

## Indigenous Sentencing Practices in Australia

This paper will outline the variety and scope of indigenous sentencing practices which are in place in Australia with a focus on the Queensland Murri Court. It should be stated at the outset that these sentencing practices are not applied to major offending such as murder, rape, sexual assault or serious assaults and are not practices which diminish the seriousness of the offending behaviour or their impact on the community.

Indigenous Sentencing initiatives have burgeoned in Australia since 1999, primarily led by judicial officers responding to the ever-worsening situation of over-representation of indigenous offenders in the prison system. Those initiatives flowed from the recommendations made in the Royal Commission into Aboriginal Deaths in Custody. The Royal Commission investigated the circumstances of 99 Indigenous people who died whilst in the custody of Police, in Prison or Detention Centres for juveniles over a nine year period in the 1980s. The Aboriginal and Torres Strait Islander Social Justice Commissioner stated in the *Social Justice Report 2001* “the key principle which underpinned the recommendations of the Commissioner ... was that imprisonment should be a measure of last resort, with the use of alternatives to custody and diversionary mechanisms where appropriate.”<sup>1</sup>

It is widely acknowledged that more than a decade on from the findings of the Royal Commission into Aboriginal Deaths in Custody, rates of incarceration of indigenous offenders are still disproportionately increasing, despite the efforts to address the recommendations of the Royal Commission. The Aboriginal and Torres Strait Islander Social Justice Commissioner noted (again in 2001) that “while some genuine efforts...have been made in the decade since the Royal Commission and continue to be made today, the sense of urgency and commitment to addressing Indigenous over-representation in criminal justice processes has slowly dissipated.”<sup>2</sup>

For example, in 2001, Aboriginal and Torres Strait Islander people were 3.2% of the Queensland population, but they made up 23.1% of the prison population and 8.4% of people in the community corrections system.<sup>3</sup> On a national basis, the rate of imprisonment of the Indigenous population was 14.9 times more than for the non-Indigenous population in the June 2001 quarter.<sup>4</sup> Indigenous juveniles were being detained at a rate of 15.5 times more than the non-Indigenous population in 2000<sup>5</sup> and Indigenous women were incarcerated at 21 times the rate of non-Indigenous women.<sup>6</sup> It was quite apparent that the mainstream methods of dealing with offending behaviour were virtually completely ineffective for indigenous offenders.

Various approaches to the issue of Indigenous sentencing have been adopted around Australia in recent years with a view to promoting involvement of local indigenous communities in the Court system resulting in more culturally appropriate sentencing processes. Those approaches will be examined and compared. Procedures and structures of indigenous sentencing courts vary but all are responsive to disparate and

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distinct indigenous communities - urban and rural, regional and remote, blended and discrete – with a focus on achieving just sentencing results for those communities. The integral features of all approaches are the involvement of respected indigenous community members, the provision of cultural information to the sentencer, a modified sentencing process and a focus on rehabilitation of the offender supervised by the community. It is of the utmost importance to maintain input from all appropriate organisations in the community, particularly the indigenous community.

In a Media Release announcing a report of the Australian Institute of Criminology, *Indigenous courts and justice practices in Australia*, in October 2004, Dr Toni Makkai, AIC Director, summarised the focus of the changes in Court processes in stating: “Indigenous Courts are able to change judicial and legal attitudes with the aim of reducing the level of incarceration of Indigenous people. Indigenous Courts in urban, rural and remote areas can empower Indigenous elders and other community members and change the attitude of offenders. The court’s work is not about processing a case or finalising a file, but rather, learning more about the offender and the offence, and working to develop an appropriate response. Through this system, Indigenous people, organisations, Elders, family and kin group members are encouraged to participate in the sentencing process and give officials insights into the offence, the character of victim-offender relations, and the offender’s readiness to change. In this way, greater attention to the reasons and context related to the offending behaviour, coupled with the involvement of Indigenous justice workers, give the urban court experience more meaning and make it less alienating.”<sup>7</sup>

In Queensland, Murri Courts have been developed in urban and regional areas in slightly different ways to respond to the needs, social structure and customs of the local indigenous community. The processes of Murri Court in Rockhampton will be explored in some detail in this paper.

Murri Court sits comfortably and in a sustainable fashion within the existing criminal justice system. Preliminary evaluative information regarding outcomes of the approach indicates that recidivism is being reduced or moderated, particularly in relation to the severity of offending. The involvement of the indigenous community - the Elders, Community Justice Group members and community organisations and service providers - has engendered an inclusive atmosphere of mutual respect and confidence in the justice process. The presentation of prescient cultural information to the Court and the re-integration of the offender into the community through personal and significant interaction with respected persons have proved to be important factors in the process. The indigenous community is heavily involved in the supervision and rehabilitation of offenders in a culturally appropriate fashion following the sentencing process.

Whether with Nungas in South Australia, Kooris in Victoria and New South Wales or Murriss and Torres Strait Islanders in Queensland, specialised sentencing initiatives for Indigenous offenders with meaningful community contribution have developed around Australia in various modes but all with the same aim in focus – to make the Court process less alienating and the Orders of the Court more culturally appropriate for Indigenous people who come into contact with the criminal justice system

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proportionately more often than the general population. The critical factor in the development of the sentencing initiatives is the willingness of the indigenous community to become involved and support the process.

Holistic rehabilitation of the offender is a central theme of the Indigenous Sentencing Practices which have developed around the country. The Western Australian Geraldton Alternative Sentencing Regime Practice Direction (effective from 2/8/01) stated that “rehabilitation is more than the absence of offending; it is also the ability to function in society, the ability to deal with life challenges in a constructive manner and without abusing alcohol or illicit drugs ... The end result of rehabilitation should be the person's empowerment to lead a productive, harmonious and fulfilling life in the community”.

Following on from the successful establishment of these sentencing practices, a further challenge is the acceptance and integration of the processes into the mainstream criminal justice system. Chief Justice Bayda of the Saskatchewan Court of Appeal (Canada) acknowledged in 1995 that circle sentencing had become “part of the fabric of our system of criminal justice and ... a recognised and accepted procedure” over a decade after the introduction of the process in Canada.<sup>8</sup> Widespread recognition of the importance of the involvement of the indigenous community in dealing with their offenders and a sustainable reduction in recidivism are important challenges for the Courts promulgating these principles.

Indigenous sentencing courts are gradually gaining acceptance – in the indigenous and wider community, the legal profession and at government level - but the initiatives need to be expanded in order to ensure that there is equity in access to the law in this manner to all indigenous people who wish to participate in such processes around the country. In many areas of the country there is substantial need in the indigenous community regarding the criminal justice system – (i) need in understanding the court process in situations where there are few interpretation services and English is not the primary language of the people accessing the Court and (ii) need for the availability of programs and treatment options in the community to facilitate culturally appropriate non-custodial orders, to name but two issues.

As can be seen from the following information, many of the initiatives have been developed in regional or remote areas. One line of thought as to why this is so is that the smaller communities with a sole judicial officer are more likely to have the flexibility to adopt practices tailored to the needs of the local community. There are particular difficulties in major centres or large cities which present a challenge for alternative Court practices but what regional areas may gain in flexibility, cities gain in available resources, in particular the range of treatment programs and facilities.

Nunga Court (South Australia)

Aboriginal Court Day has been operating in Port Adelaide, South Australia, since June 1999 and has expanded to other areas in recent years. The day is set aside for sentencing Aboriginal offenders following a plea of guilty in the Magistrates Court

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(for any offence in that jurisdiction) and is locally referred to as the Nunga Court. “An Aboriginal Court Day [is] seen as a way to better serve the needs of the community and to make courts less culturally alienating to Aboriginal people”.<sup>9</sup>

The proceedings have been modified to include an Aboriginal Justice Officer or senior Aboriginal person advising the Magistrate on issues relating to community and culture. Both persons sit at eye level with the offender, not on the Bench and the offender, and a support person if wanted, sit beside the defence solicitor at the Bar table. Family and community members are encouraged to attend Court and all have an opportunity to speak. Significant information is placed before the Court by organisations in the local community and reports address individual needs and issues of the offender with a view towards reducing the risks of re-offending. Court orders are made by the Magistrate and are carefully explained to offenders to ensure that they understand their responsibilities under those orders.

Advantages of the modified process have been seen to include an increased attendance rate of offenders – 80% compared to the usual rate for Aboriginal Offenders of 50% in other Courts.<sup>10</sup>

Koori Court (Victoria)

Koori Court was created as a division of the Magistrates Court in Victoria in 2002 with an extensive legislative base following upon a recommendation of the Victorian Aboriginal Justice Agreement.<sup>11</sup> The Court sentences indigenous people who enter pleas of guilty for all offences within the jurisdiction of the Magistrates Court except sexual and family violence offences and elect to go to Koori Court. It is operating in at least 4 centres around the State. Koori Court “reduces perceptions of cultural alienation and tailors sentencing orders to the cultural needs of Koori offenders”.<sup>12</sup> The method of achieving this aim comes from a more informal atmosphere in Court with substantial input from and involvement of the Aboriginal community in the sentencing process. The Court is supported by an Aboriginal Justice worker who also participates in the Court process.

The less formal process involves the Magistrate and Elder sitting around a table with all participants including the offender and family members. “Plain” English is used and all participants are encouraged to have input. Magistrates receive cultural advice from the Elder or Respected Person before deciding upon the appropriate sentencing Orders. Orders of Koori Court are tailored to the needs of the offender with a view to a reduction in re-offending. A Koori Justice Panel assists Community Corrections with the supervision of the offender following the order being made, and can issue warnings to the offenders, recommend breach action, and provide positive feedback on the offender’s progress to the Magistrate during the period of the order or on its completion.

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Circle Sentencing

**New South Wales**

“Circle Courts are designed to educate the community on issues surrounding offending and the promotion and enrichment of Aboriginal culture and family values. Circle Sentencing operates on the belief that crime is broader than one person; where the consequences of individual actions can have a rippling effect on entire communities.”<sup>13</sup>

Circle Sentencing commenced in Nowra in 2002 under the stewardship of Magistrate Doug Dick. It has since been extended to Dubbo and other regional centres. The Circle is convened following consultation with a panel of local Aboriginal people. The consultation with the community and co-ordination of the Circle is the responsibility of the Aboriginal Project Officer. The Circle takes place in a suitable location removed from the Magistrates Court with the participants sitting in a circle (without desks or tables). The process includes four community elders who advise the Magistrate and discuss the issues with the offender. The offender’s family and the victim of the offences/s (with a support person) are also involved in the discussions. The Magistrate prepares a written summary of the circumstances of the offence/s and the issues. Following open discussions in the Circle, which the Magistrate facilitates rather than drives, a sentencing plan is recommended by the Elders to the Magistrate for approval. If accepted by the offender, the Circle meets some months later to review the progress of the offender. Circle Sentencing is available to offenders entering a plea of guilty to an offence excluding indictable offences, sex offences and some drug offences.

**Western Australia**

Western Australian Magistrates have developed a range of sentencing practices designed to meet the disparate needs of urban, remote and traditional indigenous communities.

Circle Courts providing for the involvement of the local indigenous community in the sentencing process were established in Western Australia in 2004 at Yandeyarra in the Pilbara region. Extensive consultation with the Indigenous community has resulted in a special Court arrangement reflecting the traditional nature of the local community in which Aboriginal Elders play a significant role. The Elder sits with the Magistrate in a courtroom which imitates the arrangement of a traditional Aboriginal meeting.

A further initiative is the Geraldton Alternative Sentencing Regime. Geraldton has an urban indigenous population and the GASR focuses on rehabilitation of offenders with social issues such as substance abuse, and domestic violence. The GASR project was developed with a steering committee of community organisations which were to participate in the sentencing process. Offenders enter into behavioural contracts under which they are referred to specialised treatment programs to address the problems leading to their offending. The Offenders are subject to reviews by the

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Court on a regular basis to monitor their progress. A similar process has been adopted in the city of Bunbury, south of Perth.

Wiluna, a remote WA town has an Aboriginal court designed to meet the needs of its indigenous population which is of a more traditional nature. Following consultation with the indigenous community, the court procedures were modified so that the law could be applied in a more culturally appropriate way. “The thinking behind this process was that perhaps one of the reasons why there has been a high rate of offending among Aboriginal people is that legal processes, including court processes, have not taken into account the ways in which Aboriginal people leading a traditional lifestyle communicate and order socially harmonious behaviour within their community. Consultation with the appropriate people in authority within the Aboriginal culture in Wiluna was an important step towards adapting court procedure and sentencing options.”<sup>14</sup>

### **Northern Territory (NT)**

Circle Sentencing has also been adopted in Darwin, NT, under the name of Darwin Community Court. It provides “a place where offenders can express their shame and remorse in an environment that assures them of their intrinsic worth as human beings. It is a place where victims can hear that remorse and start to heal. Finally, it’s a place of restoration – of community values and personal relationships. ‘It’s not rocket science’, just people caring about each other.”<sup>15</sup> The Darwin Community Court is a Magistrate Court. The Magistrate may inform himself/herself of information with a view to reaching the most meaningful sentencing outcome. The Elders enter Court with the Magistrate, introductions are made and the Prosecutor makes submissions on the facts. The offender speaks and explains the circumstances of the offences, their motivations for committing the offences, identify who has been affected by the offences and suggest possible reparation. All participants address the Court and the Magistrate receives advice from the Elders before a decision is made. The trial of the Court was said to be a success, with a reduction in re-offending and high levels of satisfaction of participants. The trial was extended to other communities.

### **Australian Capital Territory (ACT)**

A successful trial of the Ngambra Circle Sentencing Court was completed in the ACT in 2004 and has been extended. “The goal of Circle Sentencing is to reduce recidivism in Aboriginal and Torres Strait Islander offenders by providing far greater participation in the criminal sentencing process by the local community through the members of an Elders Panel appointed by the Attorney General.”<sup>16</sup>

The guiding principles of the Ngambra Circle Sentencing Court are to increase involvement of the Indigenous community in the sentencing process and thereby increasing community confidence in the process and reducing barriers between the community and the Court. Culturally appropriate and effective sentencing options are sought as outcomes with offenders being provided with support services addressing offending behaviour. The Court deals only with Indigenous offenders who plead

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guilty, consent to the referral to the Circle and who are assessed as acceptable for the process. Sexual offences are excluded and offenders with drug addictions (other than cannabis) are not eligible. Upon referral, the Magistrate orders reports which are provided to the Elders Panel through the Ngambra Circle Sentencing Court Co-ordinator who has a support and organisational role for the process.

The Elders provide advice on the appropriate four members of the Community Panel to participate in the Circle. The Co-ordinator also has the role of checking on offenders' compliance when they are not subject to Corrective Services supervision and reporting any breaches of the conditions of the order. At the Circle, the victim, offender, community members, Elders and Co-ordinator all participate in an informal but direct discussion. The participants of the Circle recommend a sentence (which may not exceed that which could be imposed by a Court). If the offender accepts the sentence then the matter is referred back to the Magistrates Court for the Magistrate to impose the order.

Murri Court (Queensland)

The legislative framework which made Murri Court a viable option is found in the Penalties and Sentences Act 1992 section 9 (2) which provides (in part):

- 9(2) In sentencing an offender, a court *must* have regard to—
- (o) if the offender is an Aboriginal or Torres Strait Islander person—any submissions made by a representative of the community justice group in the offender's community that are relevant to sentencing the offender, including, for example—
    - (i) the offender's relationship to the offender's community; or
    - (ii) any cultural considerations; or
    - (iii) any considerations relating to programs and services established for offenders in which the community justice group participates;

“community justice group”, for an offender, means—

- (a) the community justice group established under the *Community Services (Aborigines) Act 1984*, part 3A,2 division 1, or *Community Services (Torres Strait) Act 1984*, part 3A, 3 division 1, for the offender's community; or
- (b) a group of persons within the offender's community, other than a department of government, that is involved in the provision of any of the following—
  - (i) information to a court about Aboriginal or Torres Strait Islander offenders;
  - (ii) diversionary, interventionist or rehabilitation activities relating to Aboriginal or Torres Strait Islander offenders;
  - (iii) other activities relating to local justice issues; or
- (c) a group of persons made up of elders or other respected persons of the offender's community.

“offender's community” means the offender's Aboriginal or Torres Strait Islander community, whether it is—

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- (a) an urban community; or
- (b) a rural community; or
- (c) a community on DOGIT land under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*.

Until the amendment of section 9 in 2000, whilst there may have been instances of the receipt of information from Indigenous communities by the Courts in Queensland, there was no formal process for the provision of such information, and no specific obligation on the part of the Courts to receive information of that nature or to take it into account. Some Courts in Qld had attempted to modify proceedings in an effort to make them more effective and increase understanding of the Court process and orders, but many thought that more was needed.

### **Operation of Murri Court**

One of the main objects of the Murri Court is to divert indigenous offenders from imprisonment orders when other appropriate penalties may be used. The focus is on the rehabilitation of offenders in the community, if that is appropriate, taking into account the safety of individuals and the community.

Eligibility for Murri Court arises from offences within the jurisdiction of the Queensland Magistrates Court, the offender being of Aboriginal or Torres Strait Island descent and indicating a plea of guilty to the charges. In Rockhampton, the Australian South Sea Islander community is also included. The offender may elect to be referred to the sittings or consent to the Magistrate's referral. No offence types are specifically excluded.

Murri Court was designed to be held at a dedicated time in the Court list in order to allow more time than is traditionally available in the eternally busy Magistrates Court list. In Brisbane, the Magistrate does not robe and sits at floor level at a custom-made oval table with the other participants of the Court.

In Rockhampton, during consultation with the Indigenous community it became clear that there was a preference for the Magistrate to robe and sit on the Bench – their reasoning was to ensure that the local offenders realised that the process was a Court process with the appropriate authority.

The Community Justice Groups are partially funded by the State Government. Members are taken from the local community (usually by way of nomination or invitation) and undergo training for their role. The Fitzroy Basin Elders Committee is a volunteer organisation of Elders who are involved in many community projects and initiatives. The Community Corrections Office, a limb of the Department of Corrections, also contributes to the operation of the Court significantly, not only in the preparation of presentence reports, but more significantly, in the supervision of community based orders.



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The positive interaction between the Elders, the Community Justice Group and the Department of Corrections, and the dedication of additional time by both organisations to the Murri Court, is integral to the success of the process. The co-operation of these organisations with the criminal justice system through the Magistrates Court represents a holistic approach to a historically difficult problem in a practical and positive way.



***Rockhampton Murri Court Team of Elders, Community Justice Group, Corrections Officers and Magistrate***

At the time of referral of the offender to the Murri Court, presentence reports are sought from the Community Corrections Office and the Community Justice Group.

The Community Justice Group is provided with a summary of the Police allegations and the criminal history of the offender by the Police. Written reports are prepared by both organisations following interviews with the offender and his/her family and following liaison regarding the availability of appropriate programs. On some occasions, offenders are referred to services prior to sentencing or may attend of their own volition. Reports address the offender's background, personal situation, the offender's attitude to the offending, availability of programs and appropriate sentencing options.

Where the offender is from another community, the Community Justice Group liaises with the Justice Group from the offender's community in relation to the report. The Elders and/or Community Justice Group may decline to assist an offender for appropriate reasons including a conflict of interest or threatening behaviour of the offender, for example.

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On the day of the Court appearance, the Elders and the Community Justice Group meet with the offender and the family (if appropriate). The Elders, in particular usually speak quite frankly about the offending behaviour and the offender's personal circumstances. The ethos of the interactions between the Elders, the Community Justice Group and the offender is very much to strongly condemn the offending behaviour and to inform the offender of the effect on the community of the offending behaviour, whilst encouraging the offender to take up the support of the Indigenous community organisations in order to rehabilitate themselves and make redress to the community for their behaviour.

Reports are tendered to the Court and verbal submissions are made in Court by the Police Prosecutor (including victim impact information if available), the Community Corrections Officer, the Community Justice Group, the offender's legal representatives, and the offender and/or their family.

A representative of the Elders organisation sits on the Bench with the Magistrate. The Elder addresses the offender in the public setting as to the community concern, the responsibilities of the offender regarding reparation and rehabilitation. This is a very powerful part of the proceedings and there are usually 4-6 other Elders who attend Court and sit in proximity to the offender. There is a discernible atmosphere of seriousness when the Elders are present.

After consideration of all of the material presented and submissions made, the sentencing decision is taken by the Magistrate alone and this is made quite clear to the offender and his family in order to protect the Elders from any potential backlash.

What cannot easily be explained is the power of the Murri Court process on a spiritual or emotional level. The power of the natural authority and wisdom of the Elders is striking in the Courtroom. There is a distinct feeling of condemnation of the offending but support for the offender's potential, emanating from the Elders and the Community Justice Group members.

Orders, particularly Probation Orders and Intensive Correction Orders, often include conditions requiring attendance on the Justice Group and/or Elders, attendance at counselling and/or programs to address specific issues (for example domestic and family violence, alcohol or drug abuse), attendance at indigenous Mens' Groups or other support groups, Community Corrections courses or programs, and so on. The extent of compliance required represents what might be considered to be significant punishment and deterrence whilst offering rehabilitation opportunities.

In October 2004, the Murri Court in Rockhampton was extended to Young People (10 to 17 years of age) with the establishment of a separate Community Justice Group. The adult and youth Justice Groups have a close working relationship and share some personnel in common. Many dedicated indigenous people from all communities give endless hours of their own time to the Court process.

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### **Symbolism and Traditional/Customary Law**

The Court, as with many other indigenous sentencing practices, does not incorporate customary law. It does acknowledge one of the basic tenets of traditional indigenous community values, that is, the authority of and respect for the Elders of the community. Whilst other customary actions such as banishments from the community or various areas and places, apologies and reparation are taken into account, it is the involvement of the Elders which makes the process so worthwhile. Their wisdom and knowledge are a constant inspiration. The acknowledgment in a public forum of the Elders' authority and wisdom and their role as moral guardians of the community by the Court honours traditional respect for the role of the Elders.

At the launch of the Community Justice Group in Rockhampton, named *Yoombudda gNujeena* (meaning "Listen, I have something to tell you"), a painting explaining the purpose of the Justice Group and its interaction with the Court and the community was presented to the Court – the focus of which is *Communication*.

**Painting presented to Court by Yoombudda gNujeena**  
**Rockhampton Community Justice Group**  
**On the occasion of the Launch of the Justice Group**



*Painted by Jim Doyle, local artist, descendant of Bidjara Tribe of Central Queensland*

The three separate outer areas of the painting are symbolic of the Indigenous Groups within our community and they are represented by the colours of their respective flags.

The central circular region represents the Justice System and Indigenous Elders in partnership.

In the top left hand corner, the Torres Strait Island Community is represented by the green blue and white colours of the Torres Strait Island flag. The drums indicate communication methods used by the Torres Strait Island people.

The top right hand corner represents the South Sea Island community, the colours of green, red and yellow symbolising the South Sea Island flag. The Shell represents communication methods used by South Sea Island people.

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The lower section of the painting represents the Aboriginal Community. The colours of red, black and yellow symbolise the Aboriginal flag. Message sticks symbolise communication methods used by the Aboriginal people.

Throughout the painting, circles represent the individual clans and tribes within the Indigenous Community Groups. The footsteps are symbolic of Indigenous people bringing messages from their people to the Justice system, along the walking tracks separating the Indigenous Community Groups.

The painting became a powerful symbol for the Murri Court participants. The Launch of the Court saw the addition of symbols of a Message Stick (Aboriginal community) and Conch Shell (Torres Strait and South Sea Islander communities – it should be noted that the drums referred to in the painting are used for calling to and communicating with family and were not appropriate in this public sense (*Elders*)) and also Scales of Justice from the Court. The symbols are displayed prominently in the Court room at each of the sittings.



***Conch Shell presented to Murri Court as a symbol of Communication***

The Youth Murri Court has its own symbols – a painting focusing on communication (detailed below) and a traditional Torres Strait Islands sardine trap (used to trap sardines to be used for bait to catch larger fish for the community).

**Painting entitled “Communication” presented to the Court  
By the Listen and Learn Youth Community Justice Group  
on the occasion of the launch of the Youth Murri Court Jan 2005**

*Painted by Gabriel Willie, local artist aged 19 years of Aboriginal and South Sea Island descent.*

The centre piece represents a Murri grapevine where a story starts from one group represented by the circle surrounded by banana shapes and then the track represents the stories being told to other groups. The two people – a younger and older male – represents a man telling a boy ghost stories and what would happen if he had done something wrong by the law. The hands in the corners represent Elders who have passed on and where the stories come from.

Communication is a theme and integral component of the ethos of the Murri Court – communication is improved, more detailed, flows in all directions and everyone takes

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a part. No one person or group has all of the wisdom or knowledge and each depends on the other for a just outcome.

### **Offender Profile**

The majority of offenders (approximately 90%) appearing before Murri Court (Adult) have significant previous convictions and many had been incarcerated in the past. The range of offences being dealt with include Assaults (from Common Assault through Serious Assault to Assault Occasioning Bodily Harm), Dishonesty and Property Offences, Disqualified and Dangerous Driving, Breach of Domestic Violence Orders, Breach of Probation and Bail Orders, Frauds under Commonwealth Crimes Act, and attendant less serious offences.

One of the major triggers for referral to Murri Court is the existence of substantial issues in the offender which can be addressed through intervention and treatment in order to move toward long term abstinence from re-offending. This requires significant effort and dedication on the part of the offender and it is essential that he/she is prepared to submit to the process and subsequent orders.

In re-designing the usual process, an aim was to ensure the significant improvement of offenders' understanding of the proceedings and his/her obligations under any resulting orders. A more precise understanding of what happened and the conditions of the orders will of course assist offenders in progressing through the orders with a more positive attitude (if feel they have been dealt with fairly) and more successfully (if they know what they need to do), leading to a decrease in breaches of orders and again decreasing the likelihood of terms of imprisonment on re-sentencing.

### **Orders and Recidivism**

A preliminary analysis of the data from the Murri Court in Rockhampton has shown that 91.5% of offenders came to the process with some previous criminal history - 8.5% of offenders had no criminal history, 31.0% of offenders had minor history (street and traffic offences) and 60.5% of offenders had history for major offences (indictable and/or violence).

Of the defendants who have appeared before the Murri Court, 31% have not re-offended, and of the 69% who did re-offend, over 60% of them committed offences of a more minor nature than the subject offence. Although over two-thirds of defendants did re-offend, this should be placed in the context of the offending profile of the defendants prior to participating in the Murri Court process. That is to say that despite only 8.5% of offenders having no criminal history prior to Murri Court, 31% did not re-offend after participating in the Murri Court, more than a three-fold increase in lawfulness.

An analysis of the nature of the re-offending showed that 67.7% committed minor offences and 32.3% of offenders committed indictable and/or violent offences, despite

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60.5% of offenders having previous convictions in this category. This could be seen to represent a significant reduction in serious offending.

Over the period that the Murri Court has operated in Rockhampton, community based orders, such as Probation and Intensive Correction Orders have been considered important, in large part because offenders respond to the opportunity for effective rehabilitation, but it can also be seen that those orders are more effective than imprisonment in diverting offenders from serious offending.

Community Based orders are more effective in reducing recidivism for indictable and violent offending. Probation orders diverted 71.8% of offenders on those orders from major re-offending, Intensive Correction Orders (terms of imprisonment served in the community under supervision and with an element of community service) diverted 100% and Imprisonment diverted only 41.6%. The highest rate of re-offending for indictable and violent offending was seen in those offenders sentenced to imprisonment.

The dual benefits of reductions in serious offending and the opportunity for rehabilitation should be attractive to all members of the community.

### **Other Benefits of Murri Court**

There have been beneficial spin-offs from the collaboration of organisations in the local community arising from their involvement in the Murri Court. A number of community organisations have dovetailed programs or created new programs and/or services in response to needs identified by the Murri Court process and its participants. The cross-referrals between services have also increased according to anecdotal reports and many partnerships have been formed. The combination and more efficient use of community services will tend to create stronger community organisations and a more integrated approach to the resolution of community and individual problems. The benefit of the increase in the feeling of “community” amongst organisations and their participants shouldn't be underestimated.

There has also been a significant building of relationships between workers in the criminal justice system and the members of the indigenous community throughout the process and the Elders and members of the Community Justice Group are accepted as an important part of the local justice system.

### **Sustainability**

During the development of these processes, there has been a focus on the sustainability of these processes from financial, human resource and Court time aspects.

There have been two approaches to the development of these practices. Some States have implemented legislatively based pilot projects which are fully funded with

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support personnel and dedicated Court time. The other approach has been a Magistrate-driven implementation of processes, initially unfunded and with time and resources eked out of the general Court resources and relying fairly heavily on volunteer time being provided by the indigenous community. Certainly the second approach is initially less costly but perhaps less likely to be sustainable long term. In some States, such as Queensland, the government is evaluating the process with the view to moving towards a stabilisation and extension of the process through funding and support.

The utilisation of the knowledge and resources of the indigenous community in the Court process is critical to the success of these processes. The ethos of many of these practices has moved away from the idea of the Court having all of the knowledge to an inclusion and reliance on the knowledge and wisdom of the indigenous community. This will always be important and integral to the process but care must be taken to appropriately resource and manage the assets of the indigenous community to ensure that they are sustainable into the future.

In order to assess the viability of indigenous sentencing practices on a financial basis, the issue of the cost of supervising offenders in community compared to prison should be considered. The average daily indigenous prisoner population in Queensland is 1,285 representing 24 % of the total prison population, with an imprisonment rate of 1647.2 per 100,000 adults (compared with 177.2 for all prisoners). The cost of incarceration per prisoner per day is \$133.50 for Open Security and \$147.60 for Secure Custody. Community Supervision by comparison is much less costly. The average daily indigenous community supervision population in Queensland is 1,946 representing 17% of the total supervision population. The Indigenous population supervision rate is 2,494.5 per 100,000 (compared with 384 total supervision population). The cost of community supervision per offender per day is \$8.00.<sup>17</sup>

### **Summary**

The participants of the Indigenous Sentencing Practices which have developed have been witness to the fact that indigenous ways have maintained not only their legitimacy in a modern setting, but their dignity and wisdom have been of benefit to the community as a whole. We must charge ourselves with the duty to continue to acknowledge, integrate and expand upon these practices as a result.

### **Acknowledgements**

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References

1. page 3/23 – [www.humanrights.gov.au/social\\_justice/sjreport\\_01/chapter1.html](http://www.humanrights.gov.au/social_justice/sjreport_01/chapter1.html)
2. page 2/23 – [www.humanrights.gov.au/social\\_justice/sjreport\\_01/chapter1.html](http://www.humanrights.gov.au/social_justice/sjreport_01/chapter1.html)
3. Queensland Government *Queensland Aboriginal and Torres Strait Islander Justice Agreement* 2001 page 7 (Department of Justice and Attorney General)
4. Australian Bureau of Statistics, *Corrective Services Australia – June Quarter 2001*, ABS Canberra 2001, Table 5 Page 20
5. Australian Institute of Criminology, *Persons in juvenile corrective institutions 1981-2000*, AIC Canberra 2001, Table 3 & Figure 2
6. Australian Institute of Criminology, *Women in Prison – Numbers Soar*, Media Release, 1 October 2000
7. Media Release, Australian Government, Australian Institute of Criminology, No.8/04, 10/8/04 – [www.aic.gov.au/media/2004/20040810.html](http://www.aic.gov.au/media/2004/20040810.html)  
*Indigenous courts and justice practices in Australia* E Marchetti and K Daly, Trends and Issues in Crime and Criminal Justice, No 277, May 2004, AIC
8. *R v. Morin* (1995) 4 CNLR 37 at 86, 69, cited in L MacNamara, “Indigenous Community Participation in the Sentencing of Criminal Offenders: Circle Sentencing”, *Indigenous Law Bulletin*, 2000, 29.
9. South Australia Courts Website – [www.courts.sa.gov.au/courts/magistrates/aboriginal\\_court\\_days.html](http://www.courts.sa.gov.au/courts/magistrates/aboriginal_court_days.html)
10. Ibid
11. Magistrates’ Court (Koori Court) Act 2002 (Victoria)
12. Victoria Magistrates Court Website - [www.magistratescourt.vic.au/CA256CD30010D864/page/Specialist+Court](http://www.magistratescourt.vic.au/CA256CD30010D864/page/Specialist+Court)
13. *Sentencing: Principles, perspectives & possibilities*, Magistrate Doug Dick - Sentencing Conference, National Judicial College and ANU, Feb 2006
14. *Applying Therapeutic Jurisprudence in Regional Areas - The Western Australian Experience*, Stipendiary Magistrate Michael S King, Murdoch University Electronic Journal of Law Preventive Law Issue: Volume 10, Number 2 (June 2003)
15. *The Darwin Community Court Trial*, Sharon Payne, Director North Australian Aboriginal Legal Aid Service delivered at the Crime Prevention Forum, May 2005, Darwin – [www.nt.gov.au/justice/ocp/docs/forums/darwin\\_community\\_court\\_trial](http://www.nt.gov.au/justice/ocp/docs/forums/darwin_community_court_trial)
16. Annual Report – ACT Magistrates Court 2004-2005 page 37
17. Department of Corrections, Queensland