage participants to fulfil bail requirements. The influence of the Elders' and Respected Persons' direction, alongside offenders not wanting to displease the Elders and Respected Persons, was noted to be the motivating source of offender compliance. It was acknowledged that the proviso to this was, as mentioned earlier, whether the services were accessible to the offender.

'Seek help from Elders, not just for court but connect better with my cultural heritage'

'[Receive] support from the Elders and learn from my mistakes'

'[Receive] support from my own Mob'

Murri Court program intends that: 1) the Elders and Respected Persons from their communities assist the participant through the court process and encourage them to make positive life choices, seek rehabilitation services or counselling to address the underlying causes of their criminal behaviour 2) the CJG will collaborate with support service providers (e.g. health services; accommodation services) and the local Aboriginal and Torres Strait Islander community to help address the defendant's underlying criminological factors or social problems.

The barriers to Murri Court supporting this outcome are:

- Funding limitations or organisational resources limited (i.e. transportation of Elders and Respected Persons or participants);
- Sufficient capacity in CJG to undertake the administration tasks associated with tracking of participants progress with each service and follow up services for progress reports;
- No mechanism to ensure progress reporting from support services or accountability for service provision (i.e. Service agreements or MOUs etc);
- Limited cultural capacity or knowledge in the provision of these services for Aboriginal and Torres Strait Islander people (i.e. perpetrator programs, FASD and cognitive assessments, etc);
- Limited cooperation from services or willingness to engage Murri Court participants;
- Limited community capacity and systems structures to support collaboration.

The enablers to Murri Court supporting this outcome are:

- Where CJG have economies of scale (a number of funding agreements) and economic integration (funded for a range of inter-connected or related services) their organisation has more capacity to provide administration support, transport and support networking in the sector; or even provide their own programs;
- Where the support service sector is supported to actively collaborate through a number of other reform areas (for example, DFV or Child Safety or Housing);
- Where service providers are Indigenous controlled organisations or have culturally safe programs or services;
- When the Magistrates, legal representatives and police prosecutors take a personal interest to inform themselves about the services the defendants are referred to, this was shown to be beneficial to the

defendants and appeared to instil confidence in the defendants that they were being referred to services that the Magistrates, legal representatives, and police prosecutors had knowledge of.

- When the service providers are actively engaged in working with individual participants and support them by attending Murri Court.
- When the support service sector has a good working relationship, trust and is focused on the collective goals for community wellbeing and safety.

Murri Court program inputs and activities alone cannot increase the availability or use of services, however where additional resources, existing capacity and individual's inclination are drawn upon, then collaboration, casework and caring will drive successful outcomes.

Facilitate improvements in defendants' self-reported physical and psychological health, and quality of life.

Initial findings suggest that Murri Court, through providing a less intimidating court system and through referral of offenders to needed support services, facilitates improvement in the quality of life and psychological and physical health of Aboriginal and/or Torres Strait Islander participants. Comments from offenders discussed improvements Murri Court had brought to their quality of life, such as being reunited with family and acquiring employment, and to their health, such as receiving counselling and freedom from substance addiction.

'Positive, have a chance to change from smoking yandy [sic.] now I don't as I went through counselling for that'

'Positive - many are changed from stopping drinking alcohol and taking drugs'

'Me positive, it's made me more mental strength and more motivation'

'Helped me to realise what I have to live for and linking me into support services...'

The extent to which Murri Court program can facilitate improvements in defendants' self-reported physical and psychological health, and quality of life will depend on the access and availability of support services to meet participant's needs. There is insufficient data to understand if significant changes in life outcomes have been made in the longer term after participation in Murri Court. However, it should be noted that Murri Court does give people the opportunity to be referred to programs and that participants have stated that they wouldn't have accessed the services if it wasn't for Murri Court.

Improve defendants' engagement with, and understanding of, the court process.

It was found that Aboriginal and/or Torres Strait Islander participants wanted to be sentenced through Murri Court so they could access what they perceived as a culturally safe and fair process (free of racial bias), avoid incarceration and adhere to familial or community desires. This cultural safety of Murri Court improved participant engagement with the court process, though it did not necessarily improve understanding of the process overall. Stakeholders were found to expect defendants to be grounded in respect for Elders, Respected Persons and the more informal judicial system and process and to be willing to be corrected and reformed. The majority of participants did not express concern with the eligibility or referral process to Murri Court and were mostly satisfied that the bail conditions were fair. Not all Aboriginal and/or Torres Strait Islander offenders are eligible for Murri Court. However, some community members and stakeholders were concerned with the requirement that participants plead guilty, regarding it as a coercive referral process that used access to human services or perceptions of 'lighter sentencing' as enticements.

'Gotten told by other Indigenous people [that] Murri Court is more understanding and respectful'

'[Murri Court is] more understanding culturally appropriate to my needs'

Providing Aboriginal and Torres Strait Islander offenders with the opportunity to understand the causes of their offending and to address those causes in a culturally appropriate and supportive environment. Also, to be accountable to the criminal justice system in a way that recognises and respects relevant cultural considerations'

'The solicitor suggested that it would be helpful to me and give me an opportunity to talk about my issues'

Defendants were asked in the Entry Reports, why they want to 'go to Murri Court' (enter the Murri Court program). Qualitative data was collated for both cohorts (2016-2017 n=248; 2017-2018 n=208). For both cohorts, their reasons, or goals pertained to two main areas (Table 1).

Table 1 Why go to Murri Court

	2016-2017	2017-2018
Therapeutic Jurisprudence	<i>Address issues; to tell my story; to learn; to get support; to get help; to change; another chance; to go to programs.</i>	<i>To be treated fairly; You get a fair process; My story would be heard; They get an understanding of me; You get help; They support you; A chance to make changes; To learn some new things</i>
Cultural Aims	<i>It's safe; they're culturally aware; the Elders.</i>	<i>To be with the Elders.</i>
Judicial Goals	<i>Avoid jail.</i>	<i>To stay out of jail.</i>
Other	<i>For family; for children; Wanted to try it; Magistrate referred me.</i>	

In the primary data stakeholders and community members reflected on the values attributed to the Murri Court program by participants to determine why they engage. Table 2 shows that two thirds (68%) value the opportunity to connect with culture or be culturally safe, and just over half felt that they have respect for their Elders (57%).

Table 2 Values attributed to Murri Court

Culture - Connection to community / cultural safety / respect Elders and Tradition	68%
Respect for: others, court, Elders, themselves.	57%
Reduction in offending behaviours / working together-collaboratively.	53%
Accountability to: others, themselves, court, Elders.	52%
Responsibility to: others, themselves, community.	51%
Trust of: program, other people.	48%
Personal qualities: Integrity; optimism; compassion; confidence; self-esteem-pride.	48%
Self Determination / autonomy.	48%

Improve Aboriginal and Torres Strait Islander Elders and Respected Persons' confidence in and knowledge of the court process.

Elders and Respected Persons were found both to be more knowledgeable about the criminal court process and subsequently to generally have greater degrees of confidence in the court process because of their service with Murri Court. Elders and Respected Persons discussed how they then brought this knowledge back to their communities.

'Yes, I'm pretty sure that I have. The Magistrate up here is great, she makes sure that a lot of what is in the RAP is being achieved, works really well with the CJG. They are getting a painting by a former inmate to go up here, I mean that's really good'

*'I've noticed over time people who engage in the court system are more positive in the court process'
'They all need to believe us when we say someone is who they are, we sometimes struggle with them believing us that a person is Indigenous'*

Structural changes advised to the Murri Court program included rendering it to automatically to be the first point of interest for Indigenous people within Queensland, to enlist Indigenous Magistrates to sit in Murri Court, and for the Court to sit more regularly to meet demand where required (i.e. from monthly to fortnightly).

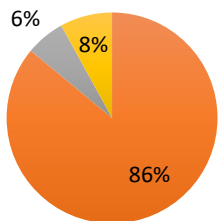
A portion of our inquiry was interested in ascertaining community member and stakeholder informed opinion on how the Murri Court program could be further refined and improved. A quarter (25%) of the stakeholders said they wanted more Elders and Respected Persons involved in Murri Court and 7% felt that more training was required for Elders and Respected Persons.

Elders and Respected Persons are trained formally by the IJOs and informally by interactions with the Magistrates in the operation of Murri Court. Elders and Respected Persons did not feel their training was intrinsically linked to what made Murri Court work as intended. Some Elders and Respected Persons stated that their relationship with the Magistrate, how the Magistrate worked with them and explained things, and the Magistrates' relationship with the Aboriginal and Torres Strait Islander community were much more likely to gain their confidence and increase their knowledge of court processes.

A high number of Community Members (86%) and Stakeholders (80%) agreed that having a consistent Magistrate would benefit the court. Stakeholders, more so than Community Members, gave reasons for their response (see Figure 1).

Figure 1 Benefit of a consistent Magistrate

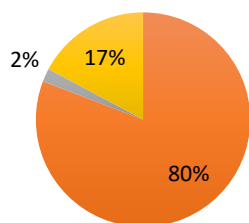
Community Members (n=90)



■ Yes ■ No ■ Other

Consistent means better understanding of community/people/culture	45%
Consistent Magistrates provides trust/reliability/minimal shame/comfort	21%

Stakeholders (n=87)



■ Yes ■ No ■ Other

Consistent means better understanding of community/people/culture/Support	34%
Consistent means cultural appropriateness - appreciation of reasons to offend/right sentencing then	21%
Consistent is good for the court/knows the clients/consistent approach	20%
Consistent Magistrates provides trust reliability/minimal shame/comfort/care/value the defendant	10%
Must be culturally appropriate/trained	10%
Build rapport with defendants/trust	7%

Many of these pertain to enabling greater consistency in the judgments given and develop rapport with the local communities:

'Yes a dedicated Magistrate is very important to establish a consistent approach to process. To build, develop working relationships for best outcomes. It can be very disruptive to the Elders and Respected Persons, defendants and stakeholders involved in the Murri Court process if a different Magistrate occurs each Murri Court as each Magistrate might have different processes compared to other Magistrates. For a Magistrate to take into account a defendant's personal and cultural circumstances they should be involved from the start of Murri Court to the finish'

*'I've noticed over time people who engage in the court system are more positive in the court process'
'They all need to believe us when we say someone is who they are, we sometimes struggle with them believing us that a person is Indigenous'*

Understand if Murri Court is Cost-Efficient

It is difficult to evaluate whether the Murri Court program is cost-efficient given its unique role and the difficulty of determining which evaluative criteria should be applied. Consideration should be given to the fact that a significant amount of work within the Murri Court program is undertaken voluntarily (by Elders and Respected Persons) or done out of good will (where budgets do not cover all staff). Without this unpaid labour, the Murri Court program would not operate successfully and would be unable to complete its mandate; in that respect, it is not cost-efficient. This report questions whether a court system should be expected to operate on good will alone, where in other sectors this would not be feasible.

'We do so much more to try to reach our people before they get into trouble. We visit kids in schools and those at risk of harm or on the wrong path. We do all this due to our commitment to make our people's lives better. Our workloads are huge - the administration, the reports, etc all takes time. I work up to 18 hours a day sometimes to be able to ensure everything is done. Our Elders do all this for free - some might get \$100 for attending court once a fortnight'

To be cost-efficient, Murri Court would require enough inputs (i.e. brokerage, funded staff, etc.) to produce the required outputs (i.e. manage the number of participants in the program). When survey participants were asked whether and how Murri Court could be improved in its operations, discussions typically moved to the subject of money. Overall, there was agreement between community members and relevant stakeholders that Murri Court was understaffed, and that increased funding would help improve service delivery and program outcomes. In this respect, it was the perspective of participants that Murri Court was not cost-efficient. While this evaluation did not address cost effectiveness, recurring themes included the employment of additional professional and administrative staff to the Court, the inclusion of additional Elders and that Elders receive higher stipends/salaries. Additional funding was seen by both groups of participants as necessary to expand the capacity of Murri Court generally and so it could process offenders, particularly young offenders.

'There was at the beginning of the program but now there is not enough funding to do anything in the murri court program. We can't take our young offenders out to experience culture so that it can help them to understand that it is not our culture to commit crimes'

'No,.. Elders do a hell of a lot out of love... !'

'The Elders should be paid the same as "expert witnesses", we rely on them to provide us with expert advice, they vouch for the defendants and stand up for them in court. They say they don't want to be paid, they just want recognition but it seems unfair... [some are] very elderly, over 70 years old..'

Procedurally, participants expressed that administrative processes attached to the Murri Court (both for those being processed, as well as for its staff) required re-drafting/streamlining to make paperwork more readily accessible and manageable; common complaints were that it was difficult to understand, time consuming, repetitive, and should be more readily available to program Elders.

'The Elders do not understand all the reports. We just write up our way for the courts and Elders. The Magistrates, Police prosecutor, ATSILS, they prefer our plain English and easy to read reports. It is all too complicated and takes so much time'

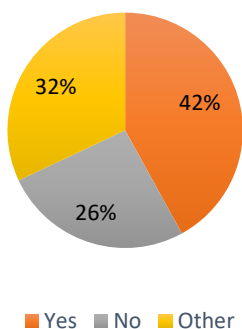
'I feel like I've already said this a lot – the forms need to be easier'

'The Elders don't understand all the reports and administrative requirements.'

In the primary data a similar line of inquiry asked during the primary data collection as to the administrative processes of Murri Court and whether these could be improved. The responses are shown in **Figure 2** below.

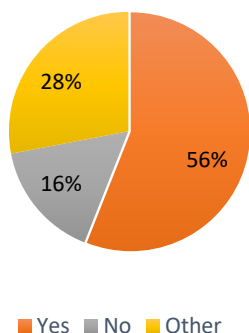
Figure 2 Murri Court administration processes

Community Members (n=90)



Too time consuming/need less forms/too repetitive	32%
Hard to understand/Need support through all forms	29%
Reports should go to Elders and Respected Persons sooner/Elders and Respected Persons should see dates of offences (other reports also)	16%
Need electronic forms	8%
Need more support with court date notice (better notice)	8%

Stakeholders (n=87)



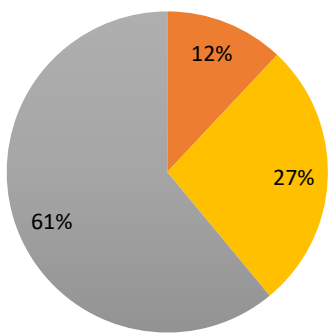
Too time consuming/need less forms/too repetitive	29%
Hard to understand/Need support through all forms	20%
Administrative processes/Put on tracking program	12%

Across both groups of participants there was indication that this could change, mostly to streamline the process ('time consuming' and 'repetitive'), whilst recognising the limitations of such changes in regional and rural centres.

The second-arm to the qualitative analysis of cost-efficiency was investigated in asking whether there was the belief that Community Justice Groups received appropriate funding, and to comment on any subsequent impacts of this on the program.

Figure 3 CJG funding and impacts

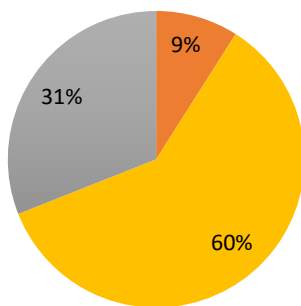
Community Members



More funding is needed	96%
Elders and Respected Persons need more funds/ to be paid properly (hourly)	54%
More services/programs are needed/need to be funded	54%
More staff are needed	33%
Their time/effort exceeds their pay	13%

■ Yes ■ No ■ Other (Don't know/unsure/Refused)

Stakeholders



More funding is needed	38%
Elders and Respected Persons need more funds/to be paid properly (hourly)	15%
More services/programs are needed/need to be funded	6%
More staff are needed/under-resourced	21%
NGO absorb the cost and the CJG run at deceit	8%
Paid Fairly/appropriately for way they do/review	6%

■ Yes ■ No ■ Other (Don't know/unsure/Refused)

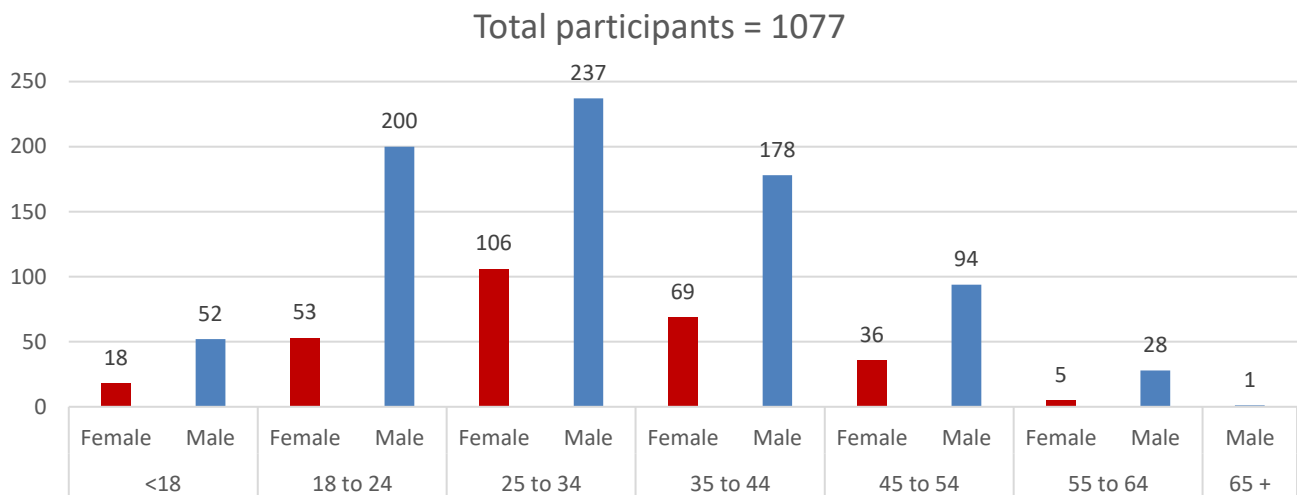
For both groups, few respondents felt the CJGS were funded appropriately. One-third of Community Members (27%) and up to 60% of stakeholder were not satisfied (Figure 2).

Across both participant groups we observe that there is a push for more funding, and that this is requested in order to enable the employment of additional staff and offer additional programs:

Murri Court participants

Based on data from DJAG, from 1 July 2016 to 30 June 2018, 1077 Aboriginal and/or Torres Strait Islander people were referred to Murri Court. Almost three-quarters (73%) were male, and 41% were males aged 18–34 years. Figure 4 shows the age and gender of participants referred to Murri Court.

Figure 4 Number of male and female participants by age



Source: DJAG, Courts Innovation Program Evaluation System data management system: Murri Court module as at January 2019

Just over three-quarters (76%) of participants were referred to Murri Court once, 20% twice and 4% three or more times, making 1232 episodes in Murri Court over the two years between 1 July 2016 and 30 June 2018. The most episodes (231) occurred in Brisbane Murri Court. There were 169 in Mt Isa, 168 in Toowoomba, 147 in Cairns, 123 in Rockhampton and 106 in Townsville, with other locations each having fewer than 100 episodes.

Before colonisation, the reciprocal relationship between people and the land underpinned all aspects of life for Aboriginal and/or Torres Strait Islander people. Today, Aboriginal and/or Torres Strait Islander people’s relationship to their traditional lands remains of central importance to their identity, cultural wellbeing and better life outcomes. A homeland may be where a cultural connection, birthplace or family is from and therefore identity formed. This may or may not be traditional land related through the kinship system. The Murri Court Entry Report asks participants about their ‘traditional homelands’; however, most named their state or territory of origin. Where two homelands were identified, the first named location was used for this analysis. For both time frames (2016–17 and 2017–18), most Murri Court participants identified Homelands in Queensland. For the 2016–17 year, 180 people identified as coming from Queensland, 35 from New South Wales, 15 from the Northern Territory and fewer than 10 from Western Australia. For the 2017–18 year, 193 were from Queensland, 25 from New South Wales, 16 from the Northern Territory and again fewer than 10 from Western Australia.

Murri Court Elders and Respected Persons are drawn from the local area, which may not be their traditional land or homelands. Similarly, participants in Murri Court may also identify their traditional land or homelands as being somewhere other than the location of the Court. This demonstrates some diversity and geographic dispersion of the Aboriginal and/or Torres Strait Islander Elders, Respected Persons and participants in Murri Court.

Table 3 shows the outcomes of Murri Court proceedings. There were 1232 episodes opened and 1025 closed, with 207 still active in the system as at 10 January 2019. Of the 1025 closed episodes, 524 (51%) participants completed the program and were sentenced in Murri Court.

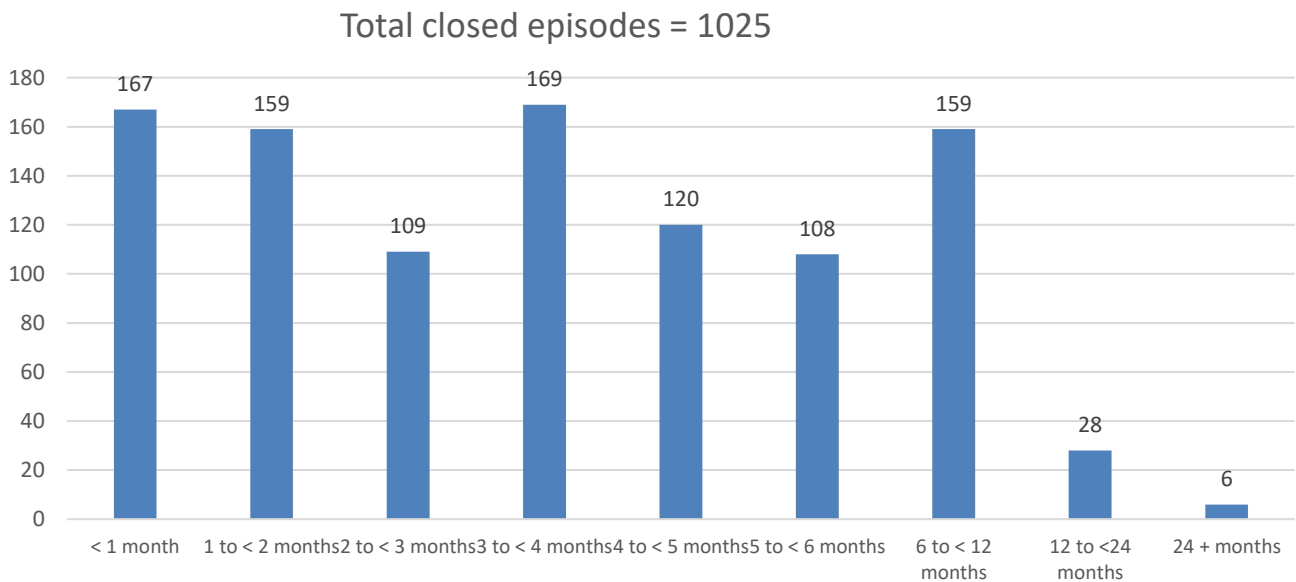
Table 3 Number of defendants by court events and outcomes as at 10 January 2019

Murri Court Finalisations	As at 10 Jan 2019
Finalised in Murri Court by Sentence	524
Finalised in Murri Court exited other reason	35
Adjourned back to Magistrates Court / Children’s Court Magistrate	233
Bail Warrant Issued - defendant failed to appear	233
Matter not finalised at 30 June 2018 (considered active)	207
TOTAL	1232

Source: DJAG Courts Innovation Program Evaluation System data management system: Murri Court module as at January 2019

Figure 5 shows the length of time for the 1025 closed episodes in Murri Court. The Murri Court program is designed to be a 12-week program with flexibility for ending early or extending as necessary for good participant outcomes. Of the closed episodes, 42% closed in under three months, with half (51%) being adjourned back to Magistrates Court or being issued a bail warrant. Over half (58%) closed after three months, with a third (38%) being sentenced in Murri Court and two-thirds either being adjourned or still in progress.

Figure 5 Length of time participating in Murri Court for completed episodes



Source: DJAG, Courts Innovation Program Evaluation System data management system: Murri Court module as at January 2019

Murri Court participants are invited to complete a survey on entry and on exit. The entry survey elicits feedback from participants who have previously appeared in a mainstream Magistrates Court. The exit survey asks a matched set of questions about their experience and feelings during their involvement with Murri Court, and their expectations of the effect of Murri Court on their future.

CJGs compile Entry, Progress and Sentence Reports for each Murri Court participant to provide information to the Court. The Entry Report is used to:

- assess the suitability of the defendant to be referred to Murri Court
- describe the defendant’s cultural and personal circumstances
- pinpoint those things that contribute to the defendant offending
- identify the treatment and support services from which the defendant may benefit.

The Sentence Report is used to:

- provide an update on the defendant’s progress with treatment and support services
- describe how the defendant’s circumstances have changed after being involved in Murri Court.

The participant may choose not to answer any questions. CJGs are trained to use the templates as a guide to gathering information informally through a yarning circle and to omit questions that are not relevant or may be too intrusive.


5. Concluding remarks: Is Murri Court working as intended?

The evaluation explored several questions designed to establish whether Murri Court is operating as intended. Qualitative inquiry of community members and stakeholders within the Murri Court program has been used, alongside analysis of documents to answer these questions. These questions direct examination of varying facets of Murri Court, including the desired program outcomes of Murri Court as contained within the Procedure Manual.

It was shown that there is widespread respect for the Murri Court program and the people within it, the salaried and non-salaried personnel; Magistrates and lay people. Accounts have been shared of how Murri Court has facilitated change and restoration in the lives of dozens of Aboriginal and/or Torres Strait Islander people, assisting in rehabilitative efforts, enabling the securing of employment and stabilising families (both through addressing domestic abuse and in preventing incarceration). Murri Court has been identified as a vehicle in reducing Aboriginal and/or Torres Strait Islander incarceration in Queensland as well as curbing the ‘revolving door of justice’.

At a structural level, Murri Court has been shown to be effective in creating a Court environment and process that is less intimidating, more approachable and accessible to Aboriginal and/or Torres Strait Islander people. This is not only because it discards many of the complexities and traditions customary to the ‘theatre’ of the traditional Magistrate Court, but also because of the intentional efforts to interact with Aboriginal and/or Torres Strait Islander people in a respectful and culturally sensitive manner. These efforts, including the training of judiciary in cultural safety and Aboriginal and/or Torres Strait Islander contexts, alongside the presence of Elders and Respected Persons within the courts, are widely recognised and respected among Aboriginal and/or Torres Strait Islander people and communities. The Murri Court is seen not as a biased ‘whitefella court’ but as one where Aboriginal and/or Torres Strait Islander people can have a ‘fair hearing’ and a ‘fair go’. Considering the history of bias against Aboriginal and/or Torres Strait Islander Australians, this is a great success on the part of Murri Court in winning community respect and trust.

The role of Elders and Respected Persons within Murri Court cannot be underestimated nor overlooked. Indeed, the primary data for this evaluation show repeatedly that they are fundamental to the success of Murri Court. They bring safety, security and authority to Murri Court in the eyes of Aboriginal and/or Torres Strait Islander people. They serve as arbiters of non-Aboriginal and/or Torres Strait Islander control and decision-making and as



a check and balance to the rule of the Magistrate. Elders and Respected Persons and community alike see this as a privilege and greatly appreciate the opportunity to both speak into the lives of Aboriginal and/or Torres Strait Islander people and to petition the ruling of Magistrates. The Elders and Respected Persons, through Murri Court, can once again serve in the judicial and pastoral role they have had for millennia. Words cannot do justice to how valued this is in Queensland.

It is acknowledged that Murri Court alone cannot rectify the widespread and entrenched inequalities and variables stimulating criminogenic needs and risk factors for criminal decision-making among Aboriginal and/or Torres Strait Islander Australians. This is reflected in the fact that recidivism and desistance rates may not have fallen to the standard desired by some commentators; more time and relevant data are needed before reassessing these criteria in Queensland. It is beyond the power of a court to overturn centuries of systemic inequality created by colonisation in Queensland. Notwithstanding this, Murri Court is an important component to restorative efforts to stimulate further positive change in the lives of and welfare for Aboriginal and/or Torres Strait Islander people in the state.

6. Recommendations: How to strengthen the Murri Court program to improve outcomes

These recommendations are provided in good faith and as determined from the findings of this evaluation of the Murri Court program. They have been derived from findings from the literature review, discussions of the Murri Court program 2016–2018 and analysis of the evaluation findings.


Recommendation 1: Length of Bail and Time in Murri Court

Throughout the evaluation it was noted that some people spent more time in Murri Court than the intended 12 - week period as specified within the Practice Direction No. 2. While this is not unusual given the need for judicial monitoring and case management, there is concern that this may lead to a breach of bail conditions (ALRC, 2017). It is not uncommon for Aboriginal and/or Torres Strait Islander people to breach bail. This is not always a sign of deviance but can instead be due to, for instance, an inability to access transport or to a conflict between the bail conditions and a person's obligation to culture, community and family (ALRC, 2018).

We adhere to the recommendations provided by the Australian Law Reform Commission (ALRC, 2017) in relation to the adoption of provisions similar to s3A of the *Bail Act 1977* (Vic) and s3A of the *Charter of Human Rights and Responsibility Act 2006* (Vic). These were to provide greater consideration to the particular cultural and personal circumstances of defendants to minimise the likelihood that untenable bail conditions would be imposed upon them. At present, s15(1)(f) (Queensland Bail Act 1980) permits the Court to consider cultural factors and the Indigeneity of the defendant. We argue that changes be made, including:

- Reconsideration should be given to submissions given by a CJG representative in respect to cultural considerations. It has been noted that this creates a means of reliance upon the goodwill of CJGs and their ability to offer such service to Aboriginal and/or Torres Strait Islander defendants. The provisions for that should extend to accept submissions from legal representation and defendants themselves.
- Of the examples listed under s15(1)(f), amendments should be made to extend considerations to include the defendant's living circumstances, such as remoteness and mobility (ALRC, 2018, pp. 165–177).

As mentioned throughout this report, we agree that additional funding should be provided to CJGs to fund Indigenous bail support programs attached to Murri Court to increase successful adherence to bail conditions (ALRC, 2018). In particular, this may be required where brokerage runs short of supporting participants to attend



Murri Court (i.e. in areas of transport disadvantage where the public transport payments [Go Cards] are not usable, or where no public housing is available and private temporary housing requires additional payment).

Access to support services that are culturally safe and effective is vital to the success of Indigenous sentencing courts (ALRC, 2018). The evaluation finds that not all services were accessible or culturally appropriate. We agree that Murri Court participants would benefit from additional support services, in particular ones that are developed specifically for their cultural and unique therapeutic needs. We recommend investigation be undertaken via a survey of each of the Murri Court sites to ascertain which services are not readily available to ensure consistency in access state-wide.

While Murri Court is a therapeutic court process for defendants and may take time, sustained periods within the court may not be feasible for the defendant or the court. It has been observed that some individuals are within the Murri Court for extended periods of time. We recommend further investigation into why the process has not kept to the 12 weeks in some locations.

To enable sufficient time with Elders and Respected Persons, we recommend formation of post-sentence Elder and Respected Persons circles where participants may meet as a part of community service orders or counselling more regularly. We agree with the ALRC (2018) report which calls for an increase in the number of community-based orders given at sentencing to Aboriginal and/or Torres Strait Islander people, for instance residential programs such as the Wulgunggo Ngalu Learning Place and community supervision orders.


Recommendation 2: Remuneration of Elders and Respected Persons

The data from this evaluation revealed a consensus that the Elders and Respected Persons involved in the Murri Court program should be paid both at a higher rate (perhaps equal to that of an expert witness) and for more than only court attendance. We recognise that while some Elders and Respected Persons were known to dismiss the suggestion of payment, it is our understanding that this may be due to ‘humbug’ (that is, not wanting to be demanding), not wishing to be a ‘burden’ on the system, out of a desire to volunteer in order to ‘give back’ to community, or other concerns regarding finances. Given the known disadvantage of Aboriginal and/or Torres Strait Islander people, we recommend that Elders and Respected Persons should be encouraged by CJGs, Magistrates and other Elders and Respected Persons to consider accepting payment for their service, as well as the freedom to volunteer and decline a payment for service. The current payment is insufficient to cover the costs that Elders and Respected Persons incur and should be increased to cover at least the expenses and time they provide. We recommend that at the very least, reimbursement of the cost of volunteering (i.e. taxis, lunch, parking, etc.) should be funded in respect to the contribution they provide to Murri Court.

Our recommendation of cost reimbursement and compensation for time may also address some of the barriers to increasing the number of Elders and Respected Persons available for Murri Court. Concern for the longevity of the service of some Elders and Respected Persons was raised on a number of occasions in interviews, and succession planning is advised. As some of the potential candidates are still in the workforce, payment for service may be an important enabler. Other enablers may be workplace agreements with employers to support their employee participating during work hours. Future-planning should prevent an unfortunate situation if a site suddenly loses an Elder due to ill health or death.

Recommendation 3: Additional Murri Court Magistrates

A number of interview responses were about the value of having Aboriginal and/or Torres Strait Islander Magistrates sit in Murri Court and having consistent Magistrates who have a therapeutic jurisprudence approach. For participants, these were key ways to ensure support of and proper consideration for personal and cultural



factors of the participant. We recommend that, as per actions in the RAP, the judiciary, including the Chief Magistrate, work with the Bar Association of Queensland and the Queensland Law Society to encourage suitably qualified Aboriginal and/or Torres Strait Islander people to submit expressions of interest to the Judicial Advisory Panel for judicial vacancies in Queensland. The Chief Magistrate could then encourage Aboriginal and Torres Strait Islander Magistrates to consider time in service across Murri Court sites.

Recommendation 4: Portability of Murri Court

Legal and criminological literature supports the effectiveness of therapeutic approaches, suggesting that they should be applied not only in specialist courts but also in mainstream courts (Spencer, 2012). Many stakeholders and community members would value a Murri Court in all locations across Queensland, or at least where CJGs exist; however, this may not be achievable. If, and as more, Magistrate Courts adopt therapeutic jurisprudence approaches, the empathy and cultural safety of mainstream courts should improve to the benefit of Aboriginal and/or Torres Strait Islander defendants. The RAP should be an enabler to support this and should be measured to ensure effective implementation occurs. The DJAG should also consider including into mainstream Magistrate Courts the additional mechanisms that Murri Court provides (i.e. changing the courtroom environment, including Elders and Respected Persons in court and additional support for Yarning Circles with Elders and Respected Persons and participants) to better support CJGs to improve outcomes for Aboriginal and/or Torres Strait Islander defendants.

The challenge for Murri Court is to encourage the introduction of therapeutic jurisprudence across mainstream Magistrate Courts and to ensure this is maintained over time. We recommend that more content be included in the legal training programs offered within Queensland universities as a way to shape the next generation of legal professionals to favour as less punitive approaches in the law. Include education on therapeutic jurisprudence as a requirement for barristers and solicitors in Queensland, such as for the Bar Exams and Practice Course for barristers and the practical legal training course or supervised traineeship for solicitors; for instance, set mandatory reading on the topic.

Recommendation 5: Eligibility criteria

Presently, Practice Direction No. 2 states that in order for a defendant to appear before Murri Court, the following criteria of eligibility must be satisfied:

- The defendant must identify as an Aboriginal and/or Torres Strait Islander person or possess an appropriate connection or kinship with such communities
- The offence for which the defendant has been charged can be heard by the Magistrates Court or the Children's Court of Queensland
- Plead guilty or there is an intention to plead guilty
- Bail has been granted to the defendant
- Consent is given by the defendant to participate fully with the Murri Court process.

The Assessment Panel currently advises the court, and the Magistrate makes the judgement about eligibility based on the criteria. We recommend that the eligibility criteria be reassessed by DJAG and, at a minimum, the following eligibility criteria are removed:

- The defendant must identify as an Aboriginal and/or Torres Strait Islander person or possess an appropriate connection or kinship with such communities

- Plead guilty or there is an intention to plead guilty

We recommend that the following is added to the Practice Direction No. 2:

- that the Indigeneity of the defendant is the decision of the Assessment Panel, with the final decision being made by the Murri Court Elders and Respected Persons.
- The Assessment Panel is to always include at least two Elders and Respected Persons.

Recommendation 6: Victim Impact Statements

Victim impact statements did not appear in the responses of participants. This is curious, considering that domestic abuse was mentioned frequently throughout the interviews. While we recognise both the importance of victim impact statements within criminal justice (Erez, 1991) and their availability to Murri Court as per the *Victims of Crime Assistance Act 2009* (Qld), we recommend further investigation of the role of victim impact statements and victim participation in Murri Court (see VLRC, 2016). We advise caution in requiring the presence and participation of victims within Murri Court in consideration of risks of re-victimisation and traumatisation, especially in sensitive matters such as sexual crimes (VLRC, 2016).

Recommendation 7: Ongoing engagement

The evaluation findings suggest that participants are in Murri Court for longer than the intended 12 weeks if it takes longer than that to write up the Sentence Reports. An unintended benefit is that participants are getting the services and support they need to improve their chances of not reoffending. After leaving Murri Court, there are no ongoing engagement or support mechanisms to help offenders stay on track and desist from offending. We recommend a whole-of-government approach to find where gaps exist in service delivery and address the funding need of ongoing case management or tracking of participants to provide support and facilitate the achievement of their life goals. This in turn would improve the long-term efficacy of Murri Court as an ideal, culturally safe and supported referral mechanism into the human services system.


Recommendation 8: Case Management

This evaluation and criminological literature more broadly show that enlisting defendants into case management can contribute to successful outcomes for those who appear before Murri Court (see White & Graham, 2010; ALRC, 2017). While the CJG Coordinators and Elders and Respected Persons at each Murri Court site seek to provide case management in some capacity within the Murri Court process, we recognise that this is not always feasible (due to time and budgeting restrictions). Additionally, these personnel are not always suitably qualified training and/or experienced to facilitate case management with defendants, particularly those with complex needs (requiring psychological and psychiatric expertise).

We recommend that DJAG investigate the implementation of a more rigorous and culturally appropriate case management framework for use in Murri Court. This may be achieved by providing additional funding to CJGs to employ a suitably qualified Aboriginal and/or Torres Strait Islander case manager with appropriate experience to support defendants through the Murri Court program, or other programs – such as Court Link – may be funded to support Murri Court with such a case management approach as a secondary option.

Recommendation 9: Clearly articulating the mechanisms in the Murri Court model

In the first evaluation of the Murri Court program (Morgan & Louis, 2010), Recommendation 16 referred to an Overarching Framework and the benefit it would have to existing and future programs operating in Queensland.



The concept of a framework is also recommended in this evaluation, but in a slightly different manner to that proposed by Morgan and Louis. We recommend a framework that would serve as a strategy-level mechanism setting out the roles and relationships of the departments, agencies and people that form the Murri Court program at the systemic level (i.e. DJAG), the program level (i.e. CJGs, inter-agency, interdepartmental staff) and the community level.

The framework would address confusion regarding the Murri Court program being both the court and part of the CJGs and would clearly articulate the program logic, establishing realistic goals and aims in light of funding arrangements and activities.

An example would be in respect to the extent to which DJAG has a role, via the CJGs, to achieve outcomes of the bail support component of the program; presently the program logic implies that DJAG can influence support services and treatment programs, and this may not necessarily be within the scope of DJAG's role.

We recommend a review of the program logic in relation to DJAG's intent for the program and how the Court's goals and aims refer to other specialised courts at a systems level. For example, the program intent is consistent with other bail support programs or drug and alcohol courts; however, in the case of Murri Court the goals and aims are achieved (or not) at the operational level, through the funding of CJGs, and to a lesser extent at the systems level of DJAG.

Recommendation 10: Reports and Questionnaires


It is acknowledged the data for the segmentation analysis pertains to less than half of the overall cohort and only includes those who completed the Murri Court Sentence Report and Sentence Questionnaire, that is, they were sentenced in Murri Court. Less is known about Murri Court participants who were adjourned back to mainstream court or who breached bail and exited the program. The analysis also does not have any subsequent information about how the participants are progressing with service use or feeling after final sentencing when they exit the program. Complete datasets are vital to building a more complete understanding of the Murri Court program and participant experiences.

10.1 To improve understanding of the purpose of the Sentence Report and Sentence Questionnaire by participants, communicate stories (with due consideration for confidentiality) from each of the segments (and not just those where change is most evident) to key audiences.

10.2 Empower participants by sharing with them the information collected about them. This places participants at the centre of their own future, encouraging them to identify their existing strengths and any influences in their environment that support or hinder them to make change. Use visual tools, symbols and cues to communicate and connect with participants so they can map their journey and plan for the future. Track this journey's success or otherwise to provide valuable evaluation measures for program effectiveness. An example of more accessible discussion prompts is the Blurred Borders Program undertaken by Legal Aid in Western Australia and the Northern Territory.

Observation 1: Addressing the needs of young offenders

Requests for additional Youth Murri Courts were made in a number of our interviews. A limitation of this evaluation is that it did not investigate in detail the two Youth Murri Courts in operation. Given the knowledge that Aboriginal and/or Torres Strait Islander youth are known to be highly represented within the criminal justice system, we advise investigation into what will work best for young offenders, as they have significantly different needs and service requirement.



The Age of Criminal Responsibility in Queensland information paper (QFCC 2017) encourages Queensland Government to consider these reform options: that the minimum age of criminal responsibility be raised to 12 years; that children aged 10–12 years cannot be sentenced to youth detention; and that youth justice conferences be mandatory for children aged 10–12 years. These measures, along with adoption of a therapeutic jurisprudence approach that has empathy and cultural safety similar to that of Murri Court, could improve the experience and outcomes for young Aboriginal and/or Torres Strait Islander defendants.

Observation 2: Culturally appropriate service access

Access to support services that are culturally safe and effective is vital to the success of Indigenous Sentencing Courts (ALRC 2018). The evaluation finds that not all services were accessible or culturally appropriate. We agree that Murri Court participants would benefit from additional support services, in particular ones that are developed specifically for their cultural and unique therapeutic needs. We recommend investigation be undertaken via a survey of each of the Murri Court sites to establish which services are not readily available to ensure consistency in access state-wide.

Bibliography

- Australian Law Reform Commission. (2017). Pathways to justice – Inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples: ALRC Report 133. Accessed from <https://www.alrc.gov.au/publications/pathways-justice-summary>
- Australian Law Reform Commission. (2018) available at <https://www.alrc.gov.au/>
- Daly, K., & Sarre, R. (2017). Criminal justice system: Aims and processes. In Darren, Palmer, Willem de Lint, and Derek Dalton (eds), Crime and justice: a guide to criminology, 5th edition (pp. 358–76). Sydney: Lawbook Co.
- Denning-Cotter, G. (2008). Bail support in Australia. Brief 2, April. Indigenous Justice Clearinghouse. Accessed from <https://www.indigenousjustice.gov.au/publisher/indigenous-justice-clearinghouse-brief-2/>
- Department of Attorney-General. (2010). Report on the review of Murri Court. Accessed from <https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/resources/files/murricourtreport-44432e36a4d12c2881aff068e6ac729f.pdf>
- Department of Justice and Attorney-General. (2015). Reinstatement of the Murri Court: Consultation Paper.
- Erez, E. (1991). Victim impact statements. Trends & issues in crime and criminal justice No. 33. Canberra: Australian Institute of Criminology. Accessed from <https://aic.gov.au/publications/tandi/tandi33>
- Irwin, J. M. (2002) Queensland Murri Court Law Asia Conference, 2008 Friday 31 October 2008 Kuala Lumpur Convention Centre.
- King, M. S. (2010). Judging, judicial values and judicial conduct in problem-solving courts, Indigenous sentencing courts and mainstream courts. Journal of Judicial Administration, 19, 133–59.
- Morgan, A. & Louis, E. (2010). Evaluation of the Queensland Murri Court: Final report. AIC Technical and Background Paper 39. Canberra: Australian Institute of Criminology. Accessed from <https://www.aic.gov.au/publications/tbp/tbp39>
- Morgan, A. (2018). How much does prison really cost? Comparing the costs of imprisonment with community corrections. Australian Institute of Criminology. Accessed from <https://aic.gov.au/publications/rr/rr5>.
- Parker, N. and Pathé, M. (2006). Report on the review of the Murri Court. Department of Justice and Attorney-General. Accessed from: <https://www.indigenousjustice.gov.au/resources/report-on-the-review-of-the-murri-court/>
- PwC Indigenous Consulting (2017). Indigenous incarceration: unlock the facts. Accessed from <https://www.pwc.com.au/indigenous-consulting/assets/indigenous-incarceration-may17.pdf>
- Queensland Productivity Commission (QPC). (2018). Issues paper: Imprisonment and recidivism. Accessed from: <https://www.qpc.qld.gov.au/inquiries/imprisonment/>.
- Queensland Courts. (nd). Queensland Murri Court Elders and Respected Persons Role Manual. Accessed from https://www.courts.qld.gov.au/_data/assets/pdf_file/0007/516445/cip-mc-murri-court-elders-and-respected-persons-manual.pdf.
- Queensland Courts. (2015). Murri Court Reinstatement Feedback Report. Accessed from https://www.courts.qld.gov.au/_data/assets/pdf_file/0005/487139/mc-rpt-reinstatement-feedback-report-2015.pdf.

- 
- Queensland Courts. (2016). Queensland Murri Court Practice Direction. No. 2 of 2016. Accessed from https://www.courts.qld.gov.au/_data/assets/pdf_file/0007/464173/mc-pd-2of2016.pdf.
- Queensland Courts. (2015). Murri Court Procedure Manual. Accessed from https://www.courts.qld.gov.au/_data/assets/pdf_file/0009/493893/cip-mc-procedures-manual.pdf.
- Queensland Government Statisticians Officer, 2017. Accessed from <https://www.treasury.qld.gov.au/economy-and-budget/queensland-economy/statistics-and-indicators/>
- Spencer, P. (2012). To dream the impossible dream? Therapeutic jurisprudence in mainstream courts. International Conference on Law and Society, 2012. Accessed from <https://ssrn.com/abstract=2083370> or <http://dx.doi.org/10.2139/ssrn.2083370>.
- Stobbs, N., & Mackenzie, G. (2009). Evaluating the performance of Indigenous sentencing courts. Australian Indigenous Law Review. 13(2), 90–105.
- The State of Queensland (2018). Queensland Bail Act 1980 Accessed from: <https://www.legislation.qld.gov.au/view/pdf/inforce/2018-03-31/act-1980-035>
- Willis, M. (2010). Indicators used internationally to measure Indigenous justice outcomes. Brief 8. Accessed from <https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/brief008.v1.pdf>.
- Willis, M., & Kapira, M. (2018). Justice reinvestment in Australia: A review of the literature. Australian Institute of Criminology.
- Willis, M. (2017). Bail support programs: a review of the literature. Australian Institute of Criminology. Accessed from <https://www.aic.gov.au/publications/rr/rr4> .