Evaluation of the Aboriginal Sentencing Court of Kalgoorlie

Final Report

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EXECUTIVE SUMMARY

In 2006, the then Department of Justice, in consultation with the Chief Magistrate, examined Aboriginal Courts throughout Australia and committed support to the judiciary in trialling an Aboriginal Sentencing Court, with the intention of determining the feasibility of implementing such courts within Western Australia. This was prompted by the high rate of Aboriginal imprisonment in Western Australia. Kalgoorlie was selected for the pilot program and the Aboriginal Sentencing Court Pilot of Kalgoorlie (locally known as the Community Court) commenced in November 2006. The project plan to establish the Community Court noted that 'initial evaluations of Aboriginal courts operating in Australia have shown a reduction in the rate of recidivism and breaches of bail for Aboriginal people appearing before them'[1].

The purpose of the Community Court pilot is to provide a courtroom sentencing experience and environment that is more relevant and less intimidating to Aboriginal people. The processes of the Community Court are designed to be more informal than mainstream Magistrates Courts with a rehabilitative focus, with Aboriginal Elders and respected persons as panellists who serve as advisors to the magistrate and provide advice on cultural issues and other relevant matters. They also assist the accused in understanding court process. The opportunity for greater involvement by the Aboriginal community in the sentencing process aims to promote a sense of Aboriginal ownership of the justice process therefore resulting in higher attendance rates and fewer breaches of bail.

Shelby Consulting was commissioned by DotAG to assess and report on three main aspects of the Community Court; its design, the achievement of outcomes and aspects of the operation of the Community Court that impact on outcomes.

The evaluation is based on a variety of information sources including a review of literature regarding similar initiatives in other jurisdictions, analysis of program documentation and data, and consultation with a total of 46 stakeholders, face-to-face or by phone. These included Kalgoorlie magistrates, Community Court staff, panellists, police, defence counsel, legal staff (ALS and Legal Aid) and corrective services representatives and internal and external agency representatives. Lastly, a number of statements were gathered from offenders who had appeared in the Community Court, which provide stories of success and failure, concerns and criticisms.

[1] Aboriginal Court Pilot Project plan, internal document, Department of the Attorney General, May 2006

Findings

Community Court design

The evaluation shows that the design of the Community Court is generally in line with good practice. It further finds that early implementation of the Community Court was well planned, supported and resourced, and contributed greatly to increasing the cohesiveness of the Aboriginal community within Kalgoorlie.

The achievement of outcomes

Meaningfulness of the court process

An overwhelming majority of stakeholders hold the view that the Community Court process resulted in an experience that is more meaningful and culturally appropriate. More time is taken with each offender talking about their circumstances, and they have to explain and take responsibility for their actions: being treated with respect and listened to in turn builds trust and respect for the judicial system.

Relationship between the court and Aboriginal people

Stakeholders generally believed that the Community Court had a positive effect on the relationship between the court and Aboriginal people. Seeing their Elders and respected persons interacting with and being respected by members of the justice system, gave offenders a greater sense of respect for and trust in the system. It was felt that information on these positive experiences would be transmitted to defendant's families and friends in the Aboriginal community, in turn enhancing their knowledge and trust in the system.

The majority of stakeholders recognise panellists as advocates for the Community Court and as such, they are believed to influence the wider Indigenous community, both in and outside of court.

Access to court services for Aboriginal people

The improvement in relationship between the court and Aboriginal people was thought by some stakeholders to have led to better access to court services. Seeing the project manager and Court Support Officer (CSO) being treated with respect led other Aboriginal people to be less reluctant to use the court services.

Aboriginal imprisonment numbers and recidivism

There was a strong belief amongst stakeholders that there had been a reduction in offending, perhaps because less serious offences were being sent to the Community Court. However, contrary to expectation, analysis showed both that *more* serious offences were being sent to the Community Court and that a higher proportion of participants reoffended in Community Court compared to those attending mainstream Kalgoorlie

Court for all age groups. This pattern held across different offence categories and for different numbers of prior convictions.

Similarly, the time to fail for Community Court participants was shorter than for Kalgoorlie Court offenders. However, on a positive note, a greater proportion of the 'failure' cases for Community Court participants were less serious than their 'original' offence compared to offenders choosing the mainstream court.

Importantly, the characteristics of offenders who attended Community Court were found to be very different from those who attended mainstream court. In particular, Community Court offenders were much younger and much less likely to have no prior convictions. A statistical test of significance was conducted for time to fail (as the outcome variable) against court for those who reoffended, and showed Community Court participants failed more quickly than those attending Kalgoorlie mainstream magistrates court. However, tests of significance also found differences in age, seriousness and number of priors between the two populations. These tests indicated that the groups were so different in characteristics that the difference in time to fail cannot confidently be attributed to the court attended. Therefore, it appears as though there are other unknown but important mechanisms at work and Community Court participants are self selecting (or being recommended) into groups with strongly different characteristics.

Court operations – issues and opportunities

A number of issues with the operation of the Community Court were identified, and recommendations made to resolve them.

Community Court referral and eligibility

The primary issue about eligibility is that while all eligible offenders may choose to have their cases heard in Community Court, analysis shows that the characteristics of those who take up the option are very different from those who do not. It is likely that recommendations by legal representatives and others in the court system play a part in the decision and currently those recommendations are neither explicit nor based on evidence regarding participants most likely to benefit from the initiative. One opinion suggests first-time offenders benefit because they are potentially less likely to offend; another suggests offenders with higher numbers of prior convictions attend the Community Court hoping it will provide a better forum for raising extenuating circumstances that might assist in negotiating more favourable sentencing outcomes or provide a better chance of accessing help to reform their offending behaviour. It is essential to understand what characteristics promote the best outcomes, decide the purpose of the Community Court, and provide guidelines or principles while still allowing flexibility.

Notwithstanding the above debate, currently, the proportion of juveniles attending Community Court is very high; should it remain so, the Community Court staff and panellists should be trained in the philosophy and role of working with young offenders in the context of the *Young*

Offenders Act (1994) as well as in effective techniques for communicating with young people. In addition, the potential for net-widening (increasing the contact with the justice system) as a side effect needs to be considered and mechanisms for reducing its likelihood put into place.

Other potential issues regarding eligibility criteria, the participation of non-local defendants, and the relaxation of the exclusion of family violence offences from the Community Court to allow consideration of some offences related to feuding issues, were not seen as problematic by stakeholders.

Programs

The literature review identified that the success of alternative courts is inextricably linked to the provision of offender programs. The Community Court design included funding for one position each in Community Justice Services (CJS) and Juvenile Justice (JJ) and the planned development of a register of services to assist with linking offenders to programs.

The evaluation shows that the implementation of the design has been compromised in a number of ways. In Kalgoorlie, there is a lack of mainstream and Indigenous-specific treatment, intervention and rehabilitation programs and support services and a lack of knowledge and information-sharing regarding available programs and services. Also impacting on the effectiveness of the Community Court is that extra resources in CJS and JJ which were planned, budgeted and implemented have only been partially applied and were not utilised to build the programming or counselling capacity for Community Court clients. The presence of a linking person, perhaps representing applicable services, would be ideal; however, a complete and accessible register of services would provide a minimum starting point.

If the current design proves too problematic to achieve effective implementation, it should be revisited; indeed, additional initiatives to bolster this critical component of the Community Court should be considered in light of the characteristics of the offenders participating in the Community Court process. For example, funding for community organisations to deliver programs for Community Court participants may be necessary to increase the availability of programs if CJ and JJ resources cannot be effectively deployed to provide additional programmatic capacity to the Community Court.

Panellist interpersonal skills, confidentiality and conflicts of interest

It was identified that panellists needed ongoing training in interpersonal skills to effectively carry out their role. In addition, issues regarding confidentiality and conflicts of interest when selecting Elders or respected people were identified. A Code of Conduct was recommended to be developed.

Roles

The efficacy of key positions has been compromised to some extent, affecting the program. The key project manager position suffered turnover

during the pilot and was vacant for some 5 months; the current incumbent's attention has been on general administrative tasks rather than community development and education, and project management. At the same time, the CSO's time has been suborned by the general court, save for actual Community Court sitting time. A particularly important casualty has been the registry of service providers and support programs, which was one of two strategies for allowing panellists, magistrates and program staff to link offenders to programs, which has not been developed.

Also critical has been the deployment of CJS and JJ funding on business-as-usual support for the Community Court participants rather than being used to develop additional programmatic support. This has compromised the second link to programs in the Community Court design.

Recruitment and retention of panellists

Processes for the recruitment of panellists have been thorough but need to be made explicit.

Training

At the start of the pilot, general court staff, magistrates and project staff received cross-cultural awareness training, and, along with panellists, on Community Court procedures. Initial training for panellists was repeated for the new panellists; however, cross-cultural training has not been repeated and many of the personnel involved in the Community Court have not received the training. The initial training needs to be provided for all new personnel; in addition, ongoing training dealing with skills and knowledge relevant to the role should be provided to the panellists.

Community building

Community building occurs through the involvement of panellists in the Community Court, who are also strong advocates for the Community Court in their communities. The project manager has a strong role to play in building links with the community and increasing knowledge of and respect for the Community Court; however, this role is currently being given a very low priority.

Governance

A Reference Group was implemented during the establishment of the Community Court; however, it ceased operation when the Community Court commenced. A Reference Group with specific focus on issues directly related to the Community Court would provide a valuable forum for intra-agency and community liaison, and input.

The project management commenced during the establishment of the Community Court, has been neglected; strategic plans, policies and procedures need to be developed, implemented and managed for key aspects of the Community Court.

Expansion

Stakeholders would like to see the Kalgoorlie Community Court expanded to the lands and areas surrounding Kalgoorlie. It was thought that if properly resourced, managed and operated, Community Courts would be appropriate and successful in Leonora, Laverton, Coolgardie, Warburton, and Esperance. The main concern of stakeholders about expanding was with resourcing, which they considered essential to the success of such specialist courts. A project manager is a minimum resource for a community court at a new location; and community support is essential.

Summary

There is considerable goodwill and positive affect generated by those involved in the project and that the program as designed is good practice and therefore, if operating as designed, has the capacity to improve outcomes; however, operating without sufficient supports, the one-half to three-quarters of an hour that the client spends within the Community Court is insufficient to result in sustained behavioural change.

Critically, analysis of offending data does not show any improvement in outcomes for Community Court in comparison to mainstream courts in relation to failure rates or time to fail, regardless of seriousness of offence, age, and number of priors. A small decrease in the seriousness of the failing offence has been noted. What has also been noted is that the population attending the Community Court has quite different characteristics compared to the mainstream Magistrates Court: a higher proportion of juveniles, lower proportion of offenders having no prior offences, and higher level of seriousness for the offences for the Community Court group. Such characteristics would suggest more rather than less support is required compared with mainstream, particularly since higher level sentencing outcomes (community based orders rather than fines) are the result.

The indication is that none of these factors are sufficient to explain the outcomes; however, the different characteristics create problems in making comparisons. Therefore, if the current trend continues, alternative comparison techniques need to be planned. Preliminary significance testing suggests that these variables do not adequately predict outcomes and additional data collection, capturing offender characteristics such as substance use and abuse, employment, accommodation and education is likely to be necessary first to identify predictors and second to suggest indicators for effective referral to the court.

Therefore the primary recommendations of this evaluation are as follows:

- Resources that were planned for the initiative but have been dissipated be immediately reoriented to their intended roles, and further, that funding for programs be provided, similar to the Drug and Family and Domestic Violence courts.
- Strong management processes be put in place as a priority to support the reestablishment of essential components of the design, particularly to renegotiate the role of CJS/JJ resources, restart the Reference Group, support and reorient the project

manager and CSO, and commence the sourcing of programs that support the Community Court's intended outcomes.

- Further investigation into Community Court outcomes be carried out to provide a better understanding of the results of the evaluation and the wider causal factors. Exploratory discussions with offenders who choose, and reject, Community Court would provide a better understanding regarding the factors considered by potential clients. The development of a mechanism to identify and record other offender characteristics will potentially provide better comparison and predictive capacity.

It should be recognised that this Community Court pilot developed out of community interest, in a region where recidivism is a grave problem and where relationships in justice have always been problematic. Addressing these issues is important. It would appear that resources were borrowed from the project to assist in other areas and elements of the design were allowed to slip away, perhaps in the belief that it wasn't affecting outcomes. However, this evaluation has shown that as currently (under)implemented the court is not demonstrably achieving its outcomes and therefore requires proper care and attention if it is to be allowed the opportunity to exhibit the outcomes designed and expected. The need for this positive force in the community is manifest and it is essential that resources be immediately reapplied to allow the program the best opportunity to succeed. When the Community Court has been allowed to operate as originally planned and resourced, further evaluation of outcomes can (and should be) undertaken.

List of recommendations

Recommendation 1.	Specific juvenile justice training for dealing with young offenders be provided for stakeholders involved with juvenile cases, particularly magistrates, panellists and police prosecutors.
Recommendation 2.	Eligibility criteria for Community Court be reviewed and clarified, and principles or guidelines for eligibility be developed, based on evidence regarding offenders showing best outcomes.
Recommendation 3.	The importance of programs to alternative court designs be recognised and community programs be funded, similar to the Drug Court or Family Violence Court.
Recommendation 4.	Panellists be provided with ongoing skills training relevant to their role, such as basic interpersonal, counselling and mediation skills.
Recommendation 5.	A Code of Conduct for panellists and others within the court (such as the police prosecutor) be developed, outlining principles for addressing

offenders, confidentiality, and identifying and dealing with conflicts of interest.

Recommendation 6. Clear roles and responsibilities for all key Community Court positions be developed and included in specific guidelines.

Recommendation 7. The project manager role be refocused on the promotion of the Community Court, community outreach and education, community network building and increasing the Community Court stakeholder base.

Recommendation 8. In particular, as a priority, the project manager focus on developing a comprehensive resource list of available programs and service providers that can be recommended to Aboriginal offenders in the Community Court.

Recommendation 9. The court support officer be refocused on supporting the operation of the Community Court including increasing the focus on supporting Aboriginal defendants, their families and community members within the Community Court and registry.

Recommendation 10. Mechanisms be developed for collaboration and liaison between the project manager and CSO positions.

Recommendation 11. Specific CJS and JJ positions be utilised for the Community Court and specific JDFs be developed in consultation with Community Court staff, including a different title associating the role with the Community Court.

Recommendation 12. Facilitate a discussion regarding the roles that CJS/JJ and magistrates carry out in relation to offender management both to clarify what each agency can contribute and to open up and improve the interagency relationship. This issue needs to be resolved at a senior level with management taking a lead role in building the relationship between courts and CJS and JJ.

Recommendation 13. Panellist recruitment and selection principles and processes be made explicit.

Recommendation 14. An ongoing schedule of training and seminars be developed and provided to panellists to address court procedures, policies and local resources/services and should be provided in an interactive manner that meets Aboriginal learning styles.

Recommendation 15. Cross-cultural training be developed and delivered by local organisations, be conducted on a regular basis and be mandatory for all magistrates, general court staff, Community Court staff and panellists, police prosecutors, CJS/JJ officers and internal and external agency representatives

Recommendation 16. Training and information related to the philosophy, purpose, process and procedures of the Community Court be provided on a regular basis to general Magistrates Court staff and staff from other agencies (DCS, CJS, JJ, Police and service providers) and that it include an explanation and clarification of the duties and responsibilities of the positions associated with the Community Court as well as issues of racism and cultural diversity.

Recommendation 17. The Reference Group be re-convened, focussed specifically on the Community Court, with clear terms of reference, roles, and lines of accountability so that key stakeholder have a mechanism for providing input into the ongoing operations and policies of the court.

Recommendation 18. Develop and expand strategic, process, policy and procedural guidelines and manuals of Community Court operations.

1. INTRODUCTION

1.1 Background

In 2006, the then Department of Justice, in consultation with the Chief Magistrate, examined Aboriginal Courts throughout Australia and committed support to the judiciary in trialling an Aboriginal Sentencing Court, with the intention of determining the feasibility of implementing such courts within Western Australia. This was prompted by the high rate of Aboriginal imprisonment in Western Australia. Kalgoorlie was selected for the pilot program and the Aboriginal Sentencing Court Pilot of Kalgoorlie (locally known as the Community Court) commenced in November 2006. The project plan to establish the Community Court noted that 'initial evaluations of Aboriginal courts operating in Australia have shown a reduction in the rate of recidivism and breaches of bail for Aboriginal people appearing before them'[2].

The Aboriginal Sentencing Court Pilot of Kalgoorlie (locally known as the Community Court) commenced in November 2006. For the purposes of this report, the Aboriginal Sentencing Court will be referred to as 'the Community Court'.[3]

The Community Court is a Magistrates Court or a Children's Court (constituted by a magistrate) in the criminal jurisdiction that acts as a sentencing court for Aboriginal accused who plead guilty to offences. The process does not utilise traditional Aboriginal Law and does not involve changes in law or the range of sentencing options available to the magistrate.

1.2 Purpose of the pilot

The purpose of the Community Court pilot is to provide a courtroom sentencing experience and environment that is more relevant and less intimidating to Aboriginal people. The processes of the Community Court are designed to be more informal than mainstream Magistrates Courts with a rehabilitative focus, with Aboriginal Elders and respected persons as panellists who serve as advisors to the magistrate and provide advice on cultural issues and other relevant matters. They also assist the accused in understanding court processes.

The opportunity for greater involvement by the Aboriginal community in the sentencing process aims to promote a sense of Aboriginal ownership of the justice process therefore resulting in higher attendance rates and fewer breaches of bail.

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[2] Aboriginal Court Pilot Project plan, internal document, Department of the Attorney General, May 2006

[3] The Norseman Community Court predated this pilot beginning in February 2006

1.3 Evaluation and monitoring

In October 2007, a Process Review and Evaluation of the Kalgoorlie Community Court was completed. The focus of this review was to evaluate the set-up and operation of the Kalgoorlie Community Court. As a result of the review, relevant strengths and weaknesses of the Community Court were determined and recommendations for improvement were made. To date, no monitoring mechanisms are formally in place to monitor the Community Court.

2. EVALUATION APPROACH AND METHODOLOGY

2.1 Purpose of the evaluation study

Shelby Consulting was contracted by the Department of the Attorney General (DotAG) to evaluate and report on the extent to which the Aboriginal Sentencing Court Pilot (Kalgoorlie Community Court) is meeting key project objectives. Those objectives, as originally stated in the Kalgoorlie-Boulder Community Court (Aboriginal Court Pilot) Procedure and Philosophy Statement, are to:

- Deliver culturally appropriate sentencing for local Aboriginal people
- Improve access to and equity of court services for Aboriginal people
- Increase the openness and inclusiveness of court services for Aboriginal people
- Improve relationships between the Court and Aboriginal people
- Reduce Aboriginal imprisonment numbers and recidivism rates in the Eastern Goldfields
- Enhance safety for all members of the local community

2.2 Evaluation questions

In initial meetings with the Evaluation Reference Group, key project objectives were discussed and clarified. As a result, the evaluation brief above was consolidated into the following broad evaluation questions:

Outcomes

1. Is the court process more meaningful to Aboriginal people, specifically offenders, the Aboriginal community, the wider community?
2. Has the experience of accessing court services for all courts improved for Aboriginal people, including offenders' families and supporters, and victims, and is this particularly due to improved staff service?
3. Overall, has the relationship between the court and Aboriginal people improved?
4. Has the court contributed to reducing Aboriginal imprisonment numbers and recidivism rates in the Eastern Goldfields and enhanced local community safety?
5. What factors have supported the achievements of outcomes (if any)?

Process

6. What improvements could be made to court processes or services?
7. How appropriate are the processes of recruitment and retention of panellists?
8. How appropriate is the cross-cultural awareness training and familiarisation for judicial officers, panellists, staff and other court participants?
9. How appropriate are the roles carried out by each of the stakeholders involved with the community court?
10. How is the community building role of the court executed? In what ways is the local Indigenous community strengthened?

Design

11. How does the WA approach compare to other jurisdictions and is there anything that WA can learn?

Sustainability

12. What are the issues and opportunities for future expansion of the courts throughout the State?
13. What are the costs and benefits of the pilot? How sustainable is the current model? What are the implications of the funding model?

2.3 Methodology

The evaluation is based on a variety of information sources: literature, program documentation, program data and consultation. These are outlined below.

Literature review

A review of literature regarding similar initiatives in other jurisdictions was undertaken which involved internet research, the review of reports, and contacting appropriate agencies in other jurisdictions. A copy of the Literature Review is attached as APPENDIX A.

Document analysis

Documents related to the establishment of the Community Court and current operations were reviewed. These included:

- Kalgoorlie-Boulder Community Court Aboriginal Court Pilot Procedures and Philosophy Statement, DotAG
- A Discussion Paper on Aboriginal Courts, Department of Justice
- Aboriginal Court Pilot, DotAG

- Aboriginal Courts Draft Communication and Consultation Plan, Department of Justice
- Aboriginal Sentencing Court Pilot Communication and Consultation Plan, DotAG
- Kalgoorlie Community Court Process Review and Evaluation Summary Report
- Kalgoorlie Community Court Action Plan, In Response to the Process Evaluation
- Job Description Form Project Manager, DotAG
- Job Description Form Court Support Officer, DotAG
- Indigenous Multilateral Funding documentation

Program data

Data regarding court appearances both for Community Court cases as well as for all the Magistrates Courts in the Region was obtained from DotAG and analysed. This was used to describe the demographic characteristics of offenders appearing in the court as well as the sentencing outcomes. Lastly, the data was used to compare reoffending. This is described in more detail below in section 2.4.

Stakeholder consultation

A total of 46 interviews were carried out either face-to-face or via telephone. Face-to-face interviews occurred with individuals, in small groups (for example Kalgoorlie magistrates) or in a community forum setting during three visits to Kalgoorlie by Shelby consultants. A total of eight consultant days were spent in Kalgoorlie conducting interviews and attending and observing the Community Court.

The stakeholders consulted included present Kalgoorlie magistrates and Community Court staff, as well as one of the magistrates involved with the inception of the Community Court. Panellists, police, defence counsel, legal staff (ALS and Legal Aid) and Department of Corrective Services representatives (CJS and JJS) were also interviewed, as well as internal and external agency representatives. Shelby's Aboriginal consultants interviewed panellists and local Aboriginal people, as well as other stakeholders. Shelby's non-Aboriginal consultants carried out additional interviews. A list of stakeholders interviewed is included in APPENDIX C.

Offenders stories

Lastly, a number of statements were gathered from offenders who had appeared in the Community Court. Additionally, stakeholders shared defendants' stories of success and failure, concerns and criticisms. These stories are woven throughout the text of this report to illustrate emerging themes and provide examples of personal experiences of those who have sat before the Community Court.

2.4 Program data analysis

This section describes the analysis carried out on the program data in more detail.

Data sets

The following datasets were obtained for the analysis:

Community Court data

A dataset of *hearings* of all cases finalised in Community Court was obtained from inception of the pilot on 23 November 2006 to 31 March 2009.

Magistrate Court data

A dataset of all cases involving Aboriginal people finalised in the Magistrates Courts in the Region was obtained for 1 November 2006 to 31 March 2009. The Region includes Magistrates Courts in Coolgardie, Esperance, Kalgoorlie, Kambalda, Laverton, Leinster, Leonora, Menzies, Norseman, Warakurna and Warburton.

The following analysis was carried out.

Cases overview

A list of finalised cases for Community Court was extracted from the list of hearings. Similar data for all Kalgoorlie Magistrates Courts and all Magistrates Courts in the Region was used for comparison. Note that this comparison is not strict due to the different definitions of Aboriginality (see below).

Aboriginality

Data for all people fronting Community Court was obtained regardless of designation of Aboriginality. These were all included in the cases and demographic overview.

For Kalgoorlie and Regional statistics the CHIPS[4] designation of Aboriginality (captured by police) was used to define Aboriginality and only those indicated as Aboriginal, Torres Straight Islander or both were included. Whereas this has been unreliable in the past, we have been advised that considerable emphasis has been put into accurately recording this information in recent years.

[4] CHIPS is the offender data management system used by Magistrates Courts

Table 2-1: Number of people, finalised cases and hearings at Community Court and comparison courts; 23 Nov 06 (commencement) to 31 Mar 09

	People*	Cases	Hearings
Community Court	258	**474**	1 119
All Kalgoorlie Magistrates Courts	1 575	3 618	
All Regional Magistrates Courts	2 529	6 930	

*All people fronting Community Court; Aboriginal people for Magistrates Court as designated by CHIPS

A description of the cases is provided in section 3.5.

The cases were analysed by the following characteristics.

Age, court and gender

Each of the cases was designated either Children's Court or Magistrates Court, regardless of the age of the offender at lodgement. Magistrates Court cases were subdivided into cases where the offender was 25 years or less at the age of lodgement, and over 25 years of age. Gender designation was reported as male, female or unknown.

Seriousness of offence

The severity of offences heard in each of the courts was compared using the ABS Overall Seriousness Index (OSI), which weights offences of different types against set criteria producing a single number. Seriousness is defined in terms of degree of harm suffered by the victim and culpability of the offender. It ranges from the 100s, which are the most serious to 1600s. The categories of offences are summarised below. For each case the most serious offence was used for the analysis.

Table 2-2: Summary of offences in ABS OSI

Category	Summary of offences
100s	Murder, attempted murder, manslaughter
200s	Sexual assaults, driving causing death, child pornography
300s	Drug dealing and manufacture, assaults, abduction
400s	Robbery and theft, blackmail, arson
500s	Weapons/explosives dealing
600s	Counterfeiting, burglary, break and enter, car theft, retail theft, receiving stolen goods
700s	Forgery, fraud and professional misrepresentation
800s	Stalking, harassment, threatening behaviour
900s	Driving under the influence, dangerous driving
1000s	Commercial/import/export regulation, offences against privacy
1100s	Pollution, public health, occ health and safety, property damage
1200s	Subvert the course of justice, breaches, resist police officer/govt official, bribery
1300s	Drug possession and use
1400s	Bribery (not govt officials), censorship, immigration
1500s	Trespass, riot, vilification, criminal intent, offensive behaviour, cruelty to animals, betting, prostitution, disorderly conduct, liquor offences
1600s	Driver licence offences, defamation, registration and regulation offences, speeding, graffiti, parking etc.

Sentencing outcomes

The cases were analysed to compare the sentencing outcomes. Consolidated outcomes categories developed by DotAG were used in the analysis to group like categories and reduce the number of categories to assist with interpretation. The categories are shown below in the *consolidated sentence* column below. The most common sentencing outcomes in each of the categories for Magistrates Court and Children's Court are given in the remaining two columns. A table in APPENDIX F shows how the sentencing outcomes are mapped into these categories.

Number	Consolidated Sentence	Adult	Juvenile
1	Detention/imprisonment	Imprisonment	Detention
2	Suspended imprisonment	SIO – Suspended Imprisonment Order	n/a
3	Intensive order	ISO – Intensive Supervision Order	IYSO – Intensive Youth Supervision Order
4	Community order	CBO – Community Based Order	YCBO – Youth Community Based Order
5	JJT referral	n/a	JJT – Juvenile Justice Teams
6	Fine	Fine	Fine
7	Conditional release etc	ACRO – Adult Conditional Release Order	GBB – Good Behaviour Bond
8	No punishment	No punishment	No (further) punishment
9	Dismissed etc	Not guilty	Not guilty
10	Not applicable		

Breaching

Since the proportion of sentencing outcomes resulting in Community Based Orders (CBOs) was much higher for Community Court, the question was raised whether this in turn raised the level of scrutiny on offenders and increased the risk of breaches of their conditions and additional offending. Therefore, the data was analysed to determine whether this was an important dynamic in offenders' experience of the Community Court. The results of this analysis are given in section 3.5.

Pre-Sentence Orders (PSOs)

PSOs can be used to defer final sentencing while the participant undertakes an agreed program. The use of PSOs prolong the sentencing phase of a case and may affect the outcome. The number of PSOs used in the Community Court was investigated to see if it was a variable that should be considered; however, as only 9 cases in the Community Court used PSOs and the outcomes were varied they were not considered important to the analysis.

Recidivism

Study period

The study period was cut to the nearest month; therefore data for cases finalised between 1 December 2006 and 31 March 2009 was included in the study. (Community Court commenced on 23 November 2006).

Recidivism study group

The recidivism study group was defined as all people who had had a case finalised in the Community Court during the study period.

- Since regional offences were only obtained for people recorded as Aboriginal in CHIPS, Community Court people who were designated *non-Aboriginal or unknown in CHIPS were excluded* from the analysis (39 people representing 82 cases and 213 hearings).
- Data for people with *unknown gender* were removed.
- For each person who appeared in Community Court at some time during the study period their first case finalised in this court was identified and designated FIRST.
- For each person, any cases with an offence date before the finalisation date of this FIRST case were designated PRIOR as the offence occurred before the Community Court experience.
- For each person, the first finalised case (if there was one) in any Magistrates Court in the Region with an offence date after the FIRST Community Court offence finalisation date was designated the FAIL case.
- For each person, any additional cases after the FAIL case were designated EXTRA cases.

Recidivism comparison group

The comparison group for the recidivism calculation was all Aboriginal people with a case finalised in Kalgoorlie Magistrates Court who *never* appeared in the Community Court during the study period.

- Data for *offenders aged 54 or older was removed* as they were older than the Community Court profile.
- Data for *offenders with unknown gender was removed*.
- For each person in this group, their first case finalised in the Kalgoorlie Magistrates Court in the study period was designated the FIRST case.
- For each person, any PRIOR cases and the FAIL case were identified as for the Community Court group.
- For each person, any additional cases after the FAIL case were designated EXTRA cases.

Coding

Cases were coded using the following designations:

Court	Kalgoorlie Community Court
Age	Children's Court Magistrates Court≤25 Magistrates Court >25
Period	1=1/12/06 to 31/5/07 2=1/6/07 to 30/11/07 3=1/12/07 to 31/5/08 4=1/6/08 to 30/11/08 5= 1/12/08 to 31/3/09
Gender	Female Male
Offence	FIRST FAIL PRIOR EXTRA

The resulting datasets used in the recidivism analysis contained the following data:

	People
Community Court	219
All Kalgoorlie Magistrates Courts	1 286

For the recidivism calculations, the individuals and cases resulting in incarceration were omitted from the calculation leaving the following data.

	People
Community Court	210
All Kalgoorlie Magistrates Courts	1 203

The following statistics were calculated for the two study groups.

Demographics

The age, court and gender of the individuals in the two study groups were calculated. In addition, the profile of the number of prior convictions was identified. ANOVAs of gender, age, seriousness and number of priors against court were carried out.

Failure rate

The proportion of each of the groups reoffending after six, 12, 18 and 24 months was calculated. This *failure rate* was further analysed against the number of prior convictions, and seriousness of the FIRST case.

Time to fail

The *time to fail* for those who did fail was calculated as the difference between the finalisation date of the FIRST case and the offence date of the FAIL date, in days. An ANOVA was carried out of time to fail for those who did fail against court attended.

Change in seriousness

The difference in seriousness between the FAIL and FIRST cases was calculated. The numbers becoming less serious, staying the same and becoming more serious was calculated.

The results of the recidivism analysis are given in the response to question 4 in section 4.2.

2.5 Format of report

Chapters One and Two introduced the evaluation and described the methodology. Chapter Three provides a foundation for the report, outlining the regional context of the court and its origins before describing the court itself: its physical characteristics and operation.

Chapter Four responds to the evaluation questions in section 2.2 addressing the achievement of project outcomes. The chapter addresses the appropriateness of the court's design compared to good practice. Next the Community Court's effectiveness is discussed considering aspects such as the meaningfulness of the court, equity and access to court services and the community-building aspirations underpinning the court, as well as quantitative outcomes including the failure rate and time to fail. Lastly, costs and benefits of the pilot are discussed in terms of project sustainability and expansion.

Finally, chapter Five discusses the findings of the evaluation proposing actions to improve the operation and outcomes of the court and commenting on sustainability and expansion of the court.

3. KALGOORLIE ABORIGINAL SENTENCING COURT

3.1 Regional history of Kalgoorlie

Located 596 kilometres inland from Perth, the city of Kalgoorlie-Boulder lies in the arid region of Western Australia. Covering an area of 95,229 square kilometres, Kalgoorlie-Boulder is Australia's largest outback city and the largest outback city in the world.

The original inhabitants of the area are the Maduwongga or "Wongi" people. As a result of the population influx during the gold rush of the late 1800's and the establishment of missions in the area, various groups of people, including different Indigenous tribes, moved to Kalgoorlie-Boulder and now permanently reside in the area. The early pastoral activities and gold mining around the city displaced many Aboriginal people and important special places or heritage sites were left unprotected and have been lost to disruption or development over time.

Over the years, Kalgoorlie-Boulder's population has oscillated with changing fortunes in the region and today, resources such as nickel and copper, as well as gold, make the region one of the most prospective mineral districts in the world. Due largely to recent development in the Northern Goldfields and ongoing confidence in the region, the population of Kalgoorlie-Boulder is approximately 28,422[5]. Seven and one-half percent of this population consists of Aboriginal people who live within the town or in Aboriginal communities situated on the fringes of the town itself.

The Aboriginal people in the region have recently litigated and lost a major Native Title claim involving many different Aboriginal family and clan groups. The internal community tensions associated with this litigation continue to plague the Aboriginal people of the region. Moreover, family disputes and feuding have contributed to a fragmented Indigenous community in Kalgoorlie.

3.2 Project origins

Context and scope

At the time that the Ministry of Justice was investigating the establishment of an Aboriginal Court in Western Australia, a magistrate who had played a role in the development and implementation of the Koori court in Victoria, together with a Western Australian magistrate who had conducted Aboriginal Sentencing Court sittings at Yandeyarra, south of Port Hedland, initiated discussions regarding establishing such a court in Kalgoorlie-Boulder, a city/region which had the highest rate of Aboriginal imprisonment in the state. Discussions with the local council,

[5] Australian Bureau of Statistics 2006 census

businesses and community groups were initiated and the idea gathered support. However, progress in setting up the Community Court in Kalgoorlie-Boulder was slow as there were highly conflicting native title issues, as well as considerable family feuding and a lack of human and administrative court resources.

In the meantime, discussions also took place in Norseman and with a smaller, more cohesive and supportive community and strong support in key agencies (including the Mining Registrar), discussions were more productive. An eight-month communication and consultation phase resulted in the establishment of a community court at Norseman in February 2006. This proceeded on an informal basis without any additional funding and little project documentation. Training was undertaken by the magistrates in time set aside during circuits and on an ad hoc basis. Aboriginal Elders who became panellists received a manual on procedural matters and relevant legislation. They later attended formal training with the Kalgoorlie-Boulder panellists.

Anecdotally, the news that Norseman court was running successfully provided the impetus for renewed community enthusiasm in Kalgoorlie-Boulder. The pilot project manager position was created and filled in April 2006. The project manager engaged with the local Aboriginal community and joined the magistrates in developing a vision for the Community Court, taking into account the importance of choosing suitable and appropriate panellists. The project to establish the Kalgoorlie-Boulder Community Court commenced in May 2006 and the court commenced operation in November 2006.

In Norseman, one of the greatest impacts identified was the panellists sitting at the table with the magistrate and the offender. Not only was this useful because all participants sat at eye-level, but it highlighted the inclusive role of the Aboriginal Elders/respected persons as cultural advisors, providing background information about the defendant, his/her immediate family and their social, economic and cultural background, which in turn informed the magistrate's sentencing decision. This was also a feature of the Victorian Koori Court and the Yandeyarra Court, and was one of the most important characteristics applied in both Norseman and Kalgoorlie.

While the Norseman and Kalgoorlie courts share a number of features, the Norseman court is unique in that it is not an Aboriginal-specific court: it was decided during the consultation phase that the community was so small that any offending impacted on it as a whole. The Norseman Community Court also had the support of two female non-Aboriginal local justices of the peace who on showing interest were invited to sit as a part of the community court process.

Panellists in both courts initially sat for free; however, since July 2008, panellists in both courts are paid $200 for a full day and $110 for a half day in line with Department of Premier and Cabinet (DPC) recommendations. They are typically provided with lunch. Never having been formally sanctioned by the Department, the Norseman court does not receive any additional funding beyond this sitting fee, and functions on the goodwill of the participants.

Process of implementation

Community Consultation

Once Kalgoorlie was selected for the project and the project manager was hired, a comprehensive communication and consultation process[6] was initiated. It took place over five months, involving both internal and external stakeholders.

The objectives of the process were to:

- Gain stakeholder input on a preferred model for the Aboriginal Sentencing Court pilot in Kalgoorlie-Boulder;
- Engage the Kalgoorlie-Boulder Aboriginal community to identify Elders and other respected persons and recruit them for the pilot court;
- Create an awareness of the pilot court among Aboriginal offenders and the wider Aboriginal community to maximise its usage;
- Convey the operation and benefits of the Aboriginal Sentencing Court to the local and wider community.

The plan aimed to involve internal staff and committees, the Attorney General, external agencies, women and men representing the diverse Aboriginal community in Kalgoorlie-Boulder and the general Kalgoorlie-Boulder community.

The process involved meetings of magistrates and the project manager with non-Indigenous community members and businesses, as well as with Aboriginal community members. The community met as women and men separately and then as a whole community. The meetings considered the appropriateness of the Community Court, canvassed Aboriginal and non-Aboriginal support, opposition and scepticism about the Community Court and attempted to forge relationships in the sector, and discussions about a model were undertaken and the meetings provided information about how the court could operate. A particular issue was the role of panellists in sentencing and it was clarified that this remained the magistrate's responsibility. People were also concerned about conflicts of interest, about members of opposing native title and feuding groups dealing with those with whom they were in conflict, and possibilities of 'pay back' against panellists for sentences.

Moreover, the process aroused the fractured and problematic relationships within the Kalgoorlie-Boulder and wider Aboriginal community and considerable mediation was required resulting in long standing issues being aired and ultimately resolved for the purposes of court hearings. Whilst the Community Court has garnered support and consensus and conciliation has occurred, it will take a much greater time to resolve these conflicts in the community itself and they are still apparent.

[6] Aboriginal Sentencing Pilot - Communication and consultation plan, DotAG internal document, May 2006

Other components of the communications and consultation phase included briefings, articles in internal agency publications and the printed media, radio interviews, public meetings and information on the agency web site. Feedback from the magistrates emphasises that the establishment of such a court is time consuming and onerous and suitable resources need to be incorporated into any implementation plan for additional courts.

The interim evaluation noted that '*the consultation was extensive and conducted in an open, inclusive manner that engendered strong community support for the concept, despite initial scepticism*.'

Panellist Recruitment and Selection Process

Panel members were recruited through informal and formal mechanisms. Informally, individuals from the Aboriginal community who it was thought would make good panellists were informed of the opportunity during the consultation, and people were invited to nominate; this occurred openly in the meetings that were held. Additionally, workers at local agencies and organisations were asked to nominate suitable candidates. In addition, an advert was placed in *The West Australian* newspaper, seeking applications from people who:

- knew the local community
- were able to provide written referees from two local individuals and
- were able to provide police clearance

The police clearances were funded by the DotAG. Applicants with matters currently before the court were precluded from nomination.

Applications were assessed and 15 panellists were selected by the magistrates, with the selections ratified by the Chief Justice. It was seen as important that panellists be selected who were committed to improving justice for Aboriginal people and who had extensive involvement in Aboriginal family and community issues. Panellists were provided with information regarding issues such as conflict of interest and Community Court expectations in a training package (see section below); however, there is no written Code of Conduct for panellists at this time. With one exception, those selected were senior members of the local Aboriginal community. The exception was a young local woman (23 years old) who met all the selection criteria whose youth was seen as a positive attribute by those with whom she sat.

Most of the original panellists still sit today; however, two new panellists have been selected in a separate recruitment drive, using a similar process to the original.

Local Reference Group

The Community Court was promoted as a 'whole of court' process. A Reference Group was established that attempted to meet once every two months to discuss issues of justice in the Aboriginal community, service delivery and anything else of concern. The forum was also designed to

enable agencies to connect their services with the community. Representatives from WA Police, Departments of Corrective Services, Community Development, Education and Training, Housing, Indigenous Affairs and Health, as well as City of Kalgoorlie-Boulder and Centrecare were invited to the meetings as were Aboriginal community representatives. The objective of the meetings was to open up the dialogue and coordinate service delivery related to the Community Court.

Training

Community Court information sessions

At the time of the Community Court's inception, all court staff participating in the Community Court, as well as general court staff associated with the Magistrates Court, attended departmental information sessions providing them with information about the Community Court, its purpose and operation.

Cross-cultural training

All court staff, including magistrates and general court staff, also attended a two-day cross-cultural training session at the time of the Community Court's inception. The first day of training was conducted by a Perth-based consultant and addressed issues of cultural diversity, cultural awareness, sensitivity and race. The second day of training was run by staff from the local Kalgoorlie-Boulder Language Centre and covered local content such as kinship systems, skin groups, the influence of missions and Christianity, and other related issues.

Court policies, processes and procedure information sessions

In addition, panellists attended two days of training on general court policies, processes and procedures. The training was split into two segments and run over four days to facilitate the attendance of the panellists for the whole of the training. Panellists were not paid for their attendances at these sessions and their organisations appear to have sanctioned and paid for their attendances. This training included reading and understanding mock-up prosecution notices, pre-sentence reports, criminal records, sentencing options, and addressing conflicts of interests. Panellists also learned about the *Sentencing Act (1995)* and *the Bail Act (1982)* and mock court sessions were held, which involved role playing with police prosecutors.

Panellist process and procedural information sessions were held over the course of the Community Court pilot and an additional one-day panellist training was conducted in early August 2008 at the Goldfields Land and Sea Council in Kalgoorlie-Boulder. This was also attended by a recently appointed magistrate and included information on reading and understanding police records, the complaint process, and determining sentence outcomes.

3.3 The Court

This section describes the Community Court design, including location, layout, resources and roles. The actual operations of the Community Court are discussed further in section 5.1.

Location

The Community Court is held in the Kalgoorlie Court House in a room designated as the Children's Court. It is at the side of the building, away from the rooms used for mainstream court. It has a small waiting room and entry is from a side door.

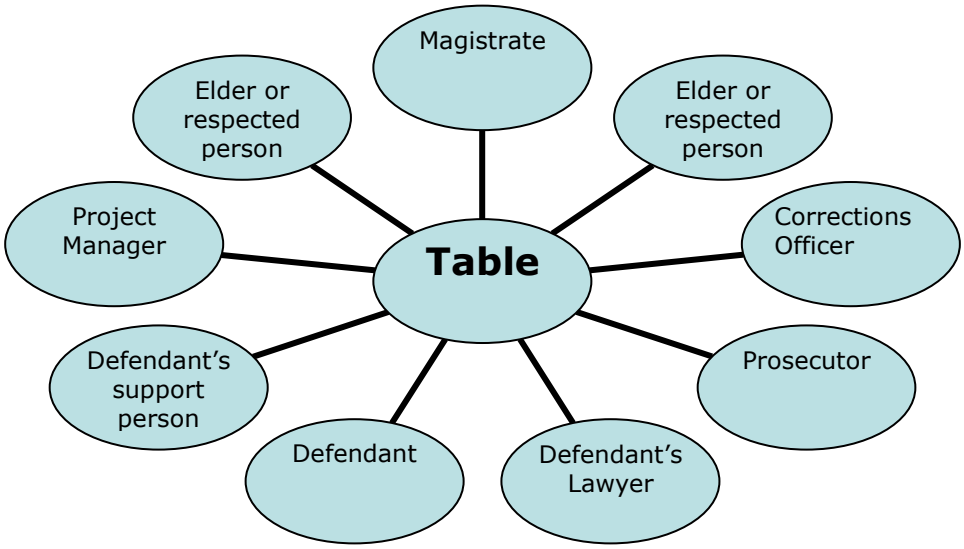
The Community Court sits once a fortnight on Wednesday. Early in its operation the court sometimes sat the entire day, with up to 18 cases while at other times only six to seven cases were seen. The number is currently capped at nine cases per sitting.

Layout

The Community Court has an informal structure with the magistrate and the other participants, including the offender and their family sitting around an oval table. The table was specially crafted by a local Aboriginal community organisation and includes an inset of an Aboriginal painting. The level and shape of the table was designed to 'ensure that everyone is at eye level' to indicate people are of an equal standing. The aim is to relax the participants and improve their involvement in the process and hopefully improve the outcome. Behind the magistrate and the panellists, the Australian, Aboriginal and Torres Strait Islander flags hang as recognition of and respect for the Aboriginal connection to their country and the land; the aim of this is also to relax the participants and improve their involvement in the process and hopefully improve the outcome. Within the courtroom is a painting bearing the legend: "This painting is by Nannapa (young people). It represents men and women meeting with their youth to show them there are better paths to take in life than the one they are on and they are there to lend a hand". This iconography, as well as the table, seating arrangement and display of the flags was included to create a culturally appropriate environment relevant to Aboriginal people.

The original seating of the Community Court was to be family- and community-focussed. Seating was designated with the magistrate flanked by the two panellists and the project manager next to one of them. Directly across from the magistrate, and facing the flags, were the defendant, his/her family and the defendant's lawyer. The corrections officer and police prosecutor were also seated between the panellists and defendant around the table. This seating is shown below.

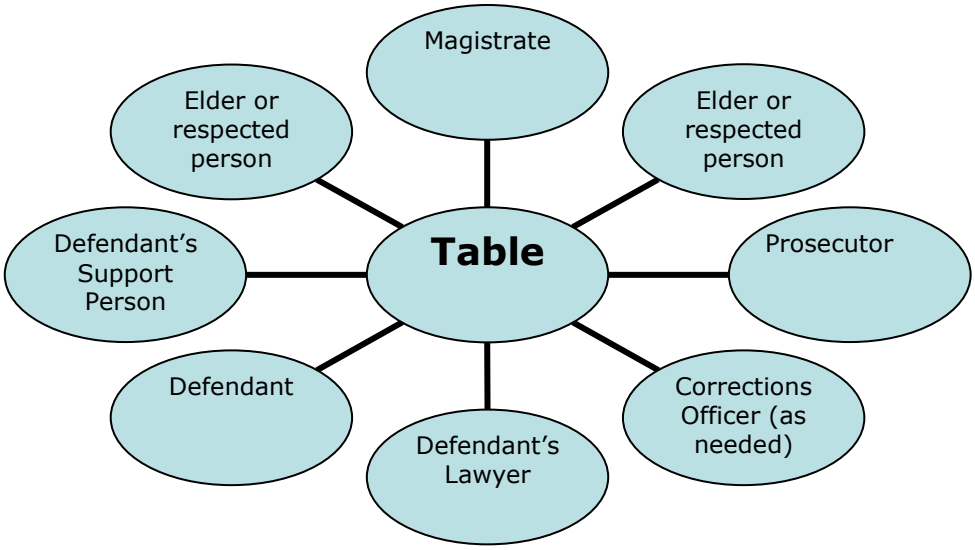
Figure 3-1: Original seating of court



During observations of the Community Court for the evaluation, it was noted that the project manager does not sit at the table, but rather in the small court gallery. This is reportedly due to a lack of space around the table and Community Court staff indicated that the project manager still has input in the proceedings where necessary and addresses the accused and the court when needed. The court support officer sits at a desk to the left of the table. Additionally, the community justice officer or juvenile justice officer attend only when they have an involvement in the case (for the former) or the case involves a juvenile (for the latter).

While lack of space was raised as an issue, it is noted that there are at times empty seats around the table as the defendant may not have a family member or support person present in court and the corrections officer may not be present. Figure 3-2 shows the current seating positions of Community Court participants.

Figure 3-2: Current seating of court



Objectives of the Court

The objectives of the Court are to:

- Deliver culturally appropriate sentencing for local Aboriginal people
- Improve access to and equity of court services for Aboriginal people
- Increase the openness and inclusiveness of court services for Aboriginal people
- Improve relationships between the Court and Aboriginal people
- Reduce Aboriginal imprisonment numbers and recidivism rates in the Eastern Goldfields
- Enhance safety for all members of the local community

Eligibility and Court procedures

Eligibility

The Community Court operates at the sentencing phase of the justice process. When it commenced, the eligibility criteria for the court were stated as the offender must:

- be Aboriginal
- plead guilty
- not be before the court for a solely indictable, family violence or sexual assault matter
- not suffer from any mental health or intellectual disability

Some family violence cases related to feuding have been heard in the court.

Court procedure

The Community Court process is as follows:

When a defendant pleads guilty to an offence the opportunity to attend the Community Court is proposed and if this is taken up, the magistrate sets a sentencing date and remands the matter or matters to that date. An administrative referral process is also available in which defendants may receive a red slip from the registry and bypass appearing in the Magistrates Court if they are willing to plead guilty. The aim is to reduce the number of times an offender appears in court overall.

In preparation for the Community Court, the project manager rosters panellists initially randomly but with appropriate regard to potential conflicts of interest. The project manager is responsible for gathering and distributing court documents and reports to panellists and the sitting magistrate. This document dissemination process occurs on the morning of the sitting and all documents are returned at the conclusion of the sitting.

Before the Community Court session, the magistrate sits down with the panellists, who arrive an hour before the court starts to sit in the court tea room, and advises of the list, the charges, any criminal records and other relevant information including any reports provided. The panellists have the opportunity to read the reports and disclose any relevant information about the offender's family background, personal experiences and other issues that may be relevant to determining an appropriate approach to the case as well as sentencing options. The project manager identifies any issues of concern or conflicts of interest in the day's matters.

The magistrate and panellists enter the courtroom together. During the Community Court session, as each case is announced, the defendant, their lawyer and any family members or support person enter and are seated at the table. Proceedings commence with the magistrate introducing the panellists as Elders and/or respected persons from the Aboriginal community, and then making the point that the Community Court is about respect for the Aboriginal and broader community, for their Elders and for the law. The magistrate acknowledges and pays respect to the traditional owners of the land. Indicative of the continuing level of native title litigation this is a broad and general acknowledgement. Aboriginal people who form part of the community may also be acknowledged. One of the senior women who sits with the Community Court is Yamatji and whilst she has been a part of the Kalgoorlie Boulder community for decades this is acknowledged.

Next, the police prosecutor reads the facts of the case and the magistrate asks if there is anything that the defendant's lawyer, court officer or the defendant would like to say to the Community Court or the panellists. Both panellists then address the offender who is allowed to respond to their questions and comments. The police prosecutor, may also comment on the offence or address the offender. Dialogue may occur between the

prosecutor and the panel, the panel and the family support member, the magistrate and the panel and comments may be made from the floor of the court. A dialogue then occurs between the magistrate and the defendant after which the defendant's lawyer may again speak on behalf of their client. In cases where victims have attended the Community Court they are also given the opportunity to speak, which reportedly has occurred on occasion.

After this interaction among all of the participants, the magistrate and panellists openly discuss what they think should happen and what would be an appropriate sentence. The magistrate then determines the sentence and announces it to the defendant. The magistrate may ask if the defendant understands the sentence and may also explain exactly what it entails and the consequences that the defendant may incur if they do not complete any orders, conditions and/or programs. The defendant is allowed to ask questions in trying to understand what has just occurred.

When all parties agree that the sentence is understood as stated, the defendant leaves the room with their family member and lawyer and typically must sign or complete paperwork at the counter or in the waiting area before leaving the courtroom. The court support officer records the outcome of the proceedings on the computer system replicating the magistrate's written decision recorded on the prosecution notice.

At the close of the day, the magistrate, panellists and project manager participate in a debriefing session if time and other commitments permit.

Resources

The budget for the Community Court was set at $303k for the first year rising to $434k in 2009/10 as follows:

Table 3-1: Four year projected budget proposal

	2006/2007 $'000s	2007/2008 $'000s	2008/2009 $'000s	2009/2010 $'000s
Salaries – Court*	99	122	122	122
Salaries – CJS**	60	114	114	114
Salaries escalated cost combined	8	20	30	41
Staff on costs	18	53	56	61
Travel/accommodation	13	24	25	28
Aboriginal Elders	57	38	40	44
Info tech	4	-	-	-
Communication plan	10	-	-	-
Evaluation	-	-	90	-
Court fitout	10	-		-
Interpreter services	24	21	22	24
Total	**303**	**392**	**499**	**434**

* Kalgoorlie-based Community Court positions: Project Manager and Court Support Officer

** Two FTEs within Kalgoorlie-Boulder CJS for support for juvenile and adult offenders

The 2006/2007 budget was underspent as this was the initial year of the pilot and the Community Court was funded for the entire year but only commenced in November. In addition, $24,000 of interpreter fees and $50,000 for training for panellists was not spent.

The 2007/2008 budget was expected to be underspent by $21,000 in interpreter fees and $8,000 in training for panellists.

The Community Court budget augments the budget of the overall Magistrates Court, which is in the order of $1.5 million per annum for 2008/09, by $320,000, which is approximately one-fifth. In addition, it augments the CJS budget by $114,000.

Role of court participants

This section describes the roles of court participants in terms of their responsibilities related to the Community Court. Specific actions taken during Community Court proceedings are detailed above in the Community Court Procedure section.

Role of the Magistrate

The role of the magistrate in Community Court is similar to their role in the Magistrates Court – to seek to administer justice fairly and impartially. Ultimately, it is the Magistrate who determines the penalty in the Community Court. However, compared with Magistrates Court, magistrates in the Community Court perform a much less overt role in conducting the proceedings. They tend to step back and are more concerned with facilitating the interaction among participants, ensuring that all parties are included in the sentencing discussion and that all of the proceedings are understood by the offender. In addition, they facilitate the pre-court meeting with the panellists, which requires care and attention to promote equity and ensure independence.

The magistrates have also been very active in community education and training, advocating for and promoting the pilot.

Role of Panellists

The panellists are Aboriginal Elders and other respected persons who sit with the magistrate during Community Court matters and play a cultural advisory role, providing background information about the defendant, his/her family background and their historical and social status if necessary. Their role is to assist the magistrate in understanding the cultural context of the defendant's background and behaviour and possible reasons for offending. In this way, the panellists provide information and advice to assist the magistrate in making sentencing decisions. The panellists also directly address the defendant about how their offending has affected the Aboriginal and wider community, how it impacts upon all

members of the offender's family, how it encourages racist stereotypes, and how it undermines the hard work of the community to make Kalgoorlie-Boulder a safe place for everybody, including other Aboriginal people. As stated by DotAG in the 2006 Aboriginal Court Pilot Project Plan the aim is to:

> *"…provide culturally relevant authority figures. Through the discussion process, the Magistrate may gain a greater insight into important cultural factors and significant information on the circumstances of the defendants that may not be available though the mainstream court processes. Thus, the magistrate is equipped with greater information to tailor a sentence to address the underlying issues behind the offending behaviour, which may help break the cycle of recidivism."*

Role of the Project Manager

The role of the project manager is defined in the Job Description Form (JDF) in terms of the following duties:

1. To develop, implement, coordinate and maintain the operations of an Aboriginal Court in Kalgoorlie;
2. Manage projects that introduce change to the Magistrates Court and the justice system in Kalgoorlie relating to Aboriginals;
3. As project manager the incumbent is responsible for project planning, resource allocation and delivering project outcomes; and
4. The incumbent is expected to have considerable liaison and negotiation with stakeholders and clients with respect to complex, sensitive or difficult and cultural issues. Client contact will be both external and internal to the Department and work involves projects that require development and implementation into courts within the Goldfields Region.

Responsibilities of this position include initiating, developing, planning and implementing sub-projects within the scope of the Community Court, as well as managing the project budget and reporting requirements. Conducting research and analysis related to organisation and stakeholder needs and resolving conflicts and problems that arise in relation to the court are also part of the project manager's responsibilities. In addition to consulting with stakeholders, the project manager also develops policies and procedures associated with the project scope and required outcomes. As will be discussed in response to question 9 in section 5.1, time pressures due to other priorities and to the position remaining open for an extended time has meant that the community development and liaison role of this position has been strongly under performed.

While the project manager has a close relationship with magistrates, they report directly to the Regional Manager, Goldfields.

Role of Court Support Officer (CSO)

The JDF states that the duties of the court support officer (CSO) are to:

1. Provide support services to the magistrate in and out of court, particularly in relation to the Aboriginal Court.
2. Provide assistance to Aboriginal accused before the court with their outcomes and obligations.
3. Provide an advisory service (within the registry) to all internal and external customers in relation to the practice and procedures of the Kalgoorlie Court.
4. Maintain and collect statistical data in relation to Aboriginal defendants of the Kalgoorlie Aboriginal Court. Identify and maintain a register of services and programs offered by local service providers with a specific emphasis on Indigenous offenders.
5. The position may be required to provide support to the magistrate when on circuit in the Cross Border Region.

Responsibilities of this position also include the delivery of services related to document preparation and clerical support, legal documentation and case-related research for judicial officers.

The CSO reports directly to the Registry Manager (who supervises all court/judicial support officers) and has no reporting relationship to the project manager.

When the Community Court sits, the CSO is responsible for ensuring that a proper record of the proceedings of the court is maintained.

The role is further defined in the Procedures and Philosophy Statement as follows:

- Responsible for building strong relationships with all the stakeholders in the Aboriginal Court, including service providers;
- Sitting in court;
- Liaises with the defendant and his or her family when necessary;
- May assist the defendant in accessing support services or provide more information about the court processes;
- Assist Aboriginal defendants who are not appearing in the Aboriginal Court; and
- Provide a conduit by which the parties can get their message across.

The role of identifying and maintaining the register of services and programs is listed in the court support officer's JDF; however, this role was reportedly passed from the court support officer to the project manager from the onset of the Community Court. In practice, as will be discussed later in response to question 9 in section 5.1, time pressures due to other priorities has meant that this role has been given a low priority.

Role of the Defendant and their family

At the Community Court hearing, family members of the offender are welcome and encouraged to attend but the offender is usually allowed to have only one support person join them at the table. Family members may interpose comments, offer support and express their concerns and reactions, which are often apparent from their body language.

Role of Defence Counsel

As with the Magistrates Court, the defence council/representative is either a lawyer or Aboriginal court officer with no formal legal training who has undertaken to look after the interests of their client, the defendant. In the Community Court, this role is often much less involved than in the Magistrates Court. In the Community Court, the defendant has chosen to plead guilty to the charge(s) and the task of defence counsel is to bring to the attention of the court any factors in the defendant's favour that might lead it to impose a sentence that is more favourable to the defendant.

Role of the Police Prosecutor

As with the Magistrates Court, the police prosecutor is the person who institutes or conducts the proceedings, providing the Community Court with information as to the offence the defendant is alleged to have committed, and the effect that it has had on other people. In the Community Court, the police prosecutor, one of whom is a Nyoongar sergeant of considerable experience, often also addresses the defendant as community member and not just as a police officer.

Community Justice Services Officer/Juvenile Justice Officer (CJS/JJS)

The corrective services officer (CJS and JJS respectively) is responsible for the assessment, supervision, community support and casework for offenders. When necessary, the CJS/JJS officer attends Community Court and represents the integrated case management team, reporting the offender’s progress in case management and related programs and actively participating in the sentencing discussion.

Role of the victim

During observations of the Community Court for this evaluation, there were at no time victims present at any of the sittings. It is understood, however, that victims have attended Community Court sittings to present information about what they experienced. One stakeholder commented that on occasion a victim of an offence might be a family member and that victim/family member has attended court with the offender and sat at the bar table.

Security Officer

As with the Magistrates Court, the Community Court uses a security officer, whose primary task is to advise the magistrate's clerk as to the

case before the court and to ensure that defendants do not leave court without signing any required paperwork.

3.4 Sentencing

Sentencing Dispositions

Adults

The *Sentencing Act* (1995) outlines the various adult sentencing options for the Community Court, which are:

- Release without sentence
- Conditional Release Order (CRO)
- Fine
- Community Based Order (CBO)
- Intensive Supervision Order (ISO)
- Suspended sentence
- Conditional suspended sentence
- Imprisonment
- Indefinite Imprisonment

Programs are typically attached to a CBO or ISO for adults and the Community Court typically makes a recommendation for programs after receiving a pre-sentence report from Community Justice Services (CJS). According to the Community Court, programs are referred to in a general way (i.e. anger management) and are not necessarily culturally relevant to Aboriginal people. Additionally, any of the above sentence options may have a licence disqualification, compensation and/or restitution added to them.

Juveniles

The *Young Offenders Act* (1994) outlines the range of sentencing options for juvenile offenders. It should be noted that there are two diversion options available for juvenile offenders that do not require a court appearance –a caution by a police officer and referral to a juvenile justice team (JJT). Referral to a JJT can also be undertaken by a court.

Juvenile sentencing options include:

- No punishment and no conditions
- No punishment with conditions
- No punishment but security or recognisance
- Fine

- Youth Community Based Order (YCBO) (Attendance at courses, community work, supervision)
- Intensive Youth Supervision Order (IYSO)
- Conditional Release Orders
- Custodial Sentence

Juvenile offenders are treated differently to adult offenders in that the juvenile system is designed to combine "welfare and justice models, balancing principles of accountability and proportionality of sentence, minimising formal intervention and increasing opportunities for restorative justice and reintegration into the community" [7]. The *Young Offender Act* outlines principles of juvenile justice (section 7), referral to juvenile justice teams (section 24) and sentencing considerations (section 46) (See APPENDIX B[8]).

The sentencing outcomes for cases heard at the Community Court are compared with those heard at Kalgoorlie's mainstream Magistrates Court later in section 3.5.

3.5 Overview of court cases

This section compares the numbers of *cases* in Community Court to other courts to give an overview of the court's activity. Details of the analysis are given in section 2.4.

Overall, 474 cases were finalised in the Community Court between 23 November 2006 when it commenced and the end of March 2009. In the same time period, 3,618 cases concerning Aboriginal people were finalised in all Kalgoorlie Magistrates Courts (including Community Court) and 6,930 cases concerning Aboriginal people were finalised in all Magistrates Courts in the Region[9]. Thus, Community Court accounted for 13% of the Kalgoorlie Magistrates Court Aboriginal cases and 7% of the Magistrates Court Aboriginal cases in the Region.

Gender and age

The gender and age of the defendants of the cases in each of the courts is shown in Table 3-2. As shown, 45% of the cases in Community Court are Children's Court cases, compared with only 19% for Aboriginal people in the Kalgoorlie Court overall.

The difference is balanced by the cases for adults over 25 which at 54% of Aboriginal cases in Kalgoorlie Magistrates Courts overall is 1.8 times the proportion in Community Court (30%). The proportion of cases relating to

[7] Australian Institute of Criminology - http://www.aic.gov.au/research/jjustice/index.html

[8] Young Offenders Act of 1994, Section 7, Western Australia Consolidated Acts, http://www.austlii.com/au/legis/wa/consol_act//yoa1994181/s7.html

[9] The Region is defined in 2.4.

18 to 25 year olds is about the same in the Community Court compared to Kalgoorlie overall. The gender balance is consistent for the three groups.

Table 3-2: Age at lodgement date and gender for finalised Aboriginal *cases* heard in Community Court, Kalgoorlie and Regional Magistrates Courts; 23 November 2006 to 31 March 2009

Community Court - Cases

Age	F	M	Unknown	*Total*	%age
Children's Court	75	138		*213*	45%
Magistrates Court ≤ 25	20	98	3	*121*	25%
Magistrates Court >25	61	78	1	*140*	30%
Total	156	314	4	*474*	
%age	33%	66%	1%		

All Kalgoorlie Magistrates Courts (incl. Community Court) - Aboriginal cases

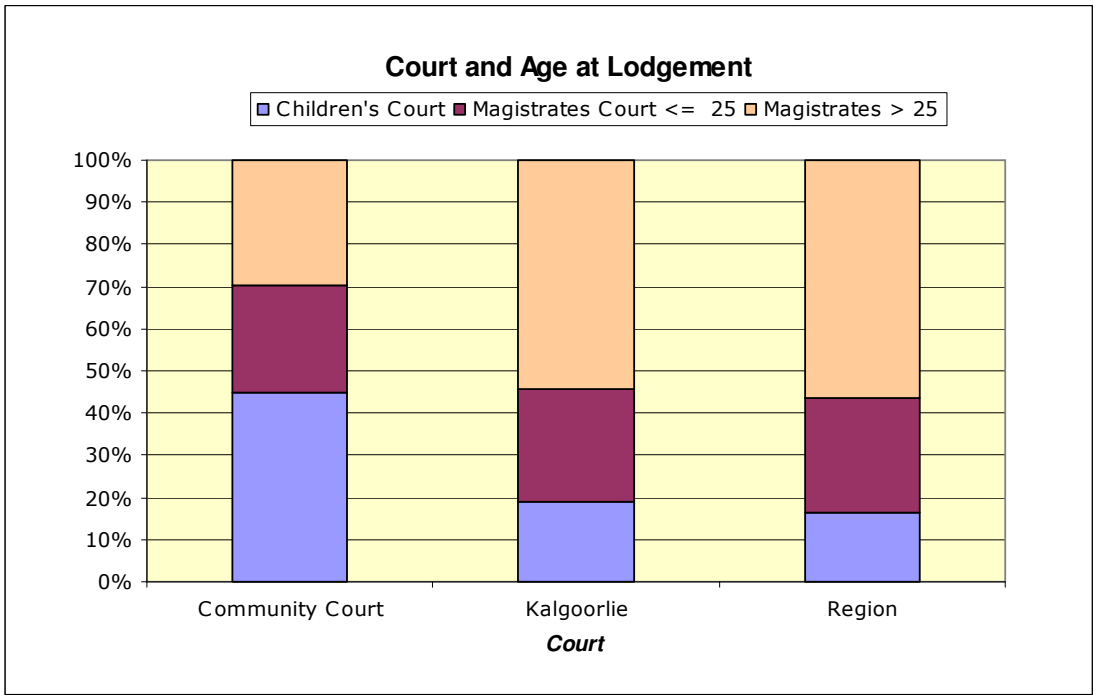
Age	F	M	Unknown	Total	%age
Children's Court	188	493	2	683	19%
Magistrates Court ≤ 25	291	673	13	977	27%
Magistrates Court >25	711	1 213	34	1 958	54%
Total	*1 190*	*2 379*	*49*	*3 618*	
%age	33%	66%	1%		

All Magistrates Courts in Region - Aboriginal cases

Age	F	M	Unknown	*Total*	%age
Children's Court	261	859	3	*1 123*	16%
Magistrates Court ≤ 25	591	1 272	34	*1 897*	27%
Magistrates Court >25	1 471	2 380	59	*3 910*	57%
Total	*2 323*	*4 511*	*96*	*6 930*	
%age	33%	66%	1%		

A comparison of the composition of Community Court cases with the whole of Kalgoorlie Magistrates Court Aboriginal cases, and the Magistrates Courts in the Region Aboriginal cases, is shown graphically below from the Community Court commencement date to the end of March 2009. The figure clearly shows the higher proportion of juvenile cases in Community Court and the higher proportion of cases for adults over 25 in Kalgoorlie and courts in the Region.

Figure 3-3: Age at lodgement date for finalised Aboriginal *cases* heard in Community Court, Kalgoorlie Magistrates Court and Regional Magistrates Courts; 23 November 2006 to 31 March 2009



Looking at the proportion of cases in each of the demographic subgroups shows that Aboriginal juvenile males account for nearly one-third of cases in Community Court compared to only 12% in the Region overall, whereas these proportions are reversed for Aboriginal adult males over 25 (see Table 3-3). Cases for Aboriginal males and females between 18 and 25 years old are underrepresented in Community Court.

Table 3-3: Proportion by age at lodgement date and gender for finalised Aboriginal *cases* at Community Court, Kalgoorlie Magistrates Court and Regional Magistrates Courts; 23 November 2006 to 31 March 2009

Community Court *(n=474)*

	Gender			
Age	**F**	**M**	**UNK**	***Total***
Children's Court	16%	29%	0%	*45%*
Magistrates Court ≤ 25	4%	21%	1%	*26%*
Magistrates Court >25	13%	16%	0%	*30%*
Total	*33%*	*66%*	*1%*	*100%*

Kalgoorlie Magistrates Court *(n=3,618)*

	Gender			
Age	**F**	**M**	**UNK**	***Total***
Children's Court	5%	14%	0%	*19%*
Magistrates Court ≤ 25	8%	18%	0%	*26%*
Magistrates Court >25	20%	34%	1%	*55%*
Total	*33%*	*66%*	*1%*	*100%*

All Magistrates Courts in Region *(n=6,930)*

	Gender			
Age	**F**	**M**	**UNK**	***Total***
Children's Court	4%	12%	0%	*16%*
Magistrates Court ≤ 25	9%	18%	1%	*28%*
Magistrates Court >25	21%	34%	1%	*56%*
Total	*34%*	*64%*	*2%*	*100%*

However, as Table 3-4 below shows, the large proportion of cases concerning juvenile males being heard in the Community Court is a function of their overall numbers and with a referral rate of 40%, cases for juvenile girls are the most likely subgroup to be heard in the Community Court.

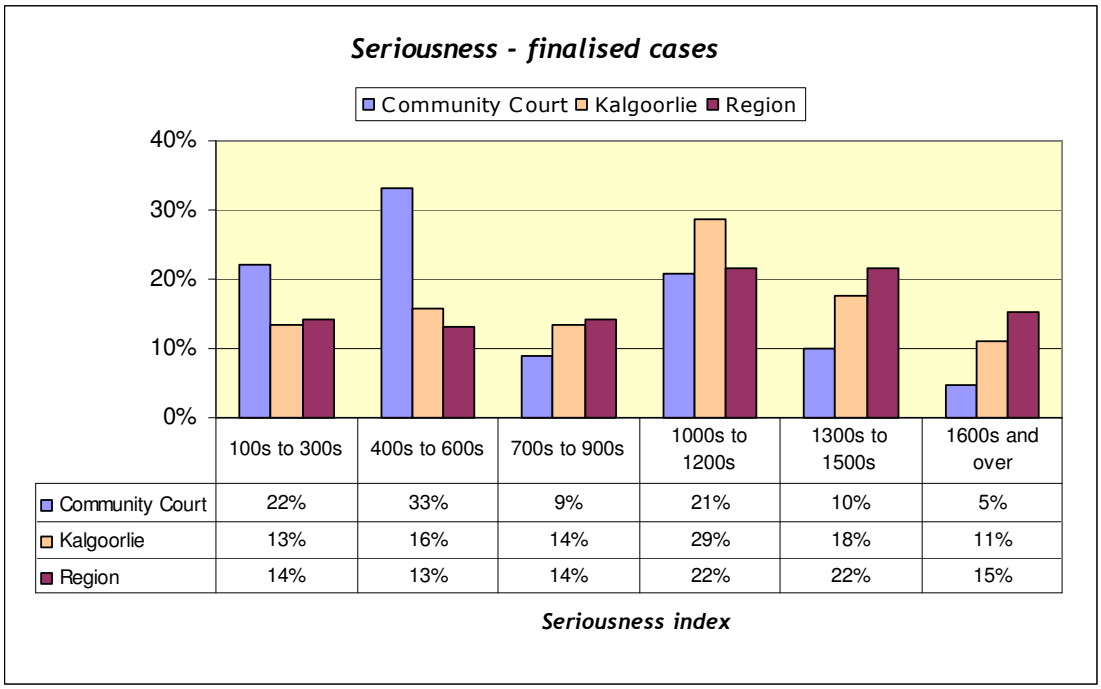
Table 3-4: *Cases* for each Aboriginal age and gender subgroup finalised in Community Court as a proportion of all Aboriginal *cases* in Kalgoorlie Magistrates Courts; 23 November 2006 to 31 March 2009

	Gender			
Age	F	M	UNK	*Total*
Children's Court	40%	28%	0%	*68%*
Magistrates Court ≤ 25	7%	15%	23%	*45%*
Magistrates Court >25	9%	6%	3%	*18%*
Total	*13%*	*13%*	*8%*	*13%*

Seriousness of offences

As described in section 2.4, the cases were analysed by seriousness of offence using the ABS-OSI. The distribution of cases by OSI is lumpy with a relatively small number of offences dominating. On the whole, cases heard in the Community Court were more serious than those heard in mainstream Kalgoorlie court. In particular, 22% of cases in the Community Court had a seriousness index between 100 and 399 compared with 13% for Aboriginal cases in the Kalgoorlie Magistrates Court (including Community Court) and 14% for Aboriginal cases in the Regional Magistrates Court. In addition, 33% had a seriousness index between 300 and the 699 compared with only 16% in mainstream Kalgoorlie court and 13% in Regional Magistrates Court (see Figure 3-4).

Figure 3-4: Seriousness index for *cases* heard in Community Court compared with Aboriginal *cases* in all Kalgoorlie and Regional Magistrates Courts (low index = more serious); 23 November 2006 to 31 March 2009



	100s to 300s	400s to 600s	700s to 900s	1000s to 1200s	1300s to 1500s	1600s and over
Community Court	22%	33%	9%	21%	10%	5%
Kalgoorlie	13%	16%	14%	29%	18%	11%
Region	14%	13%	14%	22%	22%	15%

*N=474 for Community Court; N=3,618 for Kalgoorlie Magistrates Court, N=6,930 for Magistrates Courts in the Region

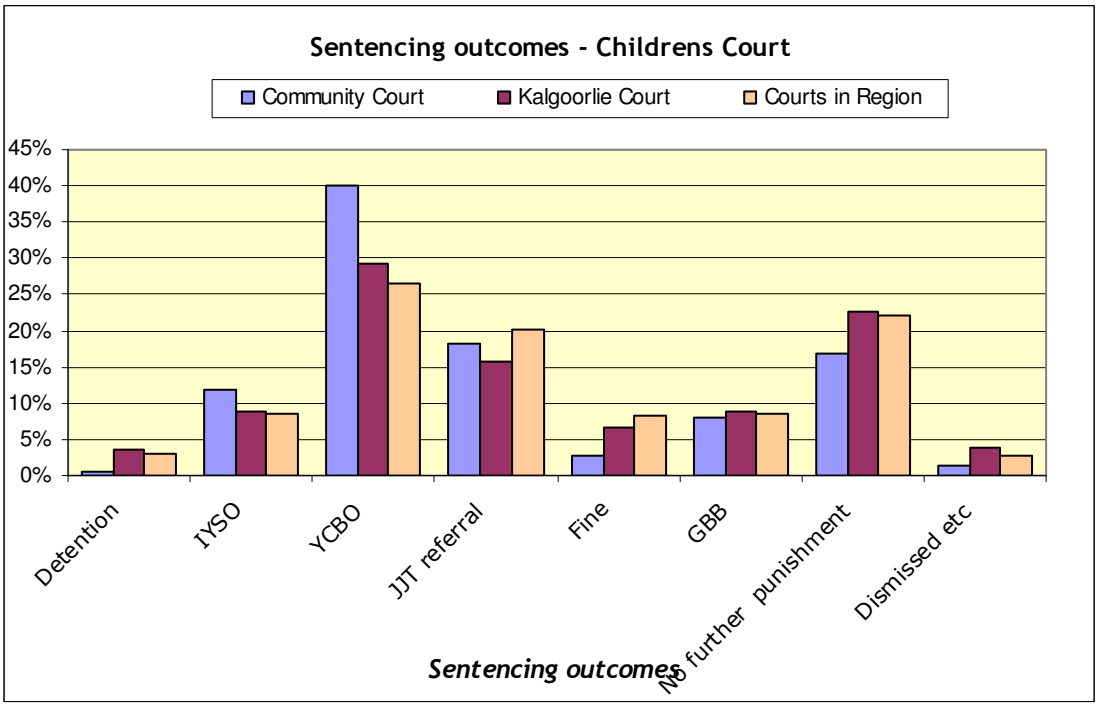
Sentencing outcomes

As described in the methodology in section 2.4, cases were analysed by sentencing outcome using categories developed within DotAG. Children's Court cases in the Community Court most frequently result in Youth Based Community Orders (40%), followed by Juvenile Justice Team referrals (18%) and no further punishment (17%) (see Table 3-5 and Figure 3-5). For Aboriginal people in Kalgoorlie Children's Court overall, the proportion of Youth Based Community Orders is lower at 29% (and therefore even lower if Community Court were not included). The second most common outcome is no further punishment (23%) followed by Juvenile Justice Team referral (16%).

Table 3-5: Sentencing outcome for finalised Children's Court *cases* at Community Court compared with finalised Aboriginal *cases* in all Kalgoorlie and Regional Children's Courts; 23 November 2006 to 31 March 2009

Sentence type	Community Court *(n=213)*	Kalgoorlie Court *(n=683)*	Regional Courts *(n=1123)*
Detention	0%	4%	3%
Intensive Youth Supervision Order	12%	9%	8%
Youth Community Based Order	40%	29%	27%
JJT referral	18%	16%	20%
Fine	3%	7%	8%
Good Behaviour Bond	8%	9%	9%
No further punishment	17%	23%	22%
Dismissed etc	1%	4%	3%
Total	*0%*	*0%*	*0%*

Figure 3-5: Sentencing outcomes by court for finalised Children's Court cases at Community Court compared with finalised Aboriginal *cases* in all Kalgoorlie and Regional Magistrates Courts; 23 November 2006 to 31 March 2009



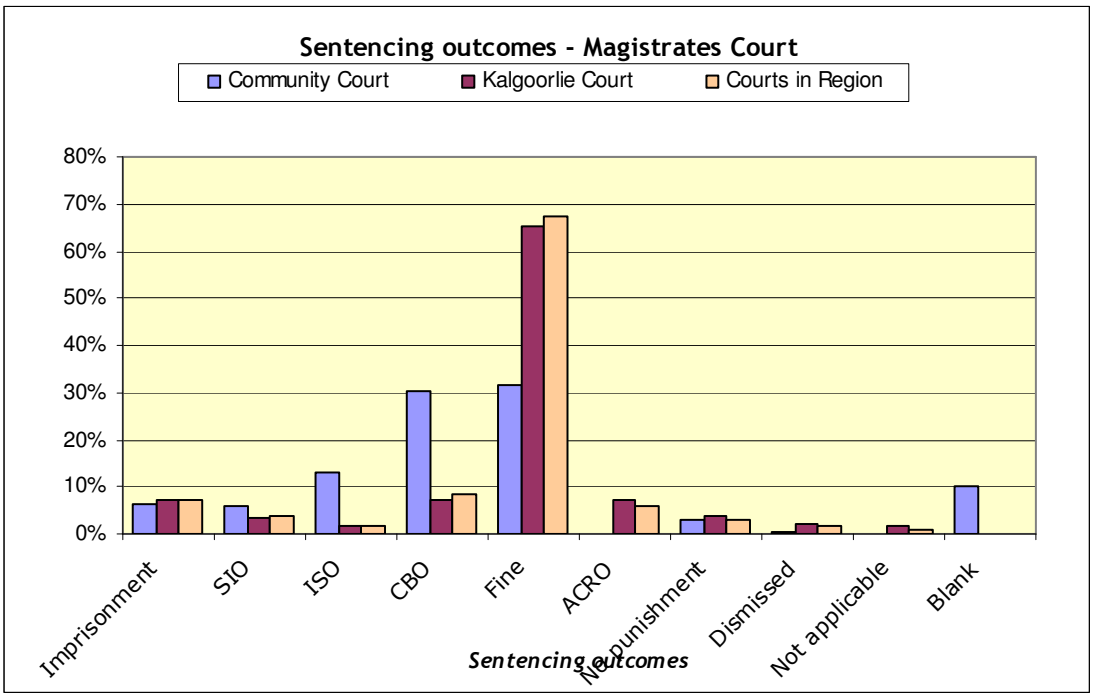
For adults, the most common sentencing outcome for the courts is fines; however, these are handed out half as often for Community Court (31%) as for Kalgoorlie Court overall (65%) or the Region overall (67%). Community Court also results in a high proportion of Community Based

Orders (30%), followed by Intensive Supervision Orders (13%). In comparison, for Kalgoorlie Magistrates Court as a whole, those figures are much lower: 7% for Community Based Orders and only 2% for Intensive Supervision Orders. On the other hand, Kalgoorlie Court overall is more likely to result in Adult Conditional Release Orders (7% compared with none for Community Court) (See Table 3-6 and Figure 3-6).

Table 3-6: Sentencing outcome for finalised Magistrates Court *cases* at Community Court compared with finalised Aboriginal *cases* in all Kalgoorlie and Regional Magistrates Courts; 23 November 2006 to 31 March 2009

Sentence type	Community Court *(n=261)*	Kalgoorlie *(n=2,935)*	Region *(n=5,807)*
Imprisonment	6%	7%	7%
Suspended Imprisonment Order	6%	4%	4%
Intensive Supervision Order	13%	2%	2%
Community Based Order	30%	7%	8%
Fine	31%	65%	67%
Adult Conditional Release Order	0%	7%	6%
No punishment	3%	4%	3%
Dismissed	0%	2%	2%
Not applicable	0%	2%	1%
Blank	10%	0%	0%
Total	*100%*	*100%*	*100%*

Figure 3-6: Sentencing outcomes by court for finalised Magistrates Court *cases* at Community Court compared with finalised Aboriginal *cases* in all Kalgoorlie and Regional Magistrates Courts; 23 November 2006 to 31 March 2009



The difference in sentencing outcomes may illustrate a deliberate shift in sentencing strategy for Community Court, from fines to options which provide more structured outcomes. However, it may also be affected by the difference in seriousness of the cases taken to the Community Court compared with the overall cases and offending history.

Breaching

Due to the prevalence of Community Based Orders (CBOs) as a sentencing outcome, the most serious charge was reviewed for community court cases to determine whether breaching of community based orders was leading to additional charging. This analysis showed that in the period of operation of the Community Court to end of March 2009 only three cases out of 474 were for the breach of a CBO; therefore this is not a significant mechanism.

4. MEASURING SUCCESS

This section analyses feedback regarding the Community Court in terms of appropriateness, effectiveness and efficiency. The subsection on appropriateness considers the design of the court in comparison to "good practice", whereas the subsection on effectiveness considers how well the court has achieved each of its desired outcomes. Comments on efficiency complete the section.

4.1 Appropriateness

Q11. How does the WA approach compare to other jurisdictions and is there anything that WA can learn?

The literature review in APPENDIX A analyses recent studies of alternative sentencing courts and identifies elements that have been accepted as essential to good design and practice. These are summarised below.

Elements of "good practice"

Establishment and jurisdiction

The literature shows that there are various Aboriginal sentencing courts in Australia that operate within similar, although clearly not identical legal, social, political and cultural conditions and with varied aims and objectives. Established primarily as a response to the disproportionate overrepresentation of Indigenous people in the criminal justice system, Aboriginal sentencing courts operate as specialist courts under the same laws and jurisdiction as any other court. In all jurisdictions, Aboriginal courts operate for adults in the Magistrates Court and in most places, for juveniles as well. Aboriginal customary law does not apply and the magistrate has the final decision-making power. In many instances, however, Aboriginal Elders participate in the process and all participants are often encouraged to speak about the offender and the offence.

Setting, processes and procedures

Aboriginal sentencing courts literature shows that these courts are generally more informal than standard sentencing courts make the court process less alienating for Aboriginal people and to encourage active involvement by all parties, including the offender. The physical layout of the court is also different from typical Magistrates Courts. Participants typically sit at eye level, at a sometimes round or oval table, in a courtroom with Aboriginal flags and/or artwork. Additionally, traditional owners of the land are usually recognised.

The direct involvement of Aboriginal community representatives and Aboriginal staff is one of the main differences between Aboriginal sentencing courts and conventional court processes. While these roles vary among the different courts, the roles of the court officer (project

manager), Elders and respected Aboriginal people and other Aboriginal staff are crucial to the success of the court. In Victoria, the role of the court officer (project manager) is designated the Aboriginal justice worker and has been described as "a critical part of the successful operation of Aboriginal sentencing courts". That role is recognised as responsible for community development, education and outreach in the Aboriginal community.

Aboriginal staff is also available to support offenders both within and outside of court. Good practice literature also shows that in courts across Australia, the role of Elders and respected persons varies considerably, but most provide cultural information about the offender to the magistrate, assisting him/her in the sentencing process; they also address the offender and the offence in court.

Legislation

Other than the Koori courts in Victoria, all Aboriginal sentencing courts have been established without specific supporting legislation. However, as discussed in the literature review (see APPENDIX A), significant consultation with the local Aboriginal community and other stakeholders has been undertaken before the establishment of Aboriginal courts in Australia.

Eligibility requirements

Eligibility criteria vary across Aboriginal sentencing courts in Australia; however, there are a number of common requirements for participation that include the offender pleading guilty and being of Aboriginal or Torres Islander descent. It is not mandatory for eligible individuals to appear before the court and the accused must consent to do so. While the court's jurisdiction determines the type of offences that can be dealt with in Aboriginal courts, most courts exclude particular types of offences specifically sexual offences and family violence matters.

Stage of operation, associated programs and approach

Generally, Aboriginal sentencing courts operate at the stage of proceedings when an offender is sentenced for the relevant offence. In some cases, sentences are deferred for the offender to participate in diversionary or treatment programs before final decisions are made. It appears that if Aboriginal sentencing courts are to achieve success in terms of reducing reoffending, it is important that offenders have access to appropriate treatment, intervention and rehabilitation programs and support services. Moreover, the literature on Aboriginal sentencing courts has shown that the decision to implement such a court in a place has hinged on whether or not there are appropriate services and intervention/rehabilitation programs to support a court. While it appears that there is a lack of appropriate treatment, intervention and rehabilitation programs and support services associated with Aboriginal sentencing courts, jurisdictions in Australia that have been most successful have been supported by such programs and services.

Panellist concerns

There are a number of issues relating to Elders and respected persons as panellists in Aboriginal sentencing courts. Potential perceptions of conflicts of interest may arise due to close family connections and, as a result of this, many courts have found it useful to develop a Code of Conduct for panellists. Payments for panellists are also an issue that varies across Aboriginal sentencing courts in Australia. Lastly, selection of panellists differs between jurisdictions and consultation with the Aboriginal community has been found to be an essential component in selecting and appointing panellists.

Training

Relevant training is necessary for all court participants including Aboriginal and non-Aboriginal staff in relation to court processes, cultural awareness and other issues related to specific court processes and procedures; moreover, research from around Australia has shown that such training should be locally-based and such training should occur regularly rather than as a one-off occurrence.

Comparison with "good design"

This section compares the design of the Kalgoorlie Community Court with the elements of good design and good practice presented in the previous section.

Establishment and jurisdiction

Western Australia has the highest rate of Aboriginal imprisonment in Australia with Aboriginal people constituting approximately 40 percent of the total adult prison population[10]. When establishing the Community Court at Kalgoorlie, research indicated that, due to the diverse Aboriginal demographic in Kalgoorlie and its geographic location, the Community Court required a model that took into consideration all of these factors. Consistent with 'best practices' literature, extensive community consultations took place in developing the Community Court.

The Community Court was established as a specialist court, for adults and juveniles, under the jurisdiction of the Magistrates Court. Aboriginal customary law does not apply and although panellists participate in the process and provide the magistrate with relevant information regarding offenders, the magistrate has final decision-making power.

Setting, processes and procedures

As with other Aboriginal sentencing courts in Australia, the Community Court in Kalgoorlie has an informal structure and setting which aims to create an atmosphere that is more relaxed, culturally inclusive and

[10]Weekly Offender Statistics, Thursday Prison Population as at 30 July 2009, Government of Western Australia, Department of Corrective services, 30 July 2009. www.correctiveservcies.wa.gov.au/_files/Prison Count/cnt090730.pdf

relevant for Aboriginal people. The court aspires to increase participation by all involved parties, including the offender, and the participants sit at eye level around an oval table inlaid with Aboriginal artwork.

Drawing from the lessons learned in other Aboriginal sentencing courts across Australia, the Community Court employs Aboriginal workers in the roles of project manager and court support officer (CSO). In Kalgoorlie, the project manager was assigned the role of building strong relationships within the Aboriginal community, through education and outreach, as well as with service providers and additional stakeholders. Offering support and assistance to offenders and their families, solely within the court and the registry, was to be undertaken by the CSO. The importance of improving the relationship between the Community Court and the community was signalled by the addition to the pilot of project manager and CSO positions. The project manager was to "be the link between the court and the community and provide a conduit by which the parties can get their message across"[11].

In the Community Court, Aboriginal Elders/respected persons sit as panellists and play a cultural advisory role, providing background information about the defendant, his/her immediate family and their social, economic and cultural background[12]. Their participation aims to inform the magistrate of matters that may affect the sentencing decision.

Consistent with other Aboriginal sentencing courts across Australia, the physical layout of the Community Court aims to be more culturally appropriate for Aboriginal people. Participants sit at eye level, around an oval table inlaid with Aboriginal art and the Australian, Aboriginal and Torres islander flags hang behind the table. Traditional landowners are recognised at the commencement of each court seating. All of these factors are aimed at creating a more relaxed atmosphere that is more culturally appropriate to Aboriginal people.

Legislation

The Community Court in Kalgoorlie was established without specific supporting legislation. However, in 2008, the Law Reform Commission of Western Australia made various proposals for legislative reform in relation to court intervention programs and, under these proposals, the Kalgoorlie Community Court would be one of the prescribed court intervention programs.

Eligibility requirements

Similar to Aboriginal sentencing courts throughout Australia, offenders appearing before the Community Court must: plead guilty, be Aboriginal and they must consent to appear before the Community Court.

[11] Aboriginal Court Pilot, DotAG internal document, no date

[12] Kalgoorlie-Boulder Community Court (Aboriginal Court Pilot) Procedure and Philosophy Statement, DotAG internal document, no date

Additionally, sexual offences and those related to family violence are excluded from the scope of the court.

Stage of operation, associated programs and approach

The Community Court operates at the sentencing stage proceedings. As with other Aboriginal sentencing courts, sentences may be deferred in order for the offender to participate in diversionary or treatment programs before final decisions are made. In this design, programs are provided for by the funding of two positions, one in CJS and one in JJ, and the inclusion in the role of the project manager of the development of a register of available programs to act as a resource for linking offenders to appropriate treatment options.

Panellist concerns

Perceived conflicts of interest do arise in the Community Court and according to stakeholders, they have been appropriately addressed. However, it would be useful for a panellist Code of Conduct to be developed and documented, so that there is a consistent process for addressing such issues when they arise.

While selection of panellists was also an issue that was raised among stakeholders from the Community Court, it is interesting to note that the Law Reform Commission of Western Australia recommended that Elders and respected persons should be selected by or in direct consultation with the local Aboriginal community. Whatever process is agreed upon, it requires documentation so that, like other processes, it is consistent and transparent.

Training

The original plan was to provide all staff with cross-cultural training and processes related to the Community Court. Panellists were to receive specialist training pertaining to general court procedures and operations.

The preceding points are summarised in the table below.

Table 4-1: Comparison of the Community Court model and operation to good design

Common characteristics of Aboriginal sentencing courts and crucial success factors	Community Court model	Community Court operation
Establishment and jurisdiction		
Specialist court for adults and juveniles under lower court operation (Magistrates and Children's Court)	Incorporated	Operating as planned
Aboriginal customary law does not apply; ultimate sentencing power lies with Magistrate	Incorporated	Operating as planned
Setting, processes and procedures		
Informal processes (sitting at same level) and increased participation	Incorporated as court staff and offender all sit around table at eye level and participate in proceedings	Project manager not sitting at table with other participants; CJS/JJ not always in attendance at the court and/or sitting at table; all others around table at eye level
Employment (and empowerment) of Aboriginal court worker(s)	Incorporated as project manager and court support officer	Two Aboriginal court workers employed
Increased Aboriginal community participation; more culturally appropriate	Incorporated with project manager's community development, education and outreach and stakeholder liaison role; establishment of Reference Group to increase Aboriginal community participation	Need for increased community development, education and outreach/stakeholder liaison role; Reference Group no longer meeting
Offender support both within and outside of court	Project manager/court support officer's role(s) assisting accused with both outcomes and obligations	Court support officer role the same as for mainstream court ostensively.
Aboriginal Elders and other respected persons involvement	Incorporated via panellists and establishment of Reference Group to involve Aboriginal Elders and respected persons	Elders and respected persons involved as panellists Reference Group operation suspended
Modified physical layout of courtroom	Incorporated with Aboriginal and Torres Islander flags, oval table (inlaid with Aboriginal painting) and recognition of traditional land owners	Modified courtroom

Common characteristics of Aboriginal sentencing courts and crucial success factors	Community Court model	Community Court operation
Legislation		
Aboriginal sentencing courts established without legislation	NA	NA
Eligibility requirements		
Accused must plead guilty (non-negotiable)	Incorporated	Operating as planned
Accused must be Aboriginal or Torres Strait Islander	Incorporated	Operating as planned
Accused must consent to appear (not mandatory)	Incorporated	Operating as planned
Exclusion of certain sexual offences and family violence matters	Incorporated	Operating as planned although some sexual offences and family violence matters have been addressed by the court
Stage of operation and associated programs and approach		
Offender access to appropriate treatment, intervention and rehabilitation programs and support service	Court support officer's duties include identifying and maintaining registry of local services, programs and providers (including Indigenous-specific), later tasked to the Project Manager	Role de-emphasised
	Funding to CJS and JJ to provide additional program support	Only standard level of support provided to Community Court participants
Collegiate approach/appropriate structures to ensure intra-agency communication, cooperation and problem-solving	Reference Group formed to discuss service delivery, increase intra-agency communication, cooperation and connect agency services/providers with community	Reference Group operation suspended
Panellist concerns		
Code of Conduct to avoid conflict of interest	Not incorporated	Not developed
Payment	Not provided initially, but planned for	Panellist payments commenced in November 2008
Development of policy/procedure regarding appointment and selection of panellists	Not documented	Not developed

Common characteristics of Aboriginal sentencing courts and crucial success factors	Community Court model	Community Court operation
Training		
Necessary for all staff and involved parties regarding specialist court processes and procedures; must occur on regular basis	Incorporated	Developed and occurred; however, not on regular basis
Necessary for all staff and involved parties regarding cultural awareness; must occur on regular basis	Incorporated	Developed and occurred; however, not on regular basis
Cultural awareness training must be locally-based; must be ongoing and not 'one off'	Initially training was planned that was not locally based; the local organisation was invited to be involved.	Training occurred once at inception of the Community Court and has not been attended by the majority of the current court staff and involved parties

4.2 Effectiveness

This section discusses the extent to which the Community Court pilot is achieving its objectives by addressing the outcome evaluation questions in section 2.2.

Q1. Is the court process more meaningful to Aboriginal people, specifically offenders, the Aboriginal community, the wider community?

The Community Court is an informal sentencing process in which participants openly discuss offences and sentences using more simplified language and terminology; however, despite this transparency and simplicity, the Community Court is viewed as an intense and intensive process and experience. An overwhelming majority of stakeholders recognise various factors that contribute to this process resulting in an experience that is more meaningful and culturally appropriate and may contribute to increased openness and inclusiveness of court services as well as improving the relationship between the court and Aboriginal people.

Greater understanding

Stakeholders, including panellists, correctional staff and community forum participants agreed that the Community Court is more meaningful than the mainstream Magistrates Court. Stakeholders believed that participants feel more comfortable in the informal environment of the Community Court and have a greater understanding of what has occurred in the

courtroom and the process that brought about the penalty that they receive.

> *"… having the Aboriginal flag and painting on the wall creates a more comfortable environment and speaking with the panellists and Magistrate at eye level… also using every day language makes it easier to understand what is happening." Stakeholder*

Being present as the panellists discuss sentencing options with the magistrate, the sentencing process becomes more transparent and open; more time is taken to explain not only the sentencing decision, but what that sentence means to the offender and the actions that they must take to follow through with their orders.

More appropriate sentencing

In the Community Court more time is taken with each offender – to understand their background, to consider and discuss the matter and for the magistrate and Aboriginal Elders to explain to the offender why what they did was wrong. This can lead to outcomes that are more likely to address behavioural issues.

The panellists provide the magistrate with information about the offender and their past so that the magistrate is able to make more informed and appropriate sentencing decisions. One offender discussed how he felt that having three people comment on the sentence was better than just one in the main court where you were more likely to go to jail rather than the court finding out what is going on in your life and what is behind the behaviour. He felt that taking the time to talk to him seemed to indicate that people in Community Court were interested in him as a person and his circumstances. Another offender felt as if he was able to tell his side of the story and given the opportunity to do the right thing.

One case in which a panellist provided invaluable personal information involved a child who was charged with burglary. The offender was carrying a knife and claimed it was for self-defence. It was the child's first time in Community Court and they were in danger of receiving detention for third strike burglary. The child came in alone and their parent was known to have a substance abuse problem. A detailed report had been provided to the panel and magistrate by the Juvenile Justice team; however, one of the panellists said she knew the child and had information that was not included in the report which provided an explanation of why the child was carrying the knife and substantiated the child's claim of carrying the knife for self defence. The Juvenile Justice team had been unaware of the child's history and therefore there had not been any interventions carried out to address it. As a direct result of the panellist's knowledge of the child's background the case was referred to a Juvenile Justice team with counselling recommended.

In another case, a woman appeared before the court who had been convicted of assault on police and resisting arrest. She arrived at the Community Court with her mother and was aware that she could receive a two-year jail sentence. During the session, the magistrate had everyone

move so that the female panellists could sit with the woman and discuss her case with her. They met for one and a half hours during which time it became apparent that she had never received counselling for a past trauma and this was taken into consideration in deciding on a sentence.

Respect

With taking time a very important part of Aboriginal culture, one offender explained that the extra time taken in Community Court makes offenders feel as if they are being treated with respect and listened to and that their voices are being heard in a court that is geared toward them; they were not just sitting in on, and being judged by, the *Whitefella* court. With Indigenous people on the bench openly discussing the case with the magistrate, offenders are forced to take the Community Court seriously because they know the people they are sitting before and they cannot pretend that they do not understand the proceedings. This contributes to not only a greater respect for magistrates and the judicial system, but an improved relationship between Aboriginal people and the court.

Legitimacy

The participation of Elders and respected persons from the Aboriginal community (panellists) was also recognised as a factor contributing to a more meaningful Community Court process and experience. When attending the Community Court, stakeholders discussed how offenders know that the Elders are part of their community and that they are familiar with their family. When offenders come into the Community Court they see the Indigenous flags, the table and relative iconography and panellists sitting with a magistrate; all the individuals involved are acknowledging the diversity of Indigenous people, the land and the traditional owners. This not only gives authority to the Indigenous community and demands respect for those Elders and that community, but provides legitimacy for the court and justice system itself and results in a court that is more accessible to and inclusive of Aboriginal people: the involvement of Aboriginal panellists in the discussion their offence and penalty makes it impossible for an offender to dismiss the process as *Whitefella* business.

> *"Aboriginal people are being dealt with by Aboriginal people. The offender identifies with seeing their own people there in the courtroom and at the table and it has a greater impact; it makes sense to them in Aboriginal terms and not just about the distrust they have for Whitefella law. They learn about self-respect from their respected people and how to take responsibility for their actions as their Elders tell them to do so." Stakeholder*

Responsibility

Educating offenders, encouraging them to be more responsible for their actions and stressing how important it is to complete their orders are seen as a key factor in reducing reoffending and recidivism. In their personal

testimonials, offenders explained how they felt that more time was taken to hear their case, understand their actions and discuss the consequences of those actions, on both the victim and the wider community.

> *"The Community Court is better because Aboriginal people have a better understanding of what happens to them in Court and you know what you have done wrong and more time is spent with you rather than pushing you 'in and out' of the regular court." Offender testimonial*

Panellists discuss the offender's actions with them and the magistrate, and the offender is forced to explain their actions and take responsibility for them before their Elders and the Community Court. This reinforces to offenders that if they commit a crime, they must answer to both their own Indigenous community and the justice system. As one stakeholder said, the panellists participation in the process combines "lore with law", which results in a more meaningful experience for offenders. Additionally, it offers support and encouragement to offenders to behave within the boundaries of their own community, but it serves as a shaming experience that discourages offenders from reoffending and reappearing before the Community Court.

For example, one woman came before the Community Court and said that no one would give her a chance. She said she had nowhere to live and such and one of the panellists called her out on this because she had offered this woman a place to stay but told the woman that she could not drink at her house and so the woman had declined.

One offender expressed this responsibility as a belief that making a promise to other Aboriginal people, and the magistrate as well, would encourage him to stay out of trouble and try to complete his order. Additionally, stakeholders believed that juveniles respect their Elders and really listen to them, which can really have an impact on their lives.

Deterrent

All of the offenders stated that they did not want to have to ever appear in the Community Court again; they believed that the shame they felt, sitting before their Elders in the Community Court, was a powerful deterrent to reoffending and reappearing before the Community Court.

Contrary view

A very small number of stakeholders did not support the Community Court; they did not believe that it is either more effective or more culturally appropriate. It was their belief that if there are positive outcomes resulting from the Community Court, it is incidental. In their opinion, the Community Court is all about interpretation and focused on the panellists and not the offender or their behaviour.

Q3: Overall, has the relationship between the court and Aboriginal people improved?

Stakeholders generally believed that the Community Court had a positive effect on the relationship between the court and Aboriginal people. The general opinion was that, traditionally, it has been difficult to convince Indigenous people to attend the Magistrates Court; and when they do decide to attend, that they neither understand the process of the court, nor the sentence they have received and what has been said by the magistrate, their lawyer or other individuals involved in the process. Magistrates interviewed for this evaluation agree that it often seems that Indigenous people appear to be 'in and out' of the mainstream court, without any understanding of what has occurred.

At community forums, panellists stated that they believe that having Aboriginal people involved in the justice system is a positive step. While this may contribute to improving the relationship between the court and Aboriginal people, these stakeholders also said that people are afraid to go to the Community Court because they are ashamed and this shame has more impact as they appear before Elders from their own community.

Magistrates discussed how the Community Court appears to give offenders a greater sense of self-respect that recognises them and their Aboriginality. By the offender seeing their Elders and respected persons interacting with and being respected and valued by the magistrate and other key figures in the justice system, it is believed that this gives offenders a greater sense of respect for and trust in the courts and the justice system in general. One magistrate stated that they believe that the Community Court process turns the court into a place where Aboriginal people can trust justice outcomes.

According to panellists, taking the time to work with Indigenous offenders and hearing them out in the Community Court is an important process to building trust and respect for the judicial system. In the Community Court, panellists feel like there is an opportunity to help people and encourage them even though they are also being shamed for what they have done. Panellists feel as if, in the Community Court, it is a level playing field for Aboriginal people. They stated that the Magistrates Court is only about punishment whereas the Community Court is about changing behaviour and treatment.

> *"The Community Court looks at hopes and aspirations, support and encouragement. They can see remorse and you get respect." Panellist*

Two of the three offenders who discussed their experience in the Community Court felt that in comparison to the mainstream court where "the judge rushes things", in the Community Court "they sit down and really talk to you". Taking more time with individuals appearing in the Community Court seemed to be an important part of the process of helping these Aboriginal offenders feel like they were being supported and that the outcome of their case was important.

> *"It is better than regular court because you sit around a table and talk about your case, with the magistrate*

> *and Elders, and they don't rush you through. They really talk to you and you can explain yourself, which is very different from the Whitefellas court. It is better to have Elders give you a lecture than the judge in the Whitefellas court. It gives you a chance to avoid jail…" Offender testimonial*

Stakeholders believed that, in the Community Court, all of the factors that contribute to the process being more meaningful also influence the relationship between the court and Aboriginal people. Because Indigenous people are treated with a greater level of respect in the Community Court, it is believed that this produces a greater level of respect among them for the court in general and the justice system. There is a greater understanding of the process, outcome and penalty in the Community Court and the informal atmosphere not only reinforces the respect that Indigenous people have for their Elders, but it is also believed that it increases the respect that they have for magistrates, police and the justice system in general.

Additionally, various stakeholders said that they believe relations between court staff and Indigenous people have improved. This was discussed in terms of the relationship between Magistrate Court staff and panellists and Indigenous staff as well as Indigenous clients coming into the courthouse. While some stakeholders believed that Indigenous people are still hesitant to come to the courthouse, a large portion stated that they believe that Indigenous people are more likely to utilise court services and come to the courthouse for reasons outside of appearing in court. For example, one stakeholder discussed how a woman who had appeared before the Community Court later utilised court services to apply for a recovery order to care for her sister's children. As a result of having a positive experience with the Community Court, this woman was utilising court services for something constructive rather than appearing in court.

Stakeholders involved in the court process believed that Aboriginal people are more comfortable coming into the courthouse, whether it is for Community Court or to access other services. They stated that when offenders come into the Community Court, they only see one white face sitting at the table and this has an impact on how seriously they take the process and the outcome.

Community Court and Community Building Aims

Panellists and magistrates appeared to believe that, although it may not be captured by the numbers yet, there is anecdotal evidence that there is a positive response to the Community Court from the Aboriginal community. At community forums, Indigenous stakeholders said that, initially, they did not have a clear understanding of the purpose and processes of the Community Court and that it appeared to be to "name and shame". There was also a preliminary misunderstanding that panellists had a direct role in the sentencing process and that sentencing outcomes had been determined before hearing mitigating circumstances. However, further discussions with stakeholders revealed that these issues were addressed and clarified at community forums and consultations.

The majority of stakeholders recognise panellists as advocates for the Community Court and as such, they are believed to influence the wider Indigenous community, both in and outside of court. In court, Elders share their own personal experiences, which stakeholders believe to have a real impact on offenders; they encourage offenders to take responsibility for their own actions and the effects of those actions on themselves, their own community and the wider community. In court, one panellist described their role with offenders as "showing you have an interest in them… that you know them or their family". As a result of the interaction that occurs in Community Court, stakeholders believe that Aboriginal people feel more involved in the process and feel as if they are partial owners and have a stake in what occurs.

Moreover, stakeholders agree that Elders are positively influencing Aboriginal juveniles, not only encouraging them to 'stay on track', but also deterring them from further offending and appearances before the court. Decreasing juvenile offences and interactions with the justice system in general was discussed by a variety of stakeholders as an important factor in 'getting to youth early' and keeping them out of trouble. One of the magistrates provided an example of the positive effect that a panellist had on a juvenile offender who found a new support system in the panellists and people from his own community, and by speaking with them, realised that he could obtain assistance.

Outside of Community Court, panellists said that they educate and inform people in the Aboriginal community about the court. Panellists also said that they correct misconceptions not only about the Community Court, but about the court in general, laws, rights and police. Word-of-mouth was discussed as a common form of information-sharing in the Aboriginal community and many stakeholders believe that although a large portion of the Aboriginal population has not been to the Community Court, they are aware of it. Other stakeholders, such as service providers, also said that they educate people in the Kalgoorlie community about not only the Community Court, but also Aboriginal culture, the Stolen Generation and other issues. This is among not only Aboriginal people, but also the Kalgoorlie community at large.

However, a small portion of stakeholders from the Aboriginal community described the Community Court as a 'kangaroo court' and said some members of the Aboriginal community did not respect it because they did not feel that all of the panellists were worthy of respect or passing judgement on their own people. They questioned the selection of panellists and the criteria and process associated with this. These views were held by only a small minority.

One of the community building aspects of the Community Court that was raised was that because of the strong tradition of word-of-mouth transmission of information within the Aboriginal community, experience with the Community Court is more likely than the mainstream court to have a ripple effect, with positive relationships and outcomes spreading to defendant's families and friends in the Aboriginal community. For example, it was thought that if someone goes through the court and receives assistance or gains a greater respect for the court, they will share

that information with other friends and family members who may also derive some benefit from it. It was also thought that panellists were also more likely to share information with family, friends and Indigenous community members regarding the Community Court, court processes and the judicial system in general.

In the wider Kalgoorlie community, stakeholders admit that there may be a community perception that the Community Court was a soft option and that it was just another benefit for 'black people who don't deserve it'. However, other stakeholders refuted this view, stating that the Community Court is inclusive, not exclusive. They believe that many Indigenous people would rather appear before the magistrate in the mainstream court and experience a process that they do not understand rather than appear before their Elders in a process that is more culturally relevant, intensive and shameful. This view is that as more information about the court has been shared and publicised, that opinion of the Community Court as a 'soft option' has changed. One source of information has been *The Miner*, the local Kalgoorlie newspaper, which published information about the initiative and wrote articles providing factual information to the wider community, which appeared to inform and perhaps improve the relationship among the Community Court, the wider community and Aboriginal people.

An alternate view of the Community Court that was raised at the community forums was that the wider community sees it as a way that Indigenous people are addressing crime in their own community and taking responsibility for the actions of Aboriginal people. More specifically, that Elders were encouraging offenders to make a change in their lives and realise the effect that their actions were having on their own community and the wider community. This was identified as a way that relations with the non-Aboriginal community had improved.

Police prosecutors felt that, based on their interaction with offenders sitting before the Community Court, the relationship between the police and Aboriginal people has improved. However, participants at the community forum indicated that they did not think that the relationship between police in general and the Aboriginal community had improved, but rather that any improvement was in regard to the relationship with police prosecutors only.

Q2: Has the experience of accessing court services for all courts improved for Aboriginal people, including offenders' families and supporters, and victims, and is this particularly due to improved staff service?

As identified earlier, while some stakeholders believe that relations between Indigenous people and court staff have improved, others disagree. Those that think so, see this as stemming from Indigenous court staff refusing to tolerate disrespect from their own people. They have even noted that there is a better attitude among Indigenous clients toward magistrates and non-Indigenous staff. Additionally, those staff who were associated with the Community Court when it began, felt that

the cross-cultural training made a significant difference in improving relations among court staff and between court staff and Indigenous staff and clients; however, the majority of the current staff have not attended the cross-cultural training nor any educational training about the Community Court.

Some staff associated with the Community Court when it began stated that they believe that equity and access to court services has improved. They observed that when Indigenous people came into the courthouse, they did not appear to be as scared or nervous as they had previously. Initially, they would ask for the project manager or CSO and seeing them interact with court staff, and treated as equals, they would not be afraid to do so as well and they were treated better by court staff. Moreover, panellists were seen more as staff members and there was respect for them also. The panellists said that they saw themselves as advocates for the Community Court in the Aboriginal community and as a result, their family and friends are more inclined to access court services. Panellists also commented that as they learn more about Court processes and procedures, they are more likely to share this information with the Aboriginal community. Panellists corrected misconceptions that people had not only about the Community Court, but about court in general or about police or laws or rights and so on.

Some stakeholders believe that Indigenous clients are more comfortable accessing additional services provided by the courthouse in general. For example, one non government service provider stated that they work with Indigenous clients and often assist them in preparing for and getting to the Community Court. She explained that after their workers describe the court and its processes, and give the offender clothes to wear and transportation to the court, they are not as afraid to come into the courthouse to access court services. This is especially the case after they have been in the court and they are more familiar with it. However, other stakeholders believe that Indigenous people are still hesitant to come to the courthouse unless it is absolutely necessary that they do so.

If people have developed relationships with the Community Court, they are more likely to be comfortable coming in and giving evidence and getting involved in the proceedings of the magistrate court. This will improve people's perception of higher courts and hopefully increase the likelihood that women will pursue domestic violence in the courts.

Q4: Has the court contributed to reducing Aboriginal imprisonment numbers and recidivism rates in the Eastern Goldfields and enhanced local community safety?

This section presents the results from an analysis of failure rate, time to fail, and seriousness of failure compared with the reference offence.

Failure rate

When asked about recidivism, the majority of stakeholders, including Community Court staff, police and panellists were of the opinion that the Community Court has had an impact on reducing Aboriginal imprisonment

numbers and recidivism rates. Additionally, offender statements say that they have been impacted by the Community Court, have stayed out of court, stuck with their orders and not re-offended.

Stakeholders involved in the court process believed that they were seeing the same people coming through the Community Court less and less. Their impression was that there has been a gradual change in offender behaviour such as increased length of time between offences or reduced seriousness of offences.

So strong was the impression of a reduction of reoffending that there was some speculation as to whether less serious offences were being sent to the Community Court and this might account for some of the reduction in offending rates.

As described in the methodology in section 2.4, the datasets were cleaned (for example, of entries with unclear Aboriginality and gender) to obtain lists of offenders from Community Court and Kalgoorlie Court. The standard recidivism calculation was carried out comparing the proportion of offenders offending over six, 12, 18 and 24 months for the Community Court and Kalgoorlie mainstream court study groups. People with FIRST cases that resulted in a detention outcome were omitted from the study.

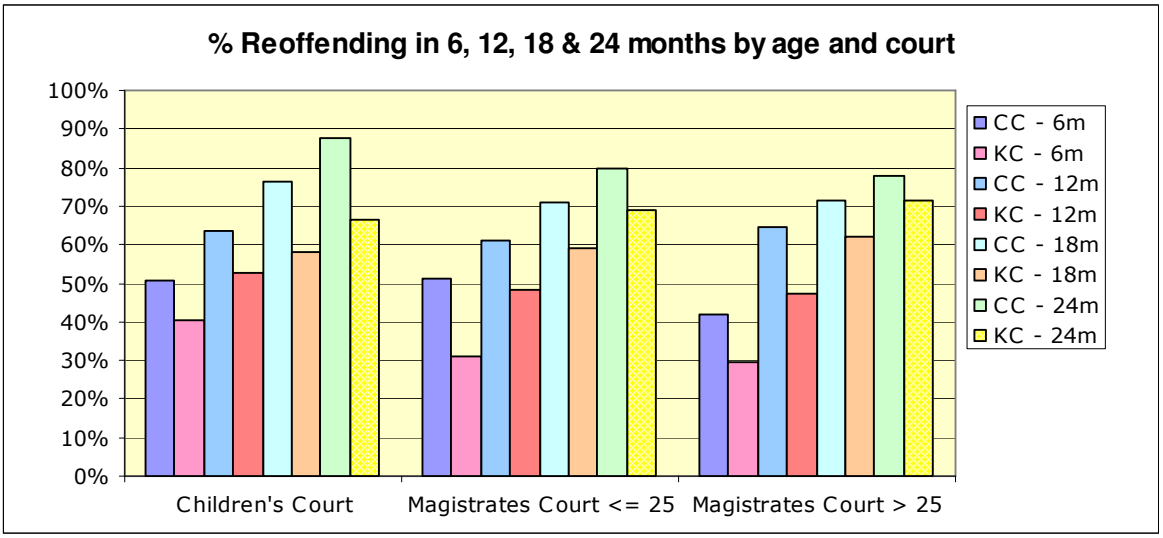
Against all expectations, the analysis showed that a higher proportion of Community Court participants fail compared to those attending mainstream Kalgoorlie Court in every time period (see Table 4-2). The gap is 10% for juvenile offenders after six months (51% for Community Court compared with 41% for Kalgoorlie Court) and increases over time to 21%. On the other hand the gap drops for adults: from 20% for young adults up to the age of 25 after six months, falling to 11% after 2 years and for older adults, from 13% after six months to 6% after 2 years. These figures are illustrated in the graph in Figure 4-1.

Table 4-2: Proportion reoffending in time period – Community Court and Kalgoorlie Court

	6 months				12 months				18 months				24 months			
	Comm Court		*Kal Court*		*Comm Court*		*Kal Court*		*Comm Court*		*Kal Court*		*Comm Court*		*Kal Court*	
	n	*%*	*n*	*%*	*n*	*%*	*n*	*%*	*n*	*%*	*n*	*%*	*n*	*%*	*n*	*%*
Age and court																
Children's Court	*75*	51%	*96*	41%	*66*	64%	*78*	53%	*47*	77%	*57*	58%	*16*	88%	*27*	67%
Magistrates Court ≤ 25	*43*	51%	*302*	31%	*31*	61%	*240*	48%	*24*	71%	*161*	59%	*10*	80%	*77*	69%
Magistrates Court > 25	*60*	42%	*582*	29%	*51*	65%	*462*	47%	*35*	71%	*329*	62%	*9*	78%	*155*	72%
Overall	*178*	48%	*979*	31%	*148*	64%	*780*	48%	*106*	74%	*547*	61%	*35*	83%	*259*	70%
Prior convictions																
0	*6*	17%	*148*	16%	*4*	0%	*119*	27%	*4*	25%	*80*	33%	*3*	0%	*30*	33%
1to3	*75*	39%	*331*	25%	*63*	57%	*248*	41%	*44*	64%	*168*	56%	*12*	83%	*78*	67%
4 to 7	*32*	50%	*214*	36%	*26*	65%	*181*	55%	*19*	74%	*130*	69%	*7*	100%	*61*	79%
8 to 15	*47*	53%	*212*	39%	*40*	73%	*172*	59%	*29*	90%	*123*	72%	*11*	91%	*64*	80%
16 to 25	*12*	75%	*58*	48%	*10*	80%	*49*	65%	*7*	86%	*38*	68%	*2*	100%	*22*	77%
> 25	*6*	83%	*15*	73%	*5*	80%	*11*	82%	*3*	100%	*8*	100%	*0*		*4*	100%
Overall	*178*	48%	*978*	31%	*148*	64%	*780*	48%	*106*	74%	*547*	61%	*35*	83%	*259*	70%
Seriousness																
100s to 300s	*49*	41%	*111*	21%	*39*	56%	*99*	41%	*28*	64%	*103*	58%	*7*	71%	*116*	81%
400s to 600s	*51*	51%	*66*	42%	*43*	70%	*70*	47%	*27*	78%	*75*	52%	*10*	100%	*84*	64%
700s to 900s	*18*	39%	*152*	30%	*16*	50%	*134*	49%	*10*	70%	*140*	69%	*3*	100%	*178*	80%
1000s to 1200s	*29*	59%	*243*	34%	*24*	71%	*225*	48%	*20*	80%	*240*	58%	*8*	75%	*280*	70%
1200s to 1500s	*22*	50%	*183*	33%	*18*	67%	*166*	52%	*14*	79%	*172*	63%	*6*	67%	*207*	64%
1600 and over	*9*	44%	*145*	25%	*8*	63%	*133*	48%	*7*	71%	*140*	60%	*1*	100%	*156*	74%
Overall	*178*	48%	*900*	31%	*148*	64%	*827*	48%	*106*	74%	*870*	61%	*35*	83%	*1,021*	70%

* shaded cells with red text indicate the number showing this characteristic is small (10 or less) and the results should be treated with caution.

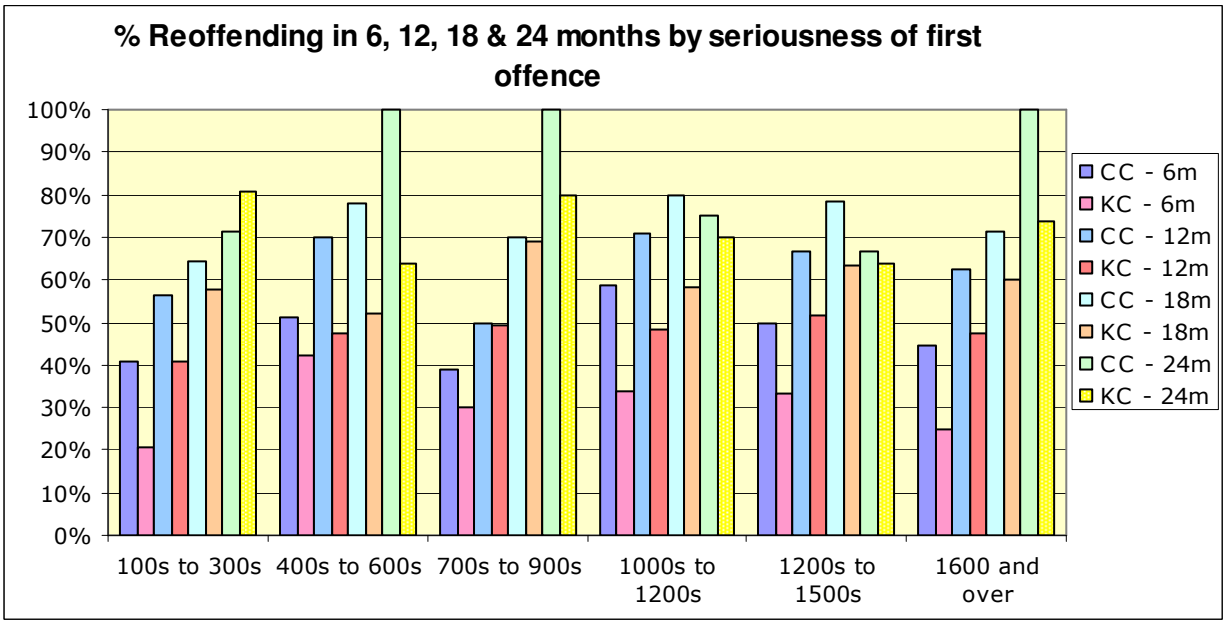
Figure 4-1: Proportion reoffending in time period – Community Court (CC) and Kalgoorlie Court (KC) over different time periods



This result then raised the question of whether the disparity in outcomes for the two study groups was the result, contrary to all stakeholder judgement, of attending the court, or to an unexpected difference between the populations.

An investigation of the effect of different offence categories on the outcome showed a similar trend as the overall figures.

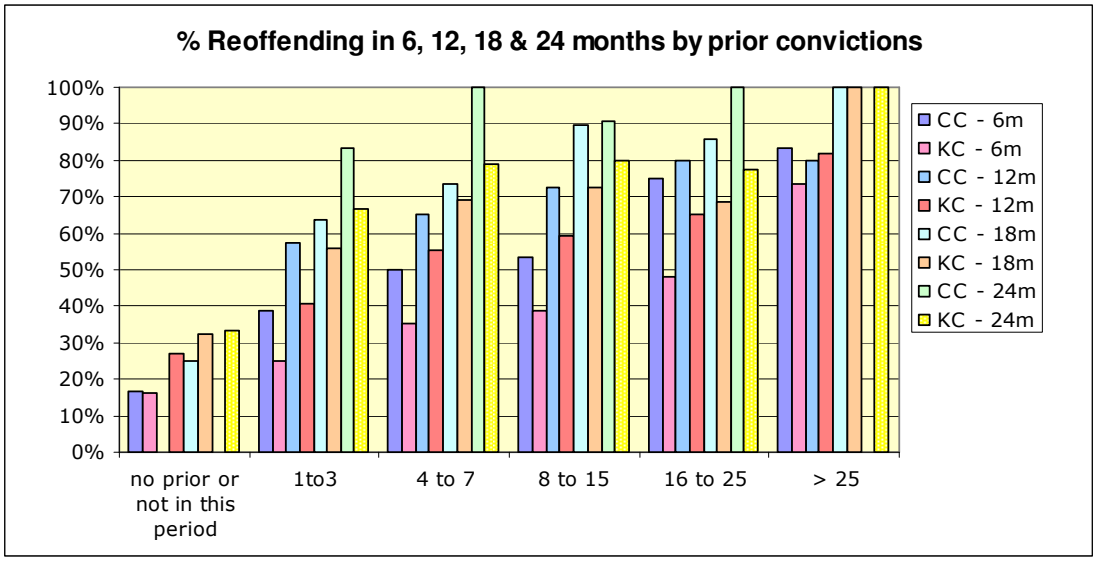
Figure 4-2: Proportion reoffending in time period – Community Court (CC) and Kalgoorlie Court (KC) for different offence categories



When the number of prior convictions became available, these were added into the analysis with the interesting result that there was a much lower

difference in failure rate for offenders with no prior convictions (see Figure 4-3). (Note, however, that the *n* for no priors in Community Court is only six for the largest group, reoffending within six months, so this result should be treated with caution.)

Figure 4-3: Proportion reoffending in time period – Community Court (CC) and Kalgoorlie Court (KC) for different numbers of prior convictions



Time to fail

A comparison of the time to fail, for all offenders with an opportunity to reoffend of over 12 months, shows a similar pattern; except for offenders between 16 and 25 years of age, those attending Community Court tend to reoffend more quickly than those attending mainstream court with a similar number of prior convictions.

Table 4-3: Average time to fail in days for Community Court offenders compared with Kalgoorlie Court offenders

	Community Court		Kalgoorlie Court		Difference between CommC and Kal Court
Prior convictions	***n***	***time to fail (days)***	***n***	***time to fail (days)***	
0	*4*	408	*119*	221	-187
1-3	*63*	167	*248*	202	35
4-7	*26*	102	*181*	196	94
8-15	*40*	144	*172*	185	41
16-25	*10*	120	*49*	123	3
>25	*5*	42	*11*	139	97
Overall	*148*	142	*780*	190	181

Change in seriousness

To determine whether the Community Court pilot is having an effect on reducing the seriousness of subsequent offences the seriousness index of the FAIL offence for an offender was compared to that of their FIRST offence. This analysis shows that for offenders who reoffend during the study period, the failing offence is less serious for nearly half (49%) of the Community Court study group compared with 43% for the Kalgoorlie Court study group. For just over a third of the Community Court group the failing offence is worse compared with 44% for Kalgoorlie Court.

Table 4-4: Comparison between the seriousness of the FAIL offence and FIRST offence for offenders attending Community Court and Kalgoorlie mainstream Court who reoffend in the study period; 1 December 2006 to 31 March 2009

	Community Court		Kalgoorlie Court	
	n	*%age*	*n*	*%age*
Less serious	*62*	49%	*250*	43%
The same	*18*	14%	*79*	13%
More serious	*46*	36%	*257*	44%
Total reoffending	*126*	*100%*	*587*	*100%*

Offender characteristics

As has been identified, offenders self select to attend Community Court. At no time was there any suggestion that there was likely to be a systematic difference between characteristics of the program group compared with the control group. However, analysis of the cases in section 3.5 had already showed that there was a difference in age and seriousness of offence between the cases going to the two courts. This section presents the characteristics of the two study groups, which is an essential basis for understanding the program.

Age and gender

The Community Court study group consisted of 219 individuals who appeared in the Community Court in the study time period and these are compared with 1,286 Aboriginal people who appeared in the mainstream Kalgoorlie Magistrates Court (omitting anyone who appeared before the Community Court at any time during the comparison time period). These figures indicate that during the study period around 15% of Aboriginal people attending Magistrates Court in Kalgoorlie attended the Community Court at some time.[13]

As described in 2.4, Community Court offenders who were not recorded as Aboriginal in the CHIPS database were omitted from the study as

[13] 219/(219+1,286) = 14.6%

information about offences heard in other courts was not provided in the datasets. In addition, people with unknown gender were removed from both groups, and people 54 and over were removed from the Kalgoorlie mainstream group.

As Table 4-7 shows, the two groups display different age profiles. The principal difference is the concentration of juvenile offenders in Community Court: at 40% this is four times the proportion of juveniles in Kalgoorlie mainstream Magistrates Court. This difference is largely balanced by the higher proportion of adults over 25 in the Kalgoorlie mainstream Magistrates Court (61% compared with 36% in Community Court), while the proportion of adults 25 or under in the two courts is more consistent.

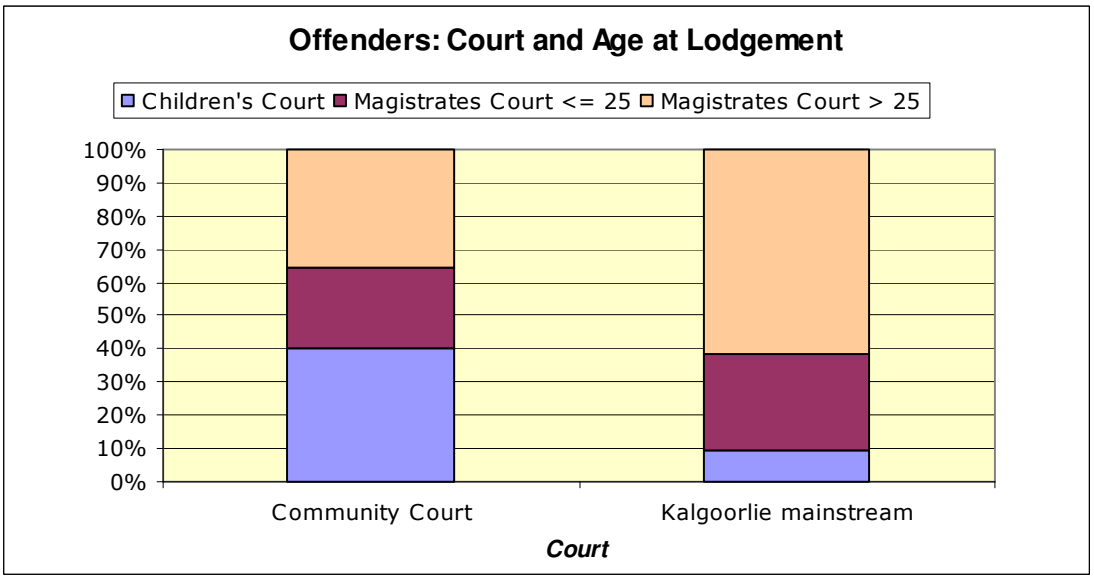
Table 4-5: Age at lodgement date and gender for Aboriginal *offenders* at first finalised offence in Community Court and Kalgoorlie mainstream Magistrates Court; 1 December 2006 to 31 March 2009

Community Court*				
	Gender			
	F	M	*Total*	*%age*
Children's Court	28	60	*88*	*40%*
Magistrates Court ≤ 25	12	41	*53*	*24%*
Magistrates Court >25	38	40	*78*	*36%*
Total	78	141	*219*	
%age	*36%*	*64%*		
Aboriginal people in Kalgoorlie mainstream Magistrates Court (excluding Community Court)*				
	Gender			
	F	M	*Total*	*%age*
Children's Court	38	86	*124*	*10%*
Magistrates Court ≤ 25	138	236	*374*	*29%*
Magistrates Court >25	295	493	*788*	*61%*
Total	471	815	*1,286*	
%age	*37%*	*63%*		

* Finalised cases only, unknown gender removed

The contrast in age profiles is illustrated in Figure 4-4 below.

Figure 4-4: Age at lodgement date for *offenders* attending Community court and Aboriginal *offenders* attending Kalgoorlie mainstream Magistrates Court; 1 December 2006 to 31 March 2009



These figures show that about 41% of all juvenile Aboriginal males appearing in a Kalgoorlie mainstream Magistrates Court attended the Community Court at some time during the study time period (60/(60+86)). This is about the same for juvenile Aboriginal females. The figures for adults is much lower: 8% of Aboriginal women up to the age of 25 and 11% of those over 25 appear at some time in the Community Court, while for adult males the proportions are 17% up to 25 years old and 8% over 25 years old.

Table 4-6: Proportion of first cases for each Aboriginal age and gender *offender* subgroup finalised in Community Court compared to all Aboriginal first cases at Kalgoorlie's mainstream Magistrates Courts; 1 December 2006 to 31 March 2009

	Gender		
Age	F	M	*Total*
Children's Court	42%	41%	*42%*
Magistrates Court ≤ 25	8%	15%	*12%*
Magistrates Court >25	11%	8%	*9%*
Total	*14%*	*15%*	*15%*

Offending history

An analysis of the criminal history of offenders shows that the biggest difference is the much lower proportion of people with no prior convictions appearing in Community Court (4% compared to 16%). This is mostly

offset by the higher proportion of offenders with between 1 and 3 prior convictions (42% at Community Court compared with 34% for Kalgoorlie mainstream Magistrates Court). The overall proportions of offenders in other categories of prior offences is fairly similar for the two groups overall, though taken together 34% of Community Court offenders had eight or more prior convictions compared with 22% for Kalgoorlie mainstream Magistrates Court. The tallies of offenders with different numbers of prior convictions are presented in Table 4-7.

Table 4-7: Number of prior convictions for Aboriginal *offenders* at first finalised offence in Community Court and Kalgoorlie mainstream Magistrates Court; 1 December 2006 to 31 March 2009

	Community Court							
	Number of prior convictions							
Age	0	1-3	4-7	8-15	16-25	> 25	*Total*	*%age*
Children's Court	3	50	15	13	4	2	*87*	*41%*
Magistrates Court ≤ 25	3	16	9	11	7	4	*50*	*24%*
Magistrates Court >25	2	22	19	27	3	0	*73*	*35%*
Total	*8*	*88*	*43*	*51*	*14*	*6*	*210*	*100%*
%age	*4%*	*42%*	*20%*	*24%*	*7%*	*3%*	*100%*	
	Kalgoorlie mainstream Magistrates Court (excluding Community Court)							
	Number of prior convictions							
Age	0	1-3	4-7	8-15	16-25	> 25	*Total*	*%age*
Children's Court	24	59	18	15	6	1	*123*	*10%*
Magistrates Court ≤ 25	75	123	58	64	28	6	*354*	*29%*
Magistrates Court >25	88	226	179	178	44	11	*726*	*60%*
Total	*187*	*408*	*255*	*257*	*78*	*18*	*1 203*	*100%*
%age	*16%*	*34%*	*21%*	*21%*	*6%*	*1%*	*100%*	

* Detention outcome removed

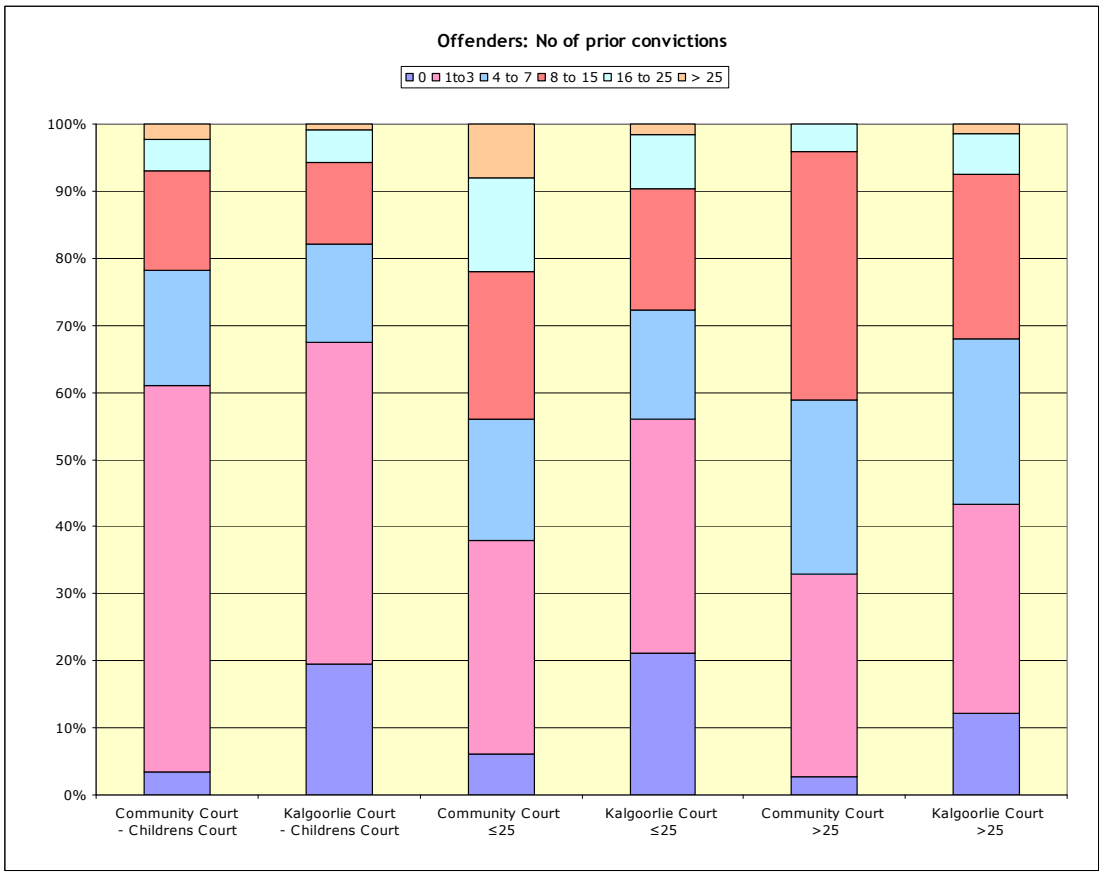
There are other differences when considering subgroups; as can be expected adults are more likely to have a larger number of priors, particularly adults over 25 years old. However, excluding the no prior category, the prior conviction profile is similar for both groups. These figures are shown as proportions in Table 4-8 and graphed in Figure 4-5.

Table 4-8: Proportion of prior convictions for Aboriginal *offenders* at first finalised offence in Community Court and Kalgoorlie mainstream Magistrates Court; 1 December 2006 to 31 March 2009

	Community Court						
	Number of prior convictions ***(n)***						
Age	**0** ***(n=8)***	**1-3** ***(88)***	**4-7** ***(43)***	**8-15** ***(51)***	**16-25** ***(14)***	**> 25** ***(6)***	***Total*** ***(210)***
Children's Court	3%	57%	17%	15%	5%	2%	*100%*
Magistrates Court ≤ 25	6%	32%	18%	22%	14%	8%	*100%*
Magistrates Court >25	3%	30%	26%	37%	4%	0%	*100%*
Total	*4%*	*42%*	*20%*	*24%*	*7%*	*3%*	*100%*
	Kalgoorlie mainstream Magistrates Court (excluding Community Court) ***(n)***						
	Number of prior convictions						
Age	**0** ***(n=187)***	**1-3** ***(408)***	**4-7** ***(255)***	**8-15** ***(257)***	**16-25** ***(78)***	**> 25** ***(18)***	***Total*** ***(1 203)***
Children's Court	19%	48%	15%	12%	5%	1%	100%
Magistrates Court ≤ 25	24%	33%	16%	18%	8%	2%	100%
Magistrates Court >25	17%	29%	23%	24%	6%	2%	100%
Total	*16%*	*34%*	*21%*	*21%*	*6%*	*1%*	*100%*

*Detention outcome removed

Figure 4-5: Proportion of prior convictions for *offenders* attending Community court and Aboriginal *offenders* attending Kalgoorlie mainstream Magistrates Court; 1 December 2006 to 31 March 2009



*Detention outcome removed

Conclusions and implications

The request for quote for this study specified as one of four requirements that the study would:

- Identify outcomes of the Community Court, using information from different sections of the community such as some of the stories emanating from the actual court sittings and also qualitative and quantitative measures

In response, Shelby's proposal offered the following:

> *"Data from the Department's information system will be analysed to identify sentencing dispositions particularly in relation to sentences of imprisonment and return to Court of previously sentenced offenders who have appeared in the Community Court.*
>
> *Shelby understands that criminal history records for all clients appearing in the court since inception can be accessed, and may allow the comparison of such histories in terms of such characteristics as severity, frequency and, if possible, time to fail… Shelby also notes that the data analysis will be affected by the quality and availability of recorded data; therefore, while Shelby will*

> *endeavor to extract and include as much relevant information as possible from the existing data, the outcome of the data analysis will be dependent on the quality of available data and the timeliness of its provision."*

Early discussions regarding the methodology centred on the Department's need to understand whether perceptions regarding differences (leniency) in sentencing and especially reduced gaol sentences and lower seriousness of cases were accurate. Percentage reoffending and time to fail were identified as the main comparisons to be carried out. In this context, the project plan indicated that the following would be considered:

- Criminal history
- Offence type – seriousness
- Bail/remand in custody
- Breach of bail
- Sentence outcomes
- Reconviction
- Time to fail

Rate of reoffending was also planned to be identified.

Preliminary cleaning and matching of data identified the large disparity of population composition with the large number of juveniles presenting in the Community Court compared to Kalgoorlie mainstream Magistrates Court. Where originally, matching of individuals was planned, the absence of prior conviction data and the presence of (near) complete datasets of individuals led to the inclusion of all data as an alternative. A number of previous studies had found it impossible to match on more than gender and age so these were identified as the minimum variables. Offence seriousness in terms of ABS-OSI was also available. Since the Community Court is available to most people[14] on a voluntary basis and there was no initial indication that the populations would vary significantly on other characteristics a comparison on these bases was expected to be sufficient.

The failure rate calculation showed a negative result for the Community Court, in complete contradiction of perception, implying that some other factors were likely to be at work. The analysis of the offender characteristics of the two groups confirmed that the two groups had considerable differences, particularly the much younger age of Community Court participants, the higher seriousness of offences and the number of prior convictions. While each of the differences in group characteristics did not by themselves account for the difference in result the question remained whether taken together offender characteristics are responsible for the difference in outcomes and therefore how the outcomes for comparable offenders compare. The *time to fail* for those who did reoffend was chosen for a test since this variable is best suited to ANOVA

[14] Pleading guilty of charges excluding sexual and family violence offences

compared with failure rate and change in seriousness. Testing gender, age, seriousness (ABS-OSI) and number of priors against time to fail indicated that the comparison groups were so different in terms of characteristics that differences in outcomes cannot with confidence be attributed to the court attended. Prior number of offences had the strongest link to time to fail, but this is likely to be a spurious effect based on the significant differences in group characteristics. It appears as though, as a result of unknown but important mechanisms, Community Court participants are self selecting (or being recommended) into groups with very different characteristics which are so disparate as to be impossible to compare on an equal basis.

A clue to the mechanisms at work may be in the stakeholders comments that it appeared to them that individuals attending the court are reducing their offending behaviour. Thus, a study which compares the offending behaviour of Community Court participants after their Community Court appearance with such behaviour before their Community Court appearance may be instructive. It is certainly risky to attempt to match Community Court participants with non-participants as there is high variation between participant outcomes with similar characteristics.

In addition, it is important to identify other mechanisms at work. This is likely to require additional data collection. For example, offender personal and environmental characteristics are very likely to contribute to individual outcomes, such as education, substance use and abuse, accommodation situation, and employment. The collection of such data should be planned now for such an analysis to be carried out in the future so as to ensure that there is meaningful data to be analysed for future evaluations.

Therefore, overall, the analysis shows the Community Court is not improving outcomes and further investigation is needed to fully explain the outcomes. Importantly, the differences in the outcomes of the Community Court cannot be explained by the court alone given the differences in offender characteristics between court populations. The within-group variance was large and therefore there are likely to be additional predictive variables that will need extra data to be collected to test their effect. A preliminary investigation, taking the form of interviews with offenders, both those who choose the alternative court as well as those who do not should begin to identify some of the selection mechanisms at work. Preliminary consideration of some of additional offender characteristics (accommodation, drug use, employment), either through retrospective analysis of offenders if possible or by capture of data for new offenders, should identify areas for further data collection. The identification of characteristics that *do* affect Community Court outcomes should be followed by a discussion regarding targeting the court to those who receive the greatest benefit.

4.3 Efficiency

Aboriginal courts are resource intensive and procedures often take more time than standard court procedures. As a result, it is most beneficial for

Aboriginal sentencing courts to target those offenders who are likely to benefit most from the process and those cases where the greatest cost savings can be achieved. Bearing in mind the huge cost of imprisonment, the greatest potential cost savings will occur in those cases where the Aboriginal sentencing court process enables more serious offenders to be dealt with in another manner.

Further work needs to be carried out to identify the characteristics that best predict a good outcome and then these should be used to target appropriate people. It is likely that it should not be people who have been charged with minor offences as this increases their involvement with the court system and leads to a more serious sentence outcome (for example, CBOs rather than fines). Currently, efficiency is a secondary consideration compared with understanding the outcomes of the court.

5. COURT OPERATIONS – ISSUES AND OPPORTUNITIES

5.1 Court operations

This section considers the court operations broadly using the process evaluation questions to structure issues and opportunities identified during the evaluation.

Q6: What improvements could be made to court processes or services?

Eligibility

Magistrates recommend Community Court to any offender appearing before them in the Magistrates Court who they think will benefit from the Community Court. They stated that they felt some resistance from defence counsel which they attributed to the difficulty in persuading clients who were difficult to get to the courthouse for their initial hearing to return on another day when Community Court schedules precluded a hearing on the same day.

Theoretically, Community Court is an option for all offenders who fit the eligibility criteria. However, as has been shown, in practice, strong mechanisms are operating to select young offenders, and offenders with prior convictions. As will be discussed later, if the Court is being recommended to people with particular characteristics this should be based on literature and outcome data and made explicit in terms of guidelines.

Juveniles

In relation to juvenile eligibility and appearance before the Community Court, some stakeholders considered that juveniles are generally being treated in the same way as adults. In addition, a lack of training for the panellists was noted regarding the differences in philosophy and approach in dealing with young offenders, as well as the role of the Children's Court and the *Young Offenders Act*. There was concern about a lack of understanding amongst panellists regarding the substantial welfare issues for among young offenders. As a consequence, it was considered by some that some panellists may use inappropriate language when speaking to young offenders.

The use of discussion in the Community Court is a critical process in the pilot model. However, the stakeholders are not trained in research-based skills for communicating with juveniles, nor in the philosophy and role of working with young offenders in the context of the *Young Offenders Act*.

Recommendation 1.	Specific juvenile justice training for dealing with young offenders be provided for stakeholders involved with juvenile cases, particularly magistrates, panellists and police prosecutors.

There was concern regarding the potential net-widening among juveniles appearing before the Community Court[15]. This occurs when juveniles regularly appear in the court system, attending mainstream court, the Community Court and Juvenile Justice and is considered incompatible with decreasing the number of interactions with the legal system and reducing the rate of reoffending among juveniles. If juveniles are referred to the Community Court rather than directly to Juvenile Justice, this is not a diversionary tactic.

An anecdotal example of this described the case of a child with no prior criminal record who stole an ice cream and was charged and appeared in the Children's Court, where their case was then referred to a Juvenile Justice team. This matter should not have gone to either court but rather should have been dealt with by direct referral to the Juvenile Justice team, thereby avoiding courts altogether.

Non local defendants

The issue of non-local defendants appearing before the Community Court was not raised as a significant issue. The overall perception was that people from outside of the Kalgoorlie community are being made aware of the impact of their actions on the local community if they appear in the Community Court.

An offender from Geraldton who appeared before the Community Court commented in a testimonial that even though the Elders he appeared before were not from his country, he still found the experience to be meaningful. He stated that it was important to be told what was right and wrong, by local Elders, and that it was a valuable experience; he believed that his Elders would have done the same.

Family violence and sexual offences

Magistrates stated there has been a wide range of criminal offences, based on the seriousness index, appearing before the Community Court. Domestic violence and sex offences were originally not to be referred to the Community Court; however some family violence offences related to feuding issues can be dealt with by the Community Court and it was felt that mediation and Violence Restraining Orders (VROs) have been effective in addressing some of these issues. The point was made that mediation is never appropriate for domestic violence cases as there is a chance that victims may mediate away their rights. Stakeholders believed

[15] Within critical criminology this term is used to describe the effects of providing alternatives to incarceration or diversion programs to direct offenders away from court. While all of these programs developed since the late 1960's were intended to reduce the numbers of offenders in prison or reduce the numbers going to court, it has been found that what has happened instead is that the total numbers of offenders under the control of the state have increased while the population targeted for reduction has not been reduced. In short, the net of social control has been thrown more widely (or some might say the mesh has been made smaller). http://bitbucket.icaap.org/dict.pl?alpha=N

that this should be explicitly stated in the policies and procedures of the Community Court.

Some Indigenous stakeholders stated that repeat offenders for offences such as family violence should not be dealt with in the Community Court.

"Targeting" offender subgroups

Eligibility for the Community Court was discussed with stakeholders, including the voluntary aspect of appearing before the Community Court. Currently, offenders can choose to have their matter dealt with by the Community Court, and this is generally accepted as an indicator of their readiness to face up to their issues. It was even suggested this choice should be available to all, including non-Indigenous offenders as the process can be more meaningful.

The alternative view was that some Indigenous people see the Community Court as much more confronting to attend, and therefore opt to attend the Magistrates Court where they generally have little understanding of the process and procedure and a lack of respect for the magistrate and their decision. This view was that rather than seeing Community Court as the easy option, offenders might avoid it because they recognise they have to face Elders from their own community, and may be forced to take responsibility for their offences. Therefore, these people considered that mandatory attendance at the Community Court would be more appropriate in some cases.

A third view was that the lack of Aboriginal offenders opting to attend the Community Court is the result of insufficient information being provided to offenders, particularly by their legal representation. It was considered that offenders should be encouraged to attend the Community Court and appear before their peers in a more culturally appropriate setting, even if it is a more difficult and shaming experience.

As shown earlier, people attending Community Court have a larger number of prior convictions and more serious offences which may account for the higher reoffending rate since plainly it is more difficult to rehabilitate those with significant histories of offending and associated social and substance abuse issues than those who have lesser histories. This was unexpected in that there was no mention in any discussions that those choosing to attend Community Court would be different from those choosing to remain in mainstream Magistrates Court.

One view is that first offenders would be good participants for the Community Court as they are potentially less likely to offend. However, it may be that legal service providers for offenders are recommending the Community Court more strongly to offenders with higher numbers of prior convictions in the hope that it might provide a better forum for their defence or have a better chance of assisting their client to reduce their offending behaviour.

Studying the attendance data and talking with offenders who do and don't choose to attend Community Court would allow a better understanding as to how this decision is made. It is essential to understand whether this is due to an informal selection process by agency staff and legal officers or

whether some community perception or self selection criteria is operating. While it is important to provide flexibility it is also important to formalise the debate and provide guidelines or principles. These can be formally revisited annually to ensure that they remain relevant and continue to serve the interests and intent of the Community Court.

Recommendation 2.	Eligibility criteria for Community Court be reviewed and clarified, and principles or guidelines for eligibility be developed, based on evidence regarding offenders showing best outcomes.

Programs

As identified in the discussion of the Court design, the literature review identified that the success of alternative courts is inextricably linked to the provision of offender programs. The Community Court design response was the funding of one position each in CJS and JJ and the planned development of a register of services to assist with linking offenders to programs.

CJS and JJ may arrange interventions which are typically short programs contracted out to agencies such as Centrecare. This agency, as well as other service providers, administer programs, which include but are not limited to, drug and alcohol intervention and domestic violence counselling. However, stakeholders recognise that these organisations, which are often volunteer-based, struggle to keep experienced, trained and skilled counsellors who are committed to this work. However, as identified later in the discussion on roles, contrary to the design, CJS and JJ are not providing any greater assistance than to any other of their clients.

While offenders have the opportunity to pursue assistance on their own, the Community Court does not provide any guidance in directing them to programs, organisations and service providers that may be helpful. Part of the project manager and court support officer's roles is to build relationships with program service providers and research and cultivate program support resources for panellists to recommend to offenders; however, as will be discussed later, this role has been given a low priority. Stakeholders elaborated on this and said that if panellists can make the connection with the defendant in the courtroom and recommend these programs and services, the offender has a chance of making a change in their lives and being proactive in modifying their behaviour. Stakeholders emphasise that this is why it is so important for these resources to be known among the panellists and court staff and to make them available and accessible to offenders.

In addition to other stakeholders, magistrates also expressed that they feel that there are gaps in mainstream and Indigenous-specific programs and services supporting offenders, both adults and juveniles, and their families. Kalgoorlie is a major regional centre and the Community Court is a specialist court and there are specialist services. For reasons which are unclear, Indigenous Diversion Programs (IDPs) do not operate in Kalgoorlie. These programs are based on need, not resources or funding,

and there is a need in Kalgoorlie. Because the Community Court is Aboriginal-specific and intended to be culturally appropriate and reduce recidivism and reoffending, it is necessary for offenders to have access to support, intervention and rehabilitation programs, from both mainstream and Aboriginal specific providers. There is funding and provision for specialist programs but this must translate into programs, strategies and special initiatives. Stakeholders attributed this gap in services to recruitment and retention issues in regional and remote areas such as Kalgoorlie where there is a lack of suitably skilled and experienced workers, both within the justice system and in the community.

Magistrates stated they would like to see more organisations working with Indigenous people in terms of mediating conflicts and addressing family feuding. Magistrates and panellists should be provided with introductory mediation skills training to assist them in their role, and referrals to mediation services should be available.

Feuding and mediation is a major issue in Kalgoorlie, which not only had to be addressed in developing the Community Court and during community consultations, but also underlies a variety of the charges that appear before the Community Court. As discussed in the process review and evaluation, the success of the Community Court requires input, involvement and support from the Kalgoorlie community. This requirement applies to not only individuals in the community, both Aboriginal and non-Aboriginal, but local agencies in Kalgoorlie in relation to programs associated with and linked to the Community Court.

Stakeholders acknowledge that Kalgoorlie is a large jurisdiction and a major challenge to overcome is increasing the level of intra-agency cooperation and information sharing. While program and service provider resources exist within organisations, stakeholders recognise that there is a lack of communication among agencies, which inhibits the utilisation of such information and services. The establishment of the Reference Group was meant to provide a critical bridge by which organisations could build relationships, discuss issues of service delivery and link programs and services with the community. However, as will be discussed further in the next section, the dissolution of the Reference Group has inhibited these links being established and disrupted any progress that was being made among stakeholders and service providers. As recognised in the process evaluation, the lack of an interagency structure for Aboriginal issues in Kalgoorlie places a substantial burden on the court organisation itself as well as pressure on the individuals and staff involved. Local resources are available, but these are limited and most are not culturally specific, and it will take time and effort to establish and build relationships with them.

Overall, it is essential that programs and services for offenders in the Community Court be researched, recommended and realised to significantly improve the achievement of Community Court outcomes. Moreover, it is vital that a list of these resources is not only provided to panellists and all Community Court participants, but that this aspect of the court be emphasised and be given more attention. Programs that successfully address an offender's domestic violence, drug or substance abuse or family feuding behaviours are much more likely to reduce

reoffending than simply increasing imprisonment. Moreover, programs that support young people at risk of offending even before they become involved in the criminal justice system are likely to enhance the protection of the community more effectively than increasing juvenile detention[16].

Recommendation 3.	The importance of programs to alternative court designs be recognised and community programs be funded, similar to the Drug Court or Family Violence Court.

Referral Process

There are no clear criteria for referral to the Community Court and therefore individuals find accessing it confusing. Most do not fully understand the 'red slip' process, which requires the police prosecutor to sign off on offenders attending the Community Court and there is also a misconception that the police prosecutor selects those who can attend the Community Court.

The process is that a person can elect to have their matter dealt with in Community Court rather than the mainstream Magistrates Court. If they do so, the police prosecutor provides them with a red slip and have the matter remanded to the Community Court.

Location

At the community forum, panellists indicated they agreed with the current location of the Community Court and considered it a secure and comfortable environment. They felt that if it were moved to Aboriginal communities, security may become an issue and the level of shame may become disproportionate.

Other stakeholders considered the room too small and identified that it was often used for other unrelated activities impacting on its availability. It was considered that a more appropriate space should be provided for the pre-court meeting as well as a suitable waiting area for offenders. If possible an alternative venue should be located.

Panellist interpersonal skills

During consultations, various stakeholders discussed the behaviour of panellists in terms of how they address offenders, and how they address and interact with court and correctional staff. Indigenous stakeholders recognised that it is the Elders' role to comment on offenders' behaviour; however, it was felt important that those Elders focused on behaviours and not personal putdowns. There must be mutual respect between and among all individuals involved with the Community Court. Playing such a pivotal role in the Community Court, the panellists must be provided with the skills to carry it out successfully.

[16] Crime and punishment: the true picture of how it works in WA, The West Australian, p. 21, June 4, 2009

Recommendation 4.	Panellists be provided with ongoing skills training relevant to their role, such as basic interpersonal, counselling and mediation skills.

Confidentiality and conflicts of interest

Reflecting on their experience in the Community Court, two of the three offenders stated that their greatest concern with the Community Court was in regard to confidentiality and conflicts of interest among panellists. If Elders have/had a relationship with a defendant, offenders felt that they should excuse themselves from sitting during that particular case. For example, one offender knew the Elder sitting on the panel and used to drink with this person and he did not feel that it was fair for his personal life to be discussed in the Community Court. He also felt that this individual may have left the Community Court and discussed his case with other people in the community and that he was being looked at funny and that people were talking about him. He felt undermined because it seemed as if this person was passing judgement on him and perhaps breeching his confidentiality. "We know blackfellas are blackfellas and they talk."

At this time, there is no written Code of Conduct for panellists. It is necessary that this be developed, documented and provided to panellists and all individuals involved with the Community Court and the court in general.

Recommendation 5.	A Code of Conduct for panellists and others within the court (such as the police prosecutor) be developed, outlining principles for addressing offenders, confidentiality, and identifying and dealing with conflicts of interest.

Debriefing session

Lastly, stakeholders emphasised the importance of the debriefing session which is supposed to occur for panellists and magistrates at the end of each Community Court session. This time was initially set aside so that court participants could "decompress" after what is recognised as an intense and intensive process and experience for participants, defendants and panellists. One stakeholder stated that many of the panellists are from the Stolen Generation and experienced trauma and physical and emotional strife in their past; they reiterated that the debriefing session is extremely important as it provides support for panellists as they address these issues as they reoccur; it also provides a conduit for building and strengthening relationships among panellists and other Community Court participants, which emphasises the involvement and support of the Justice system with Aboriginal people.

Q9: How appropriate are the roles carried out by each of the stakeholders involved with the community court?

There is a general consensus regarding the lack of clarity about roles and responsibilities for positions funded through the Community Court Pilot initiative, including the project manager, court support officer (CSO), community justice services (CJS) officer and juvenile justice (JJ) officer.

Each of these positions has played a more limited role within the Community Court than was initially planned and budgeted for. This inhibits the Community Court and its participants from fully meeting pilot objectives and achieving proposed outcomes. This issue is discussed in detail below in relation to each position.

Recommendation 6.	Clear roles and responsibilities for all key Community Court positions be developed and included in specific guidelines.

Project Manager

Internal stakeholders indicated that for various reasons attention is being diverted away from the project manager's role of developing the operations of the court, specifically in relation to community education, forging networks within the community and increasing the Community Court stakeholder base. This may be the result of an overburdening of administrative tasks and the chronically short-staffed general court facility in particular; however, as a result, these tasks are not being undertaken to the fullest extent and are likely to be directly impacting on the Community Court's ability to achieve its key project objectives of improving access to court services and the relationship between the Community Court and Indigenous people as well as creating a more open and inclusive process.

In particular, the development of a register of programs has been tasked to this position and has not eventuated. This is a critical resource for the successful operation of the Community Court and should be developed promptly. Stakeholders, including panellists, magistrates and program staff, recognise the importance of developing such a registry as a vital and invaluable resource that is culturally-specific and appropriate to provide to defendants. Panellists stated they want to learn more about programs and services that they could recommend to offenders and felt it would be more meaningful for these recommendations to come from them in the Community Court rather than as a program requirement from CJS. While there is a contrary view that panellists and magistrates are not qualified to provide case management suggestions, this link to programs is an essential mechanism in the design of alternative courts and a discussion regarding potential risks and benefits and possibilities should be initiated to assist in finding the best solution for clients at this critical time.

There appear to be barriers to the project manager carrying out their role as it was defined in the JDF. As an example, the position needs to use the managing registrar's car or pool vehicle to travel to communities to facilitate the building of relationships with service providers or to educate

and inform the people about the Community Court. This may be a factor in the lower focus in this area.

It was suggested that the role is not fully understood by general court staff, manifesting in a lack of engagement and constructive interaction. For whatever reason, the role has become primarily court-based and has adopted a considerable administrative focus, which includes rostering panellists and addressing conflicts of interest and creating folders and records for the panellists. It appears that strong encouragement and active management, at least for a time, will be needed to assist in energising and broadening the role to encompass the more important but perhaps less urgent aspects of the role which are easily delayed.

Recommendation 7.	The project manager role be refocused on the promotion of the Community Court, community outreach and education, community network building and increasing the Community Court stakeholder base.
Recommendation 8.	In particular, as a priority, the project manager focus on developing a comprehensive resource list of available programs and service providers that can be recommended to Aboriginal offenders in the Community Court.

One stakeholder explained that the very flexible and unstructured processes of the Community Court were so different from the traditional Magistrates Court that they were difficult for some staff at all levels to fully comprehend. The first project manager had had to spend time with general court staff clarifying his role and responsibilities and provided considerable information about what he was trying to achieve and how at staff meetings so as to educate his colleagues about his role. This encouraged a level of ownership of the Community Court processes amongst all court staff as well as a greater understanding of those processes which enabled a greater level of customer service to be provided to stakeholders and clients presenting at the court house.

When the Community Court began, the project manager sat at the table and took an active part in the court proceedings with the encouragement of the panellists and the magistrate. It was considered an important part of the project manager's role to be aware of the body language and associated cues of defendants to indicate or confirm whether a person was saying yes because they understood a process or because they felt they should. If it appeared that defendants did not understand what was happening in the Community Court, it was the role of the project manager to stop the court proceedings and ensure the process was clear.

The fact that the project manager no longer sits at the table to participate in proceedings was raised as an issue of concern. While there was some discussion raised regarding the appropriateness of Aboriginal staff from other locations being seated at the table, the previous project manager was also not local, and the majority view was that it was important that they are involved in the process; it is an Aboriginal process and to be

inclusive and culturally appropriate, all Aboriginal people involved need to be at the table participating.

It was considered that the project manager role must be proactive and take the initiative to build relationships within the Indigenous community and the wider community. This includes becoming part of the community, meeting people in their homes and discussing justice issues as a part of building stronger relationships. With the support of the magistrates and the managing registrar, the first project manager took every opportunity to immerse himself in the wider community and to educate people about the court processes; with positive results.

The project manager position was left vacant from November 2007 until March 2008. During this period the CSO was required to roster panellists and complete some of the duties of the position. At the same time, the Reference Group ceased to operate and no relationship building occurred. The Community Court lost considerable traction due to the failure to fill this position.

The majority of stakeholders strongly agreed that the role of the project manager is critical in ensuring the effectiveness of the Community Court and considered it essential that the role focus on community development, outreach, and keeping police and community services engaged. It was also considered important that the Reference Group be maintained and the community ties within it be retained.

Without this role actively promoting the Community Court, building relationships in the community and educating and informing people, the primary outcomes of being open and inclusive and creating a better relationship between the Community Court and Aboriginal community through more culturally appropriate processes, will be very difficult to achieve.

Court Support Officer

As described in section 3.3 in the JDF for the role, the court support officer (CSO) position has duties similar to judicial support officers but particularly related to the Community Court. In summary, the position provides administrative support for the Community Court as well as support for defendants and their families within the registry.

When the Community Court began, the CSO participated in the pre-court staff meeting with the project manager, magistrate and panellists and was also part of debriefings. The position did not participate in proceedings, but with the support of the magistrate was primarily a dedicated resource for the operation of the Community Court.

However, in current practice, perhaps because of a lack of staff, the CSO has become just another judicial support officer, involved in Community Court-specific duties only on the two days each month when that Community Court sits; the rest of the time working and completing duties associated with the Magistrates Court.

The CSO is not involved in the pre-court process with the magistrate, project manager and panellists or the debriefing process after Community

Court. Further, there are no close structural links between the CSO position and the project manager, or formal arrangements between the CSO and the regional manager regarding Community Court. Therefore, there are virtually no structural or process links between the positions to assist interaction and collaboration regarding Community Court matters.

When the first project manager left and the position was vacant for almost five months, the CSO became increasingly involved with the Magistrates Court. During that time, the CSO took on some of the project manager duties such as rostering panellists but, without direction, the roles of supporting the accused with their outcomes and obligations, advising customers about the Community Court and, crucially, maintaining the register of services and programs were given low priority.

Currently, so focussed on actual court processes has the position become, it appears that some of the CSO administrative duties are being undertaken by the project manager, including compiling files and records for the magistrate and panellists prior to Community Court sittings. Further, the CSO is not currently allotted time to provide assistance to Aboriginal accused, before or after the Community Court, in relation to their outcomes and obligations, nor are they supported to provide an advisory service to internal and external customers in relation to the procedures of the Community Court. As a consequence, the Community Court loses a critical opportunity for referral to existing programs or support, at a crucial moment when the offender is looking for support, a factor that has been shown to be especially important for Aboriginal offenders.

As stressed by the first project manager, the Community Court is unique and the process is very different from the Magistrates Court. This can be difficult for general court staff to understand and it is easy for individuals in Community Court positions to feel as if their role is being questioned or scrutinised. Indigenous positions associated with the community are responsible to the Community Court, as well as having to answer to Indigenous people in their own community regarding their role. By not enabling the CSO to carry out their role in relation to offender support, and referral to community services and programs, it not only negatively impacts on the achievement of the Community Court's objectives and outcomes but also potentially devalues the CSO role in the perception of the Aboriginal community.

The majority of stakeholders reinforced the view that the role of the CSO is essential for the Community Court to achieve its objectives and outcomes including the creation of a more open and inclusive Community Court environment that improves the relationship between the court and Indigenous people as well as access to services that are more open, inclusive and culturally appropriate. Currently duties not directly relating to Community Court sessions are being overlooked; whether this is due to the victory of urgency over importance or to a lack of understanding and support for an integral component of the Community Court is unclear but needs to be addressed for successful outcomes to be obtained.

Recommendation 9.	The court support officer be refocused on supporting the operation of the Community Court including increasing the focus on supporting Aboriginal defendants, their families and community members within the Community Court and registry.
Recommendation 10.	Mechanisms be developed for collaboration and liaison between the project manager and CSO positions.

Panellists

Stakeholders indicated that the panellists' role in the actual Community Court process has varied over time and with different magistrates. At the community forums, Indigenous stakeholders and community members stated that there may be an incorrect perception in the Indigenous community as to how much influence the panellists have in the decision making process of sentencing.

Panellists indicated that they would like to take a greater role in the sentencing process; however, they need to know more about programs and services available to offenders so that they can refer them to these. They recognised the importance of this information coming form them as opposed to other members of the Community Court or representatives from Community Justice Services.

Stakeholders also believe that panellists play an important and influential role outside of the Community Court. They promote the Community Court in their own community and build Aboriginal confidence in the Community Court. Panellists represent the justice system and set an example for offenders as well as encouraging them to realise the consequences their actions have on the community.

The panellist role within the Community Court and as an advocate for the community Court within the community appears to be working well. Some issues with recruitment and selection, training and a code of conduct will be addressed later. These and the development of a resource list have the potential to enhance the role of panellists.

CJS and JJ positions

CJS has been funded for two positions to assist with Community Court offenders; however, the roles of these two positions have not been defined in relation to Community Court. Currently, CJS and JJ provides a similar service to this court as they do mainstream Magistrates Court. That is, when asked to do so, they assess, supervise, and case manage offenders. They may also prepare court reports, place and supervise offenders on Community Service Orders, parole release and work experience, organise community care placements and utilise community resources to complement these schemes. When necessary, the CJS/JJ officer attends Community Court and represents the integrated case management team, reporting on offender's progress in case management

and related program(s); however, there have been sittings where these places were not filled at the table.

Stakeholders, and representatives from the agency itself, agree that, as with many other agencies and organisations, CJS/JJ is under-resourced and under-staffed and recruitment and retention were discussed as major challenges. The general perception from stakeholders is that the funded resources are not being used to support the Community Court but rather are used to support mainstream court matters. A community justice staff member generally attends Community Court to support juveniles; however, stretched resources mean this does not always occur. CJS's position is that while they might not nominate a set resource to support the Community Court, their overall support for Community Court offenders would utilise the two FTEs funded. However, it should be noted the Community Court funding was for *additional* resources over and above what CJS would normally provide to offenders.

Recommendation 11.	Specific CJS and JJ positions be utilised for the Community Court and specific JDFs be developed in consultation with Community Court staff, including a different title associating the role with the Community Court.

The relationship between CJS and Community Court is characterised by some tension. Neither side of the relationship feels fully supported or valued by the other. The perception is that CJS minimise their own role in the Community Court because they don't value it or believe it to make a difference. Instead, they feel that the most urgent cases are addressed, rather than the most necessary, and that the Department "picks and chooses" who it helps.

On the other hand, CJS staff perceived a lack of respect by Community Court staff and a lack of understanding of CJS' mandated, statutory role to report on and provide advice to the Community Court on sentencing, assessment and administering/overseeing offender programs. They perceive the magistrates role in Community Court in suggesting programs as conflicting with their role and as "case managing from the bench". However, CJS does feel as if, overall, they have a good relationship with the Community Court. While they feel that there are positive outcomes from the Community Court and also points that could be improved, they believe that their agency is doing the best it can with stretched resources.

JJ representatives also expressed a number of concerns related to the Community Court. Most importantly, they stressed their concern with juvenile net-widening and that juveniles who should be remanded directly to JJT end up in the Community Court thereby spending more time in the judicial system and compounding the requirements and commitments of the Community Court. They felt that this ran contrary to the goal of reducing the time that juveniles spend in court and their interactions with the judicial system.

In order for the Community Court to achieve its objectives and outcomes, it is necessary that all of the roles and responsibilities associated with the Community Court are not only functioning, but supporting the process.

The relationship between the Community Court and CJS/JJ does not appear to be cohesive and there appears to be a lack of respect between the agencies. This, coupled with the stretched resources of both CJS/JJ and the court in general appear to be detracting from the Community Court achieving its objectives and meeting outcomes.

Recommendation 12.	Facilitate a discussion regarding the roles that CJS/JJ and magistrates carry out in relation to offender management both to clarify what each agency can contribute and to open up and improve the interagency relationship. This issue needs to be resolved at a senior level with management taking a lead role in building the relationship between courts and CJS and JJ.

Police Prosecutors

The role of the police prosecutor is not identified in the Procedures and Philosophy Statement and it appears to have varied since the initial conception of the Community Court. The police prosecutor is still seated at table and their main role involves reading out statement of facts and adding some comment about the impact of the offender's actions on victims and/or the community. In some cases, the police prosecutor has taken the time to make affirmative and reproving comments, directly to the offender. Stakeholders noted that on occasion, the police prosecutor made some very helpful comments about his own life and about services which may be useful.

While all stakeholders say that police prosecutors and police in general are very supportive of the Community Court, the majority of police prosecutors say that they feel excluded from the process. Although they were actively involved in training and initiating the Community Court, their role seems to have dissipated and in some ways diminished. The reestablishment of the Reference Group with tight terms of reference as suggested at Recommendation 17 would provide a forum for police and other appropriate stakeholders to influence the Community Court project.

Interpreters

Stakeholders commented that the panellists all speak Wongai and, as a result, there has not been a need for interpreters in the Community Court.

Q7: How appropriate are the processes of recruitment and retention of panellists?

Community forum participants considered that the purpose of having Elders as panellists was to utilise their experience and knowledge of the community. Stakeholders believed that the selected panellists were probably doing a good job. These stakeholders were, however, divided in their views about the appointment, recruitment and retention of panellists.

Some of the Indigenous stakeholders who attended the community forum to discuss this evaluation stated that they thought the process was okay (word of mouth, personal networks, recruiting at community meeting) although they didn't know exactly what the process was. There was general consensus that all panellists who had been selected were well-known in the community and that they held important/significant positions. It should be noted that the people at the community forum included people who had been themselves approached to be on the panel and this might influence their views.

Other Indigenous stakeholders at the community forum were unhappy with the process of recruiting and selecting panellists. These stakeholders recommended a more involved process, perhaps utilising a Peer Panel that held panellists accountable for their own actions and for the way they carry out their role in passing judgement on individuals in their community. This issue arose as a number of stakeholders believed that some of the chosen panellists did not have the moral authority needed by panel members to positively influence defendants and the community. Any process of recruitment needs to be open and transparent so everyone has equal access to being involved.

Other stakeholders within the community agreed that it was important to chose Elders and not necessarily young people, as shaming is a big part of the court and young people should not be shaming their Elders; young people should only be rostered as panellists when young people are appearing before the Community Court.

Recommendation 13.	Panellist recruitment and selection principles and processes be made explicit.

Q8: How appropriate is the cross cultural awareness training and familiarisation for Judicial officers, panellists, staff and other court participants?

Panellist training

Prior to the commencement of the Community Court, panellists attended cross-cultural training and training on general court processes and procedures, including court policies, processes and procedures, reading and understanding Prosecution notices, PSRs, criminal records, sentencing options, addressing conflicts of interests. Panellists also learned about the *Sentencing Act* and the *Bail Act* and participated in mock court sessions which involved role playing with Police Prosecutors.

While panellists were generally positive about the training they had already received, their view, which was shared by other stakeholders, was that they would benefit from additional training and information sessions. As indicated earlier, additional training was needed on appropriate ways to address both adult and juvenile defendants in the Community Court. In addition, there was concern that the training related to court processes and procedures which was given to new panellists was brief and insufficient. Panellists hoped that further training, for both new and

existing panellists, would be more interactive and include role-playing and information about local resources/services available to recommend to offenders.

Furthermore it was remarked that cross-cultural training for new panellists was essential.

Recommendation 14.	An ongoing schedule of training and seminars be developed and provided to panellists to address court procedures, policies and local resources/services and should be provided in an interactive manner that meets Aboriginal learning styles.

Cross-cultural training

As mentioned earlier, cross-cultural training associated with the Community Court was conducted once during the two-year Community Court pilot. The training was provided to DotAG staff and the judiciary; however, the majority of staff who undertook this initial training is no longer employed by the agency. None of the three magistrates currently sitting in Kalgoorlie have attended this cross-cultural training nor has any of the current Community Court staff, general court staff, police prosecutors or CJS/JJ officers. As funding for training is available it is not clear why it has not been undertaken. Such training needs to be organised and staff attendance made a priority.

The training was originally planned to be delivered by a Perth-based company; however, due to strong support for locally sourced training it was delivered in two parts as previously described in section 3.2.

Stakeholders believed that the cross-cultural training should be conducted on a regular basis and be mandatory for all general court staff, Community Court staff and panellists, police prosecutors, CJS/JJ officers and internal and external agency representatives. Stakeholders also said that the training should ideally be offered across agencies, to assist in building relationships and networks and creating an environment of understanding of the Community Court, the roles of participants and Indigenous culture. Stakeholders also recommended that the inclusion of panellists in the delivery of training should be considered. This training is not only important to increase the understanding of the Community Court among court staff and participants, but it an essential component to improving outcomes and improving relationships between the Court and Aboriginal people.

Recommendation 15.	Cross-cultural training be developed and delivered by local organisations, be conducted on a regular basis and be mandatory for all magistrates, general court staff, Community Court staff and panellists, police prosecutors, CJS/JJ officers and internal and external agency representatives

Other training

Discussions showed that no one from the general Magistrates Court staff had attended any training or information sessions regarding the purpose, processes and procedures associated with the Community Court. While the project manager provides updates at all weekly staff meetings, general Magistrates Court staff had not been provided with any clarification or explanation of the roles related to the Community Court nor their duties or responsibilities and the ways in which those are to be carried out, although judicial support officers are provided with opportunities to perform the CSO role in Community Court.

As the mainstream Magistrates Court is very structured and the Community Court is very different in that it is flexible and unstructured, stakeholders stated this can be difficult to understand, especially for people who have been working for the mainstream court for a long time. Initially, even middle management had to be trained to facilitate their understanding of the Community Court process and its unique and very different approach from that of the Magistrates Court. Similarly, the mainstream court staff should be trained and provided with information to enhance their understanding of the differences between the Magistrates Court and the Community Court.

General Court staff also need to be informed of the roles and responsibilities of the positions associated with the Community Court, such as the project manager and the court support officer, to enhance their understanding and appreciation of the duties. If individuals associated with the Community Court are to carry out their roles and responsibilities within the Community Court, and achieve court objectives and outcomes, they must be able to do so without feeling that they are being judged or criticised because their roles or the way that they go about them is not fully understood. Additionally, this provides an avenue for general court staff to become a part of the process and even gain a level of ownership in the process as well as a greater understanding of it.

During the course of this evaluation, a number of stakeholders raised the issue of racism in Kalgoorlie and said that this was a major obstacle to overcome not only in the Community Court, but in the wider Kalgoorlie community. Aboriginal staff also indicated that they experience a degree of racism, from both court staff and the wider community, and that while some of these behaviours improved after cross-cultural training, that training does not occur often enough to ensure a sustained attitude change. This message can be achieved through ongoing training for all new staff, establishing the Reference Group, and talking up role of Community Court by managers with their staff.

Recommendation 16.	Training and information related to the philosophy, purpose, process and procedures of the Community Court be provided on a regular basis to general Magistrates Court staff and staff from other agencies (DCS, CJS, JJ, Police and service providers) and that it include an explanation and clarification of the duties and responsibilities of the positions associated with the Community Court as well as issues of racism and cultural diversity.

Q10: How is the community building role of the court executed? In what ways is the local Indigenous community strengthened?

The community-building aspect of the Community Court, both within the Indigenous community and between the Indigenous community and the wider community in Kalgoorlie, has been addressed in an earlier section of this report. It is imperative to recognise that stakeholders feel that while panellists play an important role in promoting the Community Court in the Aboriginal community and building Aboriginal confidence in the Community Court, the project manager and court support officer positions are integral to the community-building aspect of the Community Court.

During the evaluation's second community forum, stakeholders said that having Aboriginal Elders involved with the Community Court and sitting as panellists provided a message to the broader community that Aboriginal people were trying to do something to address crime and that Elders were taking some responsibility for what is happening in their community. This is considered to be contributing to improving relations with the non-Aboriginal community and resulting in steps being taken to improve safety within the Aboriginal community as well as the broader Kalgoorlie community.

5.2 Sustainability and governance

Reference Group

In keeping with the philosophy of the Community Court, a Reference Group was established when the Community Court was first implemented. Membership was drawn from public service agencies as well as Aboriginal community representatives. The purpose of the Reference Group was to "discuss issues of service delivery and anything else of concern… and also function as a forum by which agencies can connect their services with the community." The latter was seen as a way to "open up the dialogue and coordinate service delivery…and inform people of their rights and entitlements as a client of these agencies.[17]"

[17] Kalgoorlie-Boulder Community Court (Aboriginal Court Pilot) Procedure and Philosophy Statement, DotAG internal document, no date

Stakeholders who commented on the Reference Group said that it was not only a useful way to discuss issues of service delivery, but that it also provided a forum for raising other Indigenous issues that were of concern to the community. It served as an information-sharing meeting as well as a social network for Community Court participants and panellists, as well as general Court staff, to build and strengthen their relationships outside of the Court.

The Reference Group ceased in November 2006, when the first project manager left the position; at the time, the court and magistrates were not in a position to run the Reference Group without time set aside and appropriate staffing. Some stakeholders identified this as a real loss and considered that it contributed to feelings of exclusion from the process. Moreover, the lack of across-agency involvement with the Community Court initiative appears to have had a negative impact on perceptions of inclusiveness. Without the Reference Group, all operational and policy decisions and actions regarding the Community Court are now solely determined by DotAG. There is no input from others (eg police, CJS, JJ, ALS, LA) on ongoing court processes, procedures and policies.

There are currently efforts to re-establish the Reference Group with a specific focus on issues directly related to the Community Court. This would have a role in providing a sustainable point of reference for informing new Community Court participants and keeping members up to date with matters, as well as proposing and developing additional programs and polices to improve the Community Court process.

The Interim evaluation recommended that the *"role of the Reference Group should be more clearly defined and communicated. Consideration should be given to ensuring the focus of the role is on the Community Court rather than general Aboriginal issues."*

Recommendation 17.	The Reference Group be re-convened, focussed specifically on the Community Court, with clear terms of reference, roles, and lines of accountability so that key stakeholder have a mechanism for providing input into the ongoing operations and policies of the court.

Policies/procedures

The issue of a lack of consistency in Community Court processes and procedures was raised by a number of stakeholders. While it is recognised that the Community Court is "… not rigid and formulated, but a flexible and dynamic process", to increase the openness and inclusiveness, as well as improve relationships between the court and Aboriginal people, Community Court processes and procedures must be developed and recorded so as to be transparent. These can be expressed as guidelines to facilitate the process while still allowing flexibility aligned with the ethos and intent of the Community Court.

Current policy and procedures are contained in the Procedures and Philosophy Statement, a six page document developed by the initial

project manager in 2006. No further strategic or operational documents have been developed. Moreover, the existing document has not been reviewed or updated. Similarly, there are no policy/procedural manuals nor procedures for making or documenting changes in processes, procedures, roles and responsibilities. This lack of documentation raises issues of accountability, the openness and transparency of the Community Court and makes the induction of new staff difficult.

Recommendation 18.	Develop and expand strategic, process, policy and procedural guidelines and manuals of Community Court operations.

Ensuring continued Community involvement in Courts

The promise of inclusiveness of the Community Court provided by the initial consultation phase of the initiative which included extensive consultation and a Reference Group is not translating to day-to-day operations or governance. First and foremost, this evaluation shows that, as discussed above, the roles of the project manager and court support officer have been minimised and the critical functions of community building, outreach and education are not highly prioritised. This is not to say that the project manager and court support officer are neglecting these tasks; the project manager appears to be burdened with administrative tasks associated with the Community Court and the court support officer appears to be predominantly working with the mainstream Magistrates Court. It is clear that a range of internal pressures within the court's administration as well as the lengthy period of time when there was no one engaged in the role of project manger have had an impact on how this role and that of the court support officer are currently undertaken.

While the Community Court was to be promoted as a 'whole of court' process, it appears that over-burdening administrative tasks and filling the roles of open positions within the Magistrates Court have diverted attention and focus away from community education, outreach and participation, as well as strategic interagency involvement. As discussed above, the Reference Group ceased meeting in November 2006 and has not been re-established. This not only translates into a lack of communication and information-sharing across service providers and agencies, but also an absence of a community forum, which may result in agencies inability to connect their services with the Indigenous community. Moreover, it removes an essential opportunity for Aboriginal community representatives to engage with and affect the Community Court process.

Strategic planning and sustainability

The sustainability of the Community Court was discussed by various stakeholders in terms of challenges to overcome and improvements to be made. Many of those challenges have been discussed throughout this evaluation; however, overall, stakeholders commented that the Community Court model should be sustainable when it is properly

resourced, serviced and supported. This not only pertains to the Community Court participants, panellists and staff but also the wider Aboriginal and non-Aboriginal Kalgoorlie community and education, outreach and community-building aspect of the Community Court.

Stakeholders also commented on the timeframe for measuring the success of the Community Court. Panellists recognised that the situation with Aboriginal people, crime and justice is not a quick fix; the success of something like the Community Court takes time and they need to work together as they are now doing to help Aboriginal people. They reflected on the process and believe it is starting to gain momentum in the Aboriginal community. Magistrates believed that the Community Court process must be constantly reflected upon so that it is continuously evolving and improving.

If the Community Court is to be a 'whole of court' process, it needs to be an ongoing process and there must be a sustained commitment by all participants, including Community Court participants, agencies and service providers. This commitment includes the implementation of a process that is devoted to open dialogue from all stakeholders and is continually exploring ways of improving the court process and the delivery of services that address the needs of a culturally specific clientele.

If project outcomes are to be met, it is essential to develop and implement a strategic plan incorporating key activities to further develop and improve the operation of the Community Court. As identified in the process evaluation this is essential to meet the objectives of the court as well as reflecting on best practice, what has or has not worked and identify directions and goals for the future. If the Community Court is to be an inclusive, open process, there must be a commitment to be constantly reviewing and revising processes to improve the delivery of Community Court services, access to those services and participation from the Aboriginal community. In particular, issues that have been identified and changes that have been recommended in such review as the process evaluation should be addressed and resolved or implemented.

5.3 Expansion of the courts

Q12: What are the issues and opportunities for future expansion of the courts throughout the State?

The majority of stakeholders believed that it would be desirable to expand the Community Court within Kalgoorlie, to the lands and areas surrounding Kalgoorlie. They felt that Community Courts, if properly resourced, managed and operated, would be appropriate and successful in Leonora, Laverton, Coolgardie, Warburton, and Esperance; however, such an expansion would require adequate resourcing and a cultural sensitivity and awareness as each court would be unique in its own way depending on the area.

The main concern of stakeholders about expanding was with resourcing, which they considered essential to the success of such specialist courts.

Necessary resources for establishing an Aboriginal sentencing court, or Community Court, include, but are not limited to time, financing and staff. Because the Community Court is a more inclusive process, stakeholders considered that the time involved in developing and implementing such a court was much greater than for establishing a mainstream court. This includes, but is not limited to, initial community consultations, staff and panellist training and capacity building with stakeholders. Moreover, financial resources are typically not allocated for such courts, which often rely on the goodwill of parties involved in the process. For example, while the Community Court in Kalgoorlie receives separate funding, the Norseman court does not.

Current literature suggests that, minimally, a project manager is an essential role required to develop, implement and operate a Community Court. This role varies from court to court; however, the project manager plays an integral role in working with the community to explain and clarify the purpose of the court, the processes and how it will operate. Stakeholders also believe that the person in this role must be empowered to educate the community about the court, expand the stakeholder base and create a resource list of available services for offenders going through the court process.

In addition to a project manager, stakeholders also stated there must be support and participation from the local Indigenous community and the wider community in any area establishing a Community Court. This includes court staff, local agencies, police and various community members. Community consultation and information sessions were noted as an essential part of the development process to receive input and address community concerns. Particularly, any family disputes that exist within Aboriginal communities at proposed Community Court sites must be addressed and resolved if the court is to be inclusive and improve the relationship between all members of the community and the court.

Because of their strong ties to Norseman, Esperance is now asking for a Community Court to be established. However, Esperance would need at least a 12 month lead up to such an initiative to resolve the disputes in what is a divisive community. A project manager role has been shown to be essential to provide the impetus to implement such an initiative, and the position must be of a sufficiently high level to make the required changes.

6. CONCLUSION

The purpose of this evaluation was to assess three main aspects of the Community Court: its design, the achievement of outcomes, and aspects of the operation of the Community Court that impact on outcomes. Overall, we found that the Community Court's design is in line with good practice, and early implementation of the Community Court was well regarded and by all accounts, contributed greatly to increasing the cohesiveness of the Aboriginal community within Kalgoorlie, helping heal deep rifts between families. The Community Court is very strongly supported by most stakeholders, who do judge it to be more meaningful to all Aboriginal people, those who attend as well as the wider community. We found general consensus that the Community Court has helped make court services more accessible to some extent and improved the relationship between Aboriginal people and the court.

The majority of stakeholders were also of the view that the involvement of Aboriginal Elders in the Community Court has also played an important community building role within and between local Aboriginal communities and between local Aboriginal communities and the broader community.

On the other hand, analysis of offending data does not show any improvement in outcomes for Community Court in comparison to mainstream courts in relation to failure rates or time to fail, regardless of seriousness of offence, age, and number of priors. A small decrease in the seriousness of the failing offence has been noted. What has also been noted is that the population attending the Community Court has quite different characteristics compared to the mainstream Magistrates Court. That is, Community Court has a higher proportion of juveniles, lower proportion of offenders having no prior offences, and higher level of seriousness for the offences. Such characteristics would suggest more rather than less support is required compared with mainstream, particularly since higher level sentencing outcomes (community based orders rather than fines) are the result. The different characteristics create problems in making comparisons. Therefore, if the current trend continues, alternative comparison techniques need to be planned. Additional data collection, capturing offender characteristics such as substance use and abuse, employment, accommodation and education is likely to be necessary first to identify predictors and second to suggest indicators for effective referral to the court.

A number of important issues were highlighted. The implementation and early operation of the Community Court was very positive; however, over time the operation of the Community Court has fallen short of the original design, losing the Reference Group as well as a significant portion of the dedicated resources and without building links to program supports.

The loss of the Reference Group has removed an important conduit for collaboration and damaged the perception of the Community Court as open to the Aboriginal community. Along with the reduction in potency of the roles currently being played by the Court staff, the goodwill generated

during the consultation and set up of the Community Court is being eroded over time.

It is clear that the resources provided for in the budget have not been applied to the Community Court to the extent that they should have been, having been diverted by the general lack of resources that is endemic to Kalgoorlie in particular. This has been manifested in the involvement by Community Court staff in Magistrates Court business to the detriment of Community Court needs, in the lack of direction by management to ensure that this be addressed, and in the reluctant business-as-usual support by CJS and JJ.

Kalgoorlie always suffers from a lack of programs and suitable personnel, and this was likely exacerbated by the overheated economy experienced statewide prior to December 2008, leading to key positions remaining unfilled, the reassignment of existing resources to other priorities, and additional resources being only minimally deployed for Community Court priorities. The changeover of a key driver, namely the project manager, in the middle of the period and the loss of a key champion in the form of the originating magistrate no doubt exacerbated the position. The Community Court processes operated, giving the appearance of an operational project; however, they did so without the essential supports of programs and community building necessary to enable it to operate effectively.

There is no doubt that there is considerable goodwill and positive affect generated by those involved in the project and that the program as designed is good practice and therefore, if operating as designed, has the capacity to improve outcomes; however, operating without sufficient supports, the one-half to three-quarters of an hour that the client spends within the Community Court is insufficient to result in sustained behavioural change.

Therefore the primary recommendations of this evaluation are as follows:

- Resources that were planned for the initiative but have been reassigned elsewhere be immediately reoriented into the Community Court, and further, that funding for programs be provided, similar to the Drug and Family Violence courts.
- Strong management processes be put in place as a priority to support the reestablishment of essential components of the design, particularly to renegotiate the role of CJS/JJ resources, restart the Reference Group, support and reorient the project manager and CSO, and commence the sourcing of programs that support the Community Court's intended outcomes.
- Further investigation into Community Court outcomes be carried out to provide a better understanding of the results of the evaluation and the wider causal factors. Exploratory discussions with offenders who choose, and reject, Community Court would provide a better understanding regarding the factors considered by potential clients. The development of a mechanism to identify and record other offender characteristics should allow better comparison and predictive capacity.

It should be recognised that this Community Court pilot developed out of community interest, in a region where recidivism is a grave problem and where relationships in justice have always been problematic. Addressing these issues is important. It would appear that resources were borrowed from the project to assist in other areas and elements of the design were allowed to slip away, perhaps in the belief that it wasn't affecting outcomes. However, this evaluation has shown that as currently (under)implemented the court is not demonstrably achieving its outcomes and therefore requires proper care and attention if it is to be allowed the opportunity to exhibit the outcomes designed and expected. The need for this positive force in the community is manifest and it is essential that resources be immediately reapplied to allow the program the best opportunity to succeed. When the Community Court has been allowed to operate as originally planned and resourced, further evaluation of outcomes can (and should be) undertaken.

APPENDIX A: LITERATURE REVIEW

The purpose of this literature review is to provide background information for the evaluation findings and recommendations. Various sources of information about Aboriginal sentencing courts in Australia have been relied on in preparing this review and in identifying key issues.[18] International models have not been examined for this review. Comparing international and Australian models may be interesting and useful from an academic perspective; however, in conducting an evaluation it is more helpful to focus on Aboriginal sentencing courts that operate within similar (although clearly not identical) legal, social, political and cultural conditions.[19]

The first formal Aboriginal sentencing court to be established in Australia was the Nunga Court in Port Augusta, South Australia in 1999. Since that time Aboriginal sentencing courts have been established in Victoria (Koori Courts), New South Wales (Circle Sentencing Intervention Program), Queensland (Murri Courts), Northern Territory (Community Courts), Australian Capital Territory (Ngambra Circle Court) and, of course, Western Australia. The table at the end of this review provides an overview of the different Aboriginal sentencing courts in Australia. The Aboriginal Sentencing Court at Kalgoorlie is included in this table for ease of reference; however, the discussion about the operation of the court appears elsewhere in this report.

Aboriginal sentencing courts have been established primarily as a response to the disproportionate overrepresentation of Aboriginal people in the criminal justice system, to provide for more culturally appropriate court processes and to increase the involvement of Aboriginal communities in the justice system. Although the court processes and procedures are altered in Aboriginal sentencing courts, it is important to emphasise that Aboriginal sentencing courts in Australia operate under the same laws as any other court and they do not apply Aboriginal customary laws. Further, Aboriginal sentencing courts are not separately constituted courts with their own court seal; they operate as divisions or lists or special sittings within the standard court system.

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[18] This review discusses a number of formal Aboriginal sentencing court models in Australia. In some jurisdictions there are also informal processes whereby Aboriginal community members sit with Magistrates (eg, in regional locations in Western Australia and community justice groups in Queensland). Material examined for this review includes policy information available on relevant court and departmental websites, evaluation and review reports, legislation, academic articles, conference papers and other reports.

[19] Indigenous courts exist in a number of international jurisdictions. For example, in Canada there are sentencing circles and Aboriginal courts such as the Gladue (Aboriginal Persons) Courts in Toronto. The Gladue Courts were established to assist in the application of s 718(2)(e) of the Criminal Code (Canada): Ontario Ministry of Attorney General Court Services Division, Annual Report 2007–2008, 36. Section 718(2)(e) requires all Canadian criminal courts to pay particular attention to the circumstances of Aboriginal offenders when considering whether a sentence of imprisonment should be imposed. Such a provision does not exist in Australia. In New Zealand there are two Indigenous courts dealing with Maori land and resources as well as a variety of practices designed to incorporate Maori culture and community participation in the legal system: see His Honour Judge Louis Bidois, District Court of New Zealand, Indigenous Court Practices in New Zealand, Paper presented at the AIJA Indigenous Courts Conference, Mildura, Victoria, 4–7 September 2007.

Common characteristics of Aboriginal sentencing courts

There are differences between the various models of Aboriginal sentencing courts in Australia; however, a number of common features exist.[20] These include that:

- Aboriginal Elders and other Respected Persons are involved in the court process.[21]
- Aboriginal sentencing courts do not adjudicate on the guilt or otherwise of an accused (ie, the accused must plead guilty, be found guilty or indicate an intention to plead guilty).
- Generally, an accused must be an Aboriginal or a Torres Strait Islander person to participate.[22]
- The accused must consent to being dealt with in the Aboriginal sentencing court.
- Generally, Aboriginal sentencing courts operate in the lower courts (eg, Magistrates Court or Children's Court).[23]
- The judicial officer retains the ultimate sentencing power and must apply the general sentencing laws of the relevant jurisdiction.
- The courtroom is physically modified and the processes are more informal than is the case in standard sentencing courts. All participants—including the judicial officer—sit at the same level.
- Aboriginal sentencing courts aim, among other things, to increase Aboriginal community participation in the criminal justice system and to make court processes more culturally appropriate.[24]

There are two primary models for Aboriginal sentencing courts in Australia: the 'Nunga or Koori court model' and circle sentencing.[25] The Nunga or Koori court model exists in South Australia, Victoria, Queensland and Western Australia.[26] New South Wales and the Australian Capital

[20] Marchetti E & Daly K, 'Indigenous Sentencing Courts: Towards a theoretical and jurisprudential model' (2007) 29 *Sydney Law Review*, 415 421; Law Reform Commission of Western Australia, *Aboriginal Customary Laws*, Discussion Paper, Project No. 94 (2005) 152–155.

[21] The involvement of Aboriginal Elders and other Respected Persons has been described as the 'single most important feature' of Aboriginal sentencing courts: see Law Reform Commission of Western Australia, *Aboriginal Customary Laws*, Discussion Paper, Project No. 94 (2005) 142.

[22] Non-Aboriginal offenders are able to participate in the Darwin Community Court and in the Community Court at Norseman.

[23] Victoria is an exception – in late 2008 a Koori Court Division of the County Court was established.

[24] Marchetti E & Daly K, 'Indigenous Sentencing Courts: Towards a theoretical and jurisprudential model' (2007) 29 *Sydney Law Review* 415, 435.

[25] Marchetti E & Daly K, ibid 430. However, Nunga Courts have been described as more formal than Koori Courts: Western Australian Department of Justice, *A Discussion Paper on Aboriginal Courts* (2005) 2.

[26] However, South Australia now has a pilot program in Port Lincoln that is a combination of both models as well as restorative justice conferencing practices see Marshall J, *Port Lincoln Aboriginal Conference Pilot: Review report* (South Australia Office of Crime Statistics and Research; Adelaide, June 2008) 1. In this model, the Magistrate does not attend the conference but takes into account outcomes reached during the conference.

Territory have adopted the circle sentencing model. The Community Courts in the Northern Territory have been described as a combination of both models.[27] Tasmania is the only Australian jurisdiction without an Aboriginal sentencing court.

One of the differences between the two models is that in circle sentencing the aim is to reach a consensus decision in relation to the sentence to be imposed (ie, Elders and Respected Persons have a greater input into the final the outcome).[28] Further, circle sentencing focuses on restorative justice practices and, accordingly, there is usually greater victim involvement. Also, circle sentencing is more informal with court proceedings taking place in a community location rather than a traditional, albeit modified, courtroom.[29]

Key issues

Establishment

Other than the Koori Courts in Victoria, all Aboriginal sentencing courts have been established without specific supporting legislation. Some courts were developed by individual Magistrates[30] while others have been established with a degree of government support.[31] Invariably, significant consultation with the local Aboriginal community and other stakeholders has taken place before Aboriginal courts have been established.[32]

Funding arrangements differ between the various jurisdictions; some Aboriginal sentencing courts have commenced without any additional funding while others have been provided with extra funds from the start. In other instances, Aboriginal sentencing courts have been provided with supplementary resources after the court commenced. For example, the Murri Courts were initially funded from existing resources; however, it was reported that the Queensland government would provided $5.2 million

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[27] Marchetti E & Daly K, 'Indigenous Sentencing Courts: Towards a theoretical and jurisprudential model' (2007) 29 *Sydney Law Review* 415, 430.

[28] See clause 29(h) of Schedule 4 of the *Criminal Procedure Regulations 2005* (NSW).

[29] Marchetti E & Daly K, 'Indigenous Sentencing Courts: Towards a theoretical and jurisprudential model' (2007) 29 *Sydney Law Review* 415, 430.

[30] For example, the Nunga Court was established as an initiative of Magistrate Chris Vass: Tomaino J, 'Aboriginal (Nunga) Courts' (Office of Crime Statistics and Research, Information Bulletin, undated) 2. Similarly, the Murri Court was initiated by the magistracy: Queensland Department of Justice and Attorney General, 'Report on the Review of the Murri Court' (2006) 11.

[31] Circle sentencing in New South Wales was established as an initiative of the Aboriginal Justice Advisory Council and the Attorney-General's Department: Cultural and Indigenous Research Centre Australia, *Evaluation of Circle Sentencing Program* (NSW Attorney General's Department: Sydney, 2008) 19. The Koori Courts in Victoria were established as an initiative under the Aboriginal Justice Agreement with clear government support via the enactment of Koori Court legislation: Harris M, 'A Sentencing Conversation: Evaluation of the Koori Courts Pilot Program October 2002–October 2004', (Department of Justice: Melbourne, 2006) 16.

[32] See further Tomaino J, 'Aboriginal (Nunga) Courts' (Office of Crime Statistics and Research, Information Bulletin, undated) 2; Harris M, 'A Sentencing Conversation: Evaluation of the Koori Courts Pilot Program October 2002–October 2004', (Department of Justice: Melbourne, 2006) 17–19; Queensland Department of Justice and Attorney General, 'Report on the Review of the Murri Court' (2006) 11.

over three years for the courts from January 2007.[33] The Nunga Court commenced without any specific funding but approximately six months later the South Australian Courts Administration Authority funded Aboriginal Justice Officers.[34]

Legal and procedural

Legislation

Many Aboriginal sentencing courts now have supporting legislation. The Koori Court legislation (which establishes separate Koori Court Divisions of the Magistrates Court, the Children's Court and the County Court)[35] covers such matters as eligibility criteria; excluded offences; court and sentencing procedures; who may provide information to the court; and the appointment of Aboriginal Elders and Respected Persons.

In New South Wales circle sentencing is governed by the *Criminal Procedure Regulation 2005* (NSW). The Circle Sentencing Intervention Program is a prescribed intervention program and, accordingly, various provisions of the *Criminal Procedure Act 1986* (NSW) apply to its operation. Specifically, schedule 4 of the Regulation deals with issues such as the objectives of the program; eligibility criteria; referral and assessment procedures; the role of an Aboriginal Justice Group; the convening and constitution of a circle sentencing group; the role of the project officer; and disclosure of information.

The Nunga Court in South Australia commenced without specific legislation. However, s 9C of the *Criminal Law (Sentencing Act) 1988* (SA) was enacted in 2005 and it is relevant to the operation of Nunga Courts. This legislation provides for sentencing conferences for Aboriginal offenders and enables a court to take into account the views expressed at a sentencing conference. There is no specific supporting legislation for the Queensland Murri Courts; however, Queensland legislation enables any court to take into account relevant submissions from a member of an Aboriginal community justice group.[36] Community Courts in the Northern Territory, the Ngambra Circle Court in the Australian Capital Territory and Aboriginal sentencing courts in Western Australia operate under general sentencing, bail and procedural legislation.

In Queensland it has been suggested that specific Aboriginal court legislation 'could assist in making the Murri Court a permanent feature of the Magistrates and Children's Court and provide consistency in its

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[33] Queensland Department of Justice and Attorney General, 'Report on the Review of the Murri Court' (2006) 4.

[34] Tomaino J, 'Aboriginal (Nunga) Courts' (Office of Crime Statistics and Research, Information Bulletin, undated) 2.

[35] *Magistrates Court Act 1989* (Vic) ss 4D–4G & s 17A; *Children, Youth and Families Act 2005* (Vic) ss 517–520 & s 536; *County Court Act 1958* (Vic) ss 4A–4G & s 22A.

[36] *Penalties and Sentences Act 1992* (Qld) s 9(2)(p); *Juvenile Justice Act 1992* (Qld) s 150 (1)(g).

operation'.[37] The review of the Murri Court concluded that legislation was necessary, in particular, to deal with eligibility considerations; the appointment and selection of Elders and Respected Persons and confidentiality of information.[38] It has also been observed that supporting legislation may promote long-term sustainability of an Aboriginal sentencing court and ensure that such initiatives are less dependent upon individual personalities.[39] Further, it has been argued that legislation 'promotes uniformity and consistency in processes and decision-making throughout the relevant jurisdiction'.[40] However, legislation may potentially hinder the adaptability of Aboriginal sentencing courts if the legislative provisions are too prescriptive.

It is noted that in 2008 the Law Reform Commission of Western Australia made various proposals for legislative reform in relation to court intervention programs. Proposed legislative amendments included changes to the *Bail Act* 1982 (WA), the *Sentencing Act* 1995 (WA) and the *Criminal Procedure Act* 2004 (WA). Under these proposals the Aboriginal Sentencing Court at Kalgoorlie would be one of a number of prescribed court intervention programs under the *Criminal Procedure Act Regulations 2005* (WA).[41] The Law Reform Commission is in the process of preparing its recommendations and final report.

Jurisdiction

In all jurisdictions, Aboriginal sentencing courts operate for adults in the Magistrates Court (or Local Court). In most places, the court also operates for juveniles.[42] At the end of 2008 the County Court Koori Court Division commenced – this is the first Aboriginal sentencing court in a higher jurisdiction. The procedures and eligibility criteria are similar to those applicable to the Koori Court Divisions of the Magistrates Court and Children's Court; however, by virtue of the court's jurisdiction more serious criminal cases can be heard. Also, the County Court Koori Court Division has jurisdiction to hear certain appeals from sentencing decisions made by a Magistrate including a Magistrate sitting in a Koori Court Division of the Magistrates Court.[43]

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[37] Queensland Department of Justice and Attorney General, 'Report on the Review of the Murri Court' (2006) 43.

[38] Ibid 44.

[39] See further, Aboriginal and Torres Strait Islander Legal Services of Western Australia, South Australia, Victoria, Queensland and the Northern Territory (North), *Minimum Standards for Aboriginal and Torres Strait Islander Courts in Western Australia, South Australia, Victoria, Queensland & Northern Territory (North) 2007–2010* (2007) 12.

[40] Ibid 13.

[41] Law Reform Commission of Western Australia, *Court Intervention Programs,* Consultation Paper, Project No. 96 (2008) 181.

[42] The only Aboriginal sentencing courts that do not operate for juveniles are the Circle Sentencing Intervention Program in New South Wales does and the Ngambra Circle Court in the Australian Capital Territory.

[43] See *County Court Act 1958* (Vic) s 4D (appeals are limited to a re-hearing); County Court Koori Court Division, *County Court Koori Court Division Practice Note*, 8 December 2008.

Eligibility criteria

While the eligibility criteria differ between the various Aboriginal sentencing courts, there are a number of common requirements for participation. Aboriginal sentencing courts require either a plea of guilty, a finding of guilt, or an indication of an intention to plead guilty.[44] Accused persons or offenders must consent to participate.[45] In most cases, the accused or offender must be an Aboriginal or Torres Strait Islander person.[46] Examples of other eligibility requirements in some courts include that the offender:

- has sufficient community ties so that the process is likely to be effective;[47]
- is not currently subject to parole;[48]
- is not suffering from any serious mental disorder;[49]
- has a particular relationship with the local Aboriginal community;[50]
- does not suffer from an unresolved illicit drug (other than cannabis) addiction; [51]
- has been assessed as suitable to participate in the program.[52]

Excluded offences

The types of offences that can be dealt with by an Aboriginal sentencing court are primarily determined by the court's jurisdiction (ie, Magistrates Court or higher court etc). However, most Aboriginal sentencing courts also exclude particular types of offences. For example, the Koori Courts

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[44] See for example, Queensland Department of Justice and Attorney General, 'Report on the Review of the Murri Court' (2006) 17; Han A, 'The Nunga Court: Creating pathways for the improved sentencing practices of Indigenous offenders' (Report prepared for Sandra Kanck, November 2003) 7; *Magistrates Court Act 1989* (Vic) s 4F(1)(c); Cultural and Indigenous Research Centre Australia, *Evaluation of Circle Sentencing Program* (NSW Attorney General's Department: Sydney, 2008) 28.

[45] See for example, Queensland Department of Justice and Attorney General, 'Report on the Review of the Murri Court' (2006) 19; *Magistrates Court Act 1989* (Vic) s 4F(1)(d). Note that both the offender and the prosecutor have to consent to the matter being dealt with in the Murri Court see Murri Court Fact Sheet (May 2006) 1.

[46] At the Rockhampton Adult and Youth Murri Courts, Australian South Sea Islanders are also eligible to participate: Queensland Department of Justice and Attorney General, 'Report on the Review of the Murri Court' (2006) 20. Also the Darwin Community Court and the Norseman Community Court allow non-Aboriginal offenders to participate. In relation to the Norseman Community Court, it is understood that non-Aboriginal offenders are only entitled to participate if they are accepted as part of the Aboriginal community.

[47] Darwin Community Court Guidelines, 27 May 2005, 3-4.

[48] Ibid.

[49] Ibid.

[50] To participate in the Ngambra Circle Court the offender must have 'kinship or association with the Canberra Aboriginal and Torres Strait Island community': Madden S, 'The Circle Court in the ACT – An overview and its future' (2007) 6.

[51] Madden S, ibid.

[52] *Criminal Procedure Regulation 2005* (NSW) Schedule 4, Part 2.

cannot deal with certain sexual offences and family violence matters.[53] Similarly, the Norseman Community Court excludes sexual offences and the more serious domestic violence matters. Under s 348 of the *Criminal Procedure Act 1986* (NSW) there are a number of serious offences excluded from the operation of various intervention programs including the Circle Sentencing Intervention Program.[54] Sexual offences are excluded from the Northern Territory Community Courts and the Ngambra Circle Court in the Australian Capital Territory. It has been observed that in some jurisdictions family violence (and family feuding) offences are excluded because these types of matters may cause conflict in the local Aboriginal community. Nevertheless, in some circumstances it may be beneficial and appropriate for an Aboriginal sentencing court to deal with family violence matters.[55] It is noted that Barndimalgu Court in Geraldton is an Aboriginal sentencing court that deals exclusively with family and domestic violence matters.[56]

Pathways

Generally, Aboriginal sentencing courts operate at the stage of proceedings when an offender is sentenced for the relevant offence. However, in some cases, the sentencing decision is deferred so that the offender can participate in a diversionary or treatment program before the final decision is made. The legislative provisions and procedures governing deferral of sentencing differ from one jurisdiction to another. In Queensland it has been noted that Murri Court participants have been required to comply with 'bail based programs' for a number of months to determine whether their rehabilitation goals are genuine and to determine the most appropriate sentence.[57]

In relation to the Circle Sentencing Intervention program, bonds (ie, deferral of sentencing for 12 months) have been used.[58] Similarly, the evaluation of the Koori Court Pilot Program observed that there had been 26 referrals to the Broadmeadows CREDIT program since the Broadmeadows Koori Court commenced. The CREDIT program is a pre-sentence bail program involving drug treatment.[59] In discussing the Koori Courts, it has been observed that there is the 'potential for greater judicial

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53 *Magistrates Court Act 1989* (Vic) s 4F(1).

54 For example, grievous bodily harm, sexual assault, child pornography, stalking, any offence involving the use of a firearm and certain drug offences.

55 Aboriginal and Torres Strait Islander Legal Services of Western Australia, South Australia, Victoria, Queensland and the Northern Territory (North), *Minimum Standards for Aboriginal and Torres Strait Islander Courts in Western Australia, South Australia, Victoria, Queensland & Northern Territory (North) 2007–2010* (2007) 19.

56 Law Reform Commission of Western Australia, *Court Intervention Programs*, Consultation Paper (2008) 138.

57 Queensland Department of Justice and Attorney General, 'Report on the Review of the Murri Court' (2006) 22.

58 Cultural and Indigenous Research Centre Australia, *Evaluation of Circle Sentencing Program* (NSW Attorney General's Department: Sydney, 2008) 77.

59 Harris M, 'A Sentencing Conversation: Evaluation of the Koori Courts Pilot Program October 2002–October 2004', (Department of Justice: Melbourne, 2006) 67.

supervision of offenders'.[60] Indeed, Magistrates in the Broadmeadows Koori Court have required offenders to reappear in court for a warning following advice from the community corrections officer that the offender is at risk of breaching the requirements of the court order.

Similarly, a number of Aboriginal offenders in Nunga Courts have participated in a pre-sentence drug treatment program (CARDS).[61] Comparable Western Australian processes include a deferral of sentencing for up to six months to enable participation in a relevant program (such as the Supervised Treatment Intervention Regime). Further, an offender facing an immediate term of imprisonment can be placed on a Pre-Sentence Order for up to two years and, if so, the offender is required to comply with various conditions before a final sentence is imposed.[62] The Barndimalgu Court in Geraldton use these pre-sentence options coupled with intensive supervision and program requirements (including ongoing judicial monitoring).[63] It is understood that the Norseman Community Court also utilises Pre-Sentence Orders in appropriate cases.

Court processes

Aboriginal sentencing courts are more informal than standard sentencing courts in order to ensure that the court process is less alienating for Aboriginal people and to encourage active involvement by all parties (including the offender).[64] Further, the physical layout is modified so that the judicial officer is sitting at the same level as the other parties.[65] In some cases all parties sit around a circle or oval table. Aboriginal art and flags may be displayed in the courtroom and, generally, the judicial officer will acknowledge the traditional owners of the land and the Elders present in court.[66]

In Koori Courts, all who are present are encouraged to speak about the offender and offence. The discussion between the Magistrate and Elders or Respected Persons about the appropriate sentencing outcome is undertaken openly.[67] However, in some Aboriginal sentencing courts,

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60 Harris M, 'The Koori Court and the Promise of Therapeutic Jurisprudence' (2006) *Murdoch University Electronic Journal Special Series*, 129, 134.

61 South Australia Court Administration Authority, *Annual Report 2007–2008* (September 2008) 23.

62 *Sentencing Act 1995* (WA) Part 3A.

63 Law Reform Commission of Western Australia, *Court Intervention Programs*, Consultation Paper (2008) 138–139.

64 For example, s 4D(4) of the *Magistrates Court Act 1989* (Vic) provides that the Koori Court is to conduct its proceedings with as little formality and technicality and expedition as possible. Section 4D(5) states that proceedings should be understandable to the offender, his or her family and any member of the Aboriginal community who is present.

65 However, one Murri Court has retained the physical layout of a standard court at the request of the local community: Queensland Department of Justice and Attorney General, 'Report on the Review of the Murri Court' (2006) 20.

66 Law Reform Commission of Western Australia, *Aboriginal Customary Laws*, Discussion Paper, Project No. 94 (2005) 153.

67 Harris M, 'A Sentencing Conversation: Evaluation of the Koori Courts Pilot Program October 2002–October 2004', (Department of Justice: Melbourne, 2006) 25–30.

there may be some private discussions between the Elders or Respected Persons and the judicial officer.[68]

In some Aboriginal sentencing courts a formal assessment process is used to determine if the offender is a suitable candidate. In the Circle Sentencing Intervention Program in New South Wales, an Aboriginal Community Justice Group assesses the offender's suitability; if the group determines that the offender is unsuitable then the offender is ineligible. If the Aboriginal community justice group assesses the offender as suitable, the referring court may still decide that the offender is unsuitable for participation in the program.[69] Similarly, the Darwin Community Court has a referral and assessment process. Offenders are bailed with conditions while the Community Court Officer assesses the suitability of the offender to participate. A report is prepared by the Community Court Officer for the referring Magistrate.[70]

Policy considerations

Target group

Aboriginal courts are resource intensive – proceedings in circle sentencing courts can take a number of hours (even up to a day) per. Koori Courts (and similar models) do not take as long; however, it has been observed that approximately five to ten matters are dealt with per court sitting compared to more than 50 matters in a standard court.[71] Bearing this in mind it is important that Aboriginal sentencing courts target those offenders who are likely to benefit the most from the process and those cases where the greatest cost savings can be achieved. Some Aboriginal courts target the more serious offenders who are likely to go to prison.[72] Others have a broader target group covering both minor and more serious offending. Bearing in mind the huge cost of imprisonment, the greatest potential cost savings will occur in those cases where the Aboriginal sentencing court process enables an offender who is facing imprisonment to be dealt with in another manner.

Aboriginal sentencing courts are arguably more demanding than standard sentencing court process. Further, some Aboriginal sentencing courts make use of intensive pre-sentence options. Bearing this in mind, it is

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[68] It is understood that in the Norseman Community Court the Magistrate may have some discussion with the Elders and Respected Persons about the proposed sentence. Discussions between the Elders and the Magistrate also took place in private in the Yandeyarra Aboriginal Community Court in the Pilbara, Western Australia: Temby D, 'The Yandeyarra Aboriginal Community Court Project' (2006) *Murdoch Electronic Law Journal Special Series* 141, 143.

[69] *Criminal Procedure Regulation 2005* (NSW) schedule 4.

[70] Chief Magistrate Bradley, Darwin Community Court Guidelines, 27 May 2005, 5.

[71] Harris M, 'A Sentencing Conversation: Evaluation of the Koori Courts Pilot Program October 2002–October 2004', (Department of Justice: Melbourne, 2006) 32.

[72] The Murri Court Review noted that offenders involved in the court program are 'typically at risk of receiving a prison sentence': Queensland Department of Justice and Attorney General, 'Report on the Review of the Murri Court' (2006) 20. See also Cultural and Indigenous Research Centre Australia, *Evaluation of Circle Sentencing Program* (NSW Attorney General's Department: Sydney, 2008) 19.

important to consider whether Aboriginal sentencing courts cause net-widening. In other words, do Aboriginal sentencing court participants receive more intensive and onerous options than they would have if dealt with in the usual manner. In this regard, prior legal advice is vital to ensure that offender is aware of the options and provides informed consent to participate.

Victim involvement

As noted at the outset, circle sentencing courts actively encourage victim participation and are generally more victim focused than other models. For example, it has been observed that Murri Courts 'only provide for the involvement of victims on an informal basis'.[73] In the Norseman Community Court victims are provided with an opportunity to speak about the impact of the offence. The evaluation of the Koori Court pilot program stated that:

> *Although the Koori Court is no different to usual Magistrates' Court matters in that the victim may be invited to attend or a victim impact statement may be provided to the court, it should be remembered that in many ways the primary focus of the Koori Court is directed towards the rehabilitation of the defendant.*[74]

It has been argued that Aboriginal sentencing courts should ensure that victims are given the same rights as in any other court (such as the right to attend court or provide a victim impact statement). In this regard, it may be more appropriate for some Aboriginal victims to provide a victim impact statement orally.[75] It is relevant to note that increasing victim participation in the court process necessarily increases the time spent per matter. Another option is for Aboriginal sentencing courts to refer Aboriginal offenders to external victim-centred processes such as victim-offender mediation or conferencing schemes (if they exist). Further, if Aboriginal courts are to routinely involve victims it is essential that participating victims have access to appropriate victim support services.

Programs and support services

It appears that if Aboriginal sentencing courts are to achieve success in terms of reducing reoffending, it is important that offenders have access to appropriate treatment and rehabilitation programs and support services. The Koori Court evaluation noted that Shepparton was chosen as the initial site for the Koori Court because of

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[73] Queensland Department of Justice and Attorney General, 'Report on the Review of the Murri Court' (2006) 22

[74] Harris M, 'A Sentencing Conversation: Evaluation of the Koori Courts Pilot Program October 2002–October 2004', (Department of Justice: Melbourne, 2006) 56.

[75] Aboriginal and Torres Strait Islander Legal Services of Western Australia, South Australia, Victoria, Queensland and the Northern Territory (North), *Minimum Standards for Aboriginal and Torres Strait Islander Courts in Western Australia, South Australia, Victoria, Queensland & Northern Territory (North) 2007–2010* (2007) 22.

> *the availability of drug and alcohol treatment programs, an Indigenous women's mentoring program, and 'well developed Indigenous community controlled social service providers'.* [76]

Further, it has been observed that:

> *[W]ithout appropriate services or programs that would benefit an offender in a particular community, there is little scope for courts to impose penalties that can be more effective.*[77]

The 2008 evaluation of the New South Wales circle sentencing program suggested that the involvement of Aboriginal community members in the sentencing process is not, of itself, enough to reduce reoffending. It was argued that:

> *Consideration should perhaps be given to combining circle sentencing with other programs (e.g. cognitive behavioural therapy, drug and alcohol treatment, remedial education) that have been shown to alter the risk factors for further offending.*[78]

It has also been observed that sentencing orders imposed in the Rockhampton Murri Court that require offenders to attend Aboriginal community justice groups and/or Elders and to engage in relevant rehabilitation programs appear to be more effective at reducing recidivism than other sentencing orders that do not involve ongoing contact with Aboriginal community representatives and treatment programs (eg, fines, imprisonment and community work). [79]

Program objectives

Aboriginal sentencing courts have stated aims or objectives – these are set out in legislation (where it exists) or in policy documents and court guidelines. While the objectives differ for each court it is essential to emphasise that the reduction of reoffending is only one of many other important goals. For example, some Aboriginal sentencing courts also aim to

- Reduce the overrepresentation of Aboriginal offenders in the criminal justice system and in prison.
- Increase court attendance rates.

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76 Harris M, 'A Sentencing Conversation: Evaluation of the Koori Courts Pilot Program October 2002–October 2004', (Department of Justice: Melbourne, 2006) 63.

77 Marchetti E & Daly K, 'Indigenous Sentencing Courts: Towards a theoretical and jurisprudential model' (2007) 29 *Sydney Law Review* 415, 437.

78 Fitzgerald J, 'Does Circle Sentencing Reduce Aboriginal Offending?', NSW Bureau of Crime Statistics and Research, *Crime and Justice Bulletin No. 115* (May 2008) 7.

79 Cunneen C, Collings N & Ralph N, *Evaluation of the Queensland Aboriginal and Torres Strait Islander Justice Agreement* (Institute of Criminology, University of Sydney: Sydney, 2005) 147.

- Improve compliance with court orders.
- Increase participation and confidence of Aboriginal communities in the sentencing process.
- Reduce Aboriginal deaths in custody.
- Address the underlying causes of offending behaviour.
- Provide more culturally appropriate sentencing options for Aboriginal offenders.
- Provide more culturally appropriate court processes for Aboriginal people.
- Increase victim participation in the sentencing process.
- Increase the awareness of Aboriginal offenders of the consequences of their offending behaviour to victims and to their Aboriginal community and to increase awareness of community standards of behaviour.

Therefore, the objectives of any Aboriginal sentencing court tend to fit within one of two main categories: *outcome* objectives (ie, reducing imprisonment, reducing reoffending and improving compliance rates) and *process* objectives (ie, increasing Aboriginal community participation in the sentencing process, more culturally appropriate processes and increasing victim satisfaction with the process). When assessing evaluation results for Aboriginal sentencing courts it is imperative to consider all of the program's objectives. For example, a recent evaluation of circle sentencing found that the program does not reduce reoffending or reduce the severity of offending but many of the other process objectives were being met.[80]

Aboriginal participation

One of the main differences between conventional court processes and Aboriginal courts is the direct involvement of Aboriginal community representatives and Aboriginal staff. Nonetheless, it should be emphasised that the judicial officer retains the ultimate decision-making power. While the input from and involvement of Aboriginal Elders and respected persons (and other Aboriginal staff) is crucial, others may also play an important role. For example, in the Murri Court, a representative from the Department of Corrective Services (adults) or Department of Communities (juveniles) is in attendance and discusses rehabilitation options including programs available for the offender with the Magistrate.[81] Similarly, an adult community justice service officer or a juvenile justice officer is present during proceedings in the Norseman Community Court. Further, in the Norseman Community Court non-Aboriginal community

[80] Cultural and Indigenous Research Centre Australia, *Evaluation of Circle Sentencing Program* (NSW Attorney General's Department: Sydney, 2008) 6.

[81] Queensland Department of Justice and Attorney General, 'Report on the Review of the Murri Court' (2006) 18.

representatives may be involved to provide advice (eg the local school Principal).

Because of the involvement of Aboriginal community representatives and the need to ensure that court processes are culturally appropriate, relevant training is necessary. The evaluation of the Koori Court noted the importance of cultural awareness training and that such training should be locally based.[82] Further, Elders and other respected persons who sit in the court need appropriate training about legal rules and processes. In the Koori Courts, Elders are given an initial five day training course involving mock courts.[83] The Aboriginal and Torres Strait Islander Legal Services in Western Australia, South Australia, Victoria, Queensland and Northern Territory (North) have recommended that as a minimum standard those employed to work in Aboriginal sentencing courts should receive local cultural training and training about local historical and social issues. Further, Elders and respected persons should receive appropriate legal training and be informed about how to identify conflicts of interest. It was suggested that such training should occur regularly rather than as a one-off occurrence.[84]

Elders and Respected Persons

The precise role of the Elders and other respected persons varies from court to court. Generally, the role is to provide cultural and background information to the judicial officer and/or to speak directly to the offender about the circumstances of their offending and encourage rehabilitation. In some cases, Elders have significant input into the sentencing outcome. In regard to circle sentencing in New South Wales a Magistrate has stated that:

> *It is one thing for me as a Magistrate to convey the community's concerns; it is another entirely to have those concerns communicated by persons for whom the offender holds a deep-seated respected.* [85]

A review of the Murri Court stated that the role of the Elders and respected persons includes providing advice about cultural issues; assisting the offender to understand the court processes; providing advice about the most appropriate sentence; and providing a link between the court and the local community.[86] In regard to the Nunga Court it has been reported that Elders provide cultural advice and their presence also

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82 Harris M, 'A Sentencing Conversation: Evaluation of the Koori Courts Pilot Program October 2002–October 2004', (Department of Justice: Melbourne, 2006) 36.

83 Harris M, 'A Sentencing Conversation: Evaluation of the Koori Courts Pilot Program October 2002–October 2004', (Department of Justice: Melbourne, 2006) 44.

84 Aboriginal and Torres Strait Islander Legal Services of Western Australia, South Australia, Victoria, Queensland and the Northern Territory (North), *Minimum Standards for Aboriginal and Torres Strait Islander Courts in Western Australia, South Australia, Victoria, Queensland & Northern Territory (North) 2007–2010* (2007) 35.

85 Dick D, 'Circle Sentencing of Aboriginal Offenders: Victims have their say' (2004) 7 *The Judicial Review* 57, 60.

86 Queensland Department of Justice and Attorney General, 'Report on the Review of the Murri Court' (2006) 16.

ensures that promises made by offenders are more meaningful.[87] The Darwin Community Court Guidelines state that the community representatives are involved in considering the appropriate sentence, although the Magistrate has the ultimate sentencing power. Under the Koori Court legislation the court can take into account advice given by Aboriginal Elders or respected persons.[88] In the Norseman Community Court, the Elders and respected persons are not routinely involved in discussing the appropriate sentencing outcome. Instead they provide advice to the court about the offender's cultural and social background and speak directly to the offender about the impact of the offence on the community.

The role of Aboriginal Elders and respected persons raises a number of issues:

Conflict of Interest

Because there may be a close family connection between the Elders (or Respected Persons) and the offender there may be a perception of a conflict of interest. The Koori Court has developed a Code of Conduct in relation to conflict of interests; Elders or respected persons disqualify themselves if there is a conflict of interest.[89] The Darwin Community Court guidelines provide that offenders and victims have the right to object on the basis that there is a conflict of interest with the community representative(s).[90] Having more than one Elder or respected person sitting in a particular case and appropriately selecting Elders and Respected Persons to sit in court on a particular matter minimises any problems associated with a potential conflict of interest. The Aboriginal court worker has a key role in this regard.

The existence of a family connection between an Elder or Respected Person and the offender (or victim) should not necessarily preclude participation – in many cases the existence of a family relationship may be vital to ensure that the offender takes notice of what is being said. The important issue is consent, if an offender is concerned about a particular Elder or Respected Person (because of the nature of their relationship) then that offender should have the right to withdraw consent and return to standard court and be dealt in the normal manner.

Payment

In some jurisdictions, Elders or respected persons who sit with the judicial officer are paid a sitting fee.[91] In the Murri Courts Elders and respected

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87 Tomaino J, 'Aboriginal (Nunga) Courts' (Office of Crime Statistics and Research, Information Bulletin, undated) 4–5.

88 *Magistrates Court Act 1989* (Vic) s 4G.

89 Harris M, 'A Sentencing Conversation: Evaluation of the Koori Courts Pilot Program October 2002–October 2004', (Department of Justice: Melbourne, 2006) 45.

90 Chief Magistrate Bradley, Darwin Community Court Guidelines, 27 May 2005, 6.

91 Tomaino J, 'Aboriginal (Nunga) Courts' (Office of Crime Statistics and Research, Information Bulletin, undated) 13; Harris M, 'A Sentencing Conversation: Evaluation of the Koori Courts Pilot Program October 2002–October 2004', (Department of Justice: Melbourne, 2006) 45.

persons are reimbursed for expenses.[92] In 2006 the Law Reform Commission of Western Australia recommended that Elders and respected persons involved with Aboriginal courts should be appropriately renumerated with a sitting fee.[93] This view has been supported by others; however, it has been noted that some Elders and respected persons may not wish to be paid if the amount of payment impacts upon existing Centrelink payments.[94]

Selection

The method of selecting and appointing Elders and respected persons differs between jurisdictions. In Victoria, Elders and respected persons are appointed by the Secretary of the Department of Justice.[95] It has been stated that the selection process in Victoria is similar to the selection process for a public service employee.[96] On the other hand, in some jurisdictions Elders and respected persons have been selected informally.[97] In its final report on Aboriginal customary laws, the Law Reform Commission of Western Australia recommended that Elders and respected persons should be selected by or in direct consultation with the local Aboriginal community. It was also observed that Aboriginal people consulted were strongly of the view that Elders and respected persons should not be selected by government departments.[98]

Aboriginal court worker/officer

All Aboriginal sentencing courts employ an Aboriginal court worker (sometimes referred to as a Aboriginal court officer/project officer/justice officer). This role usually involves providing a link between the court and the local community and assisting with the determination of which Elders or respected persons should sit in court on a particular day. The role of the Koori Court Officer has been described as 'crucial to the successful operation of the Koori Court'.[99] During court proceedings, the Koori Court Officer sits at the oval table along with the Magistrate, the Elders or respected persons, the offender and the other participants. The Aboriginal project officer for the Circle Sentencing Intervention Program in New

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92 Queensland Department of Justice and Attorney General, 'Report on the Review of the Murri Court' (2006) 34–35.

93 Law Reform Commission of Western Australia, *Aboriginal Customary Laws: The interaction of Western Australian law with Aboriginal law and culture*, Final Report, Project No. 94 (2006) 136.

94 Aboriginal and Torres Strait Islander Legal Services of Western Australia, South Australia, Victoria, Queensland and the Northern Territory (North), *Minimum Standards for Aboriginal and Torres Strait Islander Courts in Western Australia, South Australia, Victoria, Queensland & Northern Territory (North) 2007–2010* (2007) 36.

95 See for example, *County Court Act 1958* (Vic) s 22A.

96 See also Department of Justice, *A Discussion Paper on Aboriginal Courts*, (2005) 33.

97 See also Department of Justice, *A Discussion Paper on Aboriginal Courts*, (2005) 33.

98 Law Reform Commission of Western Australia, *Aboriginal Customary Laws: The interaction of Western Australian law with Aboriginal law and culture*, Final Report, Project No. 94 (2006) 134–136.

99 Harris M, 'A Sentencing Conversation: Evaluation of the Koori Courts Pilot Program October 2002–October 2004', (Department of Justice: Melbourne, 2006) 38.

South Wales is part of the circle group under the applicable legislation. Similarly, an Aboriginal Justice Officer in South Australia is a legislatively created position with the role of assisting the court by 'providing advice about Aboriginal society and culture'; assisting the court to convene conferences; and 'assisting Aboriginal persons to understand court procedures and sentencing options and to comply with court orders'.[100]

Evidence of success

To date, few Aboriginal courts have been formally and comprehensively evaluated.[101] It is impossible to conclusively say that Aboriginal sentencing courts are successful at reducing reoffending, although evaluations and reviews do suggest that other objectives are being met. Further, in some instances, it appears that a lack of data precludes appropriate recidivism analysis[102] but that does not mean the relevant court is not achieving the desired outcome.

Evaluations to date

The evaluation of the Koori Court Pilot Program found that the program reduced recidivism: the recidivism rate for the Shepparton Koori Court was 12.5% and for Broadmeadows it was 15.5%. This was said to compare favourably with a statewide recidivism rate of 29.4%.[103] It has been observed that a preliminary evaluation of the Nhulunbuy Community Court (Northern Territory) in 2007 found that there was some reduction of reoffending – 40% compared to 60% in the standard Magistrates Court; however, it was noted that caution should be exercised because for some offenders two years had still not elapsed since they were dealt with by the court.[104] The 2003 evaluation of circle sentencing in New South Wales found that the program was meeting its objectives, including the reduction of recidivism.

However, a 2008 evaluation of reoffending by circle sentencing participants criticised this earlier finding because only eight cases were considered in total and the follow up period was short.[105] The same evaluation was critical of the conclusions reached by Harris in the evaluation of the Koori Courts in Victoria because, it was argued, that study used an inappropriate comparison group. Instead of using

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100 *Criminal Law (Sentencing) Act 1988* (SA) s 9C(5).

101 It is understood that the Murri Courts are currently being evaluated by the Australian Institute of Criminology and the results are expected to be published at the end of 2009.

102 A review of the Murri Court noted that inadequate data prevented any analysis of imprisonment rates, reoffending rates and court attendance rates: Queensland Department of Justice and Attorney General, 'Report on the Review of the Murri Court' (2006) 4–5.

103 Harris M, 'A Sentencing Conversation: Evaluation of the Koori Courts Pilot Program October 2002–October 2004', (Department of Justice: Melbourne, 2006) 85. The statewide recidivism rate was based upon the midpoint of recidivism rates for prisoners and offenders returning to corrective services.

104 Blokland J, *The Northern Territory Experience*, paper presented at the AIJA Indigenous Courts Conference, Mildura, Victoria 4–7 September 2007.

105 Fitzgerald J, 'Does Circle Sentencing Reduce Aboriginal Offending?', NSW Bureau of Crime Statistics and Research, *Crime and Justice Bulletin No. 115* (May 2008) 2.

recidivism data for all offenders in Victoria or for all Aboriginal offenders not appearing in the Koori courts, Harris' study compared reoffending rates of Koori Court participants with reoffending rates of prisoners or offenders subject to community supervision. It was argued that the control group would be expected to have a higher rate of recidivism because of more serious offending. Further, the comparison group was examined for a longer follow up period than the Koori Court participants, thus capturing more reoffending.[106] The 2008 evaluation of circle sentencing found that

> *Taken as a whole, the evidence presented here suggests that circle sentencing has no effect on the frequency, timing or seriousness of offending.*[107]

It has been reported that court attendance rates were increased in the Port Adelaide Nunga Court – 80% participation rate compared to 50% in the general Magistrates Court.[108]

Despite the lack of evidence to prove that Aboriginal courts reduce reoffending, there is a significant amount of evidence that Aboriginal courts do produce other (less quantifiable) benefits. Interviews with relevant stakeholders in relation to the Murri Court indicated that the involvement of Elders in the process assists offenders to 'trust' the court process and the 'problem-solving' approach assists offenders in their rehabilitation efforts.[109] A recent evaluation of circle sentencing found that, other than recidivism, the objectives of circle sentencing are being met.[110] It was further observed that:

> *One of the most important unintended benefits of Circle Sentencing is the positive impact that participation has had for many of the Elders involved. Many of the Elders included in the research had a strong sense of achievement as a result of their participation, with discussions about the impact on their levels of pride, confidence and community status.*[111]

These types of benefits can empower Elders and other community members. For example, in relation to Murri Courts it has been observed that Elders have developed other means to support the local community

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106 Fitzgerald J, 'Does Circle Sentencing Reduce Aboriginal Offending?', NSW Bureau of Crime Statistics and Research, *Crime and Justice Bulletin No. 115* (May 2008) 2.

107 Fitzgerald J, 'Does Circle Sentencing Reduce Aboriginal Offending?', NSW Bureau of Crime Statistics and Research, *Crime and Justice Bulletin No. 115* (May 2008) 7.

108 Tomaino J, 'Aboriginal (Nunga) Courts' (Office of Crime Statistics and Research, Information Bulletin, undated) 4.

109 Queensland Department of Justice and Attorney General, 'Report on the Review of the Murri Court' (2006) 4–5.

110 Cultural and Indigenous Research Centre Australia, *Evaluation of Circle Sentencing Program* (NSW Attorney General's Department: Sydney, 2008) 6.

111 Ibid 7.

and reduce offending such as sporting activities.[112] It is impossible to gauge the extent to which an Aboriginal court might impact upon general crime levels; however, it is reasonable to assume that if Aboriginal communities are strengthened and Elders and other community leaders are empowered by the Aboriginal sentencing court process, members of the local community are less likely to engage in criminal behaviour. As one circle sentencing Magistrate observed:

> *Success should not be measured on the raw data of re-offending rates. The strong desire to find ways that allow for increased victim and community participation in the process of justice is paramount to a healthy community and prevails above all else.* [113]

Possible success factors

Commonsense suggests that if Aboriginal sentencing courts are properly resourced, managed and supported they have, at the very least, the potential to achieve their objectives including the reduction of crime. Possible reasons why Aboriginal sentencing courts can succeed include that:

- the judicial officer (the decision-maker) is better informed about the circumstances of the offender (including cultural considerations) because of the input from Elders and other respected persons;
- the judicial officer is also better informed because all of the participants (including the offender) are encouraged to participate openly about the circumstances of the offence and the offender;
- Aboriginal sentencing courts adopt a problem-solving approach and aim to address the underlying causes of offending behaviour;
- Aboriginal offenders are more likely to respect and respond to Elders or other respected persons from their own community.

From an examination of the literature it is apparent that certain factors will be crucial to the potential success or otherwise of an Aboriginal sentencing court. The most important are that:

- The right 'personalities' must be appointed[114] (eg, it has been observed that a judicial officer sitting in an Aboriginal court must

112 Cunneen C, Collings N & Ralph N, *Evaluation of the Queensland Aboriginal and Torres Strait Islander Justice Agreement* (Institute of Criminology, University of Sydney: Sydney, 2005) 148.

113 Dick D, 'Circle Sentencing of Aboriginal Offenders', paper presented at National Judicial College of Australia & ANU, *Sentencing: Principles, perspectives and possibilities* Conference, 10–12 February 2006, 6.

114 The evaluation of the Koori Court noted that the choice of Magistrate 'can be crucial to its success': Harris M, 'A Sentencing Conversation: Evaluation of the Koori Courts Pilot Program October 2002–October 2004', (Department of Justice: Melbourne, 2006) 34.

have good communication skills; the ability to facilitate effective communication between those present; and a sound understanding of Aboriginal culture and concerns).[115]

- A collegiate approach must be adopted and appropriate structures in place to ensure that representatives from the various agencies involved can work as a team, communicate easily and resolve problems quickly and effectively.
- Programs and support services must be available for offenders participating in the court in order to address the underlying causes of offending behaviour.[116]

115 Boxall K, 'The Development of the Nunga Court', paper presented at the AIJA National Indigenous Courts Conference, Mildura, Victoria 4–7 September 2007, 2. See also Department of Justice, *A Discussion Paper on Aboriginal Courts*, (2005) 33.

116 See for example, Fitzgerald J, 'Does Circle Sentencing Reduce Aboriginal Offending?', NSW Bureau of Crime Statistics and Research, *Crime and Justice Bulletin No. 115* (May 2008) 7; Makkai T, 'Indigenous courts: How effective are they and how can they be made more effective', paper presented at the AIJA *Indigenous Courts Conference*, Mildura, Victoria, 4–7 September 2007, 3;Tomaino J, 'Aboriginal (Nunga) Courts' (Office of Crime Statistics and Research, Information Bulletin, undated) 13.

State/Territory	Legislation	Jurisdiction	Excluded offences
Western Australia: Kalgoorlie Aboriginal Community Court	General legislation	Magistrates Court and Children's Court	Sexual offences
Western Australia: Norseman Community Court	General legislation	Magistrates Court and Children's Court	Sexual offences and more serious domestic violence cases
Victoria (Koori Courts)	Specific Koori court legislation[117]	Magistrates Court, Children's Court and County Court	Certain sexual offences and family violence matters
Queensland (Murri Courts)	General legislation including provisions that courts are required to consider views of a member of a community justice groups[118]	Magistrates and Children's Courts	Offence must be within jurisdiction of Magistrates or Children's Court
South Australia (Nunga Courts)	Legislation in relation Aboriginal sentencing conferences[119]	Magistrates courts and Children's Court	To be confirmed
New South Wales (Circle Sentencing)	Specific legislation[120]	Local courts (ie, Magistrates' jurisdiction)	Numerous serious offences excluded[121]
Northern Territory (Community Courts)[122]	General legislation but note provision in sentencing legislation that deals with the reception of information about Aboriginal customary laws and community views.[123]	Magistrates Courts (adults and children)	Sexual offences are excluded and caution to be exercised for offences of violence, domestic violence and offences where the victim is a child
Australian Capital Territory (Ngambra Circle court)	General legislation	Magistrates Courts	Sexual offences

117 *Magistrates Court Act 1989* (Vic) s 4D; *Children Youth and Families Act 2005* (Vic) s 517; *County Court Act 1958* (Vic) s 4A.

118 See *Penalties and Sentences Act 1992* (Qld) s 9 (2)(p); *Juvenile Justice Act 1992* (Qld) s 150(1)(g); *Bail Act 1980* (Qld) s 15(1)(f).

119 *Criminal Law (Sentencing Act) 1988* (SA) s 9C.

120 *Criminal Procedure Regulation 2005* (NSW).

121 See *Criminal Procedure Act 1986* (NSW) s 348.

122 See Chief Magistrate Bradley, *Darwin Community Court Guidelines*, 27 May 2005. Community Courts operate in a number of locations in the Northern Territory.

123 *Sentencing Act 1995* (NT) s 104A. Note also that ss 90 & 91 of the *Northern Territory National Emergency Response Act 2007* (Cth) provide that a court cannot take into account Aboriginal customary law or culture as a reason for excusing, justifying, or lessening the serious of an offence in bail and sentencing proceedings.

APPENDIX B: Young Offenders Act 1994 – General principles

General Principles of Juvenile Justice, Section 7

The general principles that are to be observed in performing functions under this Act are that:

(a) there should be special provision to ensure the fair treatment of young persons who have, or are alleged to have, committed offences;

(b) a young person who commits an offence is to be dealt with, either formally or informally, in a way that encourages the young person to accept responsibility for his or her conduct;

(c) a young person who commits an offence is not to be treated more severely because of the offence than the person would have been treated if an adult;

(d) the community must be protected from illegal behaviour;

(e) victims of offences committed by young persons should be given the opportunity to participate in the process of dealing with the offenders to the extent that the law provides for them to do so;

(f) responsible adults should be encouraged to fulfil their responsibility for the care and supervision of young persons, and supported in their efforts to do so;

(g) consideration should be given, when dealing with a young person for an offence, to the possibility of taking measures other than judicial proceedings for the offence if the circumstances of the case and the background of the alleged offender make it appropriate to dispose of the matter in that way and it would not jeopardise the protection of the community to do so;

(h) detaining a young person in custody for an offence, whether before or after the person is found to have committed the offence, should only be used as a last resort and, if required, is only to be for as short a time as is necessary;

(i) detention of a young person in custody, if required, is to be in a facility that is suitable for a young person and at which the young person is not exposed to contact with any adult detained in the facility, although a young person who has reached the age of 16 years may be held in a prison for adults but is not to share living quarters with an adult prisoner;

(j) punishment of a young person for an offence should be designed so as to give the offender an opportunity to develop a sense of social responsibility and otherwise to develop in beneficial and socially acceptable ways;

(k) a young person who is dealt with for an offence should be dealt with in a time frame that is appropriate to the young person's sense of time;

(l) in dealing with a young person for an offence, the age, maturity, and cultural background of the offender are to be considered; and

(m) a young person who commits an offence is to be dealt with in a way that:

(i) strengthens the family and family group of the young person;

(ii) fosters the ability of families and family groups to develop their own means of dealing with offending by their young persons; and

(iii) recognises the right of the young person to belong to a family.

[Section 7 amended by No. 82 of 1994 s. 20; No. 78 of 1995 s. 145; No. 29 of 1998 s. 20.]

Referral to Juvenile Justice Teams, Principles, Section 24

In applying this Division, while observing the general principles of juvenile justice as required by section 7, particular regard is to be had to the principles that:

(a) the treatment of a young person who commits an offence that is not part of a well-established pattern of offending should seek to:

(i) avoid exposing the offender to associations or situations likely to influence the person to further offend; and

(ii) encourage and help the family or other group in which the person normally lives to influence the person to refrain from further offending;

(b) the treatment of a young person who commits an offence should be fair, should be in proportion to the seriousness of the offence, and should be consistent with the treatment of other young persons who commit offences;

(c) a young person who is dealt with for an offence should be dealt with in a time frame that is appropriate to the young person's sense of time; and

(d) it is to be made clear to a young person who is dealt with for an offence:

(i) what act or omission constituted the offence; and

(ii) what it is that the person is required to do.

Sentencing and Related Matters, Principles and considerations to be applied to young offenders, Section 46

(1) When dealing with a young person who has been found guilty of an offence, the court, in disposing of the matter, is to apply:

(a) the principles applying generally for disposing of charges of offences, except as those principles are modified by this Act; and

(b) the general principles of juvenile justice.

(2) The court is to consider any information about the offender or the offence that may assist the court to decide how to dispose of the matter, and in particular:

(a) the nature and seriousness of the offence;

(b) any history of offences previously committed by the offender;

(c) the cultural background of the offender;

(d) any order previously made by a court when disposing of a charge of an offence that still applies to the offender, and any further order such order; and

(e) the extent, if any, to which any person was affected as a victim of the offence.

(3) The court is to dispose of the matter in a way that is in proportion to the seriousness of the offence and is consistent with the treatment of other young persons who commit offences.

(4) In deciding how to dispose of the matter, which includes deciding the appropriate degree of severity to be used, the court is to consider how young the offender is as a mitigating factor.

(5) The court is to have regard to the fact that the rehabilitation of an offender is facilitated by:

(a) the participation of the offender's family; and

(b) giving the offender opportunities to engage in educational programmes and in employment,

but the absence of such participation or opportunities is not to result in the offender being dealt with more severely for the offence.

(5a) Subject to section 106 of the *Road Traffic Act* 1974 but despite any other enactment, where a written law provides that a mandatory penalty or that a minimum penalty shall be imposed in relation to an offence, the court dealing with a young person for the offence is not obliged to impose such a penalty.

(6) The operation of this section is affected by section 125.

[Section 46 amended by No. 78 of 1995 s. 145.]

APPENDIX C: STAKEHOLDERS INTERVIEWED

Stakeholder	Position and organisation	Phone/ Face-to-face/ Community forum/Email
Tanya Watt	Magistrate Kalgoorlie	Face-to-face
Liz Langdon	Magistrate Kalgoorlie	Face-to-face
Greg Benn	Magistrate Kalgoorlie	Face-to-face
Kate Auty	Magistrate	Phone
Richard Stevenson	Regional Manager Goldfields	Face-to-face
Bev Burns	Current Community Court Project Manager	Face-to-face
Kelly Richards	Current Community Court Support Officer	Face-to-face
Bradley Mitchell	First Project Manager	Phone
Donna Vicensoni	Mining Registrar Norseman	Email
Robyn Champion	Previous CJS court officer	Phone
Cathy Butler	Centrecare	Phone
Helen Growcott	Centrecare Child Witness & Victim Support Services	Phone
Leanne Banks	Child Witness and Victim Support Services	Phone
Cheryl Soggee	Aboriginal Justice Agreement Regional Coordinator	Phone
John Hart	Police Prosecutor	Face-to-face
Mark Bolitho	Police Prosecutor	Face-to-face
Allen Niewenhuis	Police Prosecutor	Face-to-face
Shane White	Police Prosecutor	Face-to-face
Jo Crossley	CJS Manager	Face-to-face
Kaye Gibbons	CJS	Face-to-face
Mike West	Juvenile Justice Services	Face-to-face
Bree Blockland	Juvenile Justice Services	Face-to-face
Antoinette Fedele	Defence counsel	Phone
Cyril Barnes	Panellist	Face-to-face
Ron Harrington-Smith	Panellist	Face-to-face
Aubrey Lynch	Panellist	Face-to-face
Leo Thomas	Panellist	Face-to-face
Gloria Hobbs	Panellist	Face-to-face
Charmaine Thomas	Panellist	Face-to-face
Tamesha Skelly	Panellist	Face-to-face
Leslie Anne Conway	NTP	Community forum
Murray Stubbs	Aboriginal Legal Service	Community forum

Stakeholder	Position and organisation	Phone/ Face-to-face/ Community forum/Email
Brendan Slattery	Aboriginal Legal Services	Community forum
Elvis Stokes	Aboriginal Legal Services	Community forum
Anna O'Connor	Legal Aid	Community forum
Glenn Jones	Centrelink	Community forum
Ben Burton	Nooda Nguleegoo A/C	Community forum
Bury Vincent	Nooda Nguleegoo A/C	Community forum
Wayne Combo	Nooda Nguleegoo A/C	Community forum
Kevin Dimer	Bega Garnbirringu Health Services	Community forum
Pearl Scott	Goldfields Indigenous Housing	Phone
Richard Collard	Indigenous Advisor ISP Justice	Community forum
Ivan Forrest	Former Deputy chair Goldfields Land and Sea Council	Community forum
Jules Whiteway	Anglicare WA Program Coordinator	Phone
Linton Piggot	Drug Diversion Programs	Phone
Pat Drayton	Community member	Community forum

APPENDIX D: STAKEHOLDER INTERVIEW QUESTIONS

Description of Court

Could you please describe how the Court operates?

Programs

Does the Court offer any programs or services to defendants?

If yes, how is this managed/provided?

Interpreters

Are interpreters provided to offenders?

Roles and responsibilities

What is your role with the community court?

Is there anything about this you would want to change?

How appropriate are the roles of others? Is there anything that you would like to change?

Training

What training was provided to you prior to taking on the role of a Panellist?

How useful was the training?

What could be improved about the training?

Cross cultural training

Were you involved in the cross cultural training provided to Court staff?

If yes what was your role? Howe the cross cultural training?

If yes, what did this involve?

If no, why not?

Meaningfulness of court process

Is the community court process more meaningful for Aboriginal people than the usual court process?

If yes, what factors have helped make the court process more meaningful/better?

Equity and access to court services

Has access to general courts services improved for Aboriginal people (whether defendant or victim or family member) due to the community court??

What factors have helped (or would help) improve access to court services?

How would you describe staff interaction with Aboriginal clients? Has it changed since the introduction of the Community Court? In what ways? Why?

Improvements

What improvements could be made to court processes or services?

Relationship

Has the relationship between the court and Aboriginal people improved?

- What factors has helped this to occur? Examples?

Recidivism, imprisonment rates

Do you think the Court has had any impact on reducing Aboriginal imprisonment numbers and recidivism rates?

Why?

(If Yes) What factors specifically has helped reduce imprisonment and re-offending?

Community building

What is the relationship between the Court and the general Aboriginal community?

The wider community?

Has the court had any impact on the relationship between the Aboriginal community and the wider community?

How? Examples?

Community safety

Has the Court had any impact on community perceptions of safety?

How? What factors has helped this to occur?

Panellists

How appropriate are the processes of recruitment and retention of panellists?

Expansion

Would you like to see the Community Court expanded here in Kalgoorlie?

What are the issues in doing this?

If the Court was expanded to other regions – what factors would need to be taken into account?

Model

What are the costs and benefits of the Community Court?

How sustainable is the current model?

APPENDIX E: ANL/ASOC CODES

This table correlates the ABS Offence Severity Index against the ASOC Code. The ASOC code categorises offences by type (against person, property etc) whereas the OSI incorporates a number of different aspects such as intent, severity of harm etc.

ASOC_CODE_ID	LONG_DESC	ABS_OSI
0111	Murder	**102**
0121	Attempted murder	**104**
0131	Manslaughter	**106**
0132	Driving causing death	**210**
0211	Serious assault resulting in injury	**308**
0212	Serious assault not resulting in injury	**316**
0213	Common assault	**326**
0291	Stalking	**802**
0299	Other acts intended to cause injury, nec	**322**
0311	Aggravated sexual assault	**202**
0312	Non-aggravated sexual assault	**206**
0321	Non-assaultive sexual offences against a child	**204**
0322	Child pornography offences	**212**
0323	Sexual servitude offences	**214**
0329	Non-assaultive sexual offences, nec	**208**
0411	Driving under the influence of alcohol or other substance	**902**
0412	Dangerous or negligent operation (driving) of a vehicle	**906**
0491	Neglect or ill-treatment of persons under care	**328**
0499	Other dangerous or negligent acts endangering persons, nec	**330**
0511	Abduction and kidnapping	**310**
0521	Deprivation of liberty/false imprisonment	**312**
0531	Harassment and private nuisance	**804**
0532	Threatening behaviour	**806**
0611	Aggravated robbery	**314**
0612	Non-aggravated robbery	**402**
0621	Blackmail and extortion	**406**
0711	Unlawful entry with intent/burglary, break and enter	**604**
0811	Theft of a motor vehicle	**606**
0812	Illegal use of a motor vehicle	**608**
0813	Theft of motor vehicle parts or contents	**610**
0821	Theft from a person (excluding by force)	**408**
0822	Theft of intellectual property	**612**
0823	Theft from retail premises	**620**
0829	Theft (except motor vehicles), nec	**614**
0831	Receive or handle proceeds of crime	**616**
0841	Illegal use of property (except motor vehicles)	**618**
0911	Obtain benefit by deception	**702**
0921	Counterfeiting of currency	**602**
0922	Forgery of documents	**704**
0923	Possess equipment to make false/illegal instrument	**706**
0931	Fraudulent trade practices	**712**
0932	Misrepresentation of professional status	**708**
0933	Illegal non-fraudulent trade practices	**710**
0991	Dishonest conversion	**714**

ASOC_CODE_ID	LONG_DESC	ABS_OSI
0999	Other fraud and deception offences, nec	**716**
1011	Import illicit drugs	**302**
1012	Export illicit drugs	**304**
1021	Deal or traffic in illicit drugs - commercial quantity	**306**
1022	Deal or traffic in illicit drugs - non-commercial quantity	**324**
1031	Manufacture illicit drugs	**318**
1032	Cultivate illicit drugs	**320**
1041	Possess illicit drugs	**1302**
1042	Use illicit drugs	**1304**
1111	Import or export prohibited weapons/explosives	**502**
1112	Sell, possess and/or use prohibited weapons/explosives	**504**
1119	Prohibited weapons/explosives offences, nec	**506**
1121	Unlawfully obtain or possess regulated weapons/explosives	**508**
1122	Misuse of regulated weapons/explosives	**510**
1129	Regulated weapons/explosives offences, nec	**514**
1211	Property damage by fire or explosion	**412**
1212	Graffiti	**1620**
1219	Property damage, nec	**1126**
1221	Air pollution offences	**1102**
1222	Water pollution offences	**1104**
1223	Noise pollution offences	**1112**
1229	Environmental pollution, nec	**1108**
1311	Trespass	**1502**
1312	Criminal intent	**1506**
1313	Riot and affray	**1502**
1321	Betting and gambling offences	**1530**
1322	Liquor and tobacco offences	**1532**
1323	Censorship offences	**1406**
1324	Prostitution offences	**1526**
1325	Offences against public order sexual standards	**1528**
1326	Consumption of legal substances in regulated spaces	**1522**
1329	Regulated public order offences, nec	**1534**
1331	Offensive language	**1510**
1332	Offensive behaviour	**1508**
1333	Vilify or incite hatred on racial, cultural, religious or ethnic grounds	**1504**
1334	Cruelty to animals	**1512**
1411	Drive while licence disqualified or suspended	**1602**
1412	Drive without a licence	**1604**
1419	Driver licence offences, nec	**1606**
1421	Registration offences	**1610**
1422	Roadworthiness offences	**1612**
1431	Exceed the prescribed content of alcohol or other substance limit	**904**
1432	Exceed the legal speed limit	**1614**
1433	Parking offences	**1616**
1439	Regulatory driving offences, nec	**1618**
1441	Pedestrian offences	**1622**
1511	Breach of custodial order offences	**1222**
1512	Breach of home detention	**1220**
1513	Breach of suspended sentence	**1220**
1521	Breach of community service order	**1228**
1522	Breach of parole	**1204**

ASOC_CODE_ID	LONG_DESC	ABS_OSI
1523	Breach of bail	**1236**
1524	Breach of bond - probation	**1224**
1525	Breach of bond - other	**1232**
1529	Breach of community-based order, nec	**1226**
1531	Breach of violence order	**1206**
1532	Breach of non-violence order	**1234**
1542	Bribery involving government officials	**1218**
1543	Immigration offences	**1406**
1549	Offences against government operations, nec	**1214**
1551	Resist or hinder government officer concerned with government security	**1210**
1559	Offences against government security, nec	**1216**
1561	Subvert the course of justice	**1202**
1562	Resist or hinder police officer or justice official	**1208**
1563	Prison regulation offences	**1230**
1569	Offences against justice procedures, nec	**1238**
1611	Defamation and libel	**1608**
1612	Offences against privacy	**1006**
1621	Sanitation offences	**1114**
1622	Disease prevention offences	**1116**
1623	Occupational health and safety offences	**1118**
1624	Transport regulation offences	**1610**
1625	Dangerous substances offences	**1120**
1626	Licit drug offences	**1520**
1629	Public health and safety offences, nec	**1122**
1631	Commercial/industry/financial regulation	**1002**
1691	Environmental regulation offences	**1110**
1692	Bribery excluding government officials	**1402**
1693	Quarantine offences	**1124**
1694	Import/export regulations	**1004**
1695	Procure or commit illegal abortion	**410**
1699	Other miscellaneous offences, nec	**1624**
1541	Resist or hinder govt official (excluding police officer, justice official or govt security officer)	**1212**
1099	Other illicit drug offences, nec	**1306**
1123	Deal or traffic regulated weapons/explosives offences	**512**
1224	Soil pollution offences	**1106**
1319	Disorderly conduct, nec	**1524**
9999	Not an Offence	

APPENDIX F: SENTENCING CATEGORIES CROSS REFERENCE

The large number of possible sentence outcomes have been consolidated into 10 main categories using the table below. These categories have been used in the analysis of outcomes from the court.

Code	Number	Code	Number	Code	Number
19BCRI	10	EDL	10	PCIT	10
ACRO	7	EDLCAN	10	PGBB	4
ADJ	10	ESWA	6	PRO	7
APNOG	10	EXTRAD	10	QUASH	8
APPCOM	10	FER	10	R	10
ASD	8	FINAL	10	RAGBB	7
BRCOMP	10	FINE	6	ROCAN	10
CBO	4	GBB	7	RODISM	10
CBOCAN	10	GBBCRI	7	SIO	2
COMMIT	10	GR	10	SIOCON	2
CPO	4	IMP	1	SPENT	10
CSID	2	ISO	3	STAYED	8
CUST	1	ISOCAN	10	STO	8
CWIL	10	IYSO	3	STO32	8
DEFDEC	10	JCRO	4	SURDCH	10
DEFSER	10	JJT	5	VRO	10
DET	1	MRO	10	VRO63A	10
DIMPC	1	NFO	10	W	8
DIS113	8	NOG	10	WAPIF	10
DIS114	8	NOM	8	WCCOM	6
DIS65A	8	NP11	8	WDO	4
DIS85	8	NP46	8	WTCAN	10
DISM	9	NP66	8	WTHSUB	10
DOC	10	NP67	8	WTPIF	10
DSCH	8	NP80	8	YCBO	4

Number	Consolidated Sentence	Adult	Juvenile
1	Detention/imprisonment	Imprisonment	Detention
2	Suspended imprisonment	Suspended Imprisonment	n/a
3	Intensive order	ISO	IYSO
4	Community order	CBO	YCBO
5	JJT referral	n/a	JJT
6	Fine	Fine	Fine
7	Conditional release etc	ACRO	GBB
8	No punishment	No punishment	No (further) punishment
9	Dismissed etc	Not guilty	Not guilty
10	Not applicable		