# ATTORNEY-GENERAL'S DEPARTMENT

# Evaluation of Indigenous Justice Programs
# Project A: Aboriginal and Torres Strait Islander Sentencing Courts and Conferences

## Final report

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**Prepared by:**

CULTURAL & INDIGENOUS RESEARCH CENTRE AUSTRALIA

**in collaboration with:**

ANNE MARKIEWICZ AND ASSOCIATES

Head Office (Sydney): Level 1, 93 Norton St, Leichhardt NSW 2040
Melbourne Office: Level 14, Como Centre, 644 Chapel St, South Yarra VIC 3141
ABN: 30 065 353 951

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# Executive summary

It has been more than 20 years since the Royal Commission into Aboriginal Deaths in Custody. In that time all Australian governments have introduced initiatives to act on the recommendations of the Commission. However, despite concerted effort and resources being invested, the fact remains that Aboriginal and Torres Strait Islander people are still significantly over-represented in the criminal justice system, both as victims and offenders.

In 2009 the Australian Government announced funding of $2 million for a major evaluation of 26 initiatives that aimed to reduce the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system. The aim was to build on the evidence base of what works in tackling crime and justice issues in Aboriginal and Torres Strait Islander communities. The evaluations also aimed to support work under the National Indigenous Law and Justice Framework, endorsed in 2009 by the former Standing Committee of Attorneys-General (now the Standing Council on Law and Justice). The evaluation comprises five projects (A to E), of which Project A considers programs relating to Aboriginal and Torres Strait Islander Sentencing Courts and Conferences. This report presents the findings of the evaluation of Project A, covering six programs across South Australia, Queensland and the Northern Territory.

## Structure of the report

After a summary of the programs in Chapter 2, Chapter 3 describes the methodology adopted, which involved consultations with program managers and staff to develop a monitoring and evaluation framework; a comprehensive literature review; consultations with program managers, program staff, stakeholders, Elders and in some cases program participants; and a review of documentation and monitoring data for each program. Following the literature review in Chapter 4, the report presents evaluation findings for the six programs (for detailed findings on each program see the relevant chapter):

- **Port Adelaide and Murray Bridge Nunga Courts, and Port Augusta Aboriginal Sentencing Court (South Australia):** courts that aim to provide a more culturally appropriate sentencing process for Aboriginal defendants who plead guilty; they are presided over by a Magistrate, assisted by Aboriginal Elders who provide advice and information about local, social and cultural issues and relevant matters about the person before the court – Chapter 5.

- **Port Lincoln Aboriginal Conferencing (South Australia):** a program in which Aboriginal defendants who plead guilty can attend a conference prior to their sentencing hearing; Magistrates do not attend, with facilitation managed by a Conferencing Coordinator and Aboriginal Justice Officer and involving Elders, a Police Prosecutor, the defendant, the victim, support persons and respected members of the local Aboriginal community – Chapter 5.

- **Section 9C Conferencing (South Australia):** a program that arose out of an amendment to the *Criminal Law Sentencing Act 1988* to include a new section 9C ('Sentencing of Aboriginal defendants'); conferences are available in all criminal jurisdictions in South Australia and are intended to provide a culturally responsive forum by involving Aboriginal Justice Officers, the Police Prosecutor, the defendant, the victim, support persons and respected members of the local Aboriginal community – Chapter 5.

- **Youth Justice Conferencing (Queensland):** a statewide restorative justice program delivered through 14 regional Youth Justice Conferencing Services; if a young person admits guilt, Police can refer them to a youth justice conference as an alternative to commencing a court proceeding; courts can also refer a young person to a youth justice conference either in place of imposing a sentence or to inform a sentencing decision; the conference brings together Police, young offenders, victims (if they choose to attend) and their families to discuss the offence and to reach a legally binding agreement about the young person making amends – Chapter 6.

- **Community Courts (Northern Territory):** courts designed to promote community involvement in court processes by engaging the offender, the victim, families and community members in the sentencing process; the presiding Magistrate is assisted by a panel of respected community members – Chapter 7.

Finally, Chapter 8 provides a description of key lessons learned and strategies for achieving good practice across all programs.

## Building an evidence base

The aim of this evaluation was to increase the number of robust evaluations of Aboriginal and Torres Strait Islander Sentencing Courts and Conferences by determining whether and on what basis these programs could be considered good practice. To measure good practice, the evaluation analysed three overarching program components: program *design*, program *delivery* and program *management.* Within this framework, 10 good practice themes were identified, as follows:

| | |
|---|---|
| **Program design** | • Theme 1: Focusing on crime prevention and aiming to reduce over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system |
| | • Theme 2: Meeting needs and addressing a service gap |
| | • Theme 3: Culturally appropriate program design and implementation |
| **Program delivery** | • Theme 4: Achieving outcomes in line with program intent |
| | • Theme 5: Promoting inclusive community participation and engagement |

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|---|---|
| | • Theme 6: Effective service coordination and collaboration |
| | • Theme 7: Advocating for systems reform and improving relationships among key stakeholders |
| **Program management** | • Theme 8: Effective governance and management processes |
| | • Theme 9: Clear articulation of program intent |
| | • Theme 10: Sustainability of the program/s over time |

Programs were assessed against these themes on a scale of 'excellent to very good practice', 'adequate practice' or 'poor practice'. The assessment of all programs against the good practice themes is outlined in Chapter 8 (Table 8a).

## Overall findings and key lessons

The following summarises the overall findings and key lessons for each of the three overarching components – program design, program delivery and program management.

### Program design

All of the programs focused on reducing crime in Aboriginal and Torres Strait Islander communities by providing a more culturally appropriate environment in comparison with mainstream courts and conferences, recognising the integral role of family and community in the lives of Aboriginal and Torres Strait Islander people and improving outcomes in relation to conference agreements and sentencing by enabling more informed decision-making.

The design of the programs was found to be culturally appropriate due to the involvement of Elders, respected persons, and Aboriginal and Torres Strait Islander staff in the courts and conferences, the opportunities the courts and conferences provide for family and community support, and the direct engagement of the offender or young person in dialogue around their offending behaviour. While all of the programs were designed to be culturally inclusive, the extent to which culturally appropriate program design was achieved varied both across and within the programs, usually in response to available resources. The South Australian Courts and Conferences demonstrated good practice in culturally appropriate program design, primarily as a result of the high level of involvement of and support for Elders and Aboriginal staff. For Youth Justice Conferencing and the Northern Territory Community Court, the achievement of culturally appropriate program design was hampered in some regions, primarily because Aboriginal and Torres Strait Islander staff were under-resourced, especially given the large geographical areas covered.

While all programs included in Project A stated that crime prevention and/or reduction of reoffending was an overarching aim, data gaps militated against the collection and analysis of robust data that

could be used to indicate such trends. There were also limitations in available data to assess achievements in relation to intermediate-level program outcomes.

Based on these results, the key lessons in relation to program design include:

- **The centrality of the concepts of cultural appropriateness and inclusion to program success:** The evaluation affirmed cultural appropriateness as a foundation for achieving intermediate-level program outcomes. There were some lessons, however, in relation to the extent to which full engagement and inclusion could occur. Programs were inclusive and equitable by design. However, in some cases programs did not operate frequently enough, have sufficient coverage to meet demand, or have adequate human resources, and this limited the capacity of programs to be culturally inclusive in their implementation. Several of the South Australian programs benefited from the ongoing involvement of community members and respected persons in the development of the program through regular meetings, and this appeared to provide a positive basis for continuous program improvement.

- **The importance of measuring intermediate client outcomes and contribution to reducing recidivism and crime prevention:** A key lesson in relation to good practice is that there is a need to incorporate monitoring and evaluation capacities in program design so that both the contribution to crime prevention and reducing recidivism in the long term and the achievement of intended intermediate-level program outcomes can be assessed. For example, measurement of intended intermediate-level program outcomes could include engagement with court and conference processes, acknowledgement of the harm done by offending, victim participation, the provision of better informed and understood sentences and conference agreements, and links made with relevant interventions/support.

**Program delivery**

Based on qualitative data, the evaluation indicated that all of the programs were achieving intermediate-level outcomes in line with program intent, although the extent to which this was achieved varied across the programs. The evaluation provided evidence that all of the programs achieved greater engagement of offenders and the community as compared with mainstream justice processes due to direct community participation and input. There was also evidence of increased knowledge and confidence in the justice system, and improved understanding of the process and outcomes for Aboriginal community members as a result of their involvement with the South Australian Aboriginal Courts and Conferences. For Youth Justice Conferencing, Elders, convenors and Aboriginal and Torres Strait Islander staff highlighted the effect of the conferences on raising awareness among young people of the impact of their offending behaviour.

While positive intermediate-level outcomes in relation to greater engagement of Aboriginal offenders and Elders in comparison to mainstream settings were also identified for the Northern Territory

Community Court, outcomes were significantly impacted by limited resources and ad-hoc delivery. Effective service partnerships formed a basis for all programs, though this was an area that needed improvement for Northern Territory Community Court and Youth Justice Conferencing, where relationships with allied services and supports could have been better developed.

The evaluation highlighted the importance of programs having some capacity for systems advocacy and/or the promotion of the unique needs of their target groups. While several programs were able to achieve this to some extent in various regions in South Australia, others were significantly limited in undertaking these roles by the resources available. Where it was achieved, this was predominantly as a result of the court and conference process improving mutual understanding among key stakeholders. Systems advocacy was also achieved in the South Australian Aboriginal Courts and Conferences through additional mechanisms that brought together stakeholder groups in order to identify common issues, barriers and strategies.

Based on these results, the key lessons in relation to program delivery include:

- **The critical role of service partnerships to program success:** Programs worked well when there were strong working relationships with allied services and related programs, rather than participants attending the sentencing court or conference as a one-off intervention and not having additional post-intervention support to address issues related to their offending behaviour. Examples of effective relationships with allied services and programs included Aboriginal community organisations, community-based youth diversion programs, community corrections, alcohol and drug rehabilitation services and programs, and victim support services.

- **The importance of a capacity for systems and individual advocacy:** There was scope to support broader systems advocacy processes through bringing together key stakeholder groups to identify common challenges and appropriate strategies. There was also scope to better promote Aboriginal and Torres Strait Islander courts and conferencing options available among justice professionals, such as through training and professional development.

**Program management**

The quality of the governance and management processes varied across the programs, and in most cases a lack of stable funding and/or sufficient resources underlined many of the performance and governance issues identified in this evaluation. Qualitative feedback indicated high levels of satisfaction with the governance and management processes of the South Australian Aboriginal Courts and Conferences. For Youth Justice Conferencing, while centrally there are effective management processes with a strong practice improvement focus, the changes to the governance, management and legislative framework that occurred during the course of the evaluation will have considerable implications for governance. The evaluation identified significant challenges that limit the

effectiveness of the governance and management processes of the Northern Territory Community Court due to the absence of a clear framework and processes, efficient structures, assessment procedures and program guidelines. Capacity to undertake performance monitoring to establish client outcomes, to develop collaborative service partnerships and to undertake systems advocacy were all limited by resource constraints.

Based on these results, the key lessons in relation to program management include:

- **The critical importance of ensuring sustainability in programs funded:** All programs could have been better resourced for success, especially for planning and monitoring and evaluation functions. This would have strengthened their capacity to be results based. The achievement of positive program results was hampered by a lack of dedicated long-term funding, meaning ongoing delivery of Aboriginal and Torres Strait Islander courts and conferences could not be guaranteed.

- **The importance of effective governance and management to program success:** Identification of clear program intent through program logic mapping (or similar) is an important feature of good governance and management so that programs can be clear on their direction and main focus. Program logic mapping should identify intended intermediate-level results to be attained, with a link being made to the achievement of longer term results such as reducing recidivism. Programs were not able to identify their progress against their intended intermediate-level outcomes due to the absence of, or the under-developed nature of, their data collection systems. This militated against the capacity of programs to identify their achievements and modify their designs in light of findings about what works, for whom and under what circumstances.

## Strategies for achieving good practice

The key lessons arising from the evaluation have revealed a number of challenges for achieving good practice in Aboriginal and Torres Strait Islander Courts and Conferences. The following strategies were identified both in terms of program design and in terms of funding and support of programs.

### Establish a valid program design and undertake program planning

Court and conference models need robust planning functions that include:

- Detailing a comprehensive program design document
- Specifying expected outcomes, both intermediate and longer term, and key indicators that will be measured to assess whether outcomes are being met
- Regularly reporting on progress in relation to intent, outcomes, processes and critical issues.

**Ensure adequate resourcing to achieve program aims and objectives**

All programs required increased levels of staffing and resources and a more consistent and stable funding base for their initiatives. Programs experienced challenges in ensuring adequate resources and sustainable funding.

**Develop a monitoring and evaluation framework capable of capturing outcomes achieved**

Establishing whether or not programs are effective is particularly important for Aboriginal and Torres Strait Islander programs, where there may be a lack of clarity as to what works. All programs required increased attention to the development of their monitoring and evaluation capacity. This will require training in monitoring and evaluation and adequate resourcing to implement appropriate and customised performance management systems. Even within a limited budget, allowance should be made for monitoring and evaluation functions. Around 10% of program budgets should be routinely set aside for monitoring and evaluation. In other words, evaluation needs to be a core component in program design and implementation and not left to ad-hoc, one-off evaluation processes.

## Conclusion

This evaluation has affirmed the importance of Aboriginal and Torres Strait Islander Courts and Conferences in providing culturally appropriate processes for engaging Aboriginal and Torres Strait Islander offenders and community members. Innovative justice programs such as these, although not necessarily proven to have a significant impact on reducing recidivism, are supported in the literature and confirmed through this evaluation as having a positive effect on Aboriginal and Torres Strait Islander offenders and communities by providing more culturally appropriate forums for dealing with the administration of sentences and penalties. The evaluation findings indicate that, when compared with mainstream justice settings, the Aboriginal and Torres Strait Islander Courts and Conferences have resulted in greater engagement, increased knowledge and confidence in the justice system, improved understanding of the process and outcomes, and improved outcomes in relation to conference agreements and sentencing by enabling more informed decision-making. Importantly, these intermediate-level outcomes may potentially lead to a reduction in offending through the development of prosocial behaviours for communities and future generations.

In order to establish a greater evidence base in regard to court and conferencing program models and the program characteristics required for their successful delivery, programs need to embed monitoring and evaluation processes into their operations. Performance indicators and outcome measures need to be developed and agreed upon by stakeholders in line with program design. There should also be a focus on assessing whether practices used in Aboriginal and Torres Strait Islander Courts and Conferences are transforming mainstream court processes into something more meaningful for everyone present and, if so, whether such transformations are empowering Aboriginal and Torres Strait Islander communities.

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We would also like to thank the many people we contacted throughout the process who provided advice, suggestions and contacts that were critical in allowing the evaluation to happen.

# Acronyms

| | |
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| ACPOs | Aboriginal Community Police Officers |
| AJOs | Aboriginal Justice Officers |
| ALRM | Aboriginal Legal Rights Movement |
| APY | Anangu Pitjantjatjara Yankunytjatjara |
| ASC | Aboriginal Sentencing Court |
| CAA | Courts Administration Authority of South Australia |
| CAALAS | Central Australian Aboriginal Legal Aid Service |
| CBT | Cognitive Behavioural Therapy |
| CFN | Court File Number |
| DPP | Director of Public Prosecutions |
| ICSO | Indigenous Conference Support Officer |
| IJIS | Integrated Justice Information System |
| MEF | Monitoring and Evaluation Framework |
| MRT | Moral Reconation Therapy |
| NAAFVLS | North Australian Aboriginal Family Violence Legal Service |
| NAAJA | North Australian Aboriginal Justice Agency |
| NCTP | Nunga Court Treatment Program |
| NTLAC | Northern Territory Legal Aid Commission |
| OARS | Offenders Aid and Rehabilitation Services Inc |
| OSCAR | Office of Crime Statistics and Research |
| PIN | Personal identification number |
| PLAHS | Port Lincoln Aboriginal Health Service |
| WAS | Witness Assistance Service |
| YJC | Youth Justice Conferencing |

# 1. Introduction

## 1.1 Background

Aboriginal and Torres Strait Islander people are dramatically over-represented in the criminal justice system. Aboriginal and Torres Strait Islander adults are 14 times more likely to be in prison than non-Aboriginal and Torres Strait Islander adults (ABS, 2012a). Aboriginal and Torres Strait Islander young people are likewise significantly over-represented in the juvenile justice system. Aboriginal and Torres Strait Islander young people are 14 times as likely to be under community-based supervision, and 18 times as likely to be in detention (AIHW, 2012).

A range of justice responses has arisen to address this over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system and in response to the recommendations of the Royal Commission into Aboriginal Deaths in Custody (1991). Over the more than 20 years since the Royal Commission, all Australian states and territories have introduced initiatives in this area.

In August 2009, the Australian Government allocated $2 million towards evaluation of Indigenous justice programs, with the aim of building an evidence base to support the National Indigenous Law and Justice Framework (the Framework). There are five interrelated goals identified in the Framework:

1. Improve all Australian justice systems so that they comprehensively deliver on the justice needs of Aboriginal and Torres Strait Islander peoples in a fair and equitable manner

2. Reduce over-representation of Aboriginal and Torres Strait Islander offenders, defendants and victims in the criminal justice system

3. Ensure that Aboriginal and Torres Strait Islander peoples feel safe and are safe within their communities

4. Increase safety and reduce offending within Indigenous communities by addressing alcohol and substance abuse, and

5. Strengthen Indigenous communities through working in partnership with governments and other stakeholders to achieve sustained improvement in justice and community safety.

The Framework was endorsed by the former Standing Committee of Attorneys-General (now the Standing Council on Law and Justice (SCLJ)) in November 2009. A total of 26 Indigenous justice programs are being evaluated. These evaluations are grouped into the following five overarching projects or themes:

- Project A: Aboriginal and Torres Strait Islander Sentencing Courts and Conferences
- Project B: Offender Support/Reintegration
- Project C: Diversion Programs
- Project D: Night and Community Patrols
- Project E: Residential Drug and Alcohol Programs.

This report relates to Project A. The approaches examined, and the findings of the evaluation, will provide information for the Standing Council on Law and Justice as it considers future whole-of-government Indigenous justice initiatives, and for all governments and service providers as they plan and implement programs and policies to reduce Indigenous interactions with the criminal justice system and improve community safety.

All programs selected for the evaluation were identified by state and territory justice departments as having attributes of good practice. The purpose of the current evaluation is to assess whether or not, and on what basis, these programs can be considered 'good practice', in order to assist in identifying the best approaches to tackling crime and justice issues in Indigenous communities. The evaluation is also focused on identifying good practice and aims to assess the effectiveness of six specific court and conferencing programs. The six programs are outlined in Chapter 2.

## 1.2 Report overview

The programs considered within Project A are diverse and cannot be directly compared; therefore this evaluation has considered them against attributes of good practice that can be applied to all programs. To do this, the evaluation has drawn together information from a number of sources. The structure of this report is as follows:

- A summary of the programs evaluated (Chapter 2).
- The evaluation framework and methodology (Chapter 3). This chapter describes the good practice themes applied to each of the programs in order to identify common good practice principles. The methodology is summarised in this chapter, although the detailed methodology for each individual program is included in the relevant program chapters (Chapters 5–7).
- A review of literature and prior evaluations (Chapter 4). This chapter provides an overview of Indigenous courts and conferencing models and their underlying philosophy, outlines the results of previous evaluations, examines what has been identified as good practice and highlights some of the challenges associated with assessing program impact.
- Individual program findings (Chapters 5–7). Each of the programs has been assessed against a common set of themes to determine whether or not, and on what basis, they can be considered good practice. Evaluation information for these assessments was based on

document analysis, secondary analysis of monitoring and evaluation data, and qualitative fieldwork with program participants and stakeholders.

- Key lessons about good practice in relation to Aboriginal and Torres Strait Islander Sentencing Courts and Conferences generally (Chapter 8). Within this context, this chapter draws on the literature and individual program findings to describe the attributes of *good program design*, the attributes of *good program delivery*, and the attributes of *good program management*.

## 1.3 Terminology

The terms 'Indigenous', 'Aboriginal', 'Aboriginal and Torres Strait Islander', 'Nunga', 'Murri' and 'Koori' are used interchangeably in this document, depending on context. It is recognised that many Aboriginal and Torres Strait Islander people from South Australia often use the term 'Nunga' instead of the European term 'Aboriginal' to refer to themselves as Indigenous people. Similarly, those from Queensland often use the term 'Murri' and those from the south-eastern regions often use the term 'Koori'. It is also recognised that many Aboriginal people in Queensland, South Australia, New South Wales, Victoria, Tasmania and Western Australia often use the term 'Aboriginal' to refer to themselves, rather than 'Indigenous'. The term 'Torres Strait Islander' refers to the Indigenous people of the Torres Strait in Queensland. The term 'Aboriginal and Torres Strait Islander people' in this document is used as an inclusive term to describe Indigenous Australians generally, rather than Aboriginal people from a certain state or territory. As with Aboriginal and Torres Strait Islander people in an Australian context, the term 'Indigenous' encompasses all Indigenous Australians. Literature is referred to throughout this document, and in a number of cases it refers to international studies relating to first nations peoples from a particular country. When referring to the literature or specific policy frameworks, the term 'Indigenous' is used to refer to first nations peoples from a particular country, including Australia.

# 2. Summary of programs

This chapter briefly describes the programs evaluated within Project A, their state or territory location, and their core focus.

### Port Adelaide and Murray Bridge Nunga Courts and Port Augusta Aboriginal Sentencing Court (South Australia) – Chapter 5

The Nunga Court was the first of its kind in Australia; it was developed in 1999 by Magistrate Vass and commenced in Port Adelaide. There is an additional Nunga Court at Murray Bridge and an Aboriginal Sentencing Court at Port Augusta. There is no specific legislative base for the courts. The courts are bound by the *Criminal Law (Sentencing) Act 1988* (SA) when determining sentences.

Aboriginal courts are believed to be more relevant to the Aboriginal community than regular courts, providing a forum for persons pleading guilty to be sentenced in a culturally appropriate way. Aboriginal courts are presided over by a Magistrate, who is assisted by respected community Elders. The courts are intended to provide opportunities for Aboriginal defendants to have their voice heard in a culturally appropriate context, with family members and support persons encouraged to attend and speak directly to the court.

Aboriginal Elders provide advice and information about local, social and cultural issues and relevant matters about the person before the court. Efforts are made to connect offenders to relevant community support services. The provision of as much information as possible, including first-hand knowledge from Elders of personal circumstances of the offender, is considered to be vitally important for exploring sentencing and alternative sentencing options. The Aboriginal Sentencing Court can thus provide additional relevant information for Magistrates' consideration when sentencing and exploring alternative sentencing options.

### Port Lincoln Aboriginal Conferencing (South Australia) – Chapter 5

Aboriginal defendants who reside in Port Lincoln and who plead guilty can attend a conference prior to the sentencing hearing. The program is aimed at adult Aboriginal defendants in a post-plea, pre-sentence conferencing process where cultural facets of the incident are considered. Magistrates do not attend conferences, which are facilitated by a Conferencing Coordinator (Youth Justice Coordinator) and an Aboriginal Justice Officer and involve Elders, a Police Prosecutor, the defendant, the victim, support persons, and respected members of the local Aboriginal community. Using non-adversarial methods, the conference is intended to provide a restorative justice opportunity to acknowledge harm done to the victim and to contribute to the development of responses to the offending behaviour. The conference process encourages contrition and reparation to remedy harm, and provides a restorative opportunity to victims.

After the conference, the Coordinator generates a report for the court outlining the process and outcomes. The sentencing Magistrate considers the report when sentencing the defendant. The initiative has been strongly supported by the local community and Magistracy, as demonstrated by regular referrals to the process from the court.

### Section 9C *Criminal Law (Sentencing) Act 1988* Aboriginal Sentencing Conferences (South Australia) – Chapter 5

In 2005, the *Criminal Law Sentencing Act 1988* was amended to include section 9C, 'Sentencing of Aboriginal defendants'. This section expands upon the Magistrates Nunga Courts to allow any criminal court, with the defendant's consent, to convene an Aboriginal sentencing conference. The conference is intended to provide a culturally responsive forum in which the offender has the opportunity to better understand the gravity of their offending and its impact upon the victim, their family and community. The Judicial Officer may also gain a better understanding of the defendant and the circumstances surrounding the offending behaviour, leading to more constructive sentencing options. Aboriginal sentencing conferences are thus intended to enable participants to share information in a more culturally appropriate forum, which the Judicial Officer can consider as part of the sentencing process.

Aboriginal sentencing conferences are either held in more informal conference rooms or in a court room, with participants sitting around the bar table, to facilitate the direct exchange of dialogue between the Judicial Officer and participants. Aboriginal defendants are encouraged to explain their offending behaviour and Elders are considered important participants, providing advice to the court and defendant.

Conferences are intended to provide defendants with an opportunity to face their victims and be made aware of the harm caused. Aboriginal Justice Officers provide assistance and support, in particular arranging for attendance of suitable Elders and representatives from relevant support agencies, while also making contact with the defendant and their family to explain the conference process.

### Youth Justice Conferencing (Queensland) – Chapter 6

Youth Justice Conferencing is a statewide restorative justice program delivered through 14 regional Youth Justice Conferencing Centres to which Police and courts can refer a young person who has committed an offence. There are no limits to the type of offence that may be referred to a conference under Queensland legislation. Where a young person admits guilt, Police can refer to a youth justice conference as an alternative to commencing a court proceeding. Courts can refer a young person to a youth justice conference either in place of imposing a sentence or to inform a sentencing decision.

Youth justice conferences bring together Police, young offenders, victims (if they choose to attend) and their families to discuss the offence and to reach a legally binding agreement about how the young person may make amends for the harm caused. Indigenous Conference Support Officers

provide additional support to Aboriginal and Torres Strait Islander people to help them prepare for and enhance their participation at the conference. Youth Justice Conferencing aims to provide a restorative justice process that holds the young person accountable for their actions by providing an opportunity for them to accept responsibility, understand the consequences of their actions and make amends for the offending behaviour. The program also aims to find ways to help repair the harm that has been caused to the victim of the offence and involve the victim, the young person's family and the young person in making decisions about what should happen to repair the harm that has been caused. It seeks to divert young people from further involvement in the criminal justice system, and a broader and long term aim is to make a contribution to a reduction in reoffending and recidivism by juvenile offenders.

In 1997 Youth Justice Conferencing, formerly named Community Conferencing, commenced in three Queensland locations (Palm Island, Ipswich and Logan) following amendments to the *Juvenile Justice Act 1992*. In 2002, Youth Justice Conferencing was rolled out on a statewide basis, with 14 services operating by 2012. In the 2009/10 financial year, 2,513 young people were referred and dealt with through Youth Justice Conferencing, with 732 of these referrals being for young Aboriginal and Torres Strait Island people. In 2009/10, 99% of participants (including victims) were satisfied with the outcome.

### Northern Territory Community Courts (Northern Territory) – Chapter 7

In 1997, the Northern Territory Law Reform Committee examined alternative dispute resolution in Aboriginal communities. It recommended that community justice plans could incorporate a community court. While there is no legislative basis for community courts, they operate in a less formal manner than regular courts and involve Elders. Community courts are designed to promote community involvement in court processes by engaging the offender, the victim, families and community members in the sentencing process. The presiding Magistrate is assisted by a panel of respected community members, but the final decision on sentencing remains with the Magistrate.

The Community Court was established in 2005 in the Darwin Magistrates Court. Under the Northern Territory Government's 'Closing the Gap' Generational Plan of Action, funds were allocated to expand Community Courts to a total of 10 centres. From the pilot's commencement in 2005 to 30 June 2012, 217 individual Community Court matters were heard in 18 locations.

While the vast majority of defendants appearing in the Community Court are Indigenous, it is not intended that the court will be limited to Indigenous offenders. The court operates on a combination of the Circle Court and Nunga Court models and is customised for Indigenous offenders. Not every case is considered to be suitable for conduct in a Community Court, however. Cases are chosen in consultation with the relevant community at the discretion of the Magistrate. These cases usually take considerably more time than a standard hearing, due to the higher number of participants.

# 3. Evaluation framework and methodology

Six programs were selected for examination within Project A: Aboriginal and Torres Strait Islander Sentencing Courts and Conferences. All programs selected for Project A had been previously identified as being either 'good practice' or 'promising practice' and included in the Good Practice Appendix to the National Indigenous Law and Justice Framework. These programs were diverse in nature and included sentencing courts, pre-sentence conferencing, sentencing conferences and restorative justice programs.

## 3.1 Objectives and framework

The overall purpose of the evaluation was to assess whether or not, and on what basis, these programs can be considered to be 'good practice', in order to assist in identifying the best approaches to tackling crime and justice issues in Aboriginal and Torres Strait Islander communities. The evaluation also explored barriers to good practice.

The evaluation developed a conceptual framework for Project A that was applied to each of the six programs in order to identify common good practice principles. The three components of investigation are:

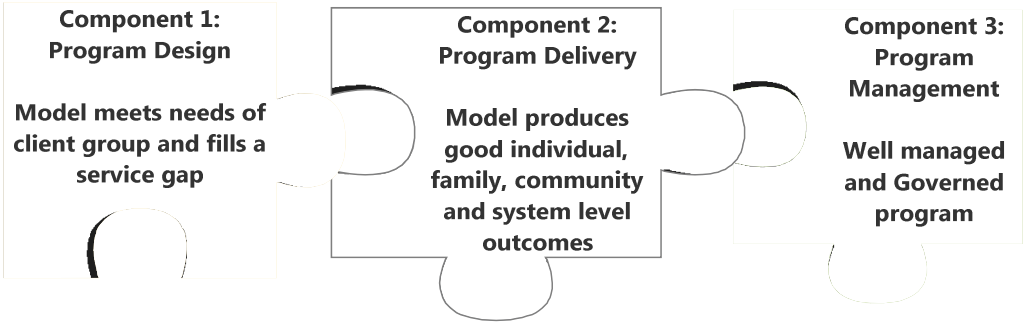
- **Program design** (meets needs of client groups and fills a service gap)
- **Program delivery** (produces good individual, family, community and system level outcomes) and
- **Program management** (well managed and governed program).

Based on literature that provides reasonable consensus as to aspects of 'good practice' in Aboriginal and Torres Strait Islander sentencing courts and conferences, and on consultations with stakeholders from the relevant programs, a series of good practice themes was developed that forms the basis of this evaluation.

The core concepts of what makes for good practice for Project A are represented in Figure 1.

**Figure 1: Conceptual framework for good practice for Project A**

The three components of the conceptual framework for Project A are:




Within these three components, 10 good practice themes were developed which formed the basis of the evaluation of the programs. These were based on literature that provides reasonable consensus as to aspects of good practice in Indigenous offender support and reintegration, and on consultations with stakeholders from the programs. The programs were assessed against these themes on a scale from 'excellent to very good practice' to 'adequate practice' or 'poor practice'. Table 3a outlines the 10 themes.

**Table 3a: The 10 good practice themes for Project A**

| | |
|---|---|
| **Program design** | |
| **Theme 1:** Focusing on crime prevention and aiming to reduce over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system | **Evaluation focus:** Does the program provide an evidence-based response to intervention and/or is it based on research about what does or does not work, for whom and under what circumstances? |
| **Theme 2:** Meeting needs and addressing a service gap | **Evaluation focus:** Does the program fill a service gap and meet needs which otherwise may be inadequately met or neglected in the service system? |
| **Theme 3:** Culturally appropriate program design and implementation | **Evaluation focus:** Is the program culturally appropriate based on Aboriginal and Torres Strait Islander empowerment, self-determination and community ownership? |
| **Program delivery** | |
| **Theme 4:** Achieving outcomes in line with program intent | **Evaluation focus:** Does the program meet its stated aims and objectives? |
| **Theme 5:** Promoting inclusive community participation and engagement | **Evaluation focus:** Does the program sufficiently engage Aboriginal and Torres Strait Islander people in all stages/aspects, and is its model responsive to local needs? |
| **Theme 6:** Effective service coordination and collaboration | **Evaluation focus:** Does the program provide an integrated response to the needs of participants? |
| **Theme 7:** Advocating for systems reform and improving relationships among key stakeholders | **Evaluation focus:** Does the program contribute to advocacy and systems reform and raise the profile of the unique needs of Aboriginal and Torres Strait Islanders within the justice system? |
| **Program management** | |
| **Theme 8:** Effective governance and management processes | **Evaluation focus:** Does the program have well-defined and effective structures of management and governance with:<br>• Results Based Management (RBM) that links planning functions with monitoring and evaluation and is outcomes focused<br>• Stability and continuity of funding and appropriate resourcing levels<br>• Strong leadership and skilled, committed and stable personnel? |
| **Theme 9:** Clear articulation of program intent | **Evaluation focus:** Is the program model clear about the program's aims and objectives and realistic in scope? |
| **Theme 10:** Sustainability of the program/s over time | **Evaluation focus:** Is there evidence of ongoing support and resourcing for the program/s? |

## 3.2 Methodology

The methodology included consultations with program managers and staff to develop the Monitoring and Evaluation Framework, a comprehensive literature review, consultations with program managers and staff, stakeholders, Elders and in some cases program participants, and a review of documentation and monitoring data for each program. Each component of the methodology is summarised below. This evaluation commenced in early 2011, with the fieldwork conducted from late 2011 through to October 2012.

In designing the methodological approach, a Monitoring and Evaluation Framework (MEF) was developed in partnership with Anne Markiewicz and Associates, based on a series of workshops with representatives from the six programs evaluated within Project A. The workshops were used to develop the common project-level 'program logic', identify common project-level evaluation questions, develop an individual program logic for each program, and identify data to be derived from routine monitoring and complemented by evaluation data collected through the evaluation. The MEF and literature review guided the development of a set of key attributes which were identified as typifying good practice in the Aboriginal and Torres Strait Islander sentencing court and conferencing area. These serve as a reference point for analysis against the good practice themes. These themes provided a tool for identifying and classifying program initiatives on a scale from 'excellent to very good practice' to 'adequate practice' or 'poor practice'. The individual program logics are presented in the chapters relating to the individual programs (Chapters 5–7).

The evaluation methodology for the programs varied depending on the nature of each program and the availability of monitoring data. The individual methodologies for each program are detailed in the relevant program chapters, but overall the evaluation methodology included the following components:

- Literature review on the evidence base for the relevant Aboriginal and Torres Strait Islander Sentencing Courts and Conferences
- Review of existing program documentation, such as manuals, guidelines and funding reports
- Review of monitoring data, including specific participation-level data as well as outcomes data where possible. In particular, data was reviewed to assess the feasibility of conducting recidivism analysis for each program
- A statistical overview and analysis of court data in relation to SA and NT programs
- Qualitative consultations with program staff, management, Elders, other key stakeholders and, in SA, with program participants. CIRCA worked very closely with the relevant program staff in developing the consultation approach, and staff were critical in the implementation of the qualitative research. Site visits were conducted for each program, as well as additional consultations via telephone. Semi-structured in-depth interviews, as well as mini-groups and focus groups, were also conducted.

In terms of analysis, quantitative and qualitative components were used to confirm and/or corroborate findings within the evaluation (Creswell, 2003). In keeping with the strengths of qualitative approaches, analysis was conducted using Strauss and Corbin's systematic approach (Corbin & Strauss, 2007). Specifically, thematic analysis incorporated initial theoretically sensitive coding, followed by the development of themes and sub-themes and further verification by the research team.

## Methodological considerations

The programs considered within Project A are diverse and cannot be directly compared; therefore, this evaluation considered them against attributes of good practice that could be applied to all the programs. While the programs differed in terms of size, scope and intent, they shared a range of common goals: increasing the sensitivity and appropriateness of the legal system for Aboriginal and Torres Strait Islander people; increasing community trust in the legal system; increasing the use of appropriate and constructive sentencing options; reducing the frequency and seriousness of offending and recidivism; improving recovery and wellbeing of victims; and promoting wider community acceptance of justice processes. In measuring the achievement of program outcomes, this evaluation has attempted to use indicators that are closely matched to program intent. A blend of qualitative and quantitative measures was used to assess programs in order to better understand why certain results were achieved or not achieved, explain unexpected outcomes, and inform key lessons derived for each of the programs. Where possible, recidivism analysis was conducted, but issues such as sample size, lack of appropriate control groups and data collection integrity issues inhibited such analysis for some programs. The quality of available data across the programs varied considerably, especially as effective monitoring often requires access to data from a range of sources that cannot be accurately matched. Where relevant, considerations in relation to data quality are discussed in the individual program chapters.

In assessing program outcomes and impact on reoffending, it is important to acknowledge that people offend for complex reasons, and it is generally beyond the scope of a single program to respond to, address and impact the complex and multilayered issues faced by offenders. Aboriginal and Torres Strait Islander offenders face unique circumstances which exacerbate many of these issues. Therefore, the approach to this evaluation has been to consider the outcomes for the individual programs in terms of how the program operates within a suite of interventions, with the understanding that often there is more than one factor that contributes to the likelihood of recidivism.

Comprehensive qualitative consultations were conducted in order to provide a depth of understanding of the programs, the perceived outcomes and the contexts. This approach included program participant feedback where possible, but it is worth noting that in these cases small numbers participated and that participation was voluntary, and both these factors may have positively skewed the results. However, the participant feedback provides an important voice that is often not heard in such evaluations, and is an aspect of the methodology that could receive far greater weight in future evaluations.

# 4. Review of literature and prior evaluations

## 4.1 Introduction

Colonisation has had an indisputable impact on the status of Indigenous Australians.[1] They continue to be disproportionally disadvantaged in areas such as health, wealth, education and employment when compared to the non-Indigenous population. According to the 2011 Census, Indigenous Australians make up approximately 2.5% of Australia's population, with 32–33% living in greater capital city areas, 44% living in regional areas and 24% living in remote or very remote areas (Australian Bureau of Statistics, 2012). Despite comprising a relatively small proportion of the overall Australian population, Indigenous Australians make up 26% of the prison population and their rate of imprisonment is 14 times higher than that of the non-Indigenous population (Australian Bureau of Statistics, 2010).

Systemic or institutional racism has been recognised as a factor which impacts on the over-representation of Indigenous people in custody, as a result of laws and policies being implemented in ways that are either unconsciously racist or discriminatory, or in ways that fail to consider the harmful effects of a particular decision or process for Indigenous people coming into contact with the criminal justice system (Blagg, Morgan, Cunneen & Ferrante, 2005; Cunneen, 2006). It is well documented that Indigenous Australians are more likely to be charged by police than non-Indigenous Australians and more likely to be sentenced to a period of imprisonment (Allard, 2010).

Some may argue that these factors are a result of Indigenous people committing more violent or serious offences and of their prior offending record (Weatherburn, Fitzgerald & Hua, 2003). However, others argue that "[t]he justice system has played a direct role in imposing an alien set of values on Aboriginal people, then criminalising when they will not, or cannot, conform to them" (Blagg, 2008:9). Sentencing laws that impose custodial sentences on offenders with particular prior criminal records, bail conditions that require an accused person to reside at a permanent address, and diversionary policies that only favour first-time offenders are all examples of policies and laws that can appear objectively just and equitable, but that are in effect disadvantageous for a particular group of people who, for various reasons, are more likely to satisfy the criteria that result in the most punitive outcomes. Until recently, Indigenous people have not traditionally undertaken formal roles in the criminal justice system in order to try and address the existence of systemic and institutional racism. However, their involvement has been increasing (Marchetti & Daly, 2007).

The need to increase Indigenous participation in the criminal justice system was raised in the Royal Commission into Aboriginal Deaths in Custody recommendations, which also emphasised that

[1] There are now certain objections to the use of the word 'Indigenous' as opposed to 'Aboriginal and Torres Strait Islander' due to the fact that there are cultural differences between the two groups, which sometimes makes it important to articulate and acknowledge those differences. The information presented in this literature review focuses mainly on Aboriginal people but it cannot say with any certainty that it does not also represent the circumstances of Torres Strait Islander people, so for the sake of inclusiveness, the term 'Indigenous' is used.

culturally sensitive practices needed to be incorporated into the mainstream criminal and legal justice systems (Johnston, 1991). It is assumed that community input and participation will make a court or justice process more suitable, meaningful and relevant for the offender, which will in turn ultimately assist in changing offending behaviour and result in the implementation of more just and equitable outcomes. Indeed, even scholars such as Snowball and Weatherburn (2006) (who have mostly espoused the benefits of crime prevention policies due to findings that show no evidence of racial bias in sentencing but evidence of higher conviction rates for violent crimes and higher rates of reoffending for explaining Indigenous over-representation in custody) have acknowledged that there are benefits in also relying on informal social controls such as the admonishment of offending behaviour by family and community members. They state that "[w]hile law enforcement and criminal justice offer important opportunities through which to reduce offending behaviour, informal social controls are often more potent in controlling criminal behaviour than formal social control measures such as arrest and prosecution [possibly exerting] a positive capacity-building effect over the longer term" (Snowball & Weatherburn, 2006:16).

## 4.2 Aboriginal and Torres Strait Islander Sentencing Courts and Conferences

### Establishment and alternative models

Involving Elders or community representatives in the sentencing process is something which has been occurring for some time around Australia, with Judicial Officers having travelled on circuit to convene courts in remote communities. Other forms of Indigenous participation in the court system have been present for some time in the use of specially convened courts in jurisdictions such as WA and Queensland (Australian Law Reform Commission, 1986). However, such practices have never been as far reaching nor had the formal recognition and support of governments as is the case with Indigenous sentencing courts. When referring to 'Indigenous sentencing courts', what is meant is courts that have been established by way of an agreed practice or protocol in either regional towns or cities and that involve the usual participants (such as the Judicial Officer, defence lawyer and prosecutor) in a conventional sentencing process, as well as respected members from the Indigenous community within which the court sits.

Since 1999, when the first Indigenous sentencing court was piloted in Port Adelaide in SA, jurisdictions have followed suit in establishing over 50 such courts at various levels of the court hierarchy. Tasmania is, to date, the only jurisdiction that has never formed such a court. Queensland and NT have recently suspended the operation of their Murri courts and community courts respectively.[2] Indigenous sentencing courts were first established at a Magistrates Court or Local

[2] Queensland Murri Courts were suspended in December 2012 due to government budget cuts. The Northern Territory Community Courts were temporarily suspended in November 2011 due to the fact that their operation was considered to be in contravention of section 104A of the *Sentencing Act* (NT). Legislation was being considered to remedy the conflict with the *Sentencing Act* and the Northern Territory Youth Community Courts had continued to operate as they did not contravene the provisions of the *Youth Justice Act (2005)* (NT).

Court level, but they now exist in children's courts[3] and in courts of a higher level.[4] Most jurisdictions follow one type of Indigenous sentencing court protocol that may vary depending on the preferences of the community in which the court is located and depending on the level of the court sitting as an Indigenous sentencing court. The exception to this is SA.

SA has a number of Aboriginal court initiatives which range from the original Nunga Court model to restorative justice conferences. Nunga Courts or Aboriginal sentencing courts at a Magistrates Court level exist in Port Adelaide, Murray Bridge, Mount Gambier and Port Augusta (Courts Administration Authority, 2012). The Nunga Court model involves at least one Elder who sits with the Magistrate. The Elders and Magistrate sit together either on the bench or at the clerk's level, which is at a higher level to the other participants, or they may sit at the bar table where the offender and other participants sit. The offender, their legal representative, the prosecutor and the Aboriginal Justice Officer are also present, with family or friends of the offender and the victim being invited to attend the hearing. In addition, criminal courts at all levels can now convene an Aboriginal sentencing conference prior to sentencing, pursuant to section 9C of the *Criminal Law (Sentencing) Act 1988* (SA). The Judicial Officer, offender's legal representative (if any), prosecutor and offender must be present, and Elders or a community member qualified to provide cultural advice, a member of the offender's family, the victim and support agencies are encouraged to attend. The conference can be held either in a courtroom or a conference room. An Aboriginal conference, which is convened out of court (following a plea of guilty in court) and does not include the presence of a Magistrate, is now a permanent (as opposed to a pilot) program in Port Lincoln in SA. Attendees include the offender, the victim, Elders, family members, support agency representatives, the prosecutor, the Conference Coordinator or Youth Justice Coordinator, and the Aboriginal Justice Officer (Courts Administration Authority, 2012). Parties attend court two days later for sentencing. Prior to this, the Magistrate reviews the conference report containing recommendations from the conference and meets with the Elders to discuss the sentencing outcome.

Queensland Murri Courts (when they were in operation), Victorian Koori Courts and the WA Kalgoorlie Aboriginal Sentencing Court are based on the SA Nunga Court model. The number of Elders or community representatives who participate in the process can vary between courts, but the process usually involves one or two Elders or community representatives. Courts in NSW and the ACT have instead adopted a circle court model which is loosely based on the Canadian circle court model. The NT uses a hybrid of the two models, although some courts in the other jurisdictions are also evolving into what might be considered more of a circle court format. Circle courts are normally convened in rooms other than ones normally used for mainstream court. In NSW, the hearings will be

However, in December 2012 the NT Government released a mini-budget that does not provide funding for the adult or youth Community Courts.

[3] In Victoria, WA, the ACT and, as previously stated, the NT.

[4] Victoria has a Koori District Court Division and South Australian courts at all levels can convene an Aboriginal Sentencing Conference.

held in venues that bear some form of cultural significance for the local community. There are usually four Elders or community representatives sitting on a circle court and it is more likely that victims participate in the process. All Indigenous sentencing courts are convened in rooms that contain Indigenous paintings and symbols. Some courts try to match the gender of the offender with the gender of the Elder or community representative participating in the process, or, if more than one Elder or community representative is present, ensure that there are equal numbers of male and female Elders or community representatives, although this may not always be possible (Marchetti & Daly, 2004).

The degree of involvement of the Elders or community representatives varies between courts, but in all courts they will speak frankly with the offender (Marchetti & Daly, 2007). Despite the fact that governments and court administration authorities often identify a need to reduce the over-representation of Indigenous people as defendants in the criminal justice system as their main reason for having established the courts, another equally important aim is to increase the participation of Indigenous people in other roles within the justice system (Briggs & Auty, 2003; Magistrates' Court of Victoria, 2012; Potas, Smart, Brignell, Thomas & Lawrie, 2003; Queensland Courts, 2009). Indeed the reason given by Magistrate Chris Vass when he established the first urban Indigenous sentencing court in Port Adelaide over 10 years ago was to "gain the confidence of Aboriginal people … and encourage them to feel some ownership of the court process" (Marchetti & Daly, 2007:434).

The operation of these courts has been supported by state or territory legislation or practice frameworks and guidelines issued by justice departments or court administration authorities. There is disagreement among Judicial Officers and other key people involved with the establishment and operation of the courts about the usefulness of specific legislation in governing the operation of an Indigenous sentencing court. Some see such legislation as having the potential to stifle innovation, while others view it as providing consistency for what might be considered contentious courtroom practices (Marchetti & Daly, 2007). The Victorian Koori Courts were established under specific legislation (although the provisions now appear in the *Magistrates' Court Act 1989* (Vic)), while in NSW and SA criminal court procedure and sentencing Acts were amended to recognise Indigenous sentencing court procedures. In other states and territories, Indigenous sentencing courts operate under general sentencing provisions and practice guidelines. In order for an offender to be eligible to appear before an Indigenous sentencing court, they must be Indigenous (or, in some courts, either Indigenous or a South Sea Islander)[5] and must have entered a guilty plea or have been found guilty in a summary hearing. McAsey notes in her study of the Victorian Koori Courts that some have argued that the need for offenders to plead guilty in order to participate in the process has encouraged offenders to enter false guilty pleas (McAsey, 2005). In response to such criticisms McAsey points to the dialectic nature of the court as a factor that reduces the risk of false guilty pleas going undetected. The offender must also consent to having the matter heard in the Indigenous sentencing court and the

[5] With the Northern Territory Community Courts and the original Western Australian court located in Norseman, there is no requirement that the offender be Indigenous.

charge must be one that falls within the jurisdiction of the mainstream court of equivalent level. The Judicial Officer retains the ultimate power in sentencing the offender (Marchetti & Daly, 2004).

There are differences among the jurisdictions in relation to the types of offences that can be heard in these courts.[6] Sexual offences are excluded in NSW, Victoria, WA and the two territories. Contraventions of family violence protection orders are excluded in WA and Victoria, where contraventions of personal safety intervention orders are also excluded, and the NT's guidelines recommend the court exercise caution when dealing with cases involving violence/domestic violence or where the victim is a child. NSW and the ACT exclude certain drug offences and offenders who are addicted to illicit drugs. Certain violent offences, stalking, offences involving the use of a firearm and offences relating to child prostitution or pornography are also excluded in NSW (Marchetti & Daly, 2007).

## Underlying philosophy

Although some scholars associate the Indigenous sentencing courts with restorative justice and therapeutic jurisprudence (see e.g. Freiberg, 2005; King, 2003), there are reasons for viewing the courts as being in a category of their own since they display different political and ideological aspirations to restorative justice or therapeutic jurisprudential practices (Marchetti & Daly, 2007; see also Law Reform Commission of Western Australia, 2006). Restorative justice practices, indeed, are not easy to define because they encompass a variety of practices at different stages of the criminal process, including *diversion* from court prosecution, actions taken *in parallel* with court decisions, and meetings between victims and offenders *at any stage* of the criminal process (e.g. arrest, pre-sentencing, prison release). Restorative justice is also not a practice that is exclusively aligned with criminal justice processes; civil law or child protection matters often display aspects of the practice (Marchetti & Daly, 2007). Restorative justice practices, although sometimes utilised for the resolution of broad political conflicts (such as in truth and reconciliation commissions), are primarily centred on healing and building relationships between the offender, the victim and the community (Marchetti & Daly, 2007), something which was never one of the main aims of Indigenous sentencing courts when they were originally established. The similarities of Indigenous sentencing processes with restorative justice practices are that both strive for: (a) holding offenders accountable in ways that are both healing and constructive, (b) improved communication between participants, particularly offenders and victims, and (c) procedural justice, in the sense that participants are treated with respect and are

[6] Queensland (while the Murri Courts were operating) and South Australia are the only jurisdictions that do not have any restrictions on the types of offences that can be heard in their Indigenous sentencing courts (aside from requiring that an offence falls within the jurisdiction of a Magistrates court). For jurisdictions that exclude certain offences by way of legislation, see *Criminal Procedure Act 1986* (NSW), s 348 and *Magistrates Court Act 1989* (Vic), s 4F. The procedures of the ACT Galambany (formerly Ngambra) Circle Sentencing Court is governed by the *Final Interim Practice Direction: Ngambra Circle Sentencing Court* (2004), cl 14, 15: <http://www.courts.act.gov.au/Magistrates>. The procedures of the Northern Territory Community Courts are governed by the *Community Court Darwin: Guidelines* (2005), cl 14: <http://www.nt.gov.au/justice/ntmc/docs/community_court_guidelines_27.05.pdf>. The jurisdiction of the Western Australian Indigenous sentencing courts is not conferred or governed by any specific legislation or protocols, but according to interviews with Magistrates; certain offences are excluded in practice.

afforded the opportunity to have their say (Dick, 2004; Marchetti & Daly, 2007). Indeed, some court programs, such as the Port Lincoln Aboriginal Conference in SA, may fit more readily within a restorative justice framework since they combine "elements of the sentencing circle and restorative justice conferencing with the Nunga Court method" (Marshall, 2008:1).

Therapeutic jurisprudence, on the other hand, "focuses attention on the … law's impact on emotional life and psychological well-being" and "proposes [to] use the tools of the behavioural sciences to study the therapeutic and antitherapeutic impact of the law" (Winick & Wexler, 2003:7). The causes of the offending behaviour are seen as the problem needing to be fixed, and Judicial Officers utilise information about the person's life and surrounding circumstances to create environments conducive to an offender changing their criminogenic[7] ways. There are a number of factors that differentiate a court utilising notions of therapeutic jurisprudence from a conventional court, mainly revolving around the ways Judicial Officers make their decisions and the fact that an interdisciplinary team is often involved in developing programs that address the individual criminogenic needs of an offender. Judicial Officers adopting a therapeutic jurisprudential framework are more likely to interact directly with offenders in ways that encourage change and induce hope within individuals that they are capable of changing, and in ways that involve continuing judicial monitoring and the integration of a number of community services (Frieberg, 2002; Winick & Wexler, 2003). As discussed below in relation to both Indigenous sentencing courts and youth justice conferencing programs, evaluations of specialty courts and programs that have implemented therapeutic jurisprudential principles have seen mixed results in relation to their impact on reoffending. That said, findings in relation to drug court programs appear to suggest that reductions in recidivism can be achieved when offenders complete the programs. For example, a long-term[8] follow-up study of the first 100 graduates of the Queensland Drug Court found that graduates of the program were significantly less likely to reoffend after completion of the program than the prisoner comparison group and those who terminated their participation in the program (Payne, 2008). In addition, there were significant reductions in overall offending for the participant group during the program, which suggested that "drug court graduates and terminates commit[ted] significantly fewer offences while participating in the drug court program than in the 12 months before" (Payne, 2008:72).

Indigenous sentencing courts usually involve other key players in the process of determining the sentence to be imposed and have as one of their main goals the desire to encourage an offender to change their behaviour by connecting them to appropriate services and by providing an opportunity for meaningful dialogue to occur between the offender, the Judicial Officer and the Elders or community representatives during the hearing. In doing so, Indigenous sentencing courts utilise important aspects of a therapeutic jurisprudential process. Having said that, distinctions have been drawn between Indigenous sentencing courts and 'problem-solving' or 'problem-oriented' courts,

[7] 'Criminogenic' is defined in the Oxford Dictionary as 'causing or likely to cause criminal behaviour'.

[8] The study evaluated the outcomes of graduates with no less than two years post-completion time.

which often exhibit therapeutic jurisprudential principles, on the basis that "aboriginality is not a 'problem' in need of an innovative solution" and it therefore should not be "focused on and dealt with as such" (Dwyer, 2005:2). Indeed, restorative justice and therapeutic jurisprudential practices lack the political dimension that exists with Indigenous sentencing courts, and they involve different key players within the process because ultimately they are focused on disparate outcomes. The aims of Indigenous sentencing courts (as stated in legislation, protocols and guidelines) include notions of community empowerment through increased court participation (CIRCA, 2008) and involvement and incorporation of cultural knowledge (Fitzgerald, 2008; McAsey, 2005; Morgan & Louis, 2010). The participation of Elders or community representatives in the sentencing process 'shames' an offender and encourages them to consider the consequences of their actions (CIRCA, 2008). Additionally, it provides an avenue for gaining information about an offender's personal circumstances to inform the court when determining the sentence. Indeed, Marchetti found that the presence of Elders or community representatives, the increased number of 'black and brown faces' in the court and presence of Aboriginal insignia in Indigenous courtrooms "are all interrelated and operate together in transforming the operations of an adult mainstream courtroom into a forum, which, although framed within the dominant colonial justice system, is nevertheless laden with significant symbolic Indigenous cultural authority and empowerment" (Marchetti, 2012:113). As a result, such courts have the potential "to bend and change the dominant perspective of 'white law'", and to achieve "group-based change in social relations (a form of political transformation), not merely change in an individual" (Marchetti & Daly, 2007:429–30).

### Evaluations: impact on the community and offenders

There have been a number of evaluations conducted of the Indigenous sentencing courts. Four have focused on the NSW Circle Courts (CIRCA, 2008; Daly & Proietti-Scifoni, 2009; Fitzgerald, 2008; Potas et al., 2003), two on the Victorian Koori Court Division of the Magistrates' Court (Harris, 2006; Sentencing Advisory Council, 2010), one on the Victorian County Koori Court (Dawkins et al., 2011), one on the Victorian Children's Koori Court (Borowski, 2010), two on the Queensland Murri Courts (Morgan & Louis, 2010; Parker & Pathe, 2006), one on the WA Kalgoorlie Aboriginal Sentencing Court (Aquilina et al., 2009), and one on the SA Nunga Courts (Tomaino, 2004). Payne also prepared a report for the Australian Research Council which was based on an 'exploratory review' of specialty courts in Australia (Payne, 2005a).

It is not easy to compare these findings since the studies are mostly jurisdiction specific, and because they all identify limitations in the manner in which the data were either collected or analysed. In fact, Daly and Proietti-Scifoni point out that "comparative analyses of Indigenous and conventional court practices [are rare and require] a considerable expenditure of funds, researcher time, and the necessary jurisdictional infrastructure to carry out the project" (2009:10).

Following is a summary of what various evaluations have found in relation to community-building aims (i.e. providing a culturally appropriate process, increasing community participation and meeting needs

of the community, victims and offenders) and criminal justice aims (i.e. preventing crime by reducing recidivism, better tailoring of penalties for individual offenders and improving court appearance rates).

***Providing a culturally appropriate process***

Most of the evaluations have found that Indigenous sentencing courts provided a more culturally appropriate sentencing process that encompassed the wider circumstances of the offender's and the victim's lives (Aquilina et al., 2009; Borowski, 2010; CIRCA, 2008; Harris, 2006; Morgan & Louis, 2010; Parker & Pathe, 2006; Potas et al., 2003; Tomaino, 2004). The notion of cultural appropriateness includes making the sentencing process more suitable for Indigenous offenders by modifying the court environment and the manner in which various participants interact, and including cultural and community knowledge about the circumstances of the offender in the decision-making process (CIRCA, 2008; Marchetti & Daly, 2007). Evaluations have, however, indicated that there is a crucial need for more culturally appropriate community support services to support the process undertaken in Indigenous sentencing court hearings (Dawkins et al., 2011; CIRCA, 2008; Morgan & Louis, 2010). The 'shaming' process whereby the offenders confront respected members of their community is a product of the cultural appropriateness of such courts and "helps to improve perceptions of the legitimacy of the court in the eyes of Indigenous offenders" (Morgan & Louis, 2010:122).

***Increased community participation***

Indigenous sentencing courts have facilitated the increased participation of the offender and the broader Indigenous community in the sentencing process. Evaluations generally established that courts were successful in promoting shared justice, reconciliation and empowerment for Indigenous communities, reflected in ownership of the process and pride among Indigenous participants. Many of the studies noted that the process had increased dialogue and participation between everyone present, and this was found to have a positive impact on developing understanding and accountability between participants (Aquilina et al., 2009; Marchetti, 2009; Morgan & Louis, 2010). The participation of offenders was found to relate to their perceptions that the sentences they received were fair and appropriate (CIRCA, 2008; Harris, 2004; Potas et al., 2003). Victim participation was found to be beneficial in promoting understanding and healing (Potas et al., 2003), but one needs to be cautious in making such claims since there is little data available to determine what effect the process has had on victims.

Community involvement, particularly that of Elders and community representatives, was found to be a crucial aspect of the process (CIRCA, 2008; Harris, 2006; Morgan & Louis, 2010; Parker & Pathe, 2006; Potas et al., 2003), although problems could arise if the offender lacked respect for the Elders or community representatives present at their sentence hearing. Their involvement worked to increase the accountability of the offender to their community and provide offenders with community support. The skills and commitment of Judicial Officers involved in the various courts were also found

to be crucial in ensuring the process was culturally appropriate (CIRCA, 2008; Morgan & Louis, 2010; Potas et al., 2003; Tomaino, 2004). Indeed, the Queensland Murri Court Elders interviewed for the Morgan and Louis study spoke of the:

> importance of selecting an appropriate Magistrate to preside over Murri Court matters; 'appropriate' Magistrates manage the court in a more culturally sensitive manner, particularly in their interactions with Indigenous participants, and recognise the authority and influence of the Elders in the Indigenous Community. (Morgan & Louis, 2010:130)

***Meeting needs of the community, victims and offenders and addressing a service gap***

A consequence of making the sentencing process more meaningful for Indigenous offenders and community members is that participants' understanding of the criminal justice system is improved (Aquilina et al., 2009; CIRCA, 2008; Dawkins et al., 2011; Morgan & Louis, 2010). This helps to ensure that the offender better understands what they need to do so that they do not breach the orders imposed. For example, the WA Kalgoorlie Community Court evaluation found that offenders appreciated the fact 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" (Aquilina et al., 2009:47). Additionally, an increased involvement of both offenders and Elders or community representatives in the sentencing process assists in mending Indigenous people's distrust of the criminal justice system:

> [T]he 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. (Aquilina et al., 2009:48)

***Preventing crime by reducing recidivism***

Addressing Indigenous over-representation in the criminal justice system has been a focus of numerous studies but as yet there has only been limited success in reducing Indigenous offending, mainly because the reasons why Indigenous people so often come into contact with the criminal justice system are extremely complex (Morgan & Louis, 2010). Indigenous disadvantage in the areas of health, education and employment, as well as substance abuse, inadequate housing conditions, limited access to services and the effects of intergenerational traumas such as the forced removal of children from their families, have all been identified as contributing to the disproportionate rates of Indigenous offending patterns (Morgan & Louis, 2010). One of the ways that governments have attempted to reduce the over-representation of Indigenous people in the criminal justice system has been to include Elders and community representatives in the sentencing process. Whether or not

such innovative court processes have any impact on an offender's criminality is a question many of the evaluations have attempted to answer. It appears that Indigenous sentencing courts are having an impact on controlling behaviour within communities by encouraging respect for Elders, who have been noted to informally assist in resolving disputes or monitoring behaviour outside the court (CIRCA, 2008; Marchetti & Daly, 2004). There have been concerns expressed in the research literature that, while Indigenous courts may work to strengthen informal social controls within Indigenous communities, there is limited evidence that they have had any impact on offender recidivism rates (Beranger, Weatherburn & Moffatt, 2010).

Generally speaking, the evaluations that have been conducted have found that the Indigenous sentencing courts have not had a significant impact on recidivism (Borowski, 2010; Fitzgerald, 2008; Morgan & Louis, 2010). In particular, the WA Kalgoorlie Community Court study found that a higher proportion of community court participants had reoffended compared to those who had attended a mainstream court in every time period studied (i.e. over 6, 12, 18 and 24 months) (Aquilina et al., 2009). This contradicted the perceptions of stakeholders, leaving the researchers to conclude that "some other factors were likely to be at work" which could only be determined by the collection of additional data such as personal and environmental characteristics (Aquilina et al., 2009:63-64). The NSW Circle Court evaluation (Fitzgerald, 2008) and Queensland Murri Court evaluation (Morgan & Louis, 2010) found no effect on the frequency, timing or seriousness of offending as a result of participating in Indigenous court processes, although the Queensland study did find that "there was a significant difference between the proportion of juveniles sentenced in the Youth Murri Court who offended less frequently in the period post-sentence than the control group, due primarily to differences between regional court locations" (Morgan & Louis, 2010:145).

Fitzgerald points to the fact that circle courts are not resourced to target behaviour that contributes to reoffending, such as "association with criminal peers, poor impulse control, alcohol and drug abuse [and] unemployment" and that unless circle sentencing is supported by other rehabilitative programs the risk factors associated with reoffending will continue to be present (Fitzgerald, 2008:7). Daly and Proietti-Scifoni agree but they also suggest a greater reliance on qualitative literature on desistance rather than quantitative analyses of reoffending for measuring the 'success' of Indigenous sentencing courts (Daly & Proietti-Scifoni, 2009). Desistance studies use a process-oriented approach that engenders understandings of how a person may move out of a life of crime into one that conforms to societal norms. Daly & Proietti-Scifoni's study is one of only two qualitative studies conducted on the impact of the courts on reoffending. It used data collected from nine in-depth interviews of non-family-violence offenders who had been through the Nowra Circle Court process and found that the participants had had positive circle court experiences, whether they desisted from further offending or not, and that "[m]any other facets of a defendant's circumstances and their will to change" ultimately explained their desistance from reoffending (Daly & Proietti-Scifoni, 2009:110). These other factors included whether or not the person had a substance abuse problem, whether they were ready to change and whether they had family, such as children, to motivate them to make a change.

Clear Horizon conducted the other qualitative study of the Koori County Court in Victoria. Although the study analysed court data to come to some conclusions about the impact of the Koori County Court on recidivism, it used a qualitative Most Significant Change methodology to document the stories of 15 offenders who were either in prison or in the community. The report describes Most Significant Change methods as "utilising an action research process" that "involves the ongoing collection and selection of stories which describe significant change that has occurred in the lives of individuals or communities" (Dawkins et al., 2011:15). Hence, the qualitative component of the study focused on issues relating to the experiences of offenders in the Koori County Court, including whether the court engendered feelings of shame and responsibility which ultimately led to a reduction in offending behaviour, and whether the experience motivated offenders to seek help in order to stop their offending behaviour. Five of the offenders agreed that the Koori County Court experience had assisted them to take responsibility for their actions (Dawkins et al., 2011). The report noted that the offenders who had been interviewed had frequently referred to the fact that the sentencing outcomes had assisted them to obtain the help they required to change their behaviour (Dawkins et al., 2011). The quantitative component of the study found that only one of the 31 offenders included in the analysis had reoffended, and this was a low-level offence (of being drunk in a public place) (Dawkins et al., 2011:21); however, as with the 2006 Harris study of the Koori Magistrates' Court mentioned below, caution is needed when relying on such findings since no appropriate control group was used to compare the findings, questions were raised by the researchers in relation to the accuracy of the reoffending data, and the number of offenders analysed was too small to support any definitive conclusions.

A major focus on the reduction of offender recidivism was regarded by some evaluators as limited in its own right, and it was suggested that it should be only used as one measure of success in an evaluation process (CIRCA, 2008; Harris, 2006; Payne, 2005a; Potas et al., 2003; Tomaino, 2004). Additionally, reoffending analyses have been criticised for

- Using inappropriate comparison groups (see Fitzgerald's critique of Harris's study of Koori Magistrates' Courts: Fitzgerald, 2008)

- Using inadequate follow-up periods (too short) and for using the number of files (or 'matters') instead of the number of defendants to measure reoffending (see Marchetti and Daly's critique of Harris's study of Koori Magistrates' Courts: Marchetti & Daly, 2007), and

- Reaching conclusions based on insufficient reoffending data or without a comparative control group (see Daly and Proietti-Scifoni's comment regarding Potas et al.'s study of the Nowra Circle Court: Daly & Proietti-Scifoni, 2009, and Morgan and Louis' comments regarding Potas et al.'s study and Borowski's study of the Children's Koori Court of Victoria: Morgan & Louis, 2010).

Limitations on conducting quantitative studies also exist as a result of a lack of reliable and complete court data, which should routinely be collected (Payne, 2005a).

***Better tailoring of penalties (or outcomes) for individual offenders***

It is generally accepted that a greater amount of information about an offender is presented in an Indigenous sentencing court process, which allows the court to better tailor penalties to suit the needs of the offender (Aquilina et al., 2009; CIRCA, 2008; Harris, 2006; Sentencing Advisory Council, 2010). Indeed, the Queensland Murri Court study found Youth Murri Court offenders were slightly less likely to receive a custodial sentence than mainstream Children's Court offenders, and that offenders sentenced in the adult Murri Court were not significantly more likely to be imprisoned than their mainstream court counterparts (Morgan & Louis, 2010). The researchers concluded that, although "data on the extent to which Murri Court participants received rehabilitative orders was not available, it appears that they are more likely to receive a sentence that provides them with the opportunity to participate in programs post-sentence under some form of supervision arrangement" (Morgan & Louis, 2010:144).

While acknowledging that the relatively low number of Koori Court cases compared to Magistrates' Court cases placed limits on what inferences could be drawn from the findings, the Victorian Sentencing Advisory Council concluded that offenders appearing before the Koori courts were in general more likely to receive community-based, rehabilitative orders than offenders sentenced in the Magistrates' Court, who were more likely to receive fines (Sentencing Advisory Council, 2010). This possibly reflected the fact that Koori courts, like other Indigenous sentencing courts, are more mindful of delivering more 'meaningful' penalties and sentences.

***Improving court appearance rates***

Evaluators have attempted to measure whether or not Indigenous sentencing courts have improved court appearance rates, since they believe it is one of the aims of the courts (Morgan & Louis, 2010; Tomaino, 2004). An early evaluation conducted of the SA Nunga Courts found that between June 2003 and June 2004 the offender "was present in court in almost three quarters of the 504 cases dealt with" in Port Adelaide, Murray Bridge and Port Augusta (Tomaino, 2004:7). Most of the offenders were not in custody at the time of their sentence hearing, which led to the conclusion that they had attended 'voluntarily'. This was particularly the case in Port Augusta. Whether or not this was better than the attendance rates of Aboriginal offenders in mainstream courts could only be assessed on anecdotal evidence (since comparative data was unavailable), which indicated that attendance rates in mainstream courts were lower.

The 2010 evaluation of the Queensland Murri Courts considered the issue of repeat court appearances in depth (Morgan & Louis, 2010). It used warrants issued for arrest as a result of a non-appearance to measure the rates of non-appearance at Murri Court hearings. The study found that there were fewer incidents of offenders absconding from Murri Court hearings than from court

appearances prior to their Murri Court referral (Morgan & Louis, 2010). In comparing the findings with those of a control group, the study found that "for court appearance events within [the adult] Murri Court, the proportion of offenders for whom a warrant was ordered (9%) and the proportion of events resulting in a warrant being ordered (4%) are substantially lower than both the period prior to Murri Court and the control group" (Morgan & Louis, 2010:88). There was no difference in the proportion of warrants that were issued for the youth Murri Court offenders and for the control group. The study acknowledged that interpreting the findings was complex due to procedural differences that exist between Murri Courts and mainstream courts and that it was not possible to make any definitive statements about appearance rates based on such data (Morgan & Louis, 2010).

## 4.3 Youth conferencing

### Establishment and underlying rationale

Young Aboriginal and Torres Strait Islander people are over-represented in all stages of the youth justice system yet they are "underrepresented in diversionary processes" (Department of Communities, 2008:9). While only 5% of young people in Australia are of Aboriginal and Torres Strait Islander descent, on an average day in 2010/11 48% of young people in detention and 39% (almost 2 in 5) of all those in juvenile justice supervision were of Aboriginal and Torres Strait Islander descent (AIHW, 2012). Young Aboriginal and Torres Strait Islander people also start engaging in offending behaviour at an earlier age and more frequently than young non-Indigenous people (Stewart, Hayes, Livingston & Palk, 2008). Young Aboriginal and Torres Strait Islander people also enter supervision at younger ages and spend more time under supervision (AIHW, 2012). The Australian Bureau of Statistics reported that nationally, in the five years preceding 2008, one in six young Aboriginal and Torres Strait Islander people aged 15 to 24 years (or 17% of all Indigenous juveniles) had been arrested and that 3% of Aboriginal and Torres Strait Islander children aged between four and 14 years had in 2007/08 been in trouble with the police (Australian Bureau of Statistics, 2011). More recently, the national over-representation of Aboriginal and Torres Strait Islander juveniles has been found across each stage of the criminal justice system, where, during 2010/11, young Aboriginal and Torres Strait Islander people aged 10 to 17 years were four to six times as likely to be proceeded against by Police, eight to 11 times as likely to be proven guilty in the Children's Court, 14 times as likely to experience community-based supervision, and 18 times as likely to experience detention, when compared to their non-Indigenous counterparts (AIHW, 2012).

The over-representation of Aboriginal and Torres Strait Islander juveniles in the criminal justice system is mirrored in Queensland. Despite the fact that young Aboriginal and Torres Strait Islander people made up only about 5% of the juvenile population, in 2006 they were charged with approximately 50% of all juvenile offences and they made up 57% of the population in detention centres during 2007/08, which equated to a rate of 342 per 100,000 Aboriginal and Torres Strait Islander people compared with the rate for all young people of 36 per 100,000 (Department of Communities, 2010). In 2010/11, Aboriginal and Torres Strait Islander young people aged 10–17 were

five times more likely than non-Aboriginal and Torres Strait Islander young people to be proceeded against by police and eight times as likely to be found guilty in the Children's Court of Queensland (AIHW, 2012).

According to Queensland Police Service data, young people (in general) tend to commit mainly property offences, which are less serious than crimes committed by adults, and they tend to 'grow out of' their criminal offending behaviour, with criminal activity peaking between the ages of 15 and 19 for young males (Department of Communities, 2010). The Queensland Department of Communities, Child Safety and Disability Services found that "Indigenous young people are more likely to have a matter dealt with by court and therefore less likely to receive the benefits of diversionary responses to offending such as cautioning or a police referral to a youth justice conference"; this has also been found in other states, such as NSW, SA and WA (Department of Communities, 2010:16). Such facts make it all the more important to consider whether alternative justice strategies that incorporate culturally appropriate practices can make a difference to not only the behaviour of Indigenous juveniles but also to systemic and institutional biases that may exist within the criminal justice system. Indeed Stewart et al. note that "[i]nitiatives within the juvenile justice system are likely to be one of the most effective strategies for reducing the over-representation of indigenous people in the criminal justice system" (Stewart et al., 2008:360).

In 1989 John Braithwaite, a well-known Australian criminologist, wrote *Crime, Shame and Reintegration*, "arguing for the development of criminal justice processes that increase the likelihood of reintegrative shaming, rather than stigmatic shaming of offenders" (Daly & Hennessey, 2001:2). He was at the time unaware that New Zealand had recently introduced legislation that established family group conferencing. The New Zealand family group conferencing model was developed in response to concerns regarding the lack of cultural sensitivity in the courts and the recognition that Maori and Pacific Islander communities had a particular orientation towards family decision-making. An advisor to the NSW Police Service in 1990 made the link between Braithwaite's concept of reintegrative shaming and the New Zealand family group conferences and proposed a similar but varied model be introduced in NSW. The conferencing model that was subsequently introduced in Australia as a manner of responding to juvenile offending located it within the police service as opposed to the youth justice department as was the case in New Zealand (Daly & Hennessey, 2001). Since then, there has been considerable debate in relation to the merits of police-run and non-police-run youth justice conferencing, with most states and territories now using a non-police-run model.

Restorative justice conferencing for young offenders is now firmly established in Australia, with legislated conferencing schemes operating in all Australian states and territories (Stewart et al., 2008). There is variation in the terms used to describe restorative justice conferences for young people, but the most common is 'youth justice conferencing'. As mentioned above in reference to the differences between restorative justice practices and Indigenous sentencing courts, a common element of conference models is convening a process for bringing together offenders, their supporters and victims to discuss the offence and its impact and to decide what to do to repair the harm done to

the victim and to the community. As a consequence, the conferencing model attempts to rethink the punitive nature of the mainstream court process. According to the Queensland Department of Communities, "[t]he primary aim of a youth justice conference is restoration for those people affected by the young person's offending behaviour" (Department of Communities, 2010:10), but it also assists in improving "the juvenile justice system by: increasing victim involvement and satisfaction; holding offenders accountable for their actions in positive, constructive and non-stigmatising ways; and repairing harms" (Hayes, McGee & Cerruto, 2011:129). It is usually a requirement that the juvenile offender admits to having committed the crime before being allowed to participate in a restorative justice conference and that victims are encouraged to be active in the process, although they are under no obligation to attend (Daly & Hennessey, 2001; Department of Communities, 2010; Stewart et al., 2008).

As with Indigenous sentencing courts, youth justice conference models vary between jurisdictions. In most jurisdictions, conferences are administered by convenors, whereas in others, such as the ACT, Tasmania and the NT, youth justice conferences can be administered by either the Police or by convenors (Hayes et al., 2011). In 1996, Queensland was one of the first Australian states to follow NSW in legislating for a restorative youth justice response. It commenced its first pilot program in 1997. Queensland's youth justice conferencing program is now provided for and administered under Queensland's *Youth Justice Act 1992*. Unlike in some jurisdictions, there are no limits on the type of offences that may be referred to a conference under Queensland legislation, aside from the fact that the referring Police Officer or court must consider the nature of the offence. By contrast, WA, NSW, the ACT and the NT exclude certain offences, such as violent crimes, drug offences and sexual assaults, from being referred to conferencing.[9] The Queensland Aboriginal and Torres Strait Islander Justice Agreement, signed by six Queensland government departments and the Aboriginal and Torres Strait Islander Board as representative of Queensland's Indigenous communities in 2000, recognised and supported the use of youth justice conferences as a strategy for reducing the over-representation of Indigenous people in custody (Stewart et al., 2008). A 2003 progress report, which considered the implementation of the Justice Agreement, proposed a statewide expansion of youth justice conferencing to assist in reducing the numbers of Indigenous people in custody by 2011. Further, the Just Futures Strategy, which was launched in Queensland on 7 December 2011, emphasises that culturally appropriate and community-based justice responses are the most effective for Indigenous people.

The dual intended outcomes from conferences are moral and cognitive development and diversion from formal prosecution and offending (Department of Communities, 2010). Having said that, disagreement still remains as to whether or not restorative justice conferencing should even aim to reduce recidivism (Hayes et al., 2011). Previous research, as outlined below, has yet to resolve the

[9] For further information regarding the types of offences that are excluded from being referred to conferencing in each of these jurisdictions see section 25 and schedules 1 and 2, *Youth Offenders Act 1994* (WA); section 8, *Young Offenders Act 1997* (NSW); Part 4, *Crimes (Restorative Justice) Act 2004* (ACT); and section 39, *Youth Justice Act* (NT) and regulation 3, *Youth Justice Regulations* (NT).

question of whether conferences can prevent juvenile reoffending. In fact, due to methodological constraints many studies have focused on assessing the satisfaction of participants as means of measuring 'success'. Of particular relevance to this project, the Queensland Youth Justice Conferencing Program has reported positively on conference outcomes over its 11 years of operation, by virtue of the fact that 97% of victims and offenders advised they thought the conference was fair, 97% of victims and 98% of offenders were satisfied with the agreement, 98% of conferences reached an agreement, and only 9% of conference agreements had been returned due to non-completion (Department of Communities, 2010). These findings were consistent with the findings of one of the earliest evaluations of the Queensland Youth Justice Conferencing Program (in 1998), which similarly reported that "[b]etween 96.7% and 100% of young people, parents/caregivers and victims were satisfied with conference agreements and felt the conference was fair" and that "[b]etween 91% and 99% of young people, parents/caregivers and victims felt the conference was 'just what [they] needed to sort things out'" (Hayes, Prenzler & Wortley, 1998:6). Like many of the later studies of youth justice conferencing (discussed below), this earlier study of the Queensland pilot program found that conferencing had little or no effect on reoffending, although the researchers identified the 'trial' nature of the program as a possible explanation for their findings.

### Evaluations: impact on recidivism

One of the early recidivism studies of family group conferences in New Zealand, by Maxwell and Morris, noted the difficulties in using recidivism as a measure of success or failure in their evaluations. They found that some young people had continued to offend but had not been apprehended, while others had been caught but not charged or convicted. Research findings point to the fact that prior offence histories were the most significant indicator of reoffending, and that those sentenced to custody were most likely to reoffend regardless of the nature of the intervention delivered by conferences (Maxwell & Morris, 1992).

Generally, the results of evaluations of youth justice conferencing have been mixed, covering a wide range of models and using a range of different methodologies. Some evaluations have argued that there is no clear evidence that conferencing and other restorative justice sanctions work to reduce reoffending, while others have identified some reduction in reoffending when compared with court-based models (Luke & Lind, 2002). Early evaluations conducted of youth justice conferences focused less on recidivism and more on the effectiveness of the process (Department of Communities, 2010). These evaluations found high levels of overall participant satisfaction, but this did not apply to victims. Victims were least satisfied when the young person was a persistent offender, and often, in these situations, plans were least likely to have been implemented. It was suggested that the needs of the victim should be considered first when organising a conference and that more systematic arrangements should be implemented for official follow-up post conference, particularly when conference agreements become unstuck (Department of Communities, 2010).

More recent evaluations conducted of youth justice conferences have confirmed that participants were generally satisfied with conference outcomes and felt that they had been treated fairly and respectfully (Stewart et al., 2008). Other major research projects in recent years have attempted to determine whether youth justice conferences have had a greater impact on recidivism than courts, having established that the process of the conference itself was effective in engaging participants. There has not been clear agreement on how to best to assess whether conferences have reduced reoffending, and available benchmarks have been inadequate to support comparison of young people who participated in a conference with those who did not. It has been difficult to establish if groups of young people in conferencing have had sufficiently similar characteristics to control groups to support comparison (Luke & Lind, 2002).

Further difficulties have arisen in determining whether cessation of offending could be attributed to natural developmental maturation rather than participating in the youth justice conference, whether curtailment rather than cessation of offending is a valid measure, whether other personal and social outcomes from the youth justice conference may be more significant in the long term, and finally whether apprehension is a valid indicator of actual offending behaviour (in other words, did young people avoid getting caught because they got better at offending?) (Hayes & Daly, 2003; Luke & Lind, 2002; Richards, 2011). These issues have served to cloud the correlation between reoffending patterns and youth justice conference outcomes. However, most scholars agree that more work needs to be undertaken in defining recidivism, agreeing upon priority outcomes from youth justice conferences, and developing an understanding of the complex interplay of youth justice conferences and other variables in a young person's life.

Maxwell and Morris's evaluation of family group conferences in New Zealand found that conferences were most effective in reducing reoffending when they were memorable to the offender, offenders were not stigmatised or shamed during the process, offenders expressed remorse, and conference outcomes were arrived at through genuine consensus (Maxwell & Morris, 1992). This finding was supported by research conducted in SA (Daly & Hennessey, 2001). Some years later, Luke and Lind found a 15–20% per annum reduction in the risk of reoffending and the rate of reappearances for 590 juveniles who had attended a youth justice conference in NSW as compared to 3,830 juveniles who had gone to court, after controlling for other factors such as gender, criminal history, age and Aboriginality. However, they did acknowledge that the lower level of reoffending might have been as a result of the differences in the groups of young offenders selected for each justice process (Luke & Lind, 2002). They conclude that "one of the lessons of [the] study is that short follow-up periods and small sample sizes are unlikely to detect the relatively subtle differences in reoffending levels that are likely to result from different official responses to offending" (Luke & Lind, 2002:14).

On the other hand, a very recent evaluation of the NSW youth justice conferencing program, which used propensity score matching of 1,041 young people who had gone through conferencing with 2,160 young people who had gone through court in 2007, found no difference between the two groups when it came to risk of reoffending (Smith & Weatherburn, 2012). The researchers offer the following

two explanations for the conflict in findings with the earlier Luke and Lind study: the first is the selection bias previously identified by Luke and Lind; and the second is that conferencing may now be less effective than it was at the time Luke and Lind conducted their study or the profile of the offenders attending the conferencing program may have changed over time. Importantly, however, Smith and Weatherburn remind us that reducing reoffending is "only one of the aims of the criminal justice system", another being improving the criminal justice experience for victims, which conferencing has been proven capable of achieving (Smith & Weatherburn, 2012:16). Youth justice conferencing in NSW has recently also been found to be more cost effective than the Children's Court (the average cost was approximately 18% less), which arguably makes it the more viable option for dealing with young offenders if both processes produce similar outcomes in terms of reoffending (Webber, 2012). Similarly, a KPMG evaluation of the Victorian Youth Justice Conferencing Program found that "for every $1 invested by DHS [Department of Human Services] on the Program, at least $1.21 is saved in the immediate and short term" (KPMG, 2010:62). It also found that young people who had been diverted to the youth justice program were less likely to reoffend after both a 12-month and a 24-month post-conference period than a comparison group of young people who had received probation or youth supervision orders instead of being diverted to the program. However, no information was provided in relation to whether or not the offending patterns of the two groups of young people were comparable and whether or not the findings were statistically significant.

Another Australian study that found positive results post youth justice conferencing was that of a 2007 NT evaluation which compared the reoffending rates of juveniles who were diverted from court by either a warning or a conference with those who were sent to court. The majority of the offenders in the study were male, Indigenous and over 14 years old. The study found that the juvenile offenders who were diverted had lower reoffending rates than those who went through court and they took longer to reoffend, leaving the researcher to conclude that "making these juveniles go through the court process exposes them to an unnecessary and possibly damaging experience for them, and is an unnecessary use of time and resources for the criminal justice system" (Cunningham, 2007:6).

Two other evaluations of youth justice conferencing in Queensland have recently been conducted, one based on micro-simulation modelling of the effects that youth justice conferencing has on Indigenous young people, and the other based on a qualitative study of 25 young offenders. The micro-simulation modeling study found that youth justice conferencing in Queensland was "unlikely to reduce the over-representation of Indigenous young people in the juvenile justice system" and was therefore unlikely to assist in reaching the goals set out in the Justice Agreement signed by various Queensland government departments and the Aboriginal and Torres Strait Islander Board (Stewart et al., 2008:357). The simulations demonstrated that decreases in finalised court appearance rates as a result of having attended a youth justice conference were greater for non-Indigenous than Indigenous young people due to the fact that some Indigenous young people began their offending careers at an earlier age and due to the fact that they offended more frequently. Despite this, the researchers conclude that:

> [f]urther development of initiatives to address the underlying causes of offending by indigenous young people, as well as the continued use of effective criminal justice responses (e.g., youth conferencing), likely will be more effective in reducing the over-representation of young indigenous people in the juvenile justice system. (Stewart et al., 2008:377)

The qualitative study included a one-year follow-up and found that 16 of the young offenders who participated in the research had not reoffended one year after their youth justice conference. As with Indigenous sentencing courts, many of the young offenders described their conferencing experience as having been a positive one due to the fact that they had been given the opportunity to tell their story. This provided them with "an opportunity to take responsibility for their offending and explain to the victim and other parties present why the offence(s) occurred" (Hayes et al., 2011:135). The opportunity to meet the victim and to hear what effect the offending behaviour had had on the victim was also described as a positive learning experience by many of the offenders, resulting in motivating some of them to stay out of the justice system. The offenders who perceived their victims as being hostile in their conference were more likely to reoffend.

The effectiveness of youth justice conferences in reducing recidivism for Indigenous young offenders (and indeed young offenders in general) is thus unclear. It appears that success is greater where the young person is at lower risk of reoffending prior to their referral to the conference. It has also been suggested that, while there is general satisfaction with the conferencing process, there is mixed evidence on participation rates in conferences and compliance with conference orders or agreements by Indigenous young people (Cunneen, 2008). Despite the range of research and evaluation projects conducted on youth justice conferencing, there is clearly a need for further meta-analysis to identify which young people are most likely to benefit from conferences.

## 4.4 Conclusion

Indigenous over-representation in the criminal justice system for both the adult and juvenile population is still alarmingly high despite the resources that have been invested in responding to research that has been conducted on the topic over the past couple of decades. The 1991 Royal Commission into Aboriginal Deaths in Custody identified a number of factors that contribute to the likelihood of an Indigenous person coming into contact with the criminal justice system and which are still pertinent today. Of particular relevance to this research project is the alienating and culturally insensitive nature of court processes. Innovative justice programs such as Indigenous sentencing courts and youth justice conferencing programs, although not necessarily proven to have a significant impact on reducing recidivism, are having a substantial effect on Indigenous offenders and communities by providing more culturally appropriate forums for dealing with the administration of sentences and penalties. Without access to culturally appropriate justice programs, it is unlikely that an Indigenous offender will have the opportunity to consider pathways that may lead to desisting from engaging in criminal activities. Unfortunately, however, innovative justice practices are at a constant risk of closure since their 'success' is often measured according to whether they have had any impact

on reoffending behaviour, rather than whether or not they are meeting other program aims and objectives, such as improving court and criminal justice experiences of offenders and victims, increasing the participation of Indigenous communities, providing opportunities for better tailoring of sentencing outcomes, and improving offender remorse and understanding of the impact of their crime. Indigenous sentencing courts and youth justice conferences have been assessed as meeting these alternative aims and objectives, which has contributed to their continued existence and support in most Australian jurisdictions.

Government departments which provide funding for the initiatives also often seek to measure whether such programs are cost effective compared to their mainstream counterparts. As Payne points out:

> cost evaluations, particularly cost-benefit evaluations are a crude measure of financial success because they only account for nominal benefits which can be valued in financial units. Such evaluations cannot determine or measure the other benefits derived from a specialty court program. For example, what monetary value can be placed on a participant's capacity to re-kindle their relationship with an estranged family member? … In this sense, cost evaluations … often underestimate the true benefits delivered by a program to a participant and the community. (Payne, 2005a:112)

One might argue that the criteria used to evaluate innovative justice programs are often more onerous than those by which mainstream courts are assessed (Stobbs & Mackenzie, 2009). Mainstream courts are normally evaluated according to whether they promote "administrative and economic efficiency, procedural fairness and due process, and user satisfaction", which is narrower and therefore easier to measure than the criteria used to evaluate innovative justice programs (Stobbs & Mackenzie, 2009:93). Attempting to measure whether innovative justice programs effectively and efficiently reduce recidivism and the over-representation of Indigenous people in the criminal justice system both at an individual and group based level is no easy task and can often be inaccurate due to limited court databases, a lack of appropriate identifiable control groups and an inability to undertake lengthy follow-up studies where there is likely to be significant sample attrition. An alternate approach for measuring recidivism is to develop monitoring systems within courts that are able to capture such data on an ongoing basis, but funding for such endeavours is not always considered a priority (Stobbs & Mackenzie, 2009).

Not only are many of the evaluations that have attempted to measure impacts on recidivism unable to properly compare like with like, they also fail to acknowledge that it is unlikely that one appearance in an Indigenous court or diversionary process can have a lasting impact on an offender's future offending behaviour. Without continued support and access to culturally appropriate post-sentence programs, an offender is often unable to maintain changes in attitude that may have been instigated by their experience of a culturally appropriate justice process. Instead there should, particularly at the early stages of the implementation of any initiative and as a continuing point of reference, be assessments of whether the practices are transforming mainstream court processes into something

that is more meaningful for everyone present and, if so, whether such transformations are assisting in strengthening and empowering Indigenous communities. Initiatives that are able to achieve such cultural transformations will, as the Royal Commission concluded, have a significant impact on reducing the social, economic and cultural disadvantages of Indigenous Australians, which in turn will undoubtedly have an impact on the over-representation of Indigenous people in the criminal justice system.

# 5. Findings: Aboriginal sentencing courts and conferences in South Australia

## 5.1 Summary of programs

This chapter evaluates four programs run in South Australia:

- Aboriginal Sentencing Courts:
    - Port Adelaide and Murray Bridge Nunga Court
    - Port Augusta Aboriginal Sentencing Court
- Port Lincoln Aboriginal Conferencing, and
- Section 9C Aboriginal Sentencing Conferences.

### Aboriginal Sentencing Courts

As sentencing courts, the Aboriginal Sentencing Courts do not hear trials or contested matters. They are available to Aboriginal adults who have pleaded guilty to an offence that occurred in the area of the relevant Magistrates Court. Aboriginal Sentencing Courts are presided over by a Magistrate, who is assisted by at least one Aboriginal Elder and/or respected person. The Elders and Magistrate sit together either on the bench or at the clerk's level, which is at a higher level to the other participants, or they may sit at the bar table where the defendant and other participants sit. Aboriginal Sentencing Courts provide an opportunity for Aboriginal defendants to address the court and family members, and support persons are also encouraged to attend and speak directly to the court. The overarching aim of the Aboriginal Sentencing Courts is to provide a more culturally appropriate sentencing process in comparison to mainstream courts.

The Aboriginal Sentencing Courts are administered by the Courts Administration Authority of South Australia (CAA). Aboriginal Justice Officers (AJOs) provide information about the operation of the courts and provide support to Aboriginal defendants and their families. AJOs also provide advice to the court and the presiding Magistrate, including in relation to appropriate services and programs to assist Aboriginal defendants.

The Nunga Court was the first Aboriginal and Torres Strait Islander sentencing court to operate in Australia. It was first conceived by Magistrate Chris Vass[10] and was based on an adaptation of the more informal courts conducted on circuits in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands. Following extensive consultation between Magistrate Vass, Aboriginal community Elders, Aboriginal

[10] Magistrate Vass was a member of the Judicial Aboriginal Cultural Awareness Program and the Regional Manager of the Port Adelaide Magistrates Court and its associated circuits in 1999, and presided as a Magistrate for many years on the Anangu Pitjantjatjara Yankunytjatjara (APY) lands. Prior to working with the Courts as a Magistrate, Mr Vass spent many years working with the Indigenous people of Papua New Guinea.

community groups and community members, the Aboriginal Legal Rights Movement, Police Prosecutors, legal practitioners and other interested parties (including state government agencies), a pilot commenced in June 1999 in the Port Adelaide Magistrates Court, where a listing day was set aside to sentence Aboriginal offenders. 'Nunga Court' was the regional Aboriginal name given to it by the local Aboriginal community.[11] Following the piloting of the court in 1999, Magistrate Kym Boxall presided over the Nunga Court in Port Adelaide from 2000 to 2006.

The Nunga Court sits fortnightly in the Port Adelaide Magistrates Court and bi-monthly in the Murray Bridge Court. Aboriginal Sentencing Courts were operating monthly in the Port Augusta Magistrates Court. However, the Port Augusta Aboriginal Sentencing Court has not been conducted since the retirement in July 2012 of its previous presiding magistrate.

***The Nunga Court Treatment Program***

In 2010/11, the Nunga Court Treatment Program commenced operation at the Nunga Court in Port Adelaide as a strategy for increasing Aboriginal participation rates in drug treatment programs that address offending behaviour.[12] The Nunga Court Magistrate can refer defendants to the Nunga Court Treatment Program and monitor their progress in the program prior to sentencing. The program is aimed at defendants with drug- and alcohol-related offences. The program focuses on a prosocial modelling[13] approach to case management, which is based on Cognitive Behavioural Therapy (CBT) techniques. The program involves up to a maximum of 10 individual weekly or fortnightly sessions with the Program Supervisor, including a complete assessment, the development and review of a case management plan, and the identification of issues and goal-setting. AJOs and community support workers provide additional support with the sessions.

Following initial assessment, an assessment and intervention plan is submitted at the next listing in the Nunga Court. The plan identifies areas of need and indicates which areas the defendant feels ready to address. The aim is that the defendant identifies drug and/or alcohol treatment as a goal and then progresses to the six-month drug treatment program. The six-month program involves weekly group sessions with other Aboriginal Nunga Court defendants delivered by Offenders Aid and Rehabilitation Services (OARS) Inc – Community Transitions. OARS delivers two CBT-based group programs, called MRT© and Staying Quit©. MRT (Moral Reconation Therapy) focuses on moral reasoning and antisocial attitudes and behaviours, while Staying Quit is a substance abuse relapse prevention program. Defendants completing a six-month program are supported to complete their

[11] Nunga is a term of self-reference for many of the Aboriginal people of southern South Australia.

[12] In 2009/10 Judge Peggy Fulton Hora (Ret) was the *Adelaide Thinker in Residence*, and her report published in 2010 recommended that the Nunga Court continue to transform into a treatment court, or refer sentenced persons to existing specialist courts, to address alcohol and substance abuse, mental health and violence issues.

[13] In this context, prosocial modelling refers to modelling and reinforcing positive prosocial behaviours, discouraging antisocial comments and behaviours, and identifying, rewarding and encouraging positive comments, behaviours and actions in clients.

MRT and relapse prevention workbooks by the Program Supervisor or other support workers. Participation in the six-month program includes regular and random drug testing (urine analysis) and alcohol breath analysis.

If drug and/or alcohol treatment is not identified as a goal, involvement in the Nunga Court Treatment Program does not continue beyond the 10 individual sessions with the Program Supervisor. During this time, defendants are referred, where possible, to appropriate programs or services according to the needs identified, and the Program Supervisor facilitates contact to these services. Program progress is generally monitored by the Nunga Court Magistrate fortnightly, but this may vary depending on the assessed progress of the defendant and Nunga Court sitting dates. Program participation is taken into account in sentencing, but failure to complete the program will not attract any additional penalty.

### Port Lincoln Aboriginal Conferencing

In 2007 the Port Lincoln Aboriginal Conferencing model was piloted, and the first conference and sentence hearings were held in November 2007. The pilot was originally proposed in a discussion paper prepared by the Deputy Chief Magistrate, Dr Andrew Cannon, and Carolyn Doherty, Manager of the Family Conference Team, in August 2007. The model combines elements of the Nunga Court model and restorative justice conferencing. It aims to provide a more culturally appropriate sentencing process that involves participants in a restorative justice process and provides the Magistrate with better information to provide more appropriate and constructive sentencing options. Development of the program involved collaboration and consultation with Magistrates, government and non-government agencies, key Aboriginal agencies and Elders.

Port Lincoln Conferencing operates as part of the Magistrates Court monthly circuit to Port Lincoln. Conferencing is available to Aboriginal adults who reside in, and have family ties/connections with Port Lincoln who have pleaded guilty to an offence. A conference referral is made initially upon the order of the court, and referrals can be suggested by defendants or their counsel, Police Prosecutors or the presiding Magistrate. The Magistrate has the final decision whether to refer a matter to conference. The Magistrate then adjourns the case for sentencing to the following month's circuit to allow a minimum of one month for the Aboriginal Conference to be convened[14]. When the conference occurs, it is conducted early in the week, and the sentencing hearing is listed several days later. At least two Elders participate in the conference, and victims are invited to participate. The defendants' family are able to attend, as well as any relevant service providers (e.g. case workers). Representatives of the Port Lincoln Aboriginal Health Service (PLAHS) also attend the conferences. The conference is conducted in a conference room, is facilitated by a Youth Justice Coordinator and

[14] If, whilst setting up the conference, the coordinators become aware of any safety concerns or other factors that make it unadvisable to proceed because of risk to any party, they will advise the referring Magistrate, Police Prosecution, and the defence counsel that it is not possible to proceed with the conference. This also applies if the defendant decides they do not wish to participate.

scribed by an AJO. The Magistrate does not participate in the conference. The Conference Facilitator writes a report of the conference, which is provided to the Magistrate, prosecution and defence counsel (or the defendant if they are unrepresented). The Magistrate receives the report prior to the sentencing hearing. In the sentence hearing, the courtroom is arranged in a less formal manner, with the Elders and the defendant sitting at the bar table beside the Magistrate.

The Port Lincoln Aboriginal Conferencing program is jointly administered by the Conferencing Unit and Aboriginal Programs within the CAA. AJOs provide information about the operation of the conference and provide support to Aboriginal defendants and their families. AJOs also provide advice to the court and the presiding Magistrate.

### Section 9C Aboriginal Sentencing Conferences

In 2005, the *Criminal Law (Sentencing) Act 1988* (SA) ('the Act') was amended to include Section 9C, which empowers a court in any criminal jurisdiction in SA to convene, with the defendant's consent, a Section 9C Aboriginal Sentencing Conference prior to sentencing in order to inform the sentencing decision. The overarching aim of this legislative provision is to provide for a culturally appropriate conferencing practice for sentencing Aboriginal offenders. These conferences are designed to promote an understanding of the consequences of offending behaviour in the defendant and an understanding of cultural and societal influences in the court, thereby providing for more appropriate and constructive sentencing options.

Pursuant to section 9C(2), a conference of this type must comprise the defendant and, if the defendant is a child, the defendant's parent or guardian, the defendant's legal representative (if any), the prosecutor, the victim (if the victim chooses to be present) and a support person of the victim's choice to provide assistance and support (also a matter of victim choice), and, if the victim is a child, the victim's parent or guardian. If the court thinks they may contribute usefully to the sentencing process, pursuant to section 9C(3), the conference may also include a person regarded by the defendant, and accepted within the defendant's Aboriginal community, as an Aboriginal Elder, a person accepted by the defendant's Aboriginal community as a person qualified to provide cultural advice relevant to sentencing of the defendant, a member of the defendant's family, a person who has provided support or counseling to the defendant, and any other person.

Section 9C Conferences are convened with the assistance and support of an AJO. AJOs assist with arranging for suitable Elders and/or community representatives to attend, as well as representatives from relevant and appropriate community services and programs. AJOs also explain conference process and help the defendant's family with this process.

Section 9C Conferences usually take place either in a courtroom, if the defendant is in custody, with participants sitting together around the bar table, or in a conference room, if the defendant is not in custody. Every participant is given an opportunity to speak, and Aboriginal defendants are

encouraged to explain the background to their offending. In instances when victims are present, defendants are given the opportunity to face the victims and apologise for their actions, and victims are given the opportunity to explain the impact the offending behaviour has had on them. The information shared during the conference can then be considered by the Judicial Officer when sentencing the defendant.

## 5.2 Profile of defendants

The SA Office of Crime Statistics and Research (OCSAR) provided a statistical overview of the Port Adelaide and Murray Bridge Nunga Courts, the Port Augusta Aboriginal Sentencing Court, Port Lincoln Conferencing and Section 9C Conferences. OCSAR conducted analysis of data over a four-year period, from 1 January 2008 until 31 December 2011. This section summarises these findings in relation to the statistical profile of defendants accessing the SA Aboriginal sentencing courts and conferences. It provides a foundation for better understanding the characteristics of defendants accessing these sentencing processes and how they compare with Aboriginal defendants generally. This information can help highlight any potential gaps in the way the justice system responds to this cohort and whether existing strategies and services could be better targeted to improve outcomes for Aboriginal people.

### Data source and matching

#### *Aboriginal Sentencing Courts*

The CAA database contains administrative court records of all defendants who have been processed in an SA court. In July 2007, a Nunga Court flag was added to the database to enable the identification of Aboriginal defendants who were processed via an Aboriginal sentencing court. It was anticipated that data for the statistical overview of the Aboriginal sentencing courts and conferences for the evaluation would be extracted based on this flag. However, it appears that the database was poorly populated against this flag and would therefore provide a very limited representation of defendants sentenced in an Aboriginal sentencing court.

Instead, manual spreadsheets of the court lists were provided to OCSAR by the CAA. These spreadsheets contained the court date, name and court file number of defendants who were listed to appear before the Port Adelaide or Murray Bridge Nunga Court between 2008 and 2011. Where a defendant had multiple court file numbers listed, generally the additional court file numbers were not supplied. For the Port Augusta Aboriginal Sentencing Court, sentencing logs of defendants who attended the court between 2008 and 2011 were provided. The information was then linked with the CAA database, based on the following steps:

- Step 1 involved matching the court file numbers (CFNs) listed on the manual spreadsheets with the numbers recorded in the CAA database.

- Where no match was recorded in Step 1, Step 2 involved matching based on the numeric part of the CFN and the unique personal identification number (PIN) of the defendant.[15] This was necessary due to the CFN on the manual spreadsheets being based on court origin and the CAA database records being based on the court in which the case was finalised.
- Step 3 involved matching on PIN only. For those cases that did not generate a PIN from Step 1, the apprehension number listed on the CFN was manually extracted and used to determine the PIN (no PIN could be found for three defendants). Then the manually extracted apprehension number was matched with an apprehension number listed in the CAA database.
- Lastly, Step 4 involved any PINs in the remaining unmatched dataset with a Nunga Court flag identified on the manual spreadsheets according to the CFN being added to the final dataset. This was particularly important due to manual spreadsheets not listing all the CFNs associated with a defendant.

For the Port Adelaide and Murray Bridge Nunga Courts, this matching process resulted in a 68% match rate for Port Adelaide and an 82% match rate for Murray Bridge based on the CFNs supplied by the CAA. Matching by PIN resulted in an 88% match rate for Port Adelaide and a 93% match rate for Murray Bridge based on the individuals listed on the manual spreadsheets.[16] Closer examination of the data revealed that some cases contained offences that did not result in a guilty outcome. These offences were removed from the dataset, which in some cases meant that an entire CFN was removed from the final dataset.

For the Port Augusta Aboriginal Sentencing Court, this matching process resulted in a 65% match rate based on the CFNs supplied by the CAA and an 80% match rate based on the individuals listed on the sentencing logs. Closer examination of the data revealed that some cases contained offences that did not result in a guilty outcome. These offences were removed from the dataset, which in some cases meant that an entire CFN was removed from the final dataset.

The matching process indicates that the vast majority of individuals are represented in the data analysis, although some of the cases relating to these individuals are not captured. It is not known whether the unmatched cases are inherently different from those that are represented in the data, so some caution should be applied when interpreting the findings. It should be noted that 25 cases listed

[15] Personal identification numbers (PINs) are generated by SA Police when an individual comes into contact with police.

[16] The match rate by PIN indicates the extent to which the data matched based on unique individuals while the match by CFN indicates the extent to which the CFNs listed in the manual records were able to be matched with the CAA database. In other words, nearly all individuals were captured in the data, however a proportion of the CFNs relating to those individuals were not able to be matched. This was primarily due to the CFNs not being listed in full on the manual records and therefore not knowing which CFNs listed against an individual in the data related to an Aboriginal sentencing court or conference.

on the original sentencing logs had the name of the defendant suppressed and no matching was attempted based on those CFNs.[17]

***Port Lincoln Aboriginal Conferencing***

Manual records of defendants scheduled to participate in a Port Lincoln Aboriginal Conference were provided to OCSAR by the CAA. These records were matched with the CAA database based on the CFN recorded for each case. From the CFN, the unique PIN was gathered in order to identify the characteristics and offence details of defendants involved in a conference.

***Section 9C Aboriginal Sentencing Conferences***

Manual records of defendants who undertook a Section 9C Conference since its inception were provided to OCSAR by the CAA. The CFNs on these records were entered into the CAA database to determine a unique PIN for each individual. The PIN was then used to extract demographic and court records for each defendant who participated in a Section 9C Conference. As a number of CFNs can be listed under each PIN, only those CFNs where the sentence date on the manual records matched the finalisation date in the CAA database were included in the study. In the event that an individual could not be matched to the CAA database (five cases), basic information from the manual records was used instead.

## Profile of Port Adelaide and Murray Bridge Nunga Court defendants

The Port Adelaide and Murray Bridge Nunga Courts held 116 sittings between 2008 and 2011, with the majority being held in Port Adelaide (95 compared with 21 in Murray Bridge). Data was available on 480 unique cases heard over the four-year period, which involved 288 defendants (based on PIN). Of the 480 cases, 67 (14.0%) solely involved one or more breach offences.[18] The vast majority of cases at the Port Adelaide and Murray Bridge Nunga Courts involved only one defendant (99%), with seven cases involving two defendants. This finding was similar to findings concerning Aboriginal defendants processed in the Port Adelaide and Murray Bridge Magistrates Courts, in which 98% of cases involved only one defendant.

***Number of cases per year***

Table 5a outlines the number of cases heard in the Port Adelaide and Murray Bridge Nunga Courts based on the year in which a case was finalised. Around two-fifths (42%) of the cases heard over the four-year period were finalised in 2008. A total of 3,242 cases involving Aboriginal defendants were

[17] Twenty-five suppressed cases were listed on the manual records for Port Augusta. No further detail is available on these cases including any information on the defendant(s) or the offence type. Therefore these cases could not be included in any of the analyses.

[18] Breach offences constitute those offences that breach the conditions of a previous court order.

heard in the Port Adelaide and Murray Bridge Magistrates Courts over the same period, with a greater number of these cases finalised in 2010 (29%) and 2011 (27%).

**Table 5a – Year case finalised**

| | Nunga Court | | Magistrates Court | |
|---|---|---|---|---|
| | Number | % | Number | % |
| 2008 | 201 | 41.9 | 678 | 20.9 |
| 2009 | 134 | 27.9 | 768 | 23.7 |
| 2010 | 76 | 15.8 | 927 | 28.6 |
| 2011 | 69 | 14.4 | 869 | 26.8 |
| **Total** | **480** | **100.0** | **3,242** | **100.0** |

Table 5b shows the number of cases for which defendants appeared in the Port Adelaide and Murray Bridge Nunga Courts. Most individuals (64%) recorded only one case during the four-year period, while a further 19% recorded two cases. In comparison, the number of cases per defendant appears to be greater in the Port Adelaide and Murray Bridge Magistrates Courts, with around half (52%) involving only one case and 14% involving five or more cases. This difference may be partly due to the match rate[19] achieved for the Nunga Court cases (68% match rate for Port Adelaide and an 82% match rate for Murray Bridge).

**Table 5b – Number of cases per discrete defendant**

| | Nunga Court | | Magistrates Court | |
|---|---|---|---|---|
| **No. of cases** | No. of defendants | % | No. of defendants | % |
| 1 | 185 | 64.2 | 683 | 51.5 |
| 2 | 56 | 19.4 | 259 | 19.5 |
| 3 | 27 | 9.4 | 115 | 8.7 |
| 4 | 8 | 2.8 | 84 | 6.3 |
| 5 or more | 12 | 4.2 | 185 | 14.0 |
| **Total** | **288** | **100.0** | **1,326** | **100.0** |

[19] A match rate is the rate at which the CFNs supplied in the manual records matched with the numbers recorded in the CAA mainframe database.

Case finalisation dates for each defendant were used to determine the number of separate cases for which defendants appeared in court over the four-year period. With regard to the Port Adelaide and Murray Bridge Nunga Courts, 78% of defendants made only one appearance in the four years and a further 18% made two separate appearances. A greater proportion of Port Adelaide and Murray Bridge Magistrates Courts defendants had multiple involvements with the Magistrates Court, with 20% recording two separate appearances, 9% recording three appearances and a further 9% recording five or more separate appearances (see Table 5c).

**Table 5c – Number of separate appearances per discrete defendant**

| | **Nunga Court** | | **Magistrates Court** | |
|---|---|---|---|---|
| **No. of appearances** | No. of defendants | % | No. of defendants | % |
| 1 | 224 | 77.8 | 761 | 57.4 |
| 2 | 51 | 17.7 | 265 | 20.0 |
| 3 | 11 | 3.8 | 122 | 9.2 |
| 4 | 2 | 0.7 | 58 | 4.4 |
| 5 or more | 0 | 0.0 | 120 | 9.0 |
| **Total** | **288** | **100.0** | **1,680** | **100.0** |

***Number of individuals and age***

Table 5d shows the age of defendants at the time of their first appearance for cases processed via the Port Adelaide and Murray Bridge Nunga Courts. Where age was recorded, over one-quarter (28%) of defendants were under 25 years of age, while a further 22% were aged 25 to 29 years. Few defendants were in the older age ranges, with only 7% of defendants aged 45 and over at the time of their first court appearance for a matter heard in the Nunga Court. The age distribution was similar for Port Adelaide and Murray Bridge Magistrates Court defendants.

Around one-quarter (26%) of Nunga Court defendants were female (compared with 35% for Magistrates Court defendants). The average age of both males and females was 31 years. The average age for males and females in the Magistrates Court was 32 years and 31 years respectively (figures not shown).

**Table 5d – Age of defendant at first appearance**

| | Nunga Court | | Magistrates Court | |
|---|---|---|---|---|
| **Age range** | No. of defendants | % | No. of defendants | % |
| 18 to 24 | 79 | 27.5 | 415 | 31.5 |
| 25 to 29 | 63 | 22.0 | 222 | 16.8 |
| 30 to 34 | 47 | 16.4 | 202 | 15.3 |
| 35 to 39 | 44 | 15.3 | 200 | 15.2 |
| 40 to 44 | 35 | 12.2 | 118 | 9.0 |
| 45 to 49 | 13 | 4.5 | 81 | 6.1 |
| 50 to 59 | 6 | 2.1 | 67 | 5.1 |
| 60 or more | 0 | 0.0 | 13 | 1.0 |
| **Total*** | **287** | **100.0** | **1,318** | **100.0** |

*Total excludes 1 Nunga Court and 8 Magistrate Court defendants with an unknown date of birth.

### *Offences recorded*

This section outlines the total number of offences recorded on each CFN, excluding those which involved breach only offences.[20] If a CFN contained more than one defendant, the total number of offences was counted separately for each defendant. There were 420 cases involving a unique defendant in the Port Adelaide and Murray Bridge Nunga Courts and a total of 1,451 offences (found guilty), with an average of 3.5 offences per case. Table 5e shows the distribution of offences per case. As shown, over one-third of cases (36%) involved only one offence and 80% involved fewer than five offences per case. Only eight cases involved 20 or more offences, with 39 being the highest number of offences recorded.

Aboriginal defendants in the Port Adelaide and Murray Bridge Magistrates Court tended to have fewer offences per case, with 55% of cases involving only one offence and a further 24% involving two offences.

[20] The criminal jurisdiction of the Magistrates Court in South Australia can hear matters where the penalty can be a fine, a prison sentence of up to two years, a good behaviour bond or a community service order. In criminal matters punishable by more than two years gaol, the Magistrates Court conducts a preliminary examination of a charge and may commit the accused person to be dealt with by a higher court. Only those matters in the jurisdiction of the Magistrates Court can be sentenced in the Nunga Court.

**Table 5e – Number of offences per case**

| | Nunga Court | | Magistrates Court | |
|---|---|---|---|---|
| **No. of offences** | No. of cases | % | No. of cases | % |
| 1 | 149 | 35.5 | 1,706 | 55.2 |
| 2 | 102 | 24.3 | 725 | 23.5 |
| 3 | 55 | 13.1 | 310 | 10.0 |
| 4 | 32 | 7.6 | 129 | 4.2 |
| 5 | 18 | 4.3 | 74 | 2.4 |
| 6 to 9 | 40 | 9.5 | 89 | 2.9 |
| 10 to 19 | 16 | 3.8 | 47 | 1.5 |
| 20 or more | 8 | 1.9 | 9 | 0.3 |
| **Total** | **420** | **100.0** | **3,089** | **100.0** |

The Justice Australian National Classification of Offences (JANCO) Classification System[21] used in SA categorises offences into nine broad groups and assigns a unique number to each offence type. Table 5f shows the distribution of offences across the nine groups, based on the major charge for each case. Where a case involves multiple defendants, more than one major charge may be listed on the case. This section describes the type of offences that defendants recorded as their major charge *found guilty* for each case. Once again, cases involving breaches only were excluded from the analysis.

For Port Adelaide and Murray Bridge Nunga Court defendants the total numbers will not change as they are required to plead guilty prior to attending the Nunga Court. For Port Adelaide and Murray Bridge Magistrates Court defendants, this section only includes those cases where the major charge involved an outcome of guilt.

For nearly one-third of Nunga Court cases (31%) their major charge with a guilty outcome was a property-related offence (mostly 'larceny not of a vehicle' and 'serious criminal trespass') and a further 27% had a major charge found guilty of an 'offence against good order'. A slightly higher proportion of

[21] The JANCO classification system was adopted throughout the Justice Information System and the Courts Administration Authority in 1992 and is managed and administered by the Office of Crime Statistics. JANCO is an adaptation of the Australian Bureau of Statistics' ANCO (Australian National Classification of Offences, 1985. Catalogue No. 1234.0) classification system. In 1997 the Australian Bureau of Statistics introduced the Australian Standard Offence Classification (ASOC) (Australian Standard Offence Classification, 1997. Catalogue No. 1234.0), to replace ANCO. The two systems are not directly comparable, with ASOC having sixteen major divisions rather than ANCO's eight major divisions. OCSAR has maintained JANCO as its primary reporting classification system to allow comparability over time.

males were found guilty of an offence against good order than females (28% compared with 23%), while females were more likely to record a major charge involving a property-related offence (36% compared with 30% for males) (figures not shown). In contrast, for over two-fifths (43%) of Port Adelaide and Murray Bridge Magistrates Court defendants their major charge with a guilty outcome was an offence against good order and a much lower proportion had a major charge found guilty of a property offence (16% compared with 31% for Nunga Court cases).

**Table 5f – Major charge found guilty per case**

| | Nunga Court | | Magistrates Court | |
|---|---|---|---|---|
| **Offence category** | No. of defendants | % | No. of defendants | % |
| 1 Offences against the person | 62 | 14.8 | 183 | 7.9 |
| 2 Robbery and extortion | 0 | 0.0 | 0.0 | 0.0 |
| 3 Serious criminal trespass (SCT), fraud, larceny etc | 132 | 31.4 | 363 | 15.6 |
| 4 Damage property and environmental offences | 16 | 3.8 | 116 | 5.0 |
| 5 Offences against good order | 113 | 26.9 | 1,005 | 43.2 |
| 6 Drug offences | 5 | 1.2 | 21 | 0.9 |
| 7 Driving, motor vehicle, traffic & related offences | 90 | 21.4 | 572 | 24.6 |
| 8 Other offences | 0 | 0.0 | 20 | 0.9 |
| 9 Non-offence matters | 2 | 0.5 | 45 | 1.9 |
| **Total** | **420** | **100.0** | **2,325** | **100.0** |

## Profile of Port Augusta Aboriginal Sentencing Court defendants

The Port Augusta Aboriginal Sentencing Court held 24 sittings between 2008 and 2011, approximately six per year. Data was available on 203 unique cases heard over the four-year period, involving 138 defendants (based on PIN). Of the 203 cases, 32 (16%) solely involved one or more breach offences. The overwhelming majority of cases involved only one defendant (98%), with three cases involving two defendants and one case involving three defendants. This finding was similar to that of Aboriginal defendants processed in the Port Augusta Magistrates Court, in which 96% of cases involved only one defendant.

### *Number of cases per year*

Table 5g outlines the number of cases heard in the Port Augusta Aboriginal Sentencing Court based on the year in which a case was finalised. Half of the cases heard over the four-year period were finalised in 2009. A total of 4,662 cases involving Aboriginal defendants were heard in the Port Augusta Magistrates Court over the same period, with a greater proportion of these cases finalised in 2010 (30%) and 2011 (29%).

**Table 5g – Year case finalised**

| | **Port Augusta Aboriginal Sentencing Court** | | **Port Augusta Magistrates Court** | |
|---|---|---|---|---|
| | Number | % | Number | % |
| 2008 | 14 | 6.9 | 991 | 21.3 |
| 2009 | 101 | 49.8 | 906 | 19.4 |
| 2010 | 47 | 23.2 | 1,401 | 30.1 |
| 2011 | 41 | 20.2 | 1,364 | 29.3 |
| **Total** | **203** | **100.0** | **4,662** | **100.0** |

Table 5h shows the number of cases for which defendants appeared in the Port Augusta Aboriginal Sentencing Court. Most individuals (70%) recorded only one case during the four-year period, while a further 20% recorded two cases. In comparison, the number of cases per defendant appears to be greater in the Magistrates Court, with around two-fifths (42%) involving only one case and 19% involving five or more cases. This difference may be partly due to the match rate achieved for the Port Augusta Aboriginal Sentencing Court cases (65% matched).

**Table 5h – Number of cases per discrete defendant**

| | **Port Augusta Aboriginal Sentencing Court** | | **Port Augusta Magistrates Court** | |
|---|---|---|---|---|
| **No. of cases** | No. of defendants | % | No. of defendants | % |
| 1 | 96 | 69.6 | 703 | 41.8 |
| 2 | 27 | 19.6 | 329 | 19.6 |
| 3 | 7 | 5.1 | 219 | 13.0 |
| 4 | 5 | 3.6 | 115 | 6.8 |
| 5 or more | 3 | 2.2 | 314 | 18.7 |
| **Total** | **138** | **100.0** | **1,680** | **100.0** |

Case finalisation dates for each defendant were used to determine the number of separate cases for which defendants appeared in the Port Augusta Aboriginal Sentencing Court over the four-year period. With regard to the Port Augusta Aboriginal Sentencing Court, 83% of defendants made only one appearance in the four years and a further 14% made two separate appearances. A greater proportion of Magistrates Court defendants had multiple involvement with the Magistrates Court, with 21% recording two separate appearances, 12% recording three appearances and a further 13% recording five or more separate appearances (see Table 5i).

**Table 5i – Number of separate appearances per discrete defendant**

| | **Port Augusta Aboriginal Sentencing Court** | | **Port Augusta Magistrates Court** | |
|---|---|---|---|---|
| **No. of appearances** | No. of defendants | % | No. of defendants | % |
| 1 | 114 | 82.6 | 777 | 46.3 |
| 2 | 19 | 13.8 | 360 | 21.4 |
| 3 | 4 | 2.9 | 208 | 12.4 |
| 4 | 1 | 0.7 | 117 | 7.0 |
| 5 or more | 0 | 0.0 | 218 | 13.0 |
| **Total** | **138** | **100.0** | **1,680** | **100.0** |

***Number of individuals and age***

Table 5j shows the age of defendants at the time of their first appearance for cases processed via the Port Augusta Aboriginal Sentencing Court. Where age was recorded, nearly one-third (29%) of defendants were under 25 years of age, while a further 16% were aged 25 to 29 years. Few defendants were in the older age ranges, with only 9% of defendants aged 45 and over at the time of their first court appearance for a matter heard in the Port Augusta Aboriginal Sentencing Court. The age distribution was similar for Magistrates Court defendants.

Just under one-third (30%) of Port Augusta Aboriginal Sentencing Court defendants were female (compared with 32% for Magistrates Court defendants) and, on average, females were slighter older than their male counterparts, with a mean age of 33 years compared with 31. The average age for males and females in the Magistrates Court was 32 years (figures not shown).

**Table 5j – Age of defendant at first appearance**

| | Port Augusta Aboriginal Sentencing Court | | Port Augusta Magistrates Court | |
|---|---|---|---|---|
| **Age range** | No. of defendants | % | No. of defendants | % |
| 18 to 24 | 40 | 29.4 | 463 | 27.6 |
| 25 to 29 | 22 | 16.2 | 334 | 19.9 |
| 30 to 34 | 21 | 15.4 | 230 | 13.7 |
| 35 to 39 | 21 | 15.4 | 243 | 14.5 |
| 40 to 44 | 20 | 14.7 | 165 | 9.9 |
| 45 to 49 | 8 | 5.9 | 121 | 7.2 |
| 50 to 59 | 3 | 2.2 | 99 | 5.9 |
| 60 or more | 1 | 0.7 | 20 | 1.2 |
| **Total*** | **136** | **100.0** | **1,675** | **100.0** |

*Total excludes 2 Port Augusta Aboriginal Sentencing Court and 5 Magistrate Court defendants with an unknown date of birth.

### *Offences recorded*

This section outlines the total number of offences recorded on each case file number, excluding those which involved breach only offences.[22] If a CFN contained more than one defendant, the total number of offences was counted separately for each defendant. There were 177 cases involving a unique defendant in the Port Augusta Aboriginal Sentencing Court and a total of 562 offences (found guilty), with an average of 3.2 offences per case. Table 5k shows the distribution of offences per case. As shown, two-fifths of cases (41%) involved only one offence and 86% involved fewer than five offences per case. Only two cases involved 20 or more offences, with 61 being the highest number of offences recorded.

Magistrate Court defendants tended to have fewer offences per case, with 57% of cases involving only one offence and a further 22% involving two offences per case. This is somewhat surprising given that the Magistrate Court cases include *all offences*, a number of which may be withdrawn or the defendant is found not guilty.

[22] As noted above, the criminal jurisdiction of the Magistrates Court in South Australia is limited to matters where the penalty can be a fine, a prison sentence of up to two years, a good behaviour bond or a community service order. Only matters in the jurisdiction of the Magistrates Court can be sentenced in the Port Augusta Aboriginal Sentencing Court.

**Table 5k – Number of offences per case**

| | Port Augusta Aboriginal Sentencing Court | | Port Augusta Magistrates Court | |
|---|---|---|---|---|
| **No. of offences** | No. of cases | % | No. of cases | % |
| 1 | 73 | 41.2 | 2,562 | 56.9 |
| 2 | 35 | 19.8 | 967 | 21.5 |
| 3 | 28 | 15.8 | 430 | 9.6 |
| 4 | 17 | 9.6 | 214 | 4.8 |
| 5 | 8 | 4.5 | 128 | 2.8 |
| 6 to 9 | 9 | 5.1 | 163 | 3.6 |
| 10 to 19 | 5 | 2.8 | 30 | 0.7 |
| 20 or more | 2 | 1.1 | 5 | 0.1 |
| **Total** | **177** | **100.0** | **4,499** | **100.0** |

Table 5l shows the distribution of offences across the nine groups, based on the major charge for each case. Where a case involves multiple defendants, more than one major charge may be listed on the case. This section describes the type of offences that defendants recorded as their major charge *found guilty* for each case. Once again, cases involving breaches only were excluded from the analysis. For Port Augusta Aboriginal Sentencing Court defendants the total numbers will not change as they are required to plead guilty prior to attending the Port Augusta Aboriginal Sentencing Court. For the Port Adelaide Magistrates Court defendants, this section only includes those cases where the major charge involved an outcome of guilt.

For around one-third of Port Augusta Aboriginal Sentencing Court cases (35%), the major charge with a guilty outcome was an offence against the person (mostly assaults) and a further 21% had a major charge found guilty of an 'offence against good order'. A higher proportion of males were found guilty of an 'offence against the person' than females (40% compared with 25%). Females were more likely to record a major charge involving an 'offence against good order' (30% compared with 17% for males) and property offences such as serious criminal trespass and larceny (21% compared with 10%) (figures not shown).

In contrast, for over two-fifths (44%) of Magistrates Court defendants the major charge with a guilty outcome was an offence against good order and a much lower proportion of Magistrates Court defendants had a major charge found guilty of an offence against the person (15% compared with 35% for Port Augusta Aboriginal Sentencing Court cases).

**Table 5l – Major charge found guilty per case**

| | Port Augusta Aboriginal Sentencing Court | | Port Augusta Magistrates Court | |
|---|---|---|---|---|
| **Offence category** | No. of defendants | % | No. of defendants | % |
| 1 Offences against the person | 62 | 35.0 | 540 | 15.1 |
| 2 Robbery and extortion | 0 | 0.0 | 0 | 0.0 |
| 3 Serious criminal trespass (SCT), fraud, larceny etc | 23 | 13.0 | 245 | 6.8 |
| 4 Damage property and environmental offences | 18 | 10.2 | 260 | 7.3 |
| 5 Offences against good order | 37 | 20.9 | 1,584 | 44.2 |
| 6 Drug offences | 1 | 0.6 | 13 | 0.4 |
| 7 Driving, motor vehicle, traffic & related offences | 28 | 15.8 | 768 | 21.4 |
| 8 Other offences | 1 | 0.6 | 110 | 3.1 |
| 9 Non-offence matters | 7 | 4.0 | 61 | 1.7 |
| **Total** | **177** | **100.0** | **3,581** | **100.0** |

## Profile of Port Lincoln Aboriginal Conference defendants

### *Number of conferences per year*

There were 43 matters referred to a conference between September 2007 and December 2011 at the Port Lincoln Magistrates Court. Of these, 34 were held. The majority of the conferences (32, or 94%) involved only one defendant, with the remaining two involving two defendants each.

As shown in Table 5m, since 2008 between six and 10 Aboriginal conferences have been held in Port Lincoln each year. These represented a small proportion of Port Lincoln Magistrates Court matters (between 2% and 4% per year).

**Table 5m – Year of conference (or year case finalised for Magistrates Court matters)**

| | Port Lincoln Aboriginal Conference | Port Lincoln Magistrates Court |
|---|---|---|
| 2007 (from September only) | 3 | – |
| 2008 | 8 | 274 |
| 2009 | 10 | 242 |
| 2010 | 6 | 269 |
| 2011 | 7 | 250 |
| **Total** | **34** | **1,035** |

### *Number of individuals and age*

As indicated, there were 34 conferences involving 36 defendants. However, two of these defendants each attended two conferences for different matters. A total of 34 unique defendants therefore attended at least one Aboriginal conference, of which data are available for 33 defendants. The results are discussed below.

As shown in Table 5n, the 33 known defendants included 19 males (58%) and 14 females. At the time of the meeting date, the ages of the defendants ranged from 19 to 54. Of the defendants, the majority were between the ages of 19 and 24 (15, or 46%). A further 10 defendants were between 25 and 29 years, six were between 30 and 34 years, and two were 40 years or older. In general, Aboriginal conference defendants were younger than Magistrates Court defendants, with nearly half aged under 25 years (compared with one-third for Magistrates Court defendants) and only 6% aged over 40 years (compared with 26% of Magistrates Court defendants).

**Table 5n – Age of defendant at first appearance**

| | Port Lincoln Aboriginal Conference | | Port Lincoln Magistrates Court | |
|---|---|---|---|---|
| **Age range** | No. of defendants | % | No. of defendants | % |
| 18 to 24 | 15 | 45.5 | 126 | 31.4 |
| 25 to 29 | 10 | 30.3 | 63 | 15.7 |
| 30 to 39 | 6 | 18.2 | 106 | 26.4 |
| 40 to 49 | 0 | 0.0 | 89 | 22.2 |
| 50 to 59 | 2 | 6.1 | 15 | 3.7 |
| 60 or more | 0 | 0.0 | 2 | 0.5 |
| **Total*** | **33*** | **100.0** | **401** | **100.0** |

*Data not available for one defendant.

### *Offences recorded*

This section outlines the total number of offences recorded on each CFN, excluding those which involved breach only offences. If a CFN contained more than one defendant, the total number of offences was counted separately for each defendant. Table 5o shows the number of offences considered per case. There were 37 cases involving a unique defendant and a total of 85 offences (found guilty). In the majority of Aboriginal conference cases (86%), there were three or fewer offences per case, with 38% of cases involving only one offence. In contrast, a greater proportion of cases processed in the Port Lincoln Magistrates Court involved only one offence (66%), with a further 19% involving two offences.

**Table 5o – Number of offences per case**

| | **Port Lincoln Aboriginal Conference** | | **Port Lincoln Magistrates Court** | |
|---|---|---|---|---|
| **No. of offences** | No. of cases | % | No. of cases | % |
| 1 | 14 | 37.8 | 636 | 65.7 |
| 2 | 13 | 35.1 | 181 | 18.7 |
| 3 | 5 | 13.5 | 77 | 8.0 |
| 4 | 2 | 5.4 | 34 | 3.5 |
| 5 | 0 | 0.0 | 12 | 1.2 |
| 6 | 0 | 0.0 | 11 | 1.1 |
| 7 | 2 | 5.4 | 10 | 1.0 |
| 8 | 1 | 2.7 | 2 | 0.2 |
| 9 | 0 | 0.0 | 2 | 0.2 |
| 10 or more | 0 | 0.0 | 3 | 0.3 |
| **Total** | **37** | **100.0** | **968** | **100.0** |

Table 5p groups the offences discussed in the previous table into broad offence categories (based on the South Australian JANCO classification). Of the 85 offences in total in the Port Lincoln Aboriginal Conference group, 30 (or 35%) involved 'offences against good order' and 29 (or 34%) involved 'offences against the person including acts of endangering life'. The offences which occurred least often were serious criminal trespass, fraud, forgery, false pretences and larceny offences (11 or 13%), driving, motor vehicle, traffic and related offences (9, or 11%) and damage property and environmental offences (6, or 7%).

**Table 5p – Offence types**

| JANCO group and description | Number | % |
|---|---|---|
| 1 Offences against the person | 29 | 34.1 |
| 3 Serious criminal trespass (SCT), fraud, larceny etc | 11 | 12.9 |
| 4 Damage property and environmental offences | 6 | 7.1 |
| 5 Offences against good order | 30 | 35.3 |
| 7 Driving, motor vehicle, traffic & related offences | 9 | 10.6 |
| **Total** | **85** | **100.0** |

Following on from the previous table, table 5q provides a further breakdown of the types of offences considered at Port Lincoln Aboriginal Conferences.[23] The majority of offences were for assault (29 or 34%), other offences against good order (12 or 14%) and offences against police, conspiracy (11 or 13%).

**Table 5q – Specific offence types**

| JANCO group and description | Number | % |
|---|---|---|
| 12 Assault | 29 | 34.1 |
| 31 Burglary and break and enter | 1 | 1.2 |
| 32 Fraud and misappropriation | 2 | 2.4 |
| 39 Larceny not of vehicle | 8 | 9.4 |
| 41 Damage property | 6 | 7.1 |
| 52 Offence against a Court or Court order | 5 | 5.9 |
| 53 Offences against Police, Conspiracy | 11 | 12.9 |
| 55 Unlawful possession, use and/or handling of weapons | 2 | 2.4 |
| 59 Other offences against good order | 12 | 14.1 |
| 71 Driving under the influence of alcohol or drugs | 4 | 4.7 |
| 73 Driving license offences | 3 | 3.5 |
| 75 Motor vehicle registration offences | 2 | 2.4 |
| **Total** | **85** | **100.0** |

[23] This further breakdown of the data into specific offence type was conducted in relation to the Port Lincoln Aboriginal Conference defendants to provide further context to the small number of defendants.

### *Major charge per case*

Table 5r provides details of the type of major charge found guilty for each CFN processed by way of an Aboriginal conference. The major charge is the most serious charge within a set of charges and is determined by the maximum statutory penalty. As shown, over half of the major charges were for offences against the person (19, or 51%). JANCO offence categories three (serious criminal trespass, fraud, larceny, etc) and five (offences against good order) were the second most common major charge categories, with each representing the major charge in six cases (16%).

**Table 5r – Major charge found guilty per case**

| | **Port Lincoln Aboriginal Conference** | | **Port Lincoln Magistrates Court** | |
|---|---|---|---|---|
| **Offence category (JANCO Classification)** | No. of defendants | % | No. of defendants | % |
| 1 Offences against the person | 19 | 51.4 | 148 | 15.3 |
| 2 Robbery and extortion | 0 | 0.0 | 5 | 0.5 |
| 3 Serious criminal trespass (SCT), fraud, larceny etc | 6 | 16.2 | 125 | 12.9 |
| 4 Damage property and environmental offences | 3 | 8.1 | 56 | 5.8 |
| 5 Offences against good order | 6 | 16.2 | 357 | 36.9 |
| 6 Drug offences | 0 | 0.0 | 18 | 1.9 |
| 7 Driving, motor vehicle, traffic & related offences | 3 | 8.1 | 228 | 23.6 |
| 8 Other offences | 0 | 0.0 | 8 | 0.8 |
| 9 Non-offence matters | 0 | 0.0 | 23 | 2.4 |
| **Total** | **37** | **100.0** | **968** | **100.0** |

There was a substantial difference in the major charge profile between the Port Lincoln Magistrates Court defendants and Aboriginal conferencing defendants. Conferencing defendants were more likely to have a major charge involving an offence against the person (51% compared to 15%). Conversely, conferencing defendants were less likely to have a major charge involving an offence against good order (16% compared to 37%), or a driving, traffic and related offence (8% compared to 24%). This is consistent with Port Lincoln conferences dealing with offences involving a victim.

## Profile of Section 9C Conference defendants

### *Referrals*

A total of 42 referrals were made to a Section 9C Conference between 2006 and 2011, and of these 40 (95%) were proceeded with. These 40 cases involved 39 unique individuals, with one person attending a conference twice over the six-year period. Overwhelmingly, more males attended a Section 9C Conference than females, with 34 males (87%) and five females (13%) processed during this time. Table 5s outlines the year of referral to a Section 9C Conference for the 40 cases that were proceeded with since its inception. It shows that for the first two years there were few referrals, with an increase in 2008 to six referrals. Referrals reached their highest in 2009 with 13 but remained quite high in 2010 and 2011 with six and 11 referrals respectively. Three-quarters of the referrals occurred from 2009 onwards.

**Table 5s – Year of referral to a Section 9C Conference**

| | Number | % |
|---|---|---|
| 2006 | 2 | 5.0 |
| 2007 | 2 | 5.0 |
| 2008 | 6 | 15.0 |
| 2009 | 13 | 32.5 |
| 2010 | 6 | 15.0 |
| 2011 | 11 | 27.5 |
| **Total** | **40** | **100.0** |

Table 5t shows the age of Aboriginal defendants at the time of referral to a Section 9C Conference. The age of defendants ranged from 19 to 44 years, with the highest proportion aged 25 to 29 years and 30 to 34 years (11 cases each). Together those aged 25 to 34 years accounted for 55% of cases processed via a Section 9C Conference. The average age of male defendants (29 years) was slightly lower than for females (32 years).

**Table 5t – Age of defendant at time of referral to a Section 9C Conference**

| Age range | Number | % |
|---|---|---|
| 15 to 19 | 2 | 5.0 |
| 20 to 24 | 7 | 17.5 |
| 25 to 29 | 11 | 27.5 |
| 30 to 34 | 11 | 27.5 |
| 35 to 39 | 5 | 12.5 |
| 40 or more | 2 | 5.0 |
| Unknown | 2 | 5.0 |
| **Total*** | **40** | **100.0** |

### *Location of Section 9C Conferences*

Table 5u indicates the court location of the Section 9C Conferences. From this data it can be seen that the vast majority of conferences were held in the metropolitan area (37, 93%), with only three held in regional registries.

**Table 5u – Location of Section 9C Conferences**

| Court location | Number | % |
|---|---|---|
| Adelaide Magistrates Court | 4 | 10.0 |
| Elizabeth Magistrates Court | 3 | 7.5 |
| Holden Hill Magistrates Court | 2 | 5.0 |
| District Court of SA | 26 | 65.0 |
| Supreme Court of SA | 2 | 5.0 |
| ***Total metropolitan courts*** | ***37*** | ***92.5*** |
| | | |
| Ceduna Magistrates Court | 2 | 5.0 |
| Supreme Court of Port Augusta | 1 | 2.5 |
| ***Total regional courts*** | ***3*** | ***7.5*** |
| **Total*** | **40** | **100.0** |

Table 5v shows the court jurisdiction in which Section 9C cases were finalised over the six-year period. The data indicates that the majority of cases (29 out of 40) were finalised in a higher court, with 65% (26) of these heard in the District Court and three heard in the Supreme Court. Just over one-quarter (11) of Section 9C Conferences were heard in the Magistrates Court.

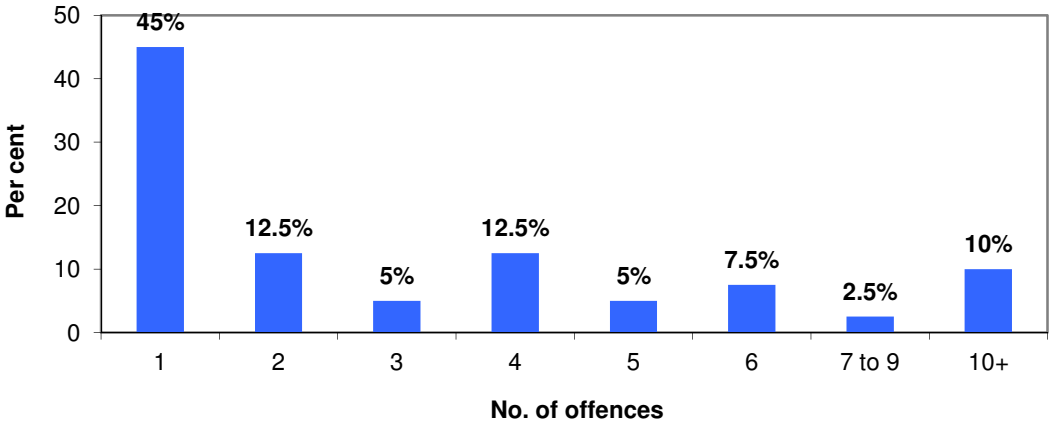
**Table 5v – Court jurisdiction of Section 9C Conferences**

| | Number | % |
|---|---|---|
| Magistrates Court | 11 | 27.5 |
| District Court | 26 | 65.0 |
| Supreme Court | 3 | 7.5 |
| **Total*** | **40** | **100.0** |

***Offences recorded***

Figure 5a displays the number of offences that defendants who attended a Section 9C Conference were charged with. The largest proportion of cases (18 or 45%) involved only one offence and a further 12 (30%) involved between two and four offences. Conversely, 10% of cases (4) involved 10 or more offences per case.

**Figure 5a – Total number of offences per case**




The JANCO classification system categorises offences into eight broad groups, and assigns a unique number to each offence type. Table 5w shows the distribution of offences across the eight groups, based on the major charge recorded for each case. Five cases are excluded from the table as their offence details could not be matched with the CAA database, or their cases were finalised in 2012.

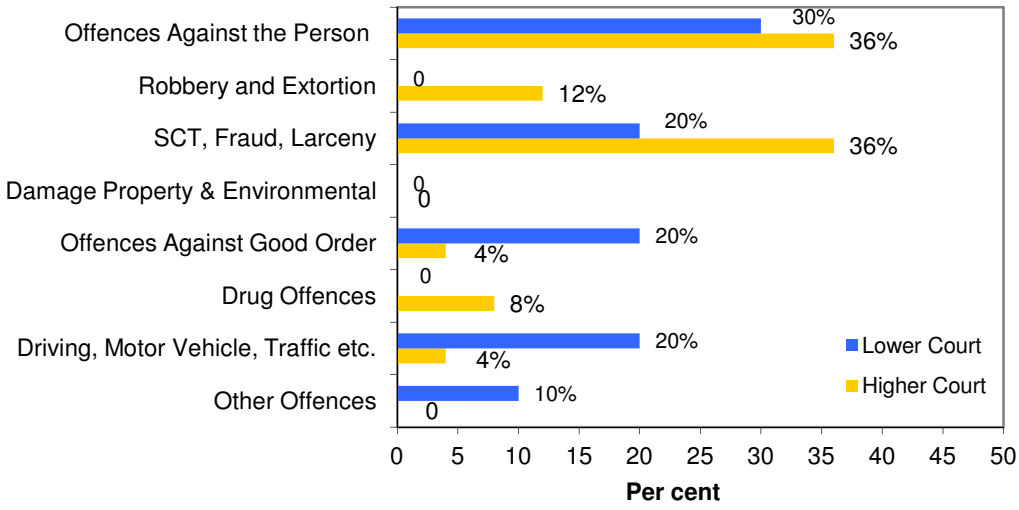
Around one-third of cases (12, or 34%) recorded a major charge involving a property offence (Category 3) and a further 31% (11) recorded an offence against the person.

**Table 5w – Major charge for offences processed by way of a Section 9C Conference**

| Offence category | Number | % |
|---|---|---|
| 1 Offences against the person | 12 | 34.3 |
| 2 Robbery and extortion | 3 | 8.6 |
| 3 Serious criminal trespass (SCT), fraud, larceny etc | 11 | 31.4 |
| 4 Damage property and environmental offences | 0 | 0.0 |
| 5 Offences against good order | 3 | 8.6 |
| 6 Drug offences | 2 | 5.7 |
| 7 Driving, motor vehicle, traffic & related offences | 3 | 8.6 |
| 8 Other offences | 1 | 2.9 |
| **Total** | **35**[24] | **100.0** |

Figure 5b separates this information out by whether the Section 9C Conferences were held in a higher or lower court. The majority of cases involving a Section 9C Conference were held in a District Court or Supreme Court. The most common offences heard in the higher courts involved property offences and offences against the person (9 each, 36% each). Conferences held in the lower courts involved a broad range of offence types, including offences against the person (3), property offences (2), driving offences (2) and offences against good order (2).

**Figure 5b – Major charge of offences by court jurisdiction**




[24] The total is 35 rather than 40 because five cases are excluded from this table as their offence details could not be matched with the CAA database, or their cases were finalised in 2012.

## 5.3 Program logic

The following table shows the program logic that was developed for the Port Adelaide and Murray Bridge Nunga Courts, Port Augusta Aboriginal Sentencing Court, Port Lincoln Aboriginal Conferencing and Section 9C Conferences. This program logic was developed with Courts Administration Authority of South Australia (CAA) representatives, Judicial Officers and OCSAR representatives, and shows the connection between the inputs and outputs of the SA courts and conferences, and expected results in the medium term (outcomes) and longer term (impacts).

| Inputs | Outputs | Outcomes | Impacts |
|---|---|---|---|
| **Port Adelaide and Murray Bridge Nunga Courts** | | | |
| Personnel:<br>Magistrate<br>Clerk<br>AJO<br>Sherriff's Office<br>Assessor & case manager<br>Elders<br>Court time/listing<br>Budget (currently no dedicated budget) | Cases heard for guilty plea sentencing and finalised<br>Aboriginal Elders identified and trained<br>Family members and support persons involved and providing information<br>Court processes established and operating involving interaction with defendant and family which provides two way information flow<br>Court processes established and operating involving Elders providing cultural and contextual information to the court<br>Referrals and connections made to community support services | *Pre 2010:*<br>Aboriginal community participation in court process<br>Increased confidence of the Aboriginal community in the court process<br>Increased attendance at court and decrease in warrants issued<br>Increased use of appropriate and constructive sentencing options<br>Direct communication between Elders, Judicial Officer, defendant and all participants in the court process<br>Increased attendance at court of Aboriginal defendants and decrease in warrants<br>Improved understanding of court processes and outcomes by defendants, families and communities<br>Effective cross-agency engagement with the court<br>Improved cultural knowledge and understanding by Judicial Officers | Increased sensitivity and appropriateness of legal system to Aboriginal needs<br>Increased community trust in legal system<br>Reduction in frequency and seriousness of offending and recidivism |

| Inputs | Outputs | Outcomes | Impacts |
|---|---|---|---|
| | | *Port Adelaide post 2010:*<br>Sentencing incorporates opportunities for restorative justice processes<br>Increased offender recognition and responsibility for harm done<br>Defendants referred to relevant service interventions (e.g. drug and alcohol services)<br>Defendants participate in intervention programs monitored by court and Elders<br>Reduction in rate of imprisonment as a result of compliance with intervention programs and restorative justice processes<br>Reduction in backlog/delays in court | |

| Inputs | Outputs | Outcomes | Impacts |
|---|---|---|---|
| **Port Augusta Aboriginal Sentencing Courts** | | | |
| Personnel:<br>Magistrate<br>Clerk<br>AJO<br>Sherriff's Office<br>Elders<br>Interpreters<br>Court time/listing<br>Budget (currently no dedicated budget) | Culturally appropriate court established<br>Cases heard and resolved at Port Augusta Aboriginal Sentencing Courts<br>Appropriate Aboriginal Elders identified and involved in Port Augusta Aboriginal Sentencing Courts<br>Training delivered for Aboriginal Elders<br>Information in relation to the operation of the Port Augusta Aboriginal Sentencing Court process provided to Port Augusta Aboriginal Sentencing Court members, legal practitioners, support services and families<br>Family members, support persons, Port Augusta Aboriginal Sentencing Court members, and support services, victims and victim representatives participate in Port Augusta Aboriginal Sentencing Court<br>Encouragement to victims to attend Port Augusta Aboriginal Sentencing Courts assessments undertaken by Aboriginal justice officers (AJOs) of defendant prior to hearing<br>Relevant interpreter services available and operating<br>Referrals and connections made to community and government support services | Increased attendance by Aboriginal defendants<br>Increase in sentencing which is culturally appropriate for offenders<br>Increase in understanding and acceptance of process and outcomes of court by offenders, families and communities<br>Community participation in court and court processes<br>Empowerment of Elders through court roles and community recognition<br>Increased community knowledge of justice system<br>Improved family relationships<br>Increase in linkages and engagement between court, justice system, other service providers and communities<br>Reduction in backlog/delays in court<br>Increased expertise amongst Magistrates in dealing with Aboriginal offenders<br>Restoration of Elders' authority and respect in community | Increased sensitivity and appropriateness of legal system to Aboriginal needs<br>Increased community trust in legal system<br>Wider community acceptance of restorative justice<br>Reduction in frequency and seriousness of offending and recidivism |

| Inputs | Outputs | Outcomes | Impacts |
|---|---|---|---|
| **Port Lincoln Aboriginal Conferencing** | | | |
| Personnel:<br>Magistrate<br>Clerk<br>AJO<br>Conference Convenor<br>Sherriff's Office<br>Elders<br>Court time/listing<br>Budget (currently no dedicated budget) | Use of non-adversarial, post-plea, pre-sentence conference process including a focus on remedying harm<br>Expressions of contrition encouraged<br>Induction and involvement of Elders in court process<br>Reports of conferences completed and considered by Magistrates in sentencing<br>Culturally appropriate court facilities and processes utilised | Increased capacity of court to respond in a culturally appropriate manner and to the personal and family related aspects of crime and offending<br>Increased use of appropriate and constructive sentencing options<br>Increase in offenders recognising and responding to harm done<br>Improvements in resolutions of cases for offenders and victims through use of expressions of contrition and reparations<br>Increased community awareness and acceptance of court process and outcomes<br>Increased connections and dialogue between court and Aboriginal community and services<br>Enhanced status of Elders and strengthened relationship between Elders and community members<br>Increased connections between service providers in community<br>Increased use of appropriate and constructive sentencing options<br>Increased compliance with court orders | Increased sensitivity and appropriateness of legal system to Aboriginal needs<br>Increased community trust in legal system<br>Reduction in frequency and seriousness of offending and recidivism |

| Inputs | Outputs | Outcomes | Impacts |
|---|---|---|---|
| **Section 9C (*Criminal Law Sentencing Act 1988*) Aboriginal Sentencing Conferences** | | | |
| Personnel:<br>Magistrate<br>AJO<br>Staff<br>Elders<br>Interpreters<br>Facility<br>Training & development<br>Budget<br>Court time/listing | Use of sentencing conference for Aboriginal offenders in a range of courts (District, Supreme, Magistrates)<br>Aboriginal Elders identified and involved using roster system<br>Training provided for Elders<br>Magistrates inducted and provided with specialist training<br>Family members and support persons involved in Aboriginal Courts<br>Referrals and connections made to community support services<br>Appropriate court and detention facilities established | Increase in offenders recognising and responding to harm done<br>Increase in awareness of Judicial Officer of offender background, contributing factors and context<br>Improvements in resolutions of cases for offenders and victims through use of expressions of contrition and reparations<br>Increase in acceptance of outcomes of court by offenders, victims, families and communities<br>Improvements in ability of court to respond to personal and cultural aspects of crime and offending<br>Increase in referral to appropriate service providers<br>Gaps in rehabilitation services and associated lack of resources identified<br>Reduction in imprisonment rates<br>Improved knowledge of Judicial Officers of sentencing outcomes<br>Increased community respect for Elders<br>Coordinated services<br>Increase in awareness of educational opportunities where relevant | Increased sensitivity and appropriateness of legal system to Aboriginal needs<br>Increased community trust in legal system<br>Wider community acceptance of restorative justice<br>Reduction in frequency and seriousness of offending and recidivism |

## 5.4 Methodology

The evaluation framework and methodology are outlined in Chapter 3.[25] Evidence for the evaluation of the Nunga Court, Port Augusta Aboriginal Sentencing Court, Port Lincoln Aboriginal Conferencing and Section 9C Conferences was gathered through analysis of documentation and data, and through interviews and consultation, as shown in the following table. Finally, based on the evidence gained, key lessons were identified.

| | |
|---|---|
| **Documentation and data analysed** | The literature on Aboriginal and Torres Strait Islander sentencing courts and conferences<br><br>CAA policy and program documentation, including practice guidelines, background papers, relevant legislation, parliamentary debates and program brochures<br><br>Court data in relation to referrals, attendance and outcomes and police apprehension data (data collected and analysed by OCSAR as outlined above). |
| **Interviews and consultations conducted** | Consultations conducted during site visit to Adelaide and Port Adelaide 14–18 November 2011 with: 4 AJOs; 4 Judicial Officers; 1 registrar; 2 interventions programs officers; 7 community Elders; 6 community service providers; 3 Department of Correctional Services Officers (Community Corrections); 4 lawyers, Aboriginal Legal Rights Movement and private (1 by phone 28 Nov).<br><br>Observation of the following courts and conferences during site visit to Adelaide and Port Adelaide 14–18 November 2011: 1 Section 9C Conference (Adelaide); full day of Nunga Court, Port Adelaide (approx 15 matters).<br><br>Consultations during site visit to Adelaide and Port Lincoln 21–24 November 2011 with: 2 AJOs, 1 Conference Coordinator; 1 Manager Conferencing Team; 2 Judicial Officers; 1 Police Prosecutor; 2 programs staff (manager and director); 7 community Elders; 2 community service providers (Victims Support Service and Port Lincoln Aboriginal Health Service); 3 lawyers; 1 Department of Correctional Services officer. |

[25] The evaluation of the South Australian models required ethics approval from the Aboriginal Health Research Ethics Committee (AHREC). The AHREC granted approval on 6 December 2011 (Ref: 04-11-422).

| | |
|---|---|
| | Observations during site visit to Port Lincoln 21–24 November 2011 of: 2 Port Lincoln Aboriginal Conferences; 2 matters in the Port Lincoln Magistrates Court (delivery of sentence).<br><br>Consultations during site visit to Port Augusta 11–12 April 2012 with: 4 AJOs; 1 Magistrate; 5 community Elders; 6 community service providers; 2 Department of Correctional Services officers; 1 Police Prosecutor; 3 lawyers.<br><br>Observation of half-day sitting of Port Augusta Aboriginal Sentencing Court during site visit to Port Augusta 11–12 April 2012.<br><br>Consultation with Chief Magistrate Elizabeth Bolton during site visit to Adelaide 29 May 2012.<br><br>Consultations during site visit to Adelaide and Port Adelaide 2–3 October 2012 with: 1 Manager Police Prosecution; 2 Nunga Court defendants; 4 Section 9C Conference defendants (some had also attended Nunga Court); 1 Interventions Programs Officer.<br><br>Consultations during site visit to Port Lincoln and Port Augusta 3–4 October 2012 with: 6 Port Lincoln Aboriginal Conferencing defendants; 4 Port Augusta Aboriginal Sentencing Court defendants (1 via phone as defendant was in custody); 1 Section 9C defendant (via phone as defendant was in custody).<br><br>Telephone interviews with: 1 Supreme Court Judge; CAA programs staff. |

## 5.5 Findings against the good practice themes

This section presents an assessment of the SA Aboriginal courts and conferences against the key attributes of good practice as identified in the Monitoring and Evaluation Framework. The evaluation focused on the Nunga Court in Port Adelaide and Murray Bridge, the Port Augusta Aboriginal Sentencing Court, Section 9C Conferences and Port Lincoln Conferencing. In this section, all of these courts and conferences are referred to broadly as the 'SA Aboriginal courts and conferences' or 'SA models'. Where differences have been identified for the different models, these are noted with reference to the specific model.

### Program design

#### *Theme 1: Focusing on crime prevention and aiming to reduce the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system*

Many of the recommendations from the Royal Commission into Aboriginal Deaths in Custody centre on increasing Indigenous participation in the criminal justice system by incorporating culturally

sensitive practices in the dominant criminal and legal justice systems (Marchetti, 2009). The SA models are focused on providing a more culturally appropriate environment in comparison to mainstream courts and recognising the integral role of the family and community in the lives of Aboriginal people. The models also aim to enable Judicial Officers to make more informed decisions when imposing criminal sentences on Aboriginal people.

The findings of this evaluation indicate that the SA models are effectively increasing the level of community input and participation in the sentencing process, and several positive outcomes have been identified as a result of this (see Theme 4 below). While the models do not directly aim to reduce reoffending, there has been much discussion in the literature (as outlined in Chapter 4) and from the evaluation feedback about the potential impact of Aboriginal sentencing courts and conferences on reducing recidivism rates. The assumption has been that community input and participation is likely to make a court or conference process more meaningful and relevant for the defendant, which may in turn ultimately assist in changing offending behaviour.

As part of this evaluation, recidivism analysis was conducted by the South Australian Office of Crime Statistics and Research (OCSAR) for the Port Adelaide and Murray Bridge Nunga Courts, the Port Augusta Aboriginal Sentencing Court and Port Lincoln Aboriginal Conferencing. Reoffending analysis was not conducted for Section 9C Conference participants due to the high proportion of cases that resulted in a sentence of imprisonment (63%). While this section provides a summary of these results, it is important that these are interpreted in light of the following challenges. These issues are discussed further in Theme 8 below.

There are many challenges to assessing whether Aboriginal sentencing courts and conferences have an impact on reducing recidivism, and there is considerable literature that emphasises the need for caution when drawing conclusions on the impact on reoffending (Daly & Proietti-Scifoni, 2009; Fitzgerald, 2008; CIRCA, 2008; Harris, 2006; Payne, 2005a; Potas et al., 2003; Tomaino, 2004). In particular, it is important to consider the many and complex reasons why Indigenous people are more likely than non-Indigenous people to come into contact with the criminal justice system, including, but not limited to, disadvantage in the areas of health, education, employment, housing, as well as substance abuse, limited access to services, and the effects of intergenerational trauma. Given these complex factors impacting offending rates, Aboriginal sentencing courts and conference models need to be considered within a suite of interventions and programs that together aim to address these underlying factors. In isolation, Aboriginal sentencing court and conference models are unlikely to sufficiently address these complex factors or have a measurable impact on reoffending.

The literature notes that without incorporating treatment as part of sentencing via a structured, court-supervised intervention program, particularly for those offenders found to be at high risk of reoffending and with high criminogenic needs, the opportunity to have an impact on recidivism is limited (Hora, 2010). Another key challenge identified in the research is that Aboriginal sentencing court and

conference models are not resourced to target behaviour that contributes to reoffending, such as "association with criminal peers, poor impulse control, alcohol and drug abuse [and] unemployment" (Fitzgerald, 2008:7). The introduction of the Nunga Court Treatment Program in Port Adelaide may go some way towards addressing the underlying issues associated with offending where drug and alcohol use is a factor. This approach of targeting behaviours that contribute to the risk of reoffending may be more effective in reducing reoffending.[26]

The challenges identified above demonstrate the difficulties of attributing changes in offending behaviour to participation in an Aboriginal sentencing court or conference. It is also important to consider the methodological challenges in conducting a recidivism analysis. The literature review notes that reoffending analyses have been criticised for using inappropriate comparison groups, for using inadequate follow-up periods (too short), and for reaching conclusions based on insufficient reoffending data or without a comparative control. Limitations of conducting quantitative studies also exist as a result of a lack of reliable and complete court data, which should routinely be collected (Payne, 2005a).

It is also important to acknowledge that the SA Aboriginal sentencing courts and conferences were not specifically established to address reoffending, so evaluating their impact on reoffending rates is going beyond the scope of their intended aims.

The recidivism analysis used police apprehension data, comparing those who had attended the Nunga Court in Port Adelaide and Murray Bridge, the Port Augusta Aboriginal Sentencing Court or Port Lincoln Aboriginal Conferencing from 2008 to 2011 with a sample of Aboriginal defendants who were processed entirely through the relevant Magistrates Court. The use of police apprehension data as a measure of recontact with the justice system may have slightly overestimated offending, as some charges may be withdrawn or dismissed or may lead to a finding of not guilty.[27] Nevertheless, the main advantage of using this measure is that it is a more immediate measure of offending and useful when measuring offending over a short follow-up period. Analysis looked at incidence of reoffending and time taken to reoffend. Only defendants with a minimum of six months free time (i.e. non-custody time available to offend) post court or conference were included in the reoffending analysis.[28] This was done to allow for adequate time to capture reoffending behaviour. A control group for each court or conference was used for comparison. In each case the control group was matched on Aboriginal

[26] Evidence drawn largely from meta-analyses which summarise the findings of international studies indicates that combining supervision with treatment or providing treatment typically reduces reoffending. Intensive treatment orientated probation/parole reduces adult reoffending by 17–18% (Aos et al., 2006; Drake et al., 2009). Cognitive behavioural therapy reduces reoffending by 2–3% for youths and 6–8% for adults (Aos et al., 2001, 2006; Drake et al., 2009).

[27] For consistency the data was grouped into criminal events. A criminal event includes all offences charged against an individual that occurred on the same day and involved an apprehension report.

[28] Defendants who had recorded periods of custody post finalisation had this amount of time deducted from the total number of days in each observation period.

status, sex, age at first court appearance during the study period,[29] number of prior offences,[30] and total number of other offences.[31] Due to the low number of defendants in the Port Lincoln Conferencing group (30), two control group defendants were matched to each conferencing defendant.

For the Nunga Court in Port Adelaide and Murray Bridge, nearly two-thirds of Nunga Court defendants (64% of 254 defendants) were reapprehended in the year following their case finalisation, which was equivalent to the reoffending rate for a matched sample of Aboriginal defendants processed entirely through the Port Adelaide and Murray Bridge Magistrates Courts (65%). By offence type, the only offence category in which Nunga Court defendants recorded a significantly greater proportion of reoffending in the follow-up period was for robbery and extortion, although the overall proportion of these offences was low in both groups (8% compared with 3%). With regard to the time taken to reoffend, there was no significant difference between the groups in the time to first apprehension event post Nunga Court (or case finalisation). The median time to first offence for Nunga defendants was 229 days, with a median time of 168 days for the control group, although, despite this variation, the difference was not statistically significant.[32]

For the Port Augusta Aboriginal Sentencing Court, just over half (53%) of defendants were reapprehended in the year following their case finalisation, which was slightly below but comparable with the reoffending rate recorded for a matched sample of Aboriginal defendants processed in the

[29] For Nunga Court, age at first court appearance during the study period was plus or minus 6 years for 97% of cases, and plus or minus 7–11 years for the remaining matched participants. For Port Augusta the age at first court appearance was plus or minus 6 years for 90% of cases, and plus or minus 7–10 years for the remaining matched participants, and for Port Lincoln it was plus or minus 6 years for 93.3% and plus or minus 9 years for the remaining control group participants.

[30] When matching the number of prior offences against the person, for Nunga Court, defendants with no priors were matched with others with no priors, otherwise plus or minus five offences for 96%, and plus or minus six to 30 for the remaining matched participants (only one match had a difference of 30 with both defendants having over 16 offences against the person respectively). For Port Augusta, defendants with no priors were matched with others with no priors, otherwise plus or minus five offences for 89%, and plus or minus five to 25 for the remaining matched participants (only one match had a difference of 25 offences with both defendants having over 15 offences against the person respectively). For Port Lincoln, plus or minus four offences for 93.3%, and plus or minus 8 for the remaining control group participants.

[31] For Nunga Court, other offences included property-related offences, property damage and environmental offences, good order offences and driving offences, and defendants were grouped into one of five categories: 0 to 4 offences; 5 to 10 offences; 11 to 20; 21 to 40; and 41 plus offences. For Port Augusta, other offences included property-related offences, good order offences and driving offences, and defendants were grouped into one of five categories: 0 to 4 offences; 5 to 10 offences; 11 to 20; 21 to 40; and 41 plus offences. For Port Lincoln, other offences included property-related offences, damage property and environmental offences, and good order offences.

[32] Two tests of significance were used in the survival analysis procedure: the Log-rank test of equality and the Wilcoxin statistic. In essence, the former test weights the survival data to the end of the survival curve while the Wilcoxin statistic weights the data closer to the beginning. Therefore a Log-rank test, with a probability of <0.05 will indicate that the differences in the end survival rate between two groups are significant. On the other hand, the Wilcoxin statistic will indicate whether the initial survival experience between groups is significant even if the final survival rate may not be (Payne 2005b). Log-rank test of equality: Total $X^2$=.876, df=1, p=0.349 Wilcoxin statistic: Total $X^2$=.1.621, df=1, p=0.203.

Port Augusta Magistrates Court (57%). When looking at offence type, there were no significant differences between the Port Augusta Aboriginal Sentencing Court defendants and the control group on the type of offences recorded post intervention. With regard to the time taken to reoffend, there was no significant difference between the groups in the time to first apprehension event post Port Augusta Aboriginal Sentencing Court (or case finalisation). The median time to first offence for Port Augusta Aboriginal Sentencing Court defendants was 300 days, with a median time of 268 days for the control group, although, despite this variation, the difference was not statistically significant.[33]

For Port Lincoln, just over half (57%) of conference defendants were reapprehended in the year following their conference, which was comparable with the reoffending rate recorded for a matched sample of Aboriginal defendants processed entirely through the Port Lincoln Magistrates Court (53.3%). When looking at offence type, the only offence category where conference defendants recorded a significantly greater proportion of reoffending in the follow-up period was for 'offences against the person'. The analysis found that 12 individuals, or 40% of conference participants, were apprehended for an offence against the person. Of the 60 participants in the Port Lincoln control group, a larger percentage (83%) did not record an offence against the person in comparison to the conference participants (60%). A chi-square analysis showed this difference to be significant ($X^2$=5.896, df=1, p=.015). With regard to the time taken to reoffend, there was no significant difference between the groups in the time to first apprehension event post conference (or case finalisation). The median time to first offence for conference defendants was 212 days, with a median time of 321 days for the control group, although despite this variation the difference was not statistically significant.[34]

These findings reflect the findings of previous evaluations of Indigenous sentencing courts, where several studies found that Indigenous sentencing courts have not had a significant impact on recidivism (Borowski, 2010; Fitzgerald, 2008; Morgan & Louis, 2010). Several studies have also concluded that a sole focus on the reduction of offender recidivism is limited, and have suggested that reoffending should be used as only one measure of success in an evaluation process (CIRCA, 2008; Harris, 2006; Payne, 2005a; Potas et al., 2003; Tomaino, 2004). The SA Aboriginal sentencing courts and conferences do not have a direct focus on reducing recidivism but aim rather to create a more culturally appropriate experience for defendants and engage them more positively with the justice process. This approach demonstrates a focus on crime reduction through delivering a more appropriate court process. Therefore, it is important that this evaluation considers the results above in light of the outcomes achieved as discussed in Theme 4 below. It is also important to acknowledge that, while the original focus was on enhancing the level of engagement of the sentencing courts and conferences, the newly implemented Nunga Court Treatment Program is perceived as more relevant

[33] Log-rank test of equality: Total $X^2$=.091, df=1, p=0.763 Wilcoxin statistic: Total $X^2$=.052, df=1, p=0.820.

[34] Log-rank test of equality: Total $X^2$=.292, df=1, p=0.589 Wilcoxin statistic: Total $X^2$=.342, df=1, p=0.559.

when considering recidivism, given the focus on addressing the underlying factors that impact on offending behaviour.

***Theme 2: Meeting needs and addressing a service gap***

The Nunga Court in SA was the first Aboriginal sentencing court in Australia and, as noted above, resulted from several years of discussions between Magistrate Chris Vass and various Aboriginal community and stakeholder groups. The consultation process conducted by Magistrate Vass identified that the justice system was mistrusted by Aboriginal people and that Aboriginal people had limited input into the judicial process, in particular sentencing deliberations. Courts were understood to be isolating and unwelcoming to community and family groups. In response to these concerns, a pilot commenced in June 1999 in Port Adelaide Magistrates Court where a listing day was set aside to sentence Aboriginal offenders. This was the first Aboriginal sentencing court piloted in Australia, and since then there have been over 50 such courts introduced at various levels of the court hierarchy (interstate and intrastate). The Nunga Court now operates in Port Adelaide, Murray Bridge and Mount Gambier, and the Aboriginal Sentencing Court is in operation in Port Augusta.[35] Between 2008 and 2011, 480 cases were finalised in the Nunga Court (Port Adelaide and Murray Bridge) and 203 cases were finalised in Port Augusta Aboriginal Sentencing Court.

It is also worth noting that data from OCSAR at the time of the Nunga Court pilot in 1999 highlights the significant need to address the over-representation of Aboriginal people within the criminal justice system. In 1998 OCSAR conducted a study comparing Aboriginal and non-Aboriginal cases finalised in the Magistrates Court in SA and found that 11.4% of involved persons were identified by Police as Aboriginal. Only 1.05% of the adult population in SA are Aboriginal. The extent of Aboriginal involvement in the Magistrates Court was 10.9 times that which would be expected on a per capita basis (OCSAR, 2000). This demonstrates the significant over-representation of Aboriginal people within the criminal justice system.

Aboriginal conferencing has also been an important development in SA. The Nunga Court influenced the development of Aboriginal conferences with the amendment in 2005 to the *Criminal Law Sentencing Act 1988* (SA). The aim was to provide a legislative basis for culturally appropriate conferencing when sentencing Aboriginal defendants in all SA criminal jurisdictions, not just the Magistrates Court. The previous government had consulted on legislative models for these practices in 2001 (SA Parliamentary Debates).[36] Under section 9C of the Act, a discretionary conferencing

[35] In October 2012 no Aboriginal Sentencing Courts were being listed in Port Augusta due to a change in Magistrate.

[36] Those consulted included the Solicitor-General, the Chief Justice, the Chief Magistrate, the Director of Public Prosecutions, the Department of Correctional Services, the Department of Human Services, the Attorney-General's Department and the Magistrates who work in the courts that use the practices. The Bill was laid aside at the time because of a deadlock in relation to the terms of a schedule to the Bill. The Bill was reintroduced in 2005 after a resolution was reached.

process ('Section 9C Conferences') is available to any court sentencing an Aboriginal defendant. These conferences are significant in promoting a culturally sensitive criminal justice process for defendants in all criminal jurisdictions, including the higher courts (SA and Victoria are the only states or territories in Australia where this model is available for higher courts[37]). The model provides a process for Aboriginal sentencing in higher courts which complies with the legislation and legitimises the way views of those at the conference can be taken into account. The first Section 9C Conference was conducted in 2006, and since this time 40 have been conducted (up to and including 2011).

Port Lincoln Aboriginal Conferencing was developed and piloted in 2007. The pilot was originally proposed in a discussion paper prepared by the Deputy Chief Magistrate, Dr Cannon, and Carolyn Doherty, Manager of the Family Conference Team. The model was based on a perceived service gap in which culturally appropriate sentencing processes did not include a restorative intent. The aim is to involve victims and members of the Aboriginal community in a pre-sentence conference while the matter is still before the Court. The model is compatible with existing court listing and circuit structures in country areas and is not dependent upon any particular Judicial Officer. In particular, in Dr Cannon's original discussion paper he noted that the process is "more akin to the sentencing circle model where sentencing is a process involving the victims, the defendant, relevant community members as well as prosecution" and one that is "not totally dependent on the skills and commitment of a particular Magistrate, which has tended to be the situation with the Nunga Court so far" (Cannon, 2007:2). Development of the model involved collaboration and consultation with Magistrates, government and non-government agencies (including the Victim Support Service), key Aboriginal agencies and Aboriginal Elders. The first Port Lincoln Aboriginal Conference was conducted in September 2007, and since then 34 have been conducted.

While there is evidence to indicate the SA Aboriginal sentencing courts and conferences are addressing a service gap by providing a more culturally appropriate sentencing process, the number of Aboriginal people able to access these courts and conferences is limited, suggesting a significant unmet need. For example, from 2008 to 2011 in Port Augusta 203 cases for Aboriginal offenders were finalised in the Port Augusta Aboriginal Sentencing Court while 4,662 cases for Aboriginal offenders were finalised in the Port Augusta Magistrates Court. For Port Adelaide and Murray Bridge the results are similar, with 480 cases for Aboriginal offenders finalised in the Nunga Court and 3,242 cases for Aboriginal offenders finalised in the Port Adelaide and Murray Bridge Magistrates Courts. In Port Lincoln, 34 conferences were conducted between September 2007 and 2011 compared to 1,035 cases finalised for Aboriginal offenders in the Magistrates Court. In Port Lincoln in particular, the number of Aboriginal defendants accessing this program is very low. However, it should be noted that, of the Aboriginal defendants whose cases were finalised in the various Magistrates Courts, only those

[37] In Victoria the County Koori Court was established as a division of the County Court by the *County Court Amendment (Koori Court) Act 2008*. This was piloted in Latrobe Valley from November 2008. In June 2012 the Victorian State Government announced it will retain the County Koori Court beyond its pilot program stage.

who pleaded guilty would be able to access the Port Augusta Aboriginal Sentencing Court or the Port Lincoln Aboriginal Conferencing.

While the qualitative feedback indicated that Section 9C Conferences address a need for an alternative sentencing process for Aboriginal defendants in the higher courts and the Magistrates Court, the process is underutilised, with only 42 referrals made to a Section 9C Conference since its inception in 2006, and 40 cases proceeding since the legislation was enacted. The evaluation indicated that this is a result of limited awareness among legal practitioners and Judicial Officers about the model, which limits access because use of the Section 9C Conferences is dependent on referrals by Judicial Officers or on application by the defendant's legal practitioner. It is worth noting, however, that since 2009 the number of Section 9C referrals has increased, with three-quarters of the referrals occurring from 2009 onwards, which suggests awareness is steadily increasing.

Previous evaluations have highlighted that there is also a crucial need for more culturally appropriate community support services to support the process undertaken in Indigenous sentencing practices (Dawkins et al., 2011; CIRCA, 2008; Morgan & Louis, 2010). The Nunga Court Treatment Program is a strategy aimed at increasing participation in drug treatment programs and could go some way to meeting a need for treatment programs that address underlying issues associated with offending behaviour where it relates to drug and/or alcohol misuse. Judicial monitoring is felt to be an important component of the program. However, the program is currently only accessible via the Port Adelaide Nunga Court, and as a result its reach is limited. As well, it was reported that the program risks reaching capacity, which would necessitate resorting to a waiting list for entry into the program.

***Theme 3: Culturally appropriate program design and implementation***

Previous evaluations of Indigenous sentencing courts and conferences have found that this process provides a more culturally appropriate sentencing process (Aquilina et al., 2009; Borowski, 2010; CIRCA, 2008; Mark Harris, 2006; Morgan & Louis, 2010; Parker & Pathe, 2006; Potas et al., 2003; Tomaino, 2004). This evaluation confirms these findings in relation to the SA models, with considerable agreement from all stakeholders, especially Elders and offenders, that these models are culturally appropriate compared to mainstream court processes. Importantly, the Nunga Courts, Port Augusta Aboriginal Sentencing Court and Port Lincoln Conferencing were designed following consultation with Aboriginal community representatives in the locations in which they were to be delivered.[38] Thus the models were designed with the central aim of providing a more culturally appropriate sentencing process, and an important part of the design process involved consultation with Aboriginal community representatives in the locations in which the courts and conferences were to be delivered. The models also incorporate aspects which enhance the cultural appropriateness and

[38] The Aboriginal Sentencing Courts and the Port Lincoln Aboriginal Conferencing models were developed following consultation with Aboriginal community representatives. The Section 9C Conference model sought to provide a legislative basis for a culturally appropriate sentencing conference in all criminal jurisdictions, based on these models.

responsiveness of their delivery, including relational dialogue between offenders, Judicial Officers and Elders; participation of Elders; involvement of family; support via Aboriginal Justice Officers; opportunities to link offenders with additional support services; and more informal physical environments (to varying degrees). These aspects are discussed in more detail below.

The evaluation identified relational dialogue as a key component of the SA sentencing courts and conferences that is critical for enhancing the cultural appropriateness of the sentencing process. In particular, the dialogue between Judicial Officers, offenders and Elders was felt to improve the impact of the courts and conferences. Offenders consistently discussed the importance of being able to 'tell their story' and 'be heard', with many noting that they spoke directly with the Magistrate (and several also noting that they sat next to the Magistrate), and many reflecting on the impact of advice provided by Elders during the court or conference. This relational dialogue facilitated a more culturally appropriate approach to sentencing because it allowed all parties to discuss and understand the offending behaviour, the offender's circumstances, the impact of the behaviour and the sentence. This meant that offenders better understood why they were at court, what they can do to make amends and what the sentence means. In particular, more time was allocated to Port Lincoln Conferencing and Section 9C Conferences, and this had a greater impact as additional time was allowed for discussion of the underlying factors of the offender's behaviour. There was feedback in relation to the Nunga Court model that it would be beneficial in some cases if more time were available for this relational dialogue, as the time constraints can potentially limit engagement.

The positive impact of the involvement of Elders was identified consistently, and this was seen as critical for effective offender engagement. The range of benefits that the participation of Elders generated included:

- Knowledge and understanding of the offender, their family and their background
- Knowledge and understanding of the community and services available (e.g. mental health, domestic violence and drug and alcohol services) – where this was relevant, the advice Elders provided in relation to service recommendations was highly valued; in some cases Elders involved are linked to key services, and this was felt to increase the level of participation of offenders in these support programs
- Creating an environment that improves the level of understanding of the court and conference process and the sentence outcomes – many offenders noted that the process was clear and understandable, with comparisons made with the complex language and processes involved in the mainstream court settings; feedback from Elders, AJOs and Community Corrections Officers also confirmed these sentiments
- An environment that encouraged defendants to reflect on their offending behaviour – some offenders spoke of the impact of being told by Elders that they are role models for young people in their community, and that more is expected of them; this was felt to be very powerful

and generated a sense of pride in being valued, with comments in relation to the impact of this on changing their behaviour

- An important supportive role – particularly significant because the courts and conferences can lead to disclosure of past trauma and grief, and it is important in this context that Elders are able to comfort and support the defendants; Elders have also been able to identify instances where defendants have been at risk of self-harm and to ensure that appropriate supports are in place
- Informing the sentences – several Judicial Officers identified this significant contribution.

The involvement of family was also cited by Elders and AJOs as an aspect of the cultural appropriateness of the Aboriginal courts and conferences. Offenders are able to bring family for support if they choose, and offenders consulted in the evaluation often indicated this is an important part of the process. Elders also noted that when family are present they 'are given a voice', gain a better understanding of the offending behaviour and the sentencing process, and are given a sense of ownership of the process, which was felt to be valuable. However, information is not collected on family participation so it is difficult to know the extent this participation leads to other positive or improved justice outcomes.

Another aspect of significance in achieving good practice in the SA models was the important role of the AJOs, especially in liaising with the Judiciary, Elders, defendants, Police and the community more broadly. AJOs provide ongoing support, including explaining the process to the offenders and supporting Elders, supporting Judicial Officers and providing information on services and support available.

A key component of the cultural appropriateness of the SA models was felt to be the ability to identify factors underlying offending behaviour, and to facilitate access to support services to address these concerns. The evaluation suggested that this is occurring to varying degrees, with a more structured and formalised approach to linking defendants with support in the Port Adelaide Nunga Court (via the Nunga Court Treatment Program) and Port Lincoln Conferencing, and a more informal approach in the Aboriginal Sentencing Courts, other Nunga Courts and Section 9C Conferences. There are a number of factors that influence the capacity of the Aboriginal sentencing courts and conferences to influence access to support and services for defendants, and these are discussed in further detail in Theme 7 below.

The literature identifies the significance of the physical environment in enhancing the cultural appropriateness of Aboriginal sentencing court and conference models. The approach was different for each of the SA models when considering the alterations that are made for the courts and conferences. Nunga Courts are conducted in a dedicated (but standard) courtroom that has been decorated with Aboriginal art and insignias and relevant community plaques. The Magistrate sits at the bench, which is no different to that of the mainstream Magistrates Court. The defendants sit at the bar

table, which is a significant variation to having defendants in custody in the dock. The defendants are also not handcuffed (depending on the assessment of risk). Although offenders who were interviewed felt this improved their level of engagement in the sentencing process, some stakeholders felt that engagement in the Nunga Court process would be improved if it was conducted in a specifically designed room or at least took place around a specific Nunga Court table, rather than in a traditional court room set-up. In the Port Augusta Aboriginal Sentencing Court, all of those participating sat at the round table in the court room. Elders and offenders reported appreciating that they were all at the same level. It is also worth noting that the Port Augusta courthouse is a purpose-built court facility which respects the cultural attitudes and beliefs of the local Aboriginal people, and the Magistrates Courtroom departs from the conventional rectangular layout by having a flexible, organic space able to accommodate traditional (western) sittings and a roundtable for the Aboriginal Sentencing Court. For Section 9C Conferences, if the defendant is in custody participants sit around the bar table in the courtroom, and if the defendant is not in custody the conference will take place in a conference room, although these can be difficult to secure. In some cases the Magistrate does not wear robes in these conferences. For Port Lincoln Conferencing, the conference is conducted in a separate room within the courthouse and the sentence is passed down in the courtroom. The courtroom is arranged in a less formal manner, with the Elders and the defendant sitting at the bar table beside the Magistrate.

The CAA noted that the seating arrangements are dependent on the individual Magistrate. While the underlying philosophy is that the separation between the Magistrate and the Elders and defendants should be limited, implementation of this varied. Existing literature and the qualitative feedback gathered in this evaluation emphasised the heightened impact when the Magistrate is supportive and engaged (CIRCA, 2008; Morgan & Louis, 2010; Potas et al., 2003; Tomaino, 2004). Where the Magistrate sits has an impact on breaking down barriers between community members and the Judiciary, and on perceptions of the cultural appropriateness of the process. Therefore, improving consistency in the implementation of the models is an area that needs consideration.

While overall the qualitative feedback on the extent to which the SA Aboriginal courts and conferences provide a culturally responsive process in comparison to the mainstream courts was positive, the evaluation indicated that there are significant challenges when English is the second, third or sometimes fourth language of the defendant. The challenges in meeting this need were highlighted in Port Augusta, where the high level of mobility of people from the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands results in defendants coming from diverse communities across the APY Lands. This extends the need for cultural understanding even further when conducting the Port Augusta Aboriginal Sentencing Court, especially as many defendants from the APY Lands will not have family support when attending the Aboriginal Sentencing Court. There would be considerable benefits if resources were available to recruit and train interpreters to cover the relevant language groups. Opportunities also exist to further utilise audiovisual technology, which was adopted in a Section 9C Conference to include members of the defendant's family and community who were unable to travel the great distances from the NT to participate in the process. The use of this technology may also facilitate the

coordination of appropriate interpreters. There are also challenges in accessing appropriate Elders for defendants from the APY Lands, and consideration needs to be given to expanding this capacity.

The evaluation found that the SA Aboriginal courts and conferences are culturally appropriate and responsive and that this is critical when providing a justice response for Aboriginal and Torres Strait Islander people. The particular outcomes linked to a more culturally appropriate sentencing process are discussed in Theme 4 below.

## Program delivery

### *Theme 4: Achieving outcomes in line with program intent*

The SA Aboriginal courts and conferences aim to provide a more culturally appropriate sentencing process through the participation of Elders and respected persons, and through greater engagement of Judicial Officers in seeking to understand and find solutions attuned to the personal background of defendants and the particular social issues they face. The AJOs also play a critical role in supporting these courts and conferences by providing assistance and information to defendants and the Judiciary. Considerable feedback was gathered from Elders, program staff, service providers, legal practitioners and Judicial Officers that these courts and conferences are effective in enhancing the cultural appropriateness of the sentencing process, increasing the level of understanding of and engagement in the process, providing a chance to be heard and an opportunity to reflect on the offending behaviour, and improving the appropriateness of the sentence delivered, resulting in an increased range of justice options.

Defendants confirmed these findings. Being able to 'tell your story' and be understood was a strong theme in almost all of the interviews, as was the sense that the more relaxed nature of the Aboriginal court or conference enables defendants to engage more with the Magistrates and Elders. Defendants spoke of reflecting on and questioning their behaviour as a result of the court or conference, and in particular the impact of Elders was identified as an important factor, as was the impact of engaging directly with the Judicial Officer; in many of the interviews the defendants spoke positively about sitting next to the Magistrate and speaking directly to them. In some cases defendants conveyed a sense of pride that Elders valued them and were interested in their lives and turning their lives around, which was empowering for several defendants. In reflecting on their behaviour, many participants spoke of feelings of remorse, shame, sorrow and guilt. Understanding the impact of their behaviour was heightened when defendants spoke directly with victims in the court or conference, and the feedback confirms that this can be very powerful.

The Aboriginal sentencing courts and conferences aim to improve court appearance rates. OCSAR analysed data on attendance rates to assess if there was any variation when comparing the Aboriginal sentencing courts to the Magistrates Court. Analysis was conducted comparing the attendance rate for those matters with at least one hearing in the Nunga Court in Port Adelaide and Murray Bridge and the

Port Augusta Aboriginal Sentencing Court to those matters involving Aboriginal defendants that did not have any hearings in the Nunga Court or Port Augusta Aboriginal Sentencing Court. The analysis looked at hearings from January 2008 to December 2011, but only included those matters that involved a guilty plea and excluded defendants appearing from custody.[39]

The results of this analysis found that for Port Augusta Aboriginal Sentencing Court and Port Adelaide Nunga Court the attendance rate was significantly higher in comparison to the relevant Magistrates Court. Interestingly, overall attendance rates for all court components of the Murray Bridge court were high. The summary below details the attendance rate for the Magistrates Court dataset overall. For the Nunga Court and Port Augusta Aboriginal Sentencing Court matters, the attendance rate includes attendance at the Nunga Court and the Aboriginal Sentencing Court on the scheduled date (i.e. post guilty plea), and attendance for this dataset at the Magistrates Court component of the matter (which is the early stage of the matter):

- Overall 72% of defendants in the Port Augusta Aboriginal Sentencing Court dataset appeared at the court on the scheduled court date (i.e. late stage or post guilty plea), and this was significantly higher than the 59% of defendants in the final Port Augusta Magistrates Court dataset who appeared on the scheduled court date.[40] The rate of attendance for the Port Augusta Aboriginal Sentencing Court dataset at the Port Augusta Magistrates Court component of the matter (i.e. the early stage of the matter) was also significantly higher than the rate of attendance of the Port Augusta Magistrates Court dataset, with 65% appearing on the scheduled court date.[41]
- Similarly, 72% of defendants in the Port Adelaide Nunga Court dataset appeared at the Nunga Court on the scheduled court date (i.e. late stage or post guilty plea), and this was significantly higher than the 63% of defendants in the final Port Adelaide Magistrates Court dataset who appeared on the scheduled court date.[42] The rate of attendance for the Port Adelaide Magistrates Court component (early stage) of the Nunga Court matters was lower than the

[39] Attendance records were obtained from the CAA's database. Analysis excluded matters where no hearing date matching an ASC date could be found (reducing the dataset for ASC from 208 matters representing 156 unique individuals to 187 matters involving 125 unique individuals). As well, a number of individuals in the dataset had more than one matter finalised over the study period, and to avoid over-counting, duplicate court dates for each defendant were excluded. As well, hearings attended from custody and matters with no attendance information were excluded. The final datasets included: 693 hearings for Port Augusta ASC, including 552 in the mainstream Magistrates Court and 141 in the ASC; 3,986 unique port Augusta Magistrates Court hearings; 1,958 hearings for Port Adelaide Nunga Court, including 1,432 in the mainstream Magistrates Court and 526 in the Nunga Court; 3,033 unique Port Adelaide Magistrates Court hearings; 240 hearings in the Murray Bridge Nunga Court, including 185 in the mainstream Magistrates Court and 55 in the Nunga Court; 849 unique Murray Bridge Magistrates Court hearings.

[40] Z test for proportions: $z= 3.342$ $p<0.001$.

[41] Z test for proportions: $z= 2.460$ $p<0.05$.

[42] Z test for proportions: $z= 4.385794$ $p<0.01$.

rate of attendance for the Port Adelaide Magistrates Court dataset, with 56% appearing on the scheduled court date.

- Overall, 78% of defendants in the Murray Bridge Nunga Court dataset appeared at the Nunga Court on the scheduled court date, and this was only slightly higher than the 76% of defendants in the final Murray Bridge Magistrates Court dataset who appeared on the scheduled court date. The rate of attendance for the Murray Bridge Magistrates Court component (early stage) of the Nunga Court matters was similar, with 75% appearing on the scheduled court date.

While this initial analysis indicates a higher attendance rate for the Port Adelaide Nunga Court and Port Augusta Aboriginal Sentencing Court, it is important to control for the difference in the stage of the matter, and further analysis was conducted that compared attendance rates based on early stage (prior to or at the same time as a guilty plea) and late stage (post guilty plea). This is relevant as hearings in the Nunga Court and Port Augusta Aboriginal Sentencing Court occur after a defendant has pleaded guilty, and it is possible that a defendant who has pleaded guilty is more committed to finalising the matter and may be more likely to attend subsequent hearings. Hearing dates that occurred prior to or at the same time as the guilty plea are equivalent to the Magistrates Court component of Port Augusta Aboriginal Sentencing Court and Nunga Court matters, while those that occurred after the guilty plea are considered equivalent to the Nunga Court or Port Augusta Aboriginal Sentencing Court stage. This analysis found that there was no statistically significant difference in attendance rates for both stages when comparing the Port Adelaide and Murray Bridge Nunga Court and Port Augusta Aboriginal Sentencing Court with the relevant Magistrates Court.

In summary, the analysis found:

- For Port Augusta, attendance in the early stage for the Aboriginal Sentencing Court was 65%, compared to 58% for the Magistrates Court, and attendance at late stage was 72% for the Aboriginal Sentencing Court compared to 63% for the Magistrates Court. While the attendance rate for both early and late stages is higher for the Aboriginal Sentencing Court, this difference is not statistically significant.
- For Port Adelaide, attendance in the early stage for the Nunga Court was 56%, compared to 62% for the Magistrates Court, and attendance at late stage was 72% for both the Nunga Court and the Magistrates Court.
- For Murray Bridge, attendance in the early stage for the Nunga Court and the Magistrates Court was 75%, and attendance at the late stage was 78% for the Nunga Court and 83% for the Magistrates Court, although this difference was not statistically significant.

These results indicate that, when taking into account the stage of the matter, namely pre guilty plea and post guilty plea, attendance rates for the Nunga Court and Port Augusta Aboriginal Sentencing Court are similar to those for the Magistrates Court.

Another key driver for the introduction of the SA Aboriginal courts and conferences was a concern that many Aboriginal defendants do not understand the sentencing process; the aim is therefore to improve the defendant's, their family's and the community's understanding of the court process and outcomes. The qualitative feedback from defendants indicated that many understood the sentencing process, including the impact of their offending behaviour and the sentencing outcomes, although it is acknowledged that only a small group of participants was consulted on this. It was felt by the participants that explanations were given during the court process that avoided the legal jargon that often isolates community members, and that Judicial Officers and Elders checked with defendants that they understood. Community Corrections Officers also indicated that those defendants with supervised orders from an Aboriginal court or conference tended to understand the sentence outcome more than Aboriginal defendants who came from the mainstream court. The evaluation also highlighted the impact of family being involved in the process, as this was felt to improve the level of understanding of the process for the family. It was also suggested that any commitment made by the defendant in terms of the conditions of court orders carries more weight when the family is present, and that this may increase the likelihood of positive outcomes (e.g. through attending relevant services to address identified needs in relation to offending behaviour) being achieved.

The SA Aboriginal sentencing courts and conferences aim to increase confidence in the judicial process among Aboriginal community members. Elders spoke of improved levels of understanding and confidence as a result of their participation. Feedback from defendants also indicated an increased level of confidence in the sentencing process, with many commenting that the outcomes are 'fair'.

The evaluation identified the significant contribution that Magistrates make in providing a culturally responsive sentencing process, especially in relation to the Nunga Court and Port Augusta Aboriginal Sentencing Court (the Port Lincoln model is guided by the CAA and the Family Conference Team and less dependent on individual Magistrates). Many spoke positively about the commitment, support and passion of the Magistrates being critical to the successful implementation of the courts and conferences. Elders also talked about the relationships with the Magistrates and AJOs, and the responses indicate an increased level of confidence in the judicial process as a result of these positive relationships. Many defendants referred to sitting with and talking directly with the Magistrate as a strength of the models, and this was mentioned unprompted, highlighting the impact of this on the defendants. The literature review also emphasises the importance of Magistrates in ensuring culturally appropriate processes (CIRCA, 2008; Morgan & Louis, 2010; Potas et al., 2003; Tomaino, 2004). Indeed, Tomaino states that "if the single, most critical ingredient of the Courts' success had to be identified, it would be the free and open exchange of views and comments that are encouraged by the Magistrate" (Tomaino, 2004:12).

The evaluation found that the implementation of the SA Aboriginal courts and conferences varies depending on the individual Magistrate, and this flexibility is important because the Aboriginal courts

operate across vastly different geographic areas and are confronted with local issues. Evaluation feedback indicated that the approach of the Magistrate has an immediate and significant impact on the process and on the Elders' level of confidence in the process; and, as mentioned above, the support and attitude of the Magistrate carries the greatest weight in relation to confidence in the sentencing process. However, there is a potential risk of the goodwill generated from previous strong relationships between the community and the Magistrate quickly eroding if subsequent Magistrates involved in the process are not supportive of or committed to it. While it is important to have 'acceptable variations' in order to provide flexibility, improving consistency should be an important focus. Consideration should be given to developing processes that aim to increase consistency across locations for briefing and training Magistrates sitting on Aboriginal courts and conferences. As concluded by Tomaino in 2004, the unique features of the Aboriginal courts and conferences need to be safeguarded and maintained to ensure sustainability over time and consistency across locations, while also allowing flexibility (Tomaino, 2004). Certainly, consistency of Magistrates' involvement and participation in these models should be considered within the framework of maintaining individual judicial independence, which is discussed further in Theme 8 below.

The Port Lincoln and Section 9C Conferencing models have restorative justice aims for the victim in terms of reparation for the harm done by the offending behaviour, although it is more difficult to assess these restorative justice outcomes as victims were not directly consulted as part of the evaluation due to access constraints.

It is worth noting that analysis conducted by OCSAR indicates that the majority of cases involve offences where there is a victim. Between September 2007 and December 2011 there were 37 cases, and just over half of these were for 'offences against the person' (19 or 51%). For three (8%) the major charge was for driving, motor vehicle, traffic and related offences, for three (8%) the major charge was damage property and environmental offences, for six (16%) the major charge was of serious criminal trespass (SCT), fraud, larceny or similar, and for six (16%) the major charge was offences against good order. Conference defendants were more likely to have a major charge involving an offence against the person in comparison to the Magistrates Court (51% compared to 15%) and were less likely to have a major charge involving an offence against good order (16% compared to 37%) or a driving, traffic and related offence (8% compared to 24%).

Data provided by the CAA on victim participation suggests there is a reasonably high level of victim participation. A manual review of records by the CAA up until October 2011 found that, of the 32 conferences conducted, 18 recorded victim attendances and an additional seven had victim representation, with 21 discrete conferences where either the actual victim and/or a personal victim representative attended (several cases had multiple victims). There were six instances where victims declined the opportunity to attend or have a representative attend on their behalf, and this included several cases of assault on Police Officers where the officer declined, several others where the victims were retailers from Adelaide, and one where the victim had left SA.

In assessing restorative justice aims, several offenders talked about having a greater understanding of the impact of their offending as a result of the conference, and expressed remorse about the impact of their behaviour. The evaluation suggested this impact is greater when the victim participates in the conference. Some defendants spoke of the impact of hearing from the victim and the victim's family, and how this led them to reflect on their behaviour and commit to changing their behaviour. It will be beneficial to review processes to ensure adequate steps are taken to encourage victim participation and support victims during and after the conferences. It was noted that in some cases conferences are conducted in relation to offences that are classed as 'victimless' (e.g. driving offences) and this generated some debate among Police Prosecutors, who do not think these are appropriate for conferencing. The qualitative feedback suggests that most stakeholders believe the Aboriginal conferences may still be relevant in these circumstances as they provide a forum for the defendant to reflect on the offending behaviour. Manual records found that in five of the 32 conferences conducted (as at October 2011) there were no identified victims of the offences (including behavioural and drink-driving offences).

A common view identified in the literature is that a greater amount of information about an offender is presented in an Indigenous sentencing court process, which allows the court to better tailor penalties to suit the needs of the offender (Aquilina et al., 2009; CIRCA, 2008; Harris, 2006; Sentencing Advisory Council, 2010). All of the Judicial Officers interviewed in this evaluation felt that the process provided useful information on which to base the sentence, including information on community support services available. Furthermore, analysis conducted by OCSAR on the sentencing remarks made in relation to offenders who took part in a Section 9C Conference found that in 17 of the 22 cases (77%) the court explicitly acknowledged that the offender had problems with alcohol and/or drugs and that this had contributed to offending. The prevalence of alcohol and/or other drugs was predominantly mentioned in relation to what rehabilitative action needed to be taken by the offender, and this was a key theme in the sentencing remarks. In 16 cases, the sentencing remarks outlined what rehabilitative programs the offender was to undertake. Of these 16, 12 specified alcohol and/or drug counselling and four specifically mentioned the Aboriginal Sobriety Group in prison and in the wider community (and in these cases the sentencing remarks noted that an Aboriginal Sobriety Group representative attended the conference). The other common program mentioned in the sentencing remarks was anger management counselling (three cases), with two of these three cases also mentioning alcohol and/or drug counselling. This demonstrates a focus on targeting the underlying factors associated with offending as a result of the information provided through the Aboriginal sentencing conferences, demonstrating a capacity to, as the literature discussed in Theme 1 above suggests, have an impact on reducing recidivism by combining supervision with treatment or linking the defendant to treatment programs (Hora, 2010; Aos et al., 2006; Drake et al., 2009).

The evaluation highlighted the importance of the SA models in providing additional information to inform the sentence and enable access to interventions to address the underlying causes of offending. While there is evidence to suggest this is a significant benefit, the evaluation also highlighted

considerable challenges given that there are limitations on the resources dedicated to this, and limitations on the availability and resources of community service providers.

The Nunga Court Treatment Program is aimed at increasing Aboriginal participation in intervention programs. However, it is too early to draw conclusions about this approach as, following the initial adoption of the program, there was a slow uptake of the program and low completion rates, with only one Aboriginal completion recorded in the 2010/11 financial year. Stakeholder feedback indicated that low participation and engagement were a result of the fact that defendants were immediately referred to the drug treatment program, without defendants having identified drug and alcohol treatment as a goal. In order to address this issue, a slower approach was adopted with a greater focus on the issues the defendant identified as wanting to address.

Qualitative feedback indicates that referrals have increased more recently and participation and engagement in the program has also increased, and there are currently (as at November 2012) eight Aboriginal defendants on the program. It is believed that this is a result of the changes in the process such that defendants themselves are identifying drug and alcohol treatment as a goal and are therefore more motivated to address their alcohol and substance use, as well as an increased focus on individual support during the one-to-one program sessions, including assistance to complete the program workbooks, which are also available in audio format. It was reported that the program risks reaching capacity, which would necessitate resorting to a waiting list for entry.

It should be noted that some stakeholders highlighted that the Nunga Court Treatment Program will only be successful for those defendants who are considered moderate to high functioning, as the treatment requires a considerable amount of effort on the part of the participant. For example, drug and alcohol testing facilities are only available at the Adelaide Magistrates Court and, as a result, participants have to travel to Adelaide regularly for testing. Without significant and culturally appropriate supports in place, many Aboriginal defendants with alcohol and substance use issues may not realistically be able to complete the program if their alcohol and substance use significantly challenges their ability to participate.

Stakeholder feedback also indicated that there are limitations in terms of the outcomes that can be achieved and sustained in a six-month program. It was reported that limited resources preclude offering the 12-month drug treatment program (which is available via the Drug Court and can include accommodation) to Nunga Court defendants.[43]

Should resources be available, opportunities exist to consider providing culturally appropriate support to participants, possibly through the employment of an Aboriginal support worker to support

[43] The Nunga Court Treatment Program is currently funded through the Drug Court which also makes it vulnerable. Issues associated with sustainability are discussed further in Theme 10 below.

defendants in the Nunga Court Treatment Program and to make the 12-month drug treatment available to participants.

Given the low participant numbers and the infancy of the current model of the Nunga Court Treatment Program, the evaluation was not able to make any findings in relation to specific outcomes of the program. In order to monitor and evaluate the outcomes of the program, Nunga Court defendants' program participation and progress will need to be recorded centrally to ensure that outcomes in relation to participation can be tracked. The current mechanisms should be reviewed to ensure that they are appropriately measuring program outcomes in line with program intent, and the results should be used to monitor program success for Aboriginal participants.

***Theme 5: Promoting inclusive community participation and engagement***

As discussed in Theme 3 above, the SA Aboriginal sentencing courts and conferences have been designed and implemented with the input of Aboriginal community members.

The evaluation indicated that community engagement occurs on an ongoing basis, and that this is an important outcome. In Port Adelaide, Murray Bridge and Port Lincoln an operations group/stakeholder group meet two to four times a year to discuss the Aboriginal sentencing courts and conferences. These groups include Judicial Officers, AJOs, Elders, Police Prosecutors, legal practitioners, and Community Corrections and local community services representatives.

These formal engagement mechanisms are supported by more informal community engagement through close working relationships between AJOs and Elders, adding to this ongoing dialogue. As outlined in Theme 3 above, community engagement is also exemplified in the participation of offenders' and victims' families in the court and conference processes.

During the evaluation AJOs identified the need for greater community engagement and promotion, but the barriers for this were consistently identified as a lack of resources, as their time is devoted to implementing the Aboriginal courts and conferences and managing fines.

The involvement of Elders in the Aboriginal courts and conferences is one of the key means for engaging with community during the sentencing and conferencing process. The evaluation indicated that recruitment of Elders for the courts and conferences happens through a number of avenues, including open community meetings, networking among the AJOs, services and the community, and networking among the Elders themselves. The qualitative feedback indicated that the approach to date has been effective in engaging a committed, skilled and passionate group of Elders. In most locations there are approximately six to eight Elders involved in the courts and conferences. The evaluation indicated that generally it is difficult to recruit Elders given the considerable commitments these key community representatives have, but that it would be beneficial to increase the pool of Elders involved.

The SA Aboriginal courts and conferences are available in a limited number of locations – Port Adelaide (Nunga Court Treatment Program), Murray Bridge, Port Augusta,[44] Mount Gambier and Port Lincoln – although Section 9C Conferences can occur in any criminal court jurisdiction across SA. While the above locations include communities with a significant Aboriginal population, this does highlight a gap in relation to the geographic coverage and therefore there are gaps in opportunity for some Aboriginal communities to participate in and engage with these culturally specific justice mechanisms.

In relation to the gender profile of offenders, the OCSAR analysis found that for the Nunga Court in Port Adelaide and Murray Bridge, and the Port Augusta Aboriginal Sentencing Court, fewer than one-third of defendants were female, with slightly lower proportions in comparison to the Magistrates Court. In the Nunga Court in Port Adelaide and Murray Bridge, 26% of defendants were female (compared to 35% for the Magistrates Court), and for the Port Augusta Aboriginal Sentencing Court 30% of defendants were female (compared to 32% for the Magistrates Court). For Port Lincoln Conferencing, 19 defendants were male (58%) and 14 were female (42%), and for Section 9C Conferences the vast majority of defendants were male (34 or 87% male, 5 or 13% female). None of the stakeholders consulted as part of the evaluation identified any concerns in relation to the gender equity of the Aboriginal court and conference models, and it is worth noting that in all locations a significant proportion of the Elders who participate in the courts and conferences are female.

***Theme 6: Effective service coordination and collaboration***

There is literature that highlights the importance of effective coordination and collaboration across government and non-government agencies (AIC, 2012; Calma, 2008; Stacey and Associates, 2004; Stewart, Lohoar & Higgins, 2011). Effective coordination is viewed as essential because it increases access to resources and service delivery and helps the offender navigate through complex systems to access the required services (Denning-Cotter, 2008; Simpson et al., 2009).

Mechanisms are in place to improve service coordination and collaboration at the individual program-site level. Operations group meetings are conducted three to four times a year in Port Adelaide and Murray Bridge, and stakeholder meetings are held twice a year in Port Lincoln.

The operations group meetings provide an opportunity for key stakeholders, including Aboriginal community Elders, magistrates, representatives from the CAA, community service providers (including victim support), Community Corrections representatives, Police Prosecutors and legal practitioners to discuss and address issues associated with effective program delivery and improvement. Feedback received as part of the evaluation indicated that, on the whole, stakeholders appreciate these forums and feel they provide opportunities to collaboratively address issues of program delivery to Aboriginal

[44] Although during consultations in October 2012 an Aboriginal Sentencing Court was not being scheduled for Port Augusta.

defendants. Given this, there would be benefits in the Port Augusta Aboriginal Sentencing Court having formalised operations group meetings.

There is no formal operations group in Port Augusta, although meetings are held informally to discuss the operation of the Aboriginal Sentencing Court and the APY court circuit. Given the diversity of language groups covered in this region and the lack of appropriate services, the challenges in effective service collaboration are far greater in Port Augusta. For example, Elders commented that the only alcohol rehabilitation service in the region is at the prison. As a result, stakeholders requested that meetings with Elders, Community Corrections, AJOs, Judicial Officers, legal practitioners and services be conducted regularly to improve the implementation of the Port Augusta Aboriginal Sentencing Court and develop its capacity to facilitate service access for defendants. In particular, it was noted that there is an opportunity for services to participate in the Port Augusta Aboriginal Sentencing Court, although the limited resources of community-based services to do this was acknowledged.

The evaluation found that Police Prosecutors and lawyers involved in the SA sentencing courts and conferences are supportive of the models and work collaboratively with other key stakeholders to facilitate their operation. Evaluation feedback indicated that this is important for the successful operation of the Aboriginal courts and conferences.

The evaluation highlighted the need for culturally appropriate community support services to support the court and conferencing processes. The SA sentencing courts and conferences aim to create an avenue for addressing underlying factors that influence offending behaviour by being a stepping stone for other community supports and program interventions. To this end, effective service coordination and collaboration is important. The evidence indicates that the programs have a strong focus on service coordination and collaboration but that the extent to which this can be achieved is limited as a result of funding and resource constraints. Internal resources available to the CAA are limited as the SA models do not have a specific funding allocation (discussed further in Theme 10 below). The availability of appropriate and necessary community-based services is also limited, as is the funding these existing services receive. This further limits the capacity of the models to facilitate appropriate and targeted service delivery to Aboriginal defendants. This limitation was of particular concern in Port Augusta and Port Lincoln.

The evaluation found that, overall, the SA models are supported by community services that are committed to working collaboratively to provide support to Aboriginal defendants. The evaluation highlighted that, in Port Lincoln and Port Adelaide, the models have strong links with Aboriginal community organisations, including the Aboriginal Sobriety Group, the Aboriginal Prisoners and Offenders Support Service and the Port Lincoln Aboriginal Health Service, that consistently attend the courts and conferences. This approach was felt to be an important element of these courts and

conferences. Concerns were raised, however, that these service providers are not able to address all the relevant service needs, particularly given limited resources.

Where possible, and where resourcing allows, service providers attend Nunga Court and Port Augusta Aboriginal Sentencing Court sittings to support defendants and inform the process. Although attendance is generally linked with supporting existing clients, this involvement means the magistrate and defence lawyers are aware of the available services and Elders, and that AJOs are also able to inform the court in this regard. Feedback from offenders indicated that the support of workers from community services during the sentencing court and conferencing process was felt to be very valuable. It is worth noting that a significant number of the defendants included in the evaluation spoke of attending the court or conference with their caseworker, or accessing services as a result of the court or conference.

The feedback indicated that the community services work closely with Community Corrections representatives, who attend Nunga Court sittings to support the clients they case manage, and a Community Corrections Aboriginal Liaison Officer is now present at all Nunga Court sittings in Port Adelaide to provide information to the court and to assist in explaining Community Corrections and conditions of orders or sentencing outcomes to defendants. Stakeholder feedback indicated that having this officer present in the court has greatly assisted the process and can serve to improve the engagement of defendants in the process. The evaluation highlighted that opportunities exist for this approach to be adopted in other locations, particularly in Port Augusta, where the support needs of defendants from the APY Lands are greater. Also, in delivering the Nunga Court Treatment Program, community service providers and AJOs work collaboratively with the program supervisor to conduct an initial assessment and refer participants on to relevant services to address identified needs.

In addition to providing information and providing defendants with support, community service providers, the feedback indicated, also assist in ensuring that realistic sentence conditions are set so that the defendant is not set up for failure.

The literature indicates that Judicial Officers who adopt a therapeutic jurisprudential framework, a philosophy of law which takes into account the defendant's wellbeing and social needs rather than solely applying the rules of law and legal procedure, are more likely to interact directly with offenders in ways that encourage change and induce hope that they are capable of changing, and in ways that involve continuing judicial monitoring and the integration of a number of community services (Frieberg, 2002; Winick & Wexler, 2003). To a certain degree, all the SA models adopt a therapeutic jurisprudential approach in that they interact directly with offenders to identify underlying issues that may be associated with the offending behaviour and seek to link Aboriginal defendants to appropriate support services, although this is achieved in varying degrees across each of the models and locations.

AJOs play a key role in facilitating the coordination of services for Aboriginal defendants via the SA models. In developing and facilitating relationships between Elders, service providers, defendants and their families, the AJOs are critical to the effective delivery of these courts and conferences. This is particularly so with the Section 9C Conferences, where the AJOs coordinate the process and conduct interviews with the defendant to identify appropriate Elders, family members and support services to participate in the sentencing conference, and provide the Judicial Officer with information in relation to available community services and supports. As noted previously, Elders also provide Judicial Officers with information in relation to available community services and are a source of community support themselves.

The evaluation also highlighted that a lack of funding and resources curtails the level of support that community services are able to provide to Aboriginal offenders, and that there was an understandable level of frustration in relation to funding constraints on the part of service providers. The resultant limitations in the capacity for the available community services to meet the myriad needs of Aboriginal offenders means that service gaps are inevitable; the evaluation feedback highlighted particular gaps in relation to accommodation, mental health services and residential rehabilitation services.

The evaluation also identified that internal changes to Community Corrections operations have curtailed the level of support that Community Corrections Officers are able to provide their Aboriginal clients, and this too was a source of frustration for stakeholders. Constraints cited included limited discretion to meet individual client and family needs, limited capacity to conduct home visits and meet with clients to achieve reporting requirements, and a lack of a holistic approach to client management. This has had a significant impact on those Community Corrections officers who have extensive experience in working with Aboriginal clients and their families and have developed practices that best meet the needs of these clients.

The evaluation found there is a high level of service coordination and collaboration in most locations within the limitations of funding and resource constraints. Opportunities exist for funding to be allocated to resource community service providers to more formally support the SA models and provide services to Aboriginal defendants to support them in meeting the conditions of their orders and setting achievable sentencing outcomes.

### *Theme 7: Advocating for systems reform and improving relationships among key stakeholder groups*

The Nunga Court in Port Adelaide was the first Aboriginal sentencing court in Australia, and SA played a significant role in the development of Aboriginal courts in other jurisdictions. SA was the also the first state to conduct Aboriginal sentencing conferences in the higher courts,[45] and is one of two states that have introduced Aboriginal sentencing conferences that can be utilised in higher courts. The

[45] The first Section 9C Aboriginal Sentencing Conference took place in the District Court in 2006.

introduction of the Port Lincoln Conferencing model also demonstrates a commitment to reviewing and developing sentencing processes in order to improve the cultural appropriateness of justice processes for Aboriginal defendants.

The Judicial Officers consulted in this evaluation indicated that their involvement with the Aboriginal courts and conferences has an impact more broadly on their dealings with Aboriginal defendants outside these courts or conferences. Judicial officers noted that the experience gained from the Aboriginal court and conference process was highly effective in improving their understanding of the factors that contribute to the offending behaviour of Aboriginal defendants and enhancing their ability to engage with Aboriginal community members. This is a significant finding as it demonstrates the capacity of the Aboriginal courts and conferences to impact on the approach taken by Judicial Officers when dealing with Aboriginal defendants more broadly. This highlights the need for greater promotion of the Section 9C Conferences in particular, among the Judiciary and the legal profession, to ensure these benefits are more broadly applied across the justice system.

The SA models also tend to raise the profile of issues related to Aboriginal offending at the locations where they operate. In each location the operations group meetings bring a diverse group of organisations and individuals together, including Judicial Officers, AJOs, Elders, Police Prosecutors, legal practitioners and services, and this was felt to improve the level of understanding in relation to justice issues that concern Aboriginal families and communities. These meetings also facilitate improved relationships between justice agencies and the Aboriginal community, particularly through the involvement of Elders, AJOs and community organisations.

While there are formal structures that are being utilised to reflect on the implementation of the SA court and conference models, and to raise issues in relation to Aboriginal offending and broader justice issues, this could be strengthened by increasing and further supporting the broader involvement of Aboriginal staff and Elders in state-based forums, in order to provide a more strategic view on the development of programs for Aboriginal people. In particular, AJOs could play a significant role in broader policy development.

## Program management

### *Theme 8: Effective governance and management processes*

The CAA centrally manages the SA Aboriginal courts and conferences via a team comprised of the Manager Aboriginal Programs and ten AJOs, including a senior AJO. Qualitative feedback indicates high levels of satisfaction with the management of the courts and conferences.

AJOs are based in Port Adelaide, Adelaide, Elizabeth, Youth Court and Port Augusta, but they also service a number of courts in metropolitan, regional and remote SA. The AJOs assist with the sentencing courts and conferences (with both preparation and during the proceedings) and are

responsible for recruiting, training and supporting Elders. The responses in relation to the support provided by the AJOs were positive, with Elders and Judicial Officers in particular highlighting the significance of the AJOs in the effective implementation of the courts and conferences. For Section 9C Conferences it was noted that initially there was a lack of clarity in relation to the role that the AJOs would provide in supporting these conferences, but that this has been addressed with agreed procedures for support. Feedback from AJOs was positive in relation to their working environments and the support they receive. There were, however, requests from AJOs for more opportunities for professional development through shared learning with other AJOs and involvement in justice conferences within SA and nationally.

Part of the governance and management of the sentencing courts and conferences is the recruitment and training of a panel of community Elders to participate in the courts and conferences. The support and training provided to Elders by the CAA was felt to be a measure of effective management. Feedback from Judicial Officers and Elders indicated that there is considerable shared and mutual learning 'on the job'. There is also training for Elders conducted by the AJOs. This is usually conducted every year in Port Adelaide, Port Augusta and Port Lincoln. This training acts as a refresher for experienced Elders, provides information to new Elders, and provides a space for Elders to share experiences and ask questions. There is supporting material available for the training, including a video.[46]

Overall, Elders interviewed in the evaluation felt that they are adequately prepared and that the greatest priority is to be 'true to themselves' and provide a 'community voice' to both the defendant and the Magistrate. This they felt was possible due to their life experience, and some also highlighted the benefits that their employment and/or community links bring to the process, by offering further opportunities for support. While Elders generally felt confident in their skill level, there were mixed responses when discussing training needs. Some had participated in the training, some had not but felt it would be valuable, and others did not feel training was necessary and were more interested in opportunities to expand their understanding by attending Aboriginal and Torres Strait Islander justice conferences with other Elders, Judicial Officers and stakeholders from other locations, both within and outside SA. Elders also indicated they would like to meet and learn from each other, and opportunities exist for mechanisms to facilitate shared learning among Elder groups. It was also noted that AJOs provide personal, ongoing briefings and support with Elders. While there were mixed responses regarding training needs, offering training consistently for all Elders would be a positive improvement.

The Elders raised additional issues in relation to management that should be considered. Regarding the Nunga Court, Elders were concerned that they are not given enough time to read the pre-sentence report before the hearing and that they therefore tend to read the report while the matter is taking

[46] The Elder training PowerPoint resource covers court penalties, court outcomes, the criminal justice system, the role of AJOs, the role of the Elders, criteria for selection and the Magistrate's expectations. Elders are also given a glossary of terms that provides information on a range of legal terms.

place; it was suggested that the reports be given to the Elders before court commences. While Elders receive a payment for their time to attend the courts and conferences, they highlighted a number of practical difficulties, with out-of-pocket expenses being of most concern. Some suggested lunch should be provided, while others had trouble travelling to the courthouse and requested this be addressed with taxi vouchers or by reimbursing parking costs. For Section 9C Conferences, Elders are not required to attend the post-conference sentencing, and the preference was that this attendance be included as part of the Elders' role or that the CAA facilitate access to sentence outcomes for Elders so that Elders are informed of the outcomes of the conferences they have participated in. Elders also expressed interest in receiving feedback on the progress of defendants they had been involved with.

Promotion of the courts and conferences is an important aspect of management, and promotion is one of the roles of the AJOs, supported by the CAA. It is difficult for AJOs to dedicate time to community education and promotion given limited resources, although there would be benefits in increasing the level of promotion in Aboriginal communities as this could have an impact on expanding the number of Elders aware of and potentially interested in being involved with the courts and conferences, and it could also improve relationships with Aboriginal service providers.

As discussed earlier, in Port Adelaide, Murray Bridge and Port Lincoln governance includes an operations group. While these operations groups provide mechanisms for facilitating feedback, it is important to review this approach to ensure these forums are utilised to their full potential in focusing on continuous improvement of the programs. The operations groups also provide an opportunity to monitor progress, and this should be formalised.

A challenge to the management and governance of the SA models is the variability of the models in terms of the individual Magistrate. This has a significant impact as it influences the extent to which these models are offered to defendants, as well as the delivery of the models. For example, it was suggested that variations in the number of matters dealt with by the Aboriginal sentencing courts and conferences are often a result of the presiding Magistrate. Qualitative feedback provided as part of the evaluation also suggested that where a Magistrate is not supportive of the model, or where a Magistrate is not adequately supported in delivering the model, community participation and engagement drop. Comments from Police Prosecutors and Elders also highlighted concern with the variability of the implementation of the courts and conferences. While the CAA has attempted to increase the consistency of the courts and conferences by providing guidance and information about the various models, implementation continues to vary depending on the individual Magistrate's discretion. It is acknowledged that there is a need for flexibility and judicial independence so that there are 'acceptable variations'; however, the evaluation indicated that it is important that the CAA, in consultation with the Judiciary, develop policies and processes to improve the consistency of the models. These policies should focus on the briefing, cultural awareness and professional development of Magistrates, and on the physical courtroom environment (such as how courts should be configured, and where people should sit, ideally with Elders, defendants and the Magistrate at the same level).

Balancing the heavy burden of the Magistrates Court lists with limited resources is a key challenge, and as a result maintaining the scheduled court dates for the Aboriginal sentencing courts and conferences can be difficult. Concerns with this challenge were identified during the evaluation, as the frequency of sittings in the Nunga Court in Port Adelaide was reduced from fortnightly to monthly due to high court lists (although it has since increased back to fortnightly).

Monitoring and evaluation is an important component for good governance, and there are limitations in conducting this effectively for the sentencing courts and conferences. Ongoing monitoring is compromised because access to quality data is limited. On conducting the analysis for this evaluation, OCSAR identified a number of significant data limitations.[47] In particular, it is recommended that to improve data quality and efficiency it is imperative that CAA staff use the Nunga flag in the 'specialist court' field to record all Aboriginal courts and conferences. It would be ideal if this involved a mandatory step in the data entry process. Proper recording of this information would enable reliable and meaningful reporting of defendants processed in an Aboriginal court or conference. It was also identified that there are disparities in the data collection systems across all justice agencies, and this has implications for the efficacy of routine monitoring and evaluation.

However, there was considerable emphasis on the importance of ensuring monitoring and evaluation processes for collecting qualitative feedback from relevant stakeholders and participants as well, given that a goal of the courts and conferences is to provide a culturally appropriate sentencing process, and the difficulty in measuring this quantitatively. Many stakeholders stated that numbers often ignore the complexities of the situation and can misrepresent the contribution of the courts and conferences, and were concerned that the focus on data outcomes can take focus away from the intent of the courts and conferences.

Overall, with limited resources, the CAA has shown a high degree of commitment to developing a well-coordinated program that provides a culturally appropriate sentencing process. In this context, limitations in management processes and governance are understandable, but should be addressed.

***Theme 9: Clear articulation of program intent***

Within the CAA, the SA courts and conferences are justice initiatives under the banner of Aboriginal Programs. Across the evaluation, the intent of the courts and conferences to provide a more culturally appropriate sentencing process in comparison to mainstream courts was well understood. This was true for Elders, Judicial Officers, program staff, legal practitioners, services and Police Prosecutors. Most defendants included in the evaluation also demonstrated a good level of understanding of this overarching aim of the courts and conferences. This shared understanding is primarily based on direct experience and ongoing dialogue. As well, there was considerable community engagement during the

[47] Limitations on data in large part reflect the aged and ageing IT infrastructure available to the CAA for recording and interrogating data, during the evolution of the Nunga Court and Aboriginal Programs to the present day.

design and pilot phase for the Port Adelaide Nunga Court, Port Augusta Aboriginal Sentencing Court and Port Lincoln Conferencing, and this has been effective in generating a good level of understanding of the aims among those involved.

In relation to program documentation, the broad goals of the Port Adelaide Nunga Court and the Port Augusta Aboriginal Sentencing Court are clearly documented in the guidelines for these courts. Similarly, for Port Lincoln Conferencing the goal of combining the elements of the Nunga Court and restorative justice conferencing are clearly articulated in the guidelines. The CAA is currently developing a brochure on Section 9C Conferences. Its website does not however include information on goals of the courts and conferences, which is an area that could be improved.

For Section 9C Conferences, guidelines have been developed by the CAA that apply to all staff of the Supreme Court and District Court. These guidelines do not provide details on the aims of Section 9C Conferences but provide details on the processes for conducting a Section 9C Conference. The CAA is currently developing guidelines for Section 9C Conferences for all staff of the Magistrates Court. The evaluation suggested that the objectives of Section 9C Conferences are not widely understood within the Judiciary and the legal profession. Improving this level of understanding is a significant challenge given Section 9C Conferences can be conducted in District, Supreme and Magistrate courts across SA. Unlike the more local-level sentencing mechanisms of the Nunga Courts, Port Augusta Aboriginal Sentencing Court and Port Lincoln Conferencing, this is a broader geographic area across which intention needs to be clearly communicated. In this evaluation the CAA and legal practitioners acknowledged the challenges in improving the level of understanding of Section 9C Conferences among the Judiciary and legal professionals, although the perception was that this has improved in recent times, with staff noticing more requests for Section 9C Conferences from legal practitioners who do not have access to Nunga Court (e.g. in Ceduna).

To promote the intent and improve the level of understanding of the SA courts and conferences, the CAA conducted a workshop with Judicial Officers in 2010 that included a panel of Judicial Officers, AJOs, Elders, Police Prosecutors and legal practitioners with experience of the courts and conferences. The workshop discussed approaches to sentencing Aboriginal offenders, explained how the courts and conferences work and identified the strengths of these approaches. The CAA has also been targeting legal practitioners to raise awareness of the courts and conferences by conducting meetings with lawyers in the various locations and targeted meetings with Aboriginal Legal Rights Movement lawyers. The CAA was also invited in 2011 to participate in a professional development workshop for legal practitioners (as part of continuing legal education) and presented information on Section 9C Conferences. To improve awareness and recognition of the courts and conferences among Judicial Officers and legal practitioners, it was suggested that a memorandum to Judicial Officers from the Chief Magistrate and the Chief Justice would be effective.

While the broad intent of the SA courts and conferences is documented and generally well understood, there are a number of additional goals that are not adequately articulated. The CAA has documented the 10 goals of the Port Adelaide Nunga Court, and these include aims from both before and after 2010 (post-2010 goals include restorative justice aims and therapeutic jurisprudence objectives in relation to addressing underlying factors that influence offending behaviour).[48] The CAA noted that these goals form the basis on which the operations groups (a forum for key stakeholders to discuss and address issues associated with effective program delivery and improvement) from other locations can develop their individual program goals, and, while in principle these goals are shared across the sentencing court models, there is flexibility and variation. This flexibility is beneficial in that it allows for accommodation of local needs, but it will be important that a consistent set of goals for the courts and conferences be readily available and promoted both within and outside the courts.

***Theme 10: Sustainability of the program/s over time***

In assessing sustainability, a major challenge is that, while there is a budget for Aboriginal Programs overall, there is no separate budget for the Aboriginal sentencing courts and conferences. Funding to cover the AJOs is discrete and accounts for the bulk of the Aboriginal Programs budget. However, apart from this, separate funding has not been allocated to the sentencing courts and conferences. Stakeholders expressed concern in relation to the vulnerability of the courts and conferences, and a need for recurrent and stable funding was identified.

As a result of there not being separate funding to run the Aboriginal sentencing courts, these programs are vulnerable, particularly as the number of sittings held in each jurisdiction is dependent on the overall caseload of the particular Magistrates Court. This has impacted on the frequency of the sittings in Port Adelaide in particular, where during the course of the evaluation the number of sittings dropped from fortnightly to monthly. However, this has recently been changed and fortnightly sittings have resumed.

Stakeholder feedback indicated that there are considerable concerns over the vulnerability of the model. Stakeholders feel that, as well as indicating a lack of commitment to improving justice outcomes for Aboriginal people, there are practical implications for defendants, including defendants'

[48] Pre 2010: 1.To provide a culturally responsive court setting which incorporates and acknowledges the important role of Elders and other respected members of the Aboriginal community; 2. To increase confidence of the Aboriginal community in the court process; 3. To provide a forum for open and direct communication between the Elders, the Judicial Officer, the defendant and all participants in the court process; 4. To increase attendance at court of Aboriginal defendants; 5. To improve the defendant's, their family and their community's understanding of the court process and outcomes; 6. To foster cross agency engagement with the court to assist the court to develop and implement a range of pre and post sentence interventions to address the underlying causes of offending. Post 2010: 7. To provide opportunities for restorative justice processes as well as traditional processes; 8. To encourage defendants to take responsibility for their actions and acknowledge the consequences of their actions for victims and the community; 9. To assist defendants address underlying issues related to their offending by providing opportunities for rehabilitation pre and post sentencing; 10. To provide a court monitored pre-sentence substance intervention program for eligible Aboriginal defendants, to improve their health and social outcomes and reduce re-offending.

anxiety at having to wait long periods in between hearings, defendants remaining incarcerated for longer periods on remand (and associated issues of losing accommodation as a result) and the court lists filling rapidly such that waiting times are doubled.

The CAA conducted an estimate of the costings for the operation of the Aboriginal sentencing courts and conferences, and this provides an indication of the budget required to discretely fund them. For the Port Adelaide Nunga Court, the estimated cost per sitting was $1,624.75 and the estimated cost per defendant was $162.47, based on an estimated 10 defendants per sitting.[49] The estimated cost for the Murray Bridge Nunga Court was $926.28, with an estimated cost of $308.76 per sitting, based on an estimate of three defendants. The estimated cost for the Port Augusta Aboriginal Sentencing Court was $1,768.75, with an estimated cost of $221.09 per sitting, based on an estimate of eight defendants.

The evaluation suggested the funding model potentially mitigates against program uptake for Section 9C Conferences because they are perceived as resource intensive. The costs for these conferences are greater than for those mentioned above, given the time required to conduct these conferences. For Section 9C, the cost is $2,112 per conference, with a significant amount of the costs covering the time of the District Court Judge ($1,136.83) and the AJO ($512.91). For Port Lincoln, it is estimated that the cost per conference is $3,554. A significant component of this cost is the time for the AJO and the Youth Justice Coordinator (16.5 hours and 21 hours respectively, costing $1,603), and travel costs for the Youth Justice Coordinator, who is not part of the circuit party ($1,348). Given the resource-intensive nature of the Port Lincoln Conferences, this model is much less replicable.

Currently the Nunga Court Treatment Program is funded via the Interventions Programs budget, which also makes it vulnerable. It will be important when reviewing funding to ensure the treatment model is adequately funded in order to enhance access and engagement, so that more of the Aboriginal courts and conferences have access to the treatment program. In order to improve the capacity for the program to meet the needs of Aboriginal defendants, consideration should also be given to allocating funding for culturally appropriate supports, perhaps via an Aboriginal support worker, to ensure participants have the necessary support available to successfully complete the program.

In assessing sustainability, a challenge identified in the evaluation was that, while section 9C provides the legislative basis for the Aboriginal Sentencing Conferences, no legislative basis exists for the Nunga Courts and the Port Augusta Aboriginal Sentencing Court. It was suggested that this has implications for the security of the Aboriginal sentencing court models, as their continuation is more susceptible to changes within the government and the Judiciary.

[49] The cost estimates for Nunga Court and ASC include time for Magistrate (3 to 6 hours), Magistrates Clerk (2-4 hours), Sheriff's Officer (2-4 hours), Aboriginal Justice Officer (5 to 6 hours), Registry Staff for Listings, etc (0.5 to 1.5 hours), payments for Elders ($140) and interpreter costs (ASC only). Incidental costs such as phone calls, stationary, accommodation, etc have not been included, and additional costs if the defendant is in custody and the appearance is outside the current security contract are excluded.

## 5.6 Assessment against the good practice themes

The following table provides an overall assessment of the SA Aboriginal courts and conference models against the 10 good practice themes identified in the Monitoring and Evaluation Framework (as outlined in Table 3a in Chapter 3).

| Area of Focus | Excellent to Very Good Practice | Adequate Practice | Poor Practice | Comments |
|---|---|---|---|---|
| **Program design** | | | | |
| **Theme 1: Focusing on crime prevention and aiming to reduce the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system** | | All programs focused on reducing crime in Aboriginal communities through delivering a more effective court process by providing a more culturally appropriate environment in comparison with mainstream courts, recognising the integral role of family and community in the lives of Aboriginal people and enabling Judicial Officers to make more informed decisions when sentencing. | | There was not a direct focus on reducing recidivism; rather, focus was on creating a more culturally appropriate sentencing process for defendants and engaging them more positively with the justice process. Analysis of recidivism data did not demonstrate any impact on recidivism in comparison with mainstream court processes. |
| **Theme 2: Meeting needs and addressing a service gap** | Aboriginal courts and conferences meet a need for a culturally appropriate sentencing process that includes input from Aboriginal community members. | The Nunga Court Treatment Program is only available in the Port Adelaide Nunga Court and as a result its reach is limited. | | |
| **Theme 3: Culturally appropriate program design and implementation** | The design is culturally appropriate as it involves Elders and AJOs and provides opportunities for family and community support with direct engagement of the offender in dialogue around their offending behaviour. | Environment of the court is modified to increase cultural responsiveness to varying degrees within the programs. | | Greater challenges in delivering a culturally appropriate process for those for whom English is not first language. The high level of mobility of people from the APY Lands and the diversity of communities from which defendants come imposes challenges in relation to the availability of suitable interpreters. |

| Area of Focus | Excellent to Very Good Practice | Adequate Practice | Poor Practice | Comments |
|---|---|---|---|---|
| **Program delivery** | | | | |
| **Theme 4: Achieving outcomes in line with program intent** | Models are effective in providing a more culturally appropriate sentencing process.<br><br>There was evidence through offender, AJO and Elder feedback of greater engagement with Aboriginal courts and conferences as compared with their experiences in the mainstream justice settings due to direct community participation and input. Outcomes included raised awareness of the impact of offending and changed attitudes to offending as a result of offender participation in the courts and conferences. There was evidence of increased knowledge and confidence in the justice system, improved understanding of the process and sentence outcomes and acceptance of justice outcomes by individuals participating.<br><br>More informed decision-making and sentencing remarks occurring as indicated by Magistrates. | Attendance rates for the Aboriginal courts and conferences similar to those of the mainstream courts.<br><br>Judicial Officers are critical to the success of the models, and implementation varies depending on the individual Judicial Officer. As a result, the operation of the programs is not consistent and gaps in delivery can occur.<br><br>Models enable access to support services to some extent, although this is limited by lack of adequately resourced services. | | Analysis of recidivism data did not demonstrate any impact on recidivism in comparison with mainstream court processes. For Nunga Courts, 64% (of 254 defendants) reapprehended in the year following their case finalisation, equivalent to reoffending rate for a matched sample of Aboriginal defendants processed entirely through Magistrates Courts (65%). For Port Augusta Aboriginal Sentencing Court, 53% of defendants reapprehended in the year following their case finalisation, slightly below but comparable with reoffending rate for a matched sample of Aboriginal defendants processed in Magistrates Courts (57%). For Port Lincoln, 57% of conference defendants reapprehended in year following their conference, comparable with reoffending rate recorded for a matched sample of Aboriginal defendants processed entirely through Magistrates Court (53.3%). |
| **Theme 5: Promoting inclusive community participation and engagement** | | Geographic coverage is limited as programs only operate in certain locations.<br><br>Programs have had involvement and ongoing consultation with Aboriginal communities during the design and delivery of the courts and conferences | | |

| Area of Focus | Excellent to Very Good Practice | Adequate Practice | Poor Practice | Comments |
|---|---|---|---|---|
| | | and there are some ongoing operations groups (steering committees) with Elder involvement.<br><br>Successful recruitment and engagement with Elders, although opportunity to increase pool of Elders involved. | | |
| **Theme 6: Effective service coordination and collaboration** | For Nunga Courts, Port Lincoln Conferencing and Section 9C Conferences, models supported by Aboriginal community service providers.<br><br>For Nunga Courts and Port Lincoln Conferencing, collaborative meetings held to identify common issues, barriers and strategies, including CAA, Magistrates, Elders, Police Prosecutors and community agencies. | Programs have a strong focus on service coordination and collaboration but the extent to which this can be achieved is limited as a result of funding and resource constraints. Community Corrections Officers and other support services attend on occasion to support offender and inform the process but limited by available funding and resources for models themselves and for community-based services.<br><br>Scope for formalising operations groups for Port Augusta. | | |
| **Theme 7: Advocating for systems reform and improving relationships among key stakeholder groups** | Judicial officers reported their involvement in the courts and conferences had benefits for their awareness of needs of Aboriginal offenders in mainstream processes.<br><br>For Nunga Courts and Port Lincoln Conferencing, collaborative meetings help raise profile of issues related to Aboriginal offending within the relevant locations. | Scope for more involvement of AJOs and Elders in policy development at statewide level. | | |

| Area of Focus | Excellent to Very Good Practice | Adequate Practice | Poor Practice | Comments |
|---|---|---|---|---|
| **Program management** | | | | |
| **Theme 8: Effective governance and management processes** | CAA provides AJOs with necessary support to perform their roles and AJOs expressed positive feedback in relation to their roles and working environment. | AJO responsibilities include community education and promotion but this is limited by resources available to them<br>Opportunities for Elders involved in programs to meet to share experiences and access broader knowledge around Aboriginal justice issues. Building capacity and skills development important given Elders receive nominal payments. | | Disparity in data collection systems across all justice agencies and this has implications for the efficacy of routine monitoring, evaluation and research studies. Data extraction not readily available and manual matching was required. Also opportunities to collect qualitative feedback given goals of the courts and conferences are difficult to measure. |
| **Theme 9: Clear articulation of program intent** | Clear documentation of program aims and objectives. | Scope for greater promotion re Section 9C Conferences among Judiciary and legal practitioners. | | |
| **Theme 10: Sustainability of the program/s over time** | | | As programs do not receive quarantined funding but are funded through existing court budgets, programs prone to be scaled back when resources are limited. Funding model potentially militates against program uptake for Section 9C Conferences as they are perceived as resource-intensive. Nunga Court Treatment Program funded via the Interventions Programs, which makes it vulnerable. | Debate about whether programs should be legislated and embedded in justice systems, and a lack of specific legislation makes programs susceptible to closure and does not demonstrate a commitment to improve justice outcomes for Aboriginal defendants (excluding Section 9C). |

## 5.7 Key lessons

The SA Aboriginal sentencing courts and conferences are effective alternative sentencing processes that provide a more culturally appropriate environment in comparison to mainstream courts and recognise the integral role of the family and community in the lives of Aboriginal people. The models also enable Judicial Officers to make more informed decisions when sentencing Aboriginal defendants. The programs are seen to be effective in improving the cultural appropriateness of the sentencing process, increasing the level of understanding and engagement in the process, providing Aboriginal defendants with a chance to be heard and an opportunity to reflect on their offending behaviour, and improving the appropriateness of the sentence delivered, resulting in an increased range of justice outcomes.

### The input of Elders encourages defendants to engage in the sentencing process

Engagement in mainstream sentencing processes by Aboriginal defendants can be limited. The SA Aboriginal courts and conferences encourage engagement and improve understanding by creating a more culturally appropriate environment in which direct dialogue between the Judicial Officer, community Elders, defendants, service providers and family members is promoted, thereby making the process more meaningful and relevant for the defendant. The evaluation found that in comparison to mainstream courts these models are more likely to result in defendants reflecting on their behaviour, having a greater awareness of the harm caused by their offending, and accepting the sentence outcomes.

### Community-based services are key to addressing the issues underlying offending behaviour, and funding is required to support this

When seeking to address the over-representation of Aboriginal people in the criminal justice system it is necessary to consider the complex reasons why Aboriginal people are more likely to come into contact with this system. The evaluation highlighted the importance of access to community-based culturally appropriate services and programs to address the myriad of factors underlying offending behaviour for Aboriginal defendants. The SA models provide an avenue for identifying factors underlying offending behaviour and facilitating access to support services to address these issues.

However, the capacity for the models to achieve significant results in this area is limited by available funding and resources for both the models themselves and the community-based services. This limitation in relation to available services was particularly significant in Port Augusta Aboriginal Sentencing Court. There is a need for funding to resource community service providers to more formally support the models, to assist in setting achievable sentencing outcomes, and to provide services to Aboriginal defendants to support them in meeting the conditions of their orders and addressing underlying factors influencing their offending behaviour. The limitations in this area are highlighted by the analysis of recidivism data, which did not demonstrate any impact on recidivism in

comparison with mainstream court processes. This indicates that, unless the underlying causes of offending behaviour are also addressed, the benefits from the operations of Aboriginal sentencing courts and conferences will necessarily be limited.

### Partnerships are effective means for achieving positive justice-related outcomes

Effective working relationships developed at a local level with community service providers reflect a degree of coordination across the programs, with strong cooperation and goodwill established to improve the services available to Aboriginal defendants. The evaluation found that important relationships with key agencies have been developed and that these need to be maintained and strengthened, particularly as these organisations face funding and resource constraints. Opportunities exist to support AJOs to work more directly with community service organisations. This includes strengthening and supporting existing relationships as well as developing new relationships in order to broaden the network of services that can support the models and better address defendants' needs.

### Dedicated funding is needed for continued operation of the courts and conferences

Given a lack of quarantined funding for the SA Aboriginal sentencing courts and conferences, the models are vulnerable in terms of their delivery and sustainability. This can result in reduced frequency of delivery of the courts and conferences, and considerable uncertainty in relation to the level of commitment to improve justice outcomes for Aboriginal defendants. This is heightened by the fact that, aside from the Section 9C Conferences, the SA Aboriginal courts and conferences do not have a legislative basis.

These courts and conferences are available in select locations within SA, and there are opportunities to expand the coverage to enable wider access to the courts and conferences for Aboriginal defendants.

### Opportunities exist for greater Aboriginal community involvement

At the local level there is considerable engagement with Aboriginal community Elders and organisations in the implementation of the SA Aboriginal sentencing courts and conferences, and this is a key strength. Currently time constraints mean that AJOs are not able to focus on community education and promotion, and consideration should be given to supporting the AJOs to promote the courts and conferences in the relevant locations in order to increase the pool of Elders and respected persons involved. At a statewide level, there are opportunities for greater involvement of Elders and AJOs in policy development, including attendance at intra- and interstate justice conferences.

### There should be a greater focus on monitoring and evaluation to measure outcomes against intent

Accessing reliable data is a key challenge in monitoring the outcomes of the SA Aboriginal courts and conferences, and deficiencies in recording data should be addressed. It is also important to ensure that monitoring and evaluation processes focus on the measurement of intermediate-level program outcomes such as engagement with the court process, acknowledgement of the harm done by offending and appropriate sentencing. Monitoring should include the collection of qualitative feedback from relevant stakeholders and participants, given the goals of the courts and conferences of providing a culturally appropriate sentencing process, and the difficulty in measuring this quantitatively, as numbers are often seen by community stakeholders to ignore the complexities of the situation. A review of monitoring and evaluation capabilities should also consider the relevance of collecting information on the level of participation of victims, families and Elders, the time taken to conduct the courts and conferences, and the links and referrals made to support services.

### Flexibility and consistency need to be balanced through improved processes

The role of the Judicial Officer is critical to the effective implementation of the SA Aboriginal sentencing courts and conferences in achieving their goal of providing a culturally appropriate sentencing process. The evaluation identified an increased level of confidence in the judicial process among Elders and defendants as a result of the high level of engagement with Judicial Officers. The evaluation also found that the implementation of the courts and conferences varies depending on the individual Judicial Officer, and this flexibility is necessary to allow for individual judicial independence and the operation of the Aboriginal courts across vastly different geographic areas. However, this variability also poses a risk to successfully delivering the courts and conferences, and consideration should be given to developing processes that aim to enhance consistency across locations for briefing and training Judicial Officers.

### Section 9C Conferences are under-utilised and should be promoted

Section 9C Conferences can be conducted in the District, Supreme and Magistrates courts across SA, yet the evaluation identified that there are gaps in the level of awareness and understanding of this model among Judicial Officers and legal practitioners. The evaluation suggested the funding model potentially mitigates against program uptake for Section 9C Conferences because they are perceived as resource intensive. Opportunities exist to promote the intent and enhance the level of understanding of Section 9C Conferences among Judicial Officers and legal practitioners.

# 6. Findings: Youth Justice Conferencing (Queensland)

## 6.1 Summary of program

Youth Justice Conferencing (YJC) provides an alternative to court for young people who admit to, or are found guilty of, offending. It is a restorative justice process facilitated by the Department of Justice and Attorney-General[50] for young offenders aged 10 to16 at the time of the offence. YJC is a process that provides a way of dealing with offending that allows young people, victims of crime, families and community members to discuss the offence and decide how the harm done should be repaired. YJC seeks to divert young people from further involvement in the criminal justice system and to reduce reoffending and recidivism.

YJC is provided for and administered under Queensland's *Youth Justice Act 1992* (the Act) via amendments enacted in 1996. Formerly known as Community Conferencing, YJC was piloted in 1997 by the Queensland Department of Justice in three locations: Ipswich, Logan and Palm Island. The pilot was evaluated in 1998 by the Griffith University Centre for Crime Policy and Public Safety, and the evaluation recommended that the program be expanded statewide (Hayes et al., 1998). In April 2012, 14 YJC Services were operating, in the following locations: Cairns, Townsville, Mackay, Rockhampton, Hervey Bay, Maroochydore, Caboolture, Ipswich, Toowoomba, Brisbane North, Western Districts, Brisbane South, Woodridge and Mermaid Beach.

A Youth Justice Conference is facilitated by a YJC Convenor and is attended by those most affected by an offence, including the young person, their family, the victim, other relevant community representatives and police. In the case of Aboriginal and Torres Strait Islander young offenders, the Act provides for the involvement of either a respected person in the young person's Aboriginal or Torres Strait Islander community and/or a representative of the Community Justice Group (CJG). From 1 July 2011 to 30 April 2012, YJC received 930 referrals for Aboriginal and Torres Strait Islander young people and these constituted 38% of the total number of referrals for that period.

At the time of the evaluation, the Act provided three pathways of referral to a Youth Justice Conference: police referral, indefinite court referral, and conference before sentence referral. For the period 1 May 2011 to 30 April 2012, approximately one-third (32% or 298) of the matters referred to YJC for Aboriginal and Torres Strait Islander young people were referred by Police. A further 49% (or 456) of referrals for Aboriginal and Torres Strait Islander young people were an indefinite referral from the court. Conferences conducted before sentencing accounted for 19% (or 172) of all YJC referrals for Aboriginal and Torres Strait Islander young people in the same period. The *Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012*, passed in November 2012, removed the ability of Queensland courts to refer to YJC (Queensland Parliamentary Debates, 2012).

[50] Prior to 2012, YJC was delivered by the Queensland Department of Communities.

## 6.2 Profile of YJC

This section provides a summary of the YJC data provided by the Queensland Government Department of Communities and the Queensland Department of Justice and Attorney-General, sourced from the YJC-Files database.

### Number of Aboriginal and Torres Strait Islander referrals by location

Table 6a outlines the number of Aboriginal and Torres Strait Islander referrals to YJC broken down by YJC Service location. In 2010/11, YJC received 914 referrals for Aboriginal and Torres Strait Islander young people and these constituted 33% of the total number of referrals for that period. From 1 July 2011 to 30 April 2012, YJC received 930 referrals for Aboriginal and Torres Strait Islander young people and these constituted 38% of the total number of referrals for that period. The Townsville and Cairns YJC Services received the highest number and proportion of Aboriginal and Torres Strait Islander referrals, with around three-quarters of the referrals received in these locations being for Aboriginal and Torres Strait Islander young people. Rockhampton, Hervey Bay and Toowoomba also received a relatively high number of Aboriginal and Torres Strait Islander referrals.

**Table 6a – YJC referrals by Aboriginal and Torres Strait Islander status and location**

| YJC Service location | 2010/11 | | YJC Service location | 1 July 2011 – 30 April 2012[51] | |
|---|---|---|---|---|---|
| | No. of Aboriginal and Torres Strait Islander referrals | % of total YJC referrals received | | No. of Aboriginal and Torres Strait Islander referrals | % of total YJC referrals received |
| Cairns | 165 | 73 | Cairns | 219 | 73 |
| Townsville | 237 | 75 | Townsville | 212 | 75 |
| MacKay | 49 | 41 | MacKay | 38 | 44 |
| Rockhampton | 77 | 52 | Rockhampton | 95 | 52 |
| Hervey Bay | 83 | 44 | Hervey Bay | 56 | 39 |
| Maroochydore | 13 | 7 | Maroochydore | 15 | 9 |
| Caboolture | 49 | 14 | Caboolture | 22 | 12 |
| Ipswich | 25 | 23 | Ipswich | 44 | 35 |
| Toowoomba | 55 | 33 | Toowoomba | 77 | 47 |
| Brisbane North | 46 | 23 | Brisbane North | 33 | 22 |
| Brisbane South | 43 | 16 | Brisbane South | 29 | 22 |
| Woodridge | 51 | 15 | Woodridge | 55 | 21 |
| Mermaid Beach | 9 | 5 | Mermaid Beach | 14 | 8 |
| | | | Western Districts[52] | 9 | 22 |
| **Statewide** | **914** | **33** | **Statewide** | **930** | **38** |

[51] YJC-Files ceased operation in May 2012 and was replaced by the new system, CRIS (Conferencing Reporting and Information System), which commenced in May 2012 (discussed further in 6.5 below).

[52] The Western Districts YJC Service Centre, based in the Brisbane region, commenced operating in July 2011.

## Number of Aboriginal and Torres Strait Islander referrals proceeding to conference

Of the 914 Aboriginal and Torres Strait Islander referrals received in 2010/11, 688 (or 75%) proceeded to conference. Similarly, from 1 July 2011 to 30 April 2012, of the 930 Aboriginal and Torres Strait Islander referrals received, 652 (or 70%) proceeded to conference.

Table 6b shows the number of Aboriginal and Torres Strait Islander referrals that proceeded to conference by YJC Service location. In 2010/11, 29% of all YJC conferences were conducted with Aboriginal and Torres Strait Islander young people, and from 1 July 2011 to 30 April 2012 34% were with Aboriginal and Torres Strait Islander young people. The Townsville and Cairns YJC Services conducted the highest number (and proportion) of Aboriginal and Torres Strait Islander conferences, with around three-quarters of the conferences conducted in these locations being with Aboriginal and Torres Strait Islander young people.

**Table 6b – Aboriginal and Torres Strait Islander YJC referrals proceeding to conference by location**

| YJC Service location | 2010/11 | | YJC Service location | 1 July 2011 – 30 April 2012 | |
|---|---|---|---|---|---|
| | No. of Aboriginal and Torres Strait Islander conferences conducted | % of total YJC conferences | | No. of Aboriginal and Torres Strait Islander conferences conducted | % of total YJC conferences |
| Cairns | 104 | 72 | Cairns | 130 | 73 |
| Townsville | 198 | 71 | Townsville | 176 | 76 |
| MacKay | 53 | 42 | MacKay | 25 | 37 |
| Rockhampton | 53 | 45 | Rockhampton | 70 | 50 |
| Hervey Bay | 61 | 36 | Hervey Bay | 34 | 35 |
| Maroochydore | 14 | 8 | Maroochydore | 14 | 10 |
| Caboolture | 36 | 12 | Caboolture | 25 | 13 |
| Ipswich | 13 | 17 | Ipswich | 29 | 28 |
| Toowoomba | 49 | 37 | Toowoomba | 51 | 41 |
| Brisbane North | 30 | 18 | Brisbane North | 18 | 15 |
| Brisbane South | 23 | 13 | Brisbane South | 24 | 17 |
| Woodridge | 42 | 13 | Woodridge | 40 | 18 |
| Mermaid Beach | 9 | 6 | Mermaid Beach | 7 | 5 |
| | | | Western Districts | 5 | 36 |
| **Statewide** | **688** | **29** | **Statewide** | **652** | **34** |

## Percentage of agreements reached and completed

Table 6c shows the percentage of Youth Justice Conferences with Aboriginal and Torres Strait Islander young people that reached agreement and were completed. For the period 1 July 2011 to 30 April 2012, 652 conferences were conducted with Aboriginal and Torres Strait Islander young people, and agreements were reached in 82% of these conferences. For the period 1 July 2010 to 30 June 2011, 688 conferences were held with Aboriginal and Torres Strait Islander young people, and agreements were reached in 84% of these. For the period 1 July 2011 to 30 April 2012, the rate of completion of agreements reached by Aboriginal and Torres Strait Islander young people was 77%, and for 2010/11 the rate of completion was 79%.

In 2010/11 the percentage of Youth Justice Conferences that reached agreement in Cairns and Townsville (the YJC Services with the largest numbers of Aboriginal and Torres Strait Islander YJC referrals that proceeded to conference) was high, with 97% and 90% reaching agreement respectively. From 1 July 2011 to 30 April 2012, 83% and 97% of Aboriginal and Torres Strait Islander conferences in Cairns and Townsville reached agreement respectively.

**Table 6c – Percentage of Aboriginal and Torres Strait Islander Youth Justice Conferences that reached agreement and were completed**

| YJC Service location | 2010/11 (based on 688 conferences conducted with Aboriginal and Torres Strait Islander young people) | | YJC Service location | 1 July 2011 – 30 April 2012 (based on 652 conferences conducted with Aboriginal and Torres Strait Islander young people) | |
|---|---|---|---|---|---|
| | % conferences that reached agreement | % agreements completed | | % conferences that reached agreement | % agreements completed |
| Cairns | 97 | 79 | Cairns | 83 | 65 |
| Townsville | 90 | 74 | Townsville | 97 | 76 |
| MacKay | 96 | 88 | MacKay | 100 | 96 |
| Rockhampton | 100 | 82 | Rockhampton | 60 | 88 |
| Hervey Bay | 87 | 70 | Hervey Bay | 85 | 77 |
| Maroochydore | 71 | 100 | Maroochydore | 94 | 88 |
| Caboolture | 97 | 89 | Caboolture | 100 | 85 |
| Ipswich | 100 | 93 | Ipswich | 90 | 72 |
| Toowoomba | 62 | 70 | Toowoomba | 96 | 68 |
| Brisbane North | 100 | 77 | Brisbane North | 100 | 76 |
| Brisbane South | 90 | 86 | Brisbane South | 95 | 91 |
| Woodridge | 95 | 81 | Woodridge | 89 | 64 |
| Mermaid Beach | 100 | 78 | Mermaid Beach | 72 | 43 |
| | | | Western Districts | 75 | 75 |
| **Statewide** | **91** | **79** | **Statewide** | **88** | **75** |

## Gender breakdown of YJC referrals

Overall, around three-quarters of the Aboriginal and Torres Strait Islander referrals received were for males, with males accounting for 76% of the Aboriginal and Torres Strait Islander referrals from 1 July 2011 to 30 April 2012 and 74% in 2010/11. This gender balance was similar in the locations with larger numbers of Aboriginal and Torres Strait Islander referrals, such as Cairns, Townsville, Rockhampton, Hervey Bay and Toowoomba.

**Table 6d – Gender breakdown of Aboriginal and Torres Strait Islander YJC referrals**

| YJC Service location | 2010/11 | | YJC Service location | 1 July 2011 – 30 April 2012 | |
|---|---|---|---|---|---|
| | Female % of Aboriginal and Torres Strait Islander referrals | Male % of Aboriginal and Torres Strait Islander referrals | | Female % of Aboriginal and Torres Strait Islander referrals | Male % of Aboriginal and Torres Strait Islander referrals |
| Cairns | 22 | 77* | Cairns | 23 | 77 |
| Townsville | 23 | 77 | Townsville | 18 | 80* |
| MacKay | 25 | 75 | MacKay | 42 | 58 |
| Rockhampton | 16 | 84 | Rockhampton | 23 | 77 |
| Hervey Bay | 26 | 74 | Hervey Bay | 19 | 81 |
| Maroochydore | 62 | 38 | Maroochydore | 29 | 71 |
| Caboolture | 33 | 67 | Caboolture | 26 | 74 |
| Ipswich | 36 | 61* | Ipswich | 28 | 72 |
| Toowoomba | 30 | 70 | Toowoomba | 27 | 73 |
| Brisbane North | 57 | 43 | Brisbane North | 44 | 56 |
| Brisbane South | 28 | 72 | Brisbane South | 38 | 63 |
| Woodridge | 14 | 86 | Woodridge | 15 | 85 |
| Mermaid Beach | 23 | 77 | Mermaid Beach | 8 | 92 |
| | | | Western Districts | 14 | 86 |
| **Statewide** | **26** | **74** | **Statewide** | **24** | **76** |

* Percentages do not add to 100% due to rounding and missing data fields.

## 6.3 Program logic

The following table shows the 'program logic' that was developed for Queensland Youth Justice Conferencing. This program logic was developed with representatives from Queensland Department of Communities and shows the connection between the inputs and outputs of YJC and expected results in the medium term (outcomes) and longer term (impacts).

| Inputs | Outputs | Outcomes | Impacts |
|---|---|---|---|
| Personnel recruitment, training and support<br><br>Indigenous Conference Support Officers (ICSO) employment<br><br>Involvement of Elders and community representatives<br><br>Education of courts and police<br><br>Pre-conference preparation<br><br>Conference process<br><br>Post-conference monitoring<br><br>Data collection<br><br>Referral of eligible young people to YJC | YJC as a:<br>▪ Court-referred conference<br>▪ Conference held prior to sentencing, or<br>▪ Conference held as a result of a police referral and as an alternative to commencing a court proceeding<br><br>Involving and engaging all relevant parties (young people, families, victims, Elders and other relevant stakeholders) organised and delivered<br><br>Conferences held within the parameters of approved framework<br><br>Conference agreements reach and completed<br><br>Conference agreements considered in sentencing (where appropriate) | Increased understanding, recognition and response to harm done by offenders<br><br>Improved sense of safety, closure and satisfaction with the justice process by victims<br><br>Appropriate reparation made through conference agreements offering a response to the harm done<br><br>Young people complete all aspects of conference agreements satisfactorily<br><br>Conference meets the needs of all participants in reaching an agreement about how the offence is to be dealt with<br><br>Program is responsive to victim, offender and family needs including the cultural aspects of crime<br><br>Increased confidence and knowledge of police and courts in the use of YJC as an alternative justice process<br><br>Increased victim and other relevant stakeholder involvement and participation in the justice process<br><br>Increased stakeholder confidence in alternative justice processes<br><br>Increased community trust in YJC as a component of the justice system | Increased sensitivity and appropriateness of the justice system to Indigenous people's needs<br><br>Program makes a contribution to meeting COAG and Closing the Gap targets<br><br>Contribution to the reduction of reoffending and recidivism by Aboriginal and Torres Strait Islander young offenders<br><br>Victims feels safe<br><br>Community wellbeing restored |

## 6.4 Methodology

The evaluation framework and methodology are outlined in Chapter 3. Evidence for the evaluation of the Queensland YJC was gathered through analysis of documentation and data, and through interviews and consultation, as shown in the following table. Finally, based on the evidence gained, key lessons were identified.

| | |
|---|---|
| **Documentation and data analysed** | The literature on Aboriginal and Torres Strait Islander sentencing courts and conferences.<br><br>YJC policy and program documentation.<br><br>Program data in relation to YJC referrals and outcomes.<br><br>Data system limitations – data based on a count of referrals, rather than young people with an individual identifier (discussed in Theme 1 in 6.5 below), precluded an analysis of reoffending for young Aboriginal and Torres Strait Islander offenders who have participated in YJC. |
| **Interviews and consultations conducted** | Consultations conducted during site visit to Brisbane 12–14 December 2011 with: personnel from the Caboolture YJC Service Centre (including YJC Convenor and Service Leader); representatives from the Aboriginal and Torres Strait Islander Legal Service (ATSILS); Legal Aid Solicitor; Youth Justice Court Services Unit personnel; Brisbane Children's Court Magistrate; Community Elder; Youth Justice Services Brisbane South (Indigenous Service Support Officer (ISSO)); Dr Hennessey Hayes, Senior Lecturer, School of Criminology, Griffith University; Department of Communities Officers/Managers; Detective Superintendent, Child Safety Director, Queensland Police.<br><br>Consultations conducted during site visit to Cairns 13-15 February 2012 with: YJC Service Centre personnel (including YJC Convenor, Indigenous Conference Support Officers (ICSO), Regional Coordinator); Community Elders; Community Justice Group, Yarrabah (two members); lawyers (5); Community organisations/stakeholders.<br><br>Consultations conducted during site visit to Mount Isa 27 February 2012 with: YJC Service Centre personnel (including Resource Officer, ICSO); Queensland Police Officers; Youth Justice Services personnel; Community Elder.<br><br>Consultations conducted during site visit Palm Island and Townsville 28 February–1 March 2012 with: YJC Service Centre personnel (including YJC Convenors, ICSOs, Service Leader and Regional Coordinator); Community Elders; Director Government Coordination, Palm Island; Youth Justice |

| | |
|---|---|
| | Services personnel; ATSILS solicitors; Community Justice Group representatives.<br><br>Follow-up telephone interviews with Youth Justice Policy, Performance, Programs and Practice personnel. |

## 6.5 Findings against the good practice themes

The following makes an assessment of YJC as it applies to Aboriginal and Torres Strait Islander young people against the 10 good practice themes identified in the Monitoring and Evaluation Framework, as outline in Table 3a in Chapter 3.

### Program design

***Theme 1: Focusing on crime prevention and aiming to reduce the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system***

YJC is guided by the principles of restorative justice. It is a process that involves the young offender, the young person's family and the victim or a victim's representative (if they choose to be involved) in making decisions about what should happen to repair the harm caused by the young person's criminal behaviour. The process seeks to place greater emphasis on the impact of the offending behaviour on the victim, hold the young person accountable for their actions, and find ways to help repair the damage or harm that has been caused by the offence through discussion among the parties involved in the offence.

YJC was not developed as a specific program for Aboriginal and Torres Strait Islander young people, but rather as a mainstream juvenile justice initiative delivered statewide for all young people. However, the objectives as listed in section 2 of the *Juvenile Justice Act 1992* include:

> "(e) to recognise the importance of families of children and communities, in particular Aboriginal and Torres Strait Islander communities, in the provision of services designed to –
>
> (i) rehabilitate children who commit offences; and
> (ii) reintegrate children who commit offences into the community".

Also, YJC Service Centres are situated in areas with high Aboriginal and Torres Strait Islander populations, and the numbers of young Aboriginal and Torres Strait Islander offenders referred to YJC are high. For example, from 1 July 2010 to 30 June 2011, 165 referrals were received (73% of all referrals received) in the Cairns YJC Service, 237 referrals were received (75% of all referrals received) in the Townsville YJC Service and 77 referrals were received (52% of all referrals received) by the Rockhampton YJC Service were for Aboriginal and Torres Strait Islander young people.

Although the main focus of YJC is restoration for those affected by the young person's offending behaviour, it is also aimed at diverting young offenders from the criminal justice system with a view to reducing the likelihood of reoffending. In outlining the potential benefits of YJC, section 30(4)(d)(i) of the Act states that the community may benefit from YJC by "fewer offences being committed because of effective early intervention by the community". There are many challenges when assessing whether YJC impacts on reoffending. Disagreement still remains as to whether or not restorative justice conferencing should aim to reduce recidivism (Hayes, et al., 2011), and previous research has yet to resolve the question of whether conferences can prevent juvenile reoffending. There has not been clear agreement as how best to assess whether conferences have reduced reoffending, and available benchmarks have been inadequate to support measurement or comparison of young people who participated in a conference with those who did not. It has been difficult to establish control groups of young people with sufficiently similar characteristics to those in conferencing to support meaningful comparison (Luke & Lind, 2002).

Given these limitations, previous evaluations have shown mixed results, indicating that the effectiveness of youth justice conferences in reducing recidivism for Indigenous young offenders (and indeed young offenders in general) is unclear. It has been suggested that, while there is general satisfaction with the conferencing process, there is mixed evidence on participation rates in conferences and compliance with conference orders or agreements by Indigenous young people (Cunneen, 2008).

Further difficulties have arisen in determining whether cessation of offending could be attributed to natural developmental maturation rather than participating in the conference, whether curtailment rather than cessation of offending is a valid measure, whether other personal and social outcomes from the conference may be more significant in the long term, and finally whether apprehension is a valid indicator of actual offending behaviour (in other words, did young people not get caught because they get better at offending?) (Hayes & Daly, 2003; Luke & Lind, 2002; Richards, 2011). These issues have served to cloud the correlation between reoffending patterns and Youth Justice Conference outcomes.

Data limitations preclude analysis of reoffending for young Aboriginal and Torres Strait Islander offenders who have participated in YJC. The previous YJC data collection system, called YJC-Files, was implemented in 1997 and ceased operation in May 2012. YJC-Files was a stand-alone system that provided data based on a count of referrals, rather than of young people with an individual identifier. Without having an individual identifier per young person, it was not possible to systematically report how many young people had further contact with the youth justice system for a new offence (i.e. were reoffenders within the child or adult justice systems?). The new system, called CRIS (Conferencing Reporting and Information System), commenced in May 2012 and provides operational information management. CRIS collects data based on each young person and provides future capacity to track a young person within the youth justice system. Ability to track young people across

criminal justice agencies may be achieved in future with the introduction of the Single Person Identifier (SPI) currently being implemented by the Queensland Government.

***Theme 2: Meeting needs and addressing a service gap***

Restorative justice conferencing is established in Australia as an alternative model for responding to juvenile offending, with legislated conferencing schemes operating in all Australian states and territories. In seeking to divert young people away from the criminal justice system, YJC may assist in addressing the over-representation of Aboriginal and Torres Strait Islander young people in the youth justice system. By providing an alternative to mainstream court processes that allows for input from community Elders, YJC fills a need for culturally relevant alternative justice processes for Aboriginal and Torres Strait Islander young people.

Aboriginal and Torres Strait Islander young people are over-represented in all stages of the youth justice system in Australia as a whole (AIHW, 2012), and this is mirrored in Queensland. In 2010/11, Indigenous young people aged 10–17 were five times more likely than non-Indigenous young people to be proceeded against by police and eight times more likely to be found guilty in the Children's Court of Queensland (AIHW, 2012).

In 2007/08, Aboriginal and Torres Strait Islander young people constituted 42% of finalised court appearances for offences by young people (Department of Communities, 2010), and in 2010/11 about 33% of young people proven guilty in the Children's Court were Indigenous (AIHW, 2012). The Queensland Department of Communities is aware of evidence that suggests that Aboriginal and Torres Strait Islander young people are less likely to receive the benefits of diversionary responses to offending such as cautioning or a police referral to YJC. This is supported by a 2008 report by the Australian Institute of Criminology which found that young Aboriginal and Torres Strait Islander offenders in NSW, SA and WA were more likely than their non-Aboriginal and Torres Strait Islander young counterparts to be referred to court than to a diversionary response irrespective of factors such as age, gender or prior criminal history (Department of Communities, 2010).

Evaluation feedback indicates that Aboriginal and Torres Strait Islander adults and young people can feel intimidated by mainstream justice processes and are less likely to engage in them as a result. YJC has the capacity to take into account the cultural background of the young person, particularly through the input of Elders or respected community representatives, which is not available in other mainstream court and justice processes. Pursuant to section 34(1)(h) of the Act, a convenor can decide that another person, other than the participants specifically referred to in section 34(1)(a)-(g), can attend a conference. Section 34(3) states that for subsection 34(1)(h), if the young person is an Aboriginal or Torres Strait Islander person, the Convenor must consider inviting either a respected person in the young person's Aboriginal or Torres Strait Islander community and/or a representative of the CJG, if there is one in the community. Stakeholder feedback highlighted that there are greater opportunities for cultural engagement in a restorative justice process with the involvement of Elders than there are

in other justice and court processes, thereby rendering YJC more suitable for Aboriginal and Torres Strait Islander young people. These opportunities are strengthened by the introduction of Indigenous Conference Support Officer (ICSO) positions.

Following a review of YJC service delivery and structure in 2005, these positions were piloted across five regions from December 2006 to June 2007. ICSOs are employed to assist in the preparation and facilitation of Youth Justice Conferences and in the monitoring of YJC agreements. ICSOs are Aboriginal and Torres Strait Islander identified positions that work alongside Convenors to provide advice and information in relation to cultural issues and factors that are relevant to conference proceedings and outcomes. These positions (discussed further in Theme 3 below) are aimed at improving service delivery and outcomes for Aboriginal and Torres Strait Islander young people, victims, their families and communities. As respected members of their communities with strong community connections, ICSOs are well placed to act as a key point of contact for YJC in their communities and to ensure the program engages Aboriginal and Torres Strait Islander people in a culturally respectful and responsive way.

The trial resulted in seven ICSO positions being recurrently funded and a further 2.5 positions being trialled in urban locations. At the time of consultation, 12 full-time equivalent (FTE) ICSO positions were funded in the following 10 YJC Services, based on need: Cairns, Mackay, Townsville, Hervey Bay, Rockhampton, Caboolture, Brisbane South, Brisbane North, Toowoomba and Logan.

These positions demonstrate a commitment to making YJC more responsive, meeting the needs of Aboriginal and Torres Strait Islander young people, their families and communities. Feedback received during the evaluation indicated that these positions are highly valued. However, the feedback also suggested that, given the high volume of conferences, particularly in those regions that were identified as having a higher need, and the large geographical area serviced by the regions, the ICSO positions are stretched and therefore their capacity to provide cultural support to the mainstream process can be limited. In 2010/11, YJC received 914 referrals for Aboriginal and Torres Strait Islander young people and these constituted 33% of the total number of referrals for that financial year. From 1 July 2011 to 30 April 2012, YJC received 930 referrals for Aboriginal and Torres Strait Islander young people and these constituted 38% of the total number of referrals for that period.

The 2012 Queensland Government amendments to YJC will see the number of ICSO positions funded across the state reduced to 3.5 FTE positions, which will clearly have a significant impact on the program's capacity to meet the needs of Aboriginal and Torres Strait Islander offenders. The challenges associated with meeting needs and delivering the program across a state with such a large geographical spread are discussed further in Theme 5 below.

***Theme 3: Culturally appropriate program design and implementation***

As noted above, the Act provides for the involvement of either a respected person in the young person's Aboriginal or Torres Strait Islander community and/or a representative of the CJG, if there is one in the community. This and the employment of ICSOs to support the delivery of YJC when it involves Aboriginal or Torres Strait Islander people are the main culturally specific elements of the program. The focus on engagement in the process as a result of the participatory nature of the conference and the opportunity for storytelling and dialogue between participants, which allows for a greater understanding among participants, was also noted in the feedback as a strength of the process, one that makes it more relevant for Aboriginal and Torres Strait Islander people. The dialogue among participants was also felt to have a family-strengthening role, with parents seeing their child take responsibility for their actions, and young people hearing of the impact of their behaviour on their parents, all of which created a greater sense of wellbeing and was felt to be culturally relevant.

The positive impact of the involvement of Elders or respected community representatives was consistently identified in the evaluation feedback, and this was seen as essential for effective engagement in the process by Aboriginal and Torres Strait Islander young people and their families. Elder involvement was also seen as important in providing a more meaningful process when the victims of the offence are Aboriginal and Torres Strait Islander people. The range of benefits identified that result from the participation of Elders and respected community representatives included:

- Knowledge and understanding of the offender, their family and their background
- Creating an environment that enhances the level of understanding of the conferencing process
- The moral authority that Elders can bring to the table, which can impact on the young person's perception of their offending behaviour and its impact on others and the community; Elder involvement was felt to offer guidance to the young person as well as adding weight to the process and outcome and highlighting the importance of the agreement reached
- The supportive role that Elders can play, which was seen as particularly important given the conferencing process can lead to the disclosure of significant family issues; Elders also lend support to the families of the young people, who may be struggling to maintain authority
- The cultural learning that comes from the opportunity for community Elders to tell young people their own story and the history of their community
- Emphasising to young people that they are part of a community with a strong cultural identity; this was seen as particularly significant as adolescence is a time of identity development.

It was also noted that, by being involved in the process, Elders and respected community representatives gain an understanding of what it means to be a young person today and the particular challenges and stresses young people face. This was felt to enhance their capacity to fulfil the role that Elders play in their community.

However, it was clear from the evaluation feedback that the level of Elder and community involvement differs across the various YJC Service locations, and it was reported that in some instances the level of involvement is inadequate, the process does not sufficiently include or engage Aboriginal and Torres Strait Islander people, and many conferences take place without their involvement. Notwithstanding the efforts of the ICSOs to identify and engage suitable community representatives to be involved in conferences, a number of challenges were identified when engaging Elders and respected persons. As is the case with all programs that rely on community member participation and support, key community representatives are busy with numerous community and other commitments and their capacity is stretched, making it difficult to find available community Elders who are in a position to make the required time commitment. Stakeholders were also mindful of not over-relying on or over-burdening the same group of people. Furthermore, in remote communities it is likely that some Elders may be related to many of the young people referred for YJC. It was also noted that there can be challenges selecting and finding Elders from the appropriate cultural and family group.

There was also a view among some stakeholders consulted that there was a lack of Elder and Aboriginal and Torres Strait Islander community involvement in the design of how YJC is delivered when it involves an Aboriginal or Torres Strait Islander young person, and a lack of input in relation to what Aboriginal and Torres Strait Islander community or Elder involvement in the process should and does entail. This lack has had an impact on the overall understanding and acceptance of YJC among Aboriginal and Torres Strait Islander community stakeholders. Opportunities for greater consultation with and involvement of Aboriginal and Torres Strait Islander community members were identified, and these are discussed further in Theme 5 below.

Although data in relation to Elder participation in YJC is recorded locally by Convenors, due to data system limitations there is no capacity to report on the extent to which Elders and respected community representatives are involved in YJC. While information in relation to Elder and respected community representative participation in conferences is currently collected via CRIS, there is currently not the capability to report on this information. Should resources become available, consideration should be given to increasing the capacity of CRIS so that outcomes for Aboriginal and Torres Strait Islander young people can be monitored and scrutinised in relation to whether or not Elders were involved in the YJC process.

As noted above, ICSOs are employed to assist in the preparation and facilitation of conferences, to assist in the monitoring of YJC agreements and to ensure that the conference includes the appropriate people and is conducted in a culturally appropriate way. ICSOs are also key to the involvement in YJC of Elders and respected community representatives, and feedback indicated that the positions enhance the cultural capability of the program and are crucial to the delivery of YJC for Aboriginal and Torres Strait Islander people. An ICSO's knowledge of the community was seen by stakeholders as increasing the young person's and their family's acceptance of and engagement with the process, and their involvement in the YJC process was seen to increase understanding and build trust. The focus of

the model on pre-conference interviews with participants conducted face to face, in which Convenors ensure that all parties understand the process and expectations are managed, was also seen as important to participant satisfaction more generally but also of particular value in the engagement of Aboriginal and Torres Strait Islander participants. ICSO involvement in pre-conference interviewing heightens the value of this process.

At the time of the evaluation, 12 FTE ICSO positions were supporting YJC delivery across the state. Feedback indicated that the positions were stretched, particularly given the geographical areas covered by the positions, and that more resources were required to ensure YJC could be successfully delivered for Aboriginal and Torres Strait Islander people across Queensland. Stakeholders also indicated that the ICSOs are performing duties beyond their AO3 classification and the role should be classified as an AO4. As a result, there was a perception that the ICSOs are undervalued and overworked. It is understood that YJC management had unsuccessfully sought funding for statewide coverage of the ICSO positions in order to increase the cultural capability of YJC and for the roles to have the higher classification of AO4.

Some stakeholders felt that Aboriginal and Torres Strait Islander Convenors were important for the effective delivery of YJC to Aboriginal and Torres Strait Islander people, and indeed in those locations where an Aboriginal and Torres Strait Islander Convenor was employed this Convenor conducted the vast majority of Aboriginal and Torres Strait Islander referrals. However, difficulties in recruiting for identified positions were also noted, as were issues around the capacity for an Aboriginal and Torres Strait Islander Convenor to maintain a position of neutrality in some locations, particularly where community connections are close.

The evaluation revealed that greater efforts could be made to recruit Aboriginal and Torres Strait Islander Convenors, particularly in areas with high numbers of Aboriginal and Torres Strait Islander referrals, and opportunities exist for a policy to preference suitable Aboriginal and Torres Strait Islander applicants. Mechanisms should be put in place to ensure that Convenors do not feel compromised.

In terms of the current approach to recruitment of YJC Convenors, these positions have either been classified as an 'identified' or 'specified' position, with Regional Coordinators[53] determining how they would classify the position. Applicants for a specified position have to nominate an Aboriginal or Torres Strait Islander person who is recognised and accepted in the Aboriginal and Torres Strait Islander community as a referee to help them meet selection criteria in relation to an ability to communicate, consult and negotiate effectively and sensitively with Aboriginal and Torres Strait Islander people. Stakeholder feedback indicated that generally the positions were advertised as specified positions to avoid difficulties of there not being enough applicants for, or not being able to fill,

[53] Under the 2012/13 budget and workplace changes, the Regional Coordinator positions will no longer exist.

an identified position. After 2009, rather than being advertised as a specified position, the Convenor role included a technical role-specific capability to "communicate sensitively and effectively with Aboriginal and Torres Strait islander people and have a knowledge and understanding of both cultures and societies and issues that impact upon them in contemporary society and have the capacity to learn about other cultures", without the need for an Aboriginal or Torres Strait Islander referee (JD_2726).

The evaluation also highlighted that opportunities exist for a greater emphasis on cultural capability training for non-Aboriginal and Torres Strait Islander staff. When the program came under the remit of the Department of Communities (prior to mid-2012), cultural capability training packages were available to staff, but it would appear that this was delivered on an ad-hoc rather than formal basis. In regional locations the training was not delivered by the training unit but was delivered locally by Youth Justice Aboriginal and Torres Strait Islander staff members in conjunction with the local CJG. In urban locations a general, rather than Aboriginal and Torres Strait Islander-specific, cultural capability training package was made available to YJC staff. Given the high proportion and large numbers of Aboriginal and Torres Strait Islander young people referred to YJC, it is essential that staff are appropriately trained in working sensitively and appropriately with Aboriginal and Torres Strait Islander community members.

Other efforts have been made both at a central and local level to enhance the cultural capability of the YJC program. In 2008, 10 Aboriginal and Torres Strait Islander conferencing staff from across Queensland were brought together by the central office's training unit to form a working party with the purpose of developing a training package to assist YJC Services to deliver a service that meets the needs of Aboriginal and Torres Strait Islander communities. A key challenge identified by YJC Convenors in the Cairns region, and supported by other working party members, related to issues arising in conferences with Aboriginal and Torres Strait Islander young people as a result of the order of the 'telling the story' stage of a conference, when participants convey the facts and express their feelings surrounding the incident. The YJC Practice Manual outlines that the young person is first to tell the story of the circumstances of the offence, in order to demonstrate taking responsibility for their offending and acknowledging the harm done. The working party identified that speaking first to a group of adults, particularly if community Elders were present, was a significant challenge for Aboriginal and Torres Strait Islander young people, and that their behaviour in the conferences, due to the embarrassment and shame experienced, had the potential to be construed as an unwillingness to participate or take responsibility and show remorse for their actions. It was also considered that, as Aboriginal and Torres Strait Islander young people are considerably more represented in the younger age cohort of juvenile offenders, these issues were heightened.

In response to this issue, Aboriginal and Torres Strait Islander staff in Cairns and other centres had locally adapted variations to the format which provided changes to the 'telling the story' format, including having the young person speak after other participants and be assisted in telling their story.

From this feedback the training unit developed an alternative model, known as 'responsive storytelling', which, among other variations from the standard process, involved the Police Officer or victim initiating the storytelling around the offence so that the young person could take responsibility for their actions by responding to rather than initiating discussion.

This model was endorsed by the working party and formally trialled in far north, south-west and central Queensland.[54] The conferences evaluated as part of the trial suggested that the engagement of the young person was more effective than if the standard process had been followed. Convenors rated the success of the conferences highly, particularly when compared with the likelihood of success if the standard process had been adopted.

Although the model was trialled successfully and the relevant training package developed, the revised model was not officially endorsed, likely as a result of alternative prioritisation of resources. As a result, it would appear that the revised model, or at least its core variation to the usual conference speaking order, has only been informally adopted on a limited ad-hoc basis at the Convenor's discretion, suggesting that an opportunity to enhance the cultural appropriateness of the YJC model was missed.

## Program delivery

### *Theme 4: Achieving outcomes in line with program intent*

Youth Justice Conferencing aims to provide a restorative justice process that holds the young person accountable for their actions by providing an opportunity for them to accept responsibility, understand the consequences of their actions and make amends for the offending behaviour. The program also aims to find ways to help repair the harm that has been caused to the victim of the offence and involve the victim, the young person's family and the young person in making decisions about what should happen to repair the harm that has been caused. YJC seeks to divert young people from further involvement in the criminal justice system, and a broader and longer term aim is to make a contribution to a reduction in reoffending and recidivism by juvenile offenders. Findings in relation to outcomes are largely based on monitoring data collected by Youth Justice Practice Improvement and interviews conducted with YJC personnel (including ICSOs, YJC Convenors, Service Leaders and Regional Coordinators), Elders and CJG representatives, court personnel (including Judicial Officers), legal practitioners and community organisation representatives. It should be noted that feedback in relation to outcomes is limited because consultations could not be conducted with young people who had participated in YJC or with individual victims.

[54] The trial was the subject of the Queensland representative's briefing to the Australasian Juvenile Justice Administrators meetings in 2009 and 2010.

There was consensus among stakeholders that the process gives young offenders a greater understanding of the impact of their offending behaviour in comparison to a court process. It was felt that YJC provides for a more meaningful process as young people are forced to acknowledge and take ownership of their offending behaviour rather than being a disengaged participant in a courtroom where legal practitioners speak on their behalf. It was reported that young people often show remorse when hearing about the harm caused by their actions and that this is more likely when Elders and individual victims are present. It was also noted that the process is more likely to have a significant impact for those young people who do not have a history of offending.

The primary mechanism for the young offender to make amends for their offending behaviour is the conference agreement. For the period 1 July 2011 to 30 April 2012,[55] 652 conferences were conducted with Aboriginal and Torres Strait Islander young people, and agreements were reached in 88% of these. For the period 1 July 2010 to 30 June 2011, 688 conferences were held with Aboriginal and Torres Strait Islander young people, and agreements were reached in 91% of these. For the period 1 July 2011 to 30 April 2012, the rate of completion of agreements reached by Aboriginal and Torres Strait Islander young people was 75%, and for the period 1 July 2010 to 30 June 2011 the rate of completion was 79%. One of the strengths of the YJC model identified by stakeholders that is likely to be linked to a high rate of agreements reached is the strong focus on pre-conference preparation. This includes face-to-face interviews with all conference participants, which was seen by stakeholders to develop participants' understanding of the process and assist in the management of expectations in relation to potential outcomes.

In terms of the capacity for YJC to repair the harm done, qualitative feedback indicates that in certain circumstances this is achieved, with the process providing an opportunity for both the victim and young person to determine a mutually acceptable response to repairing the material, psychological and social damage caused by the crime. The extent to which this is possible may be limited by factors such as the attitude of the participants, the capacity of the young person and their family to provide financial restitution, and the availability of a suitable adult or family support to supervise voluntary or community work. Participant satisfaction rates measured for the first 11 years of YJC through self-completed forms at the conclusion of the conference indicated that 97% of victims and 98% of offenders were satisfied with the agreement (Department of Communities, 2010), suggesting that the process is perceived to have satisfactorily resolved the matter for victims and offenders. These figures relate to satisfaction rates for participants overall and were not broken down to indicate the satisfaction levels for Aboriginal and Torres Strait Islander offenders and victims, and caution should be taken when interpreting the results of survey instruments for Aboriginal and Torres Strait Islander audiences. Qualitative feedback provided examples in which stakeholders felt that YJC has been powerful in answering the 'why me' question and helping victims feel less fearful because the conference revealed that they were not targeted specifically but were rather a victim of a random offence. Some

[55] Due to a changeover to the new CRIS data system, data was unavailable for the full financial year.

stakeholders did however feel that the conference agreements were at times inadequate for the incident. Reference was made to apology letters not being sufficient in the circumstances, though it should be noted that this was often discussed in the context of a lack of appropriate supervision and community work opportunities.

YJC seeks to provide the victim of a criminal offence with an opportunity to be part of the process of dealing with that offence. Stakeholder feedback indicated a commitment to ensuring that the views of the victims are represented either through direct participation, a victim impact statement or a victim representative. The extent to which victims are involved in YJC cannot be determined, as victim participation, while recorded locally by Convenors, is not centrally available due to data system limitations. It is important to monitor this information, as the evaluation feedback indicated that direct victim participation has a significant impact on conference outcomes for all participants.

In terms of diverting young Aboriginal and Torres Strait Islander people from the criminal justice system, as indicated by the data in relation to referrals for 1 May 2011 to 30 April 2012, approximately one-third (32% or 298) of the matters referred to YJC for Aboriginal and Torres Strait Islander young people provided a complete diversion from court-based criminal justice processes because they were referred by Police. These diversionary outcomes are much lower than those of non-Aboriginal and Torres Strait Islander young offenders, in which Police referrals constituted 47% of referrals. This indicates an opportunity to enhance the capacity for YJC to divert young Aboriginal and Torres Strait Islander people from the criminal justice process, and further investigation is required to understand the reasons for the lower Police referral rate for Aboriginal and Torres Strait Islander young offenders.

Indefinite referrals, while not initially diverting young people from court, provide an opportunity for diversion from further involvement in the criminal justice system if an agreement is reached and completed. A further 49% (or 456) of referrals for Aboriginal and Torres Strait Islander young people are diverted from sentencing by way of an indefinite referral from the court. This rate of referral is slightly higher than that for non-Aboriginal and Torres Strait Islander young people (41% or 653).

In terms of conferences conducted before sentencing, this accounted for 19% (or 172) of all YJC referrals for Aboriginal and Torres Strait Islander young people. This rate of referral is slightly higher than that for non-Aboriginal and Torres Strait Islander young people (12% or 186). Evaluation feedback highlighted the importance of a well-written agreement for this type of referral. It was noted that the essence of the conference needs to be captured in the agreement, possibly through the use of quotes from the victim and the young person. Also, if an agreement has not been reached, then it is important that the form that is returned to the Judicial Officer accurately records the reasons why an agreement could not be reached. For example, if the circumstances were such that the young person took responsibility for their actions through the conference process but the victim was looking for financial restitution, and the young person was not in a position to provide this, this information needs to be reflected in the information provided to the Judicial Officer. This negates the potential for the

Judicial Officer to draw any negative inferences from the fact that an agreement was not reached. Similarly, where an Aboriginal and Torres Strait Islander young person does not attend a conference, it is important that the reasons for this are communicated to the Judicial Officer.

As noted above in Theme 1, the impact of YJC on reducing reoffending of Aboriginal and Torres Strait Islander young people cannot be measured, due to data system limitations. Given that YJC seeks to have impact on reducing reoffending and recidivism by juvenile offenders, it will be important for any future monitoring processes to have mechanisms in place to assess these outcomes.

***Theme 5: Promoting inclusive community participation and engagement***

YJC is delivered statewide, which indicates a commitment to equitable access to the program. However, there are significant challenges in delivering the program across such a wide geographical area that encompasses so many disparate communities, particularly in remote Aboriginal and Torres Strait Islander communities. As noted previously, evaluation feedback indicated that limitations in the number of ICSO positions available to service these communities across the state pose challenges to the depth and quality of the service that can be delivered. As YJC staff are generally based in the regional YJC Service Centres, the time available to conduct pre-conference preparation in remote communities, including pre-conference interviews, is limited to the time spent in the communities to conduct conferences, generally three days. Attempts have been made in the past by some YJC Services to employ a local ICSO on a casual basis to conduct the pre-conference preparation. However, the challenges of finding a suitable candidate, and the difficulties of retaining someone in high demand on a casual basis, proved insurmountable.

The availability of Police Officers in remote communities was also cited as a potential barrier to effective delivery of YJC, with stakeholders noting that Police Officers in remote communities are key to program success and that they often have limited time available on account of a heavy workload. Feedback indicated that young people can be transient and tend to move between communities and regional locations, which can make it difficult to locate them, although it was noted that Police and school staff will often lend assistance in this regard. Difficulties were also noted with English being a second, third or fourth language, requiring more time for explanation of the conference process and greater effort to ensure the young people and their family understand what is involved.

While not unique to YJC in terms of delivering services in remote communities, other issues identified included the impact of 'sorry business' and the risks associated with travelling to a community only to find that no-one is available, the time and cost involved in travelling to the locations, the impact of weather patterns and conditions and being able to access communities, and the availability of vehicles and accommodation in communities. Concerns were raised over timelines blowing out as a result of these challenges, making the achievement of key performance indicators (KPIs) difficult in relation to the timely finalisation of matters. It was felt that applying the same timeliness expectations for delivering the YJC program in remote locations was unrealistic and unreasonable.

The evaluation highlighted that opportunities exist to improve the level of ongoing involvement and consultation with Aboriginal and Torres Strait Islander communities and Elders around the delivery and implementation of YJC for Aboriginal and Torres Strait Islander young people. Stakeholder feedback indicated that, while it occurs in some locations, community engagement happens on an ad-hoc basis and is not embedded in the model. Some feedback suggested that there was a lack of understanding on the part of the Department (at the time the Department of Communities) of the importance of community engagement and education, particularly as there is no specific funding allocated to this function and there is no time or resources to incorporate community engagement into core business. There was a feeling in those locations where a commitment has been made to invest time and energy into community engagement that there has been a direct impact on outcomes. However, it was also felt that, as community engagement is difficult to measure in terms of reportable outcomes, and does not form part of the KPIs for YJC Services, it is not a focus or priority.

Although stakeholder feedback indicated that mechanisms were in place for improving community engagement at a regional level via Regional Coordinators and Service Leaders, and there are guidelines for expenditure of funds associated with community engagement strategies, these processes have had differing levels of success across the regions and appear insufficient to ensure that community engagement is occurring consistently across all the YJC Services. Restructuring under the 2012/13 budget and workplace changes will likely mean that some of those avenues for engagement may no longer be available. As a result, significant gaps exist in terms of mechanisms to support greater community consultation, input and engagement with Aboriginal and Torres Strait Islander communities, including feeding back to community members about the outcomes of YJC for Aboriginal and Torres Strait Islander young people. Greater attention to developing avenues for engagement is required, such as greater engagement with CJGs, where they exist. It will also be important that mechanisms have the flexibility to adapt to meet the needs of local communities. As noted above, the evaluation indicated that some locations find it difficult to recruit Elders to participate in YJC, and stakeholders felt that this was also linked to a lack of community engagement and community education around YJC. Greater emphasis on community engagement and more formal recognition of its importance may help to alleviate some of the issues associated with a lack of participation by Elders and respected community representatives in YJC in some locations. The Just Futures 2012–2015 strategy could provide a framework for a community-based approach to engagement for YJC.[56]

[56] The 'Just Futures' strategy aims to improve safety in Queensland's Aboriginal and Torres Strait Islander communities and reduce the over-representation of Aboriginal and Torres Strait Islander Queenslanders in the criminal justice system. It seeks meaningful partnerships with Aboriginal and Torres Strait Islander communities and leaders, all levels of government, the non-government sector and service providers. The strategy follows on from the Queensland Aboriginal and Torres Strait Islander Justice Agreement which was signed in December 2000 and was an agreement for a period of ten years between Queensland Government justice-related agencies and the Aboriginal and Torres Strait Islander Advisory Board (ATSIAB) that represents the Aboriginal and Torres Strait Islander communities of Queensland.

In terms of gender inclusivity, data indicates that female juvenile offenders are accessing YJC at approximately the same rate or higher as the rate of offending for young Aboriginal and Torres Strait Islander females. Concerns were raised in some locations in relation to difficulties in matching the gender of ICSOs and Elders with the gender of offenders, particularly as the majority of young offenders are male. This was seen as a particular challenge in service delivery in remote locations, as many ICSOs and Convenors are female.

***Theme 6: Effective service coordination and collaboration***

There is literature that highlights the importance of effective coordination and collaboration across government and non-government agencies (AIC, 2012; Calma, 2008; Stacey and Associates, 2004; Stewart, Lohoar & Higgins, 2011). Effective coordination is viewed as essential because it increases access to resources and service delivery, as well as assisting the offender to navigate through complex systems to access the required services (Denning-Cotter, 2008; Simpson et al., 2009).

Although representatives from community support services at times do attend conferences, and young people may be linked with services and programs through the YJC process, the evaluation found that the program does not have a strong focus on engaging young people with support services to address the underlying causes of their offending behaviour, and that the capacity for the YJC program to facilitate access to support services is limited. It was noted that offender support is not seen as an expectation of YJC, with the statutory framework for YJC being the provision of an alternative justice process, with concerns in relation to the need for YJC Convenors to remain impartial and not wanting them to case manage offenders. Feedback indicated that YJC Services keep abreast of current services via the Resource Officer and predominantly provide the young person and their family or support person with information in relation to available services in the region, rather than facilitating access to services, with a view to maintaining the young person's independence from the youth justice service system.

During the evaluation consultations, stakeholders consistently noted the need for and value of facilitating access to support services for young Aboriginal and Torres Strait Islander offenders to address underlying issues associated with their offending behaviour, and the need for resources to be able to deliver this kind of support. Concerns were also raised that in some circumstances programs and services were available to young offenders through the court process and via supervised orders that were not available to YJC clients.

Although examples were cited of workers from various community services attending YJCs and forming links with young people, this occurs to varying degrees across the different locations. Instances of referrals to programs and services forming part of conference agreements were also discussed, but feedback from stakeholders indicated that linking with support services or programs had not been a formal or focal part of the YJC process. It should also be noted that it was often mainstream services that were cited, with few examples being provided of linkages with Aboriginal and

Torres Strait Islander specific services. Also, services were often involved to provide information in relation to specific issues associated with the offending behaviour, such as drug and alcohol use, rather than as a referral pathway to support services.

Feedback from YJC management indicated that concerns in relation to the capacity for the YJC process to link young offenders to services had previously been raised by both internal and external stakeholders. These stakeholders had similar concerns about court processes providing better pathways for access to programs and services for young people. Recognising that if YJC is to be a successful diversionary process there is a need to provide a formal pathway from YJC to referral agencies or support services, and in response to this feedback, amendments were drafted to the YJC practice framework at the end of 2011 and were communicated to Service Leaders via a workshop. The YJC Practice Manual was updated in 2012 to include these amendments. The amendments included specific responses to identifying client needs, including providing information to enable the young person to voluntarily address the identified needs themselves, or providing an assisted referral to a relevant service on behalf of the young person. The amendments also included a specific suggestion that a representative from a community agency could be invited to attend the conference to provide information about programs that may address other issues for the young person or may assist in deterring them from future offending. As well as facilitating access to the services for young people, it was noted that these amendments would provide YJC Convenors the opportunity to refocus on their core business of facilitating the conference process. Given how recent these amendments were, it was not possible to determine whether they had had an impact on the degree to which the YJC process is linking young offenders with community services. It should be noted however that the amendments do not include any reference to Aboriginal and Torres Strait Islander specific or culturally competent services for young people of Aboriginal or Torres Strait Islander descent. Consideration should also be given to collecting and monitoring data in relation to referrals to services.

To this end, effective service coordination and collaboration will be important. The extent to which this can be achieved is limited as a result of funding and resource constraints. Stakeholder feedback noted that there is no YJC funding attached to engaging young people in services. Although the guidelines for expenditure of funds allocated to support the contribution of Aboriginal and Torres Strait Islander community members to YJC allows for the reimbursement of costs for a young person to complete a program delivered by an Elder or respected community representative as part of their agreement or pre-conference, this is not funding that has been quarantined for this purpose and there was no evidence that funds are being used in this way.

Reference was also made to the therapeutic intervention, education or other specialist service that is mandated before a conference for sexual offences and a lack of funded services to link young offenders with, and a lack of funding to facilitate access (including transport) to, these services. Evaluation feedback also consistently identified that the availability of appropriate and necessary community-based services for young people is limited, as is the funding that existing services receive,

thereby inhibiting the capacity of YJC to facilitate appropriate and targeted service delivery to Aboriginal and Torres Strait Islander young people – an issue that is amplified in the more remote communities. Management also noted that investment in youth services in Queensland is low. Stakeholders further noted that access to services may be dependent on the young person having adequate family support, both to access services and to complete the conference agreement. Many references were made to the need for a youth worker or case worker who could work with the young person to help oversee completion of the conference agreement, ensure they are appropriately connected with referral pathways, facilitate attendance at appointments and programs, and provide ongoing support after completion of the agreement. Funding for victim support groups was also raised given the importance of victim participation in the process.

Formal mechanisms for enhancing service coordination and collaboration appear to be limited to regional court stakeholder meetings. These are generally held quarterly with Magistrates, legal practitioners (including from the Aboriginal and Torres Strait Islander Legal Service – ATSILS), Child Safety Services representatives, Queensland Police representatives, YJC Service Leaders and/or Regional Coordinators and Youth Justice Services representatives in attendance. CJG representatives are also invited to attend these meetings, but their level of participation is unclear. At these meetings, YJC personnel present recent data, and emerging trends and challenges are discussed.

It was reported that the court stakeholder meetings go some way to engaging the referral agencies and stakeholders, that is, the Police and the courts. Relationships with Police Officers also appear to have been built at a local and regional level to varying degrees across the YJC Services. ICSOs, Convenors, Service Leaders and Regional Coordinators all discussed having developed relationships with local Police Officers. Feedback from the Caboolture YJC Service indicated a strong commitment to developing relationships with local Police Officers, and this is reflected in the Police referral data for May 2011 to April 2012, which indicates Police referrals for Caboolture constitute 53% of the referrals for Aboriginal and Torres Strait Islander young people. Examples were cited of YJC personnel giving presentations in relation to the option and benefits of YJC at Police academies before recruits graduate. At an operational level, examples were also provided of police officers and Court Services officers assisting YJC Convenors to locate the young person in circumstances where the Convenor is having difficulty. Stakeholders also reported the positive impacts of participating in a conference on Police Officers' views of YJC and the relationship-building capacity that the positive experience provided. Challenges with building relationships with Police Officers in more remote locations as a result of frequent personnel changes and less time spent in communities were also cited.

However, it would appear there is still work to be done on improving relationships with and attitudes towards YJC in general among Police Officers. Stakeholder feedback indicated that many see YJC as a 'soft option' and feel that conferencing agreements often produce inadequate results, with apology letters consistently raised as examples of this. Time constraints appear to compound these feelings,

with Police Officers finding the time involved in participating in YJC places high demands on already challenging schedules. Police also reportedly see YJC as a once-only chance, and see the progression for dealing with juvenile offenders (depending on the circumstances of the offence) being a caution, then YJC, then court. As a result, some tend to feel undermined by the courts when matters are then referred to YJC.

The Police referral data suggests that these sentiments are more keenly felt in terms of YJC for Aboriginal and Torres Strait Islander young people. For the period 1 May 2011 to 30 April 2012, referrals by Police Officers to YJC for Aboriginal and Torres Strait Islander young people constituted only 29% of all Police referrals (YJC-Files database). As noted above in section 6.1, referrals to YJC for Aboriginal and Torres Strait Islander young people constitute 37% of all referrals to YJC. The Police referral rate for Aboriginal and Torres Strait Islander young people is significantly lower than the referral rate for non-Aboriginal and Torres Strait Islander young people. Police referrals constitute 32% of all Aboriginal and Torres Strait Islander referrals to YJC and 47% of all non-Aboriginal and Torres Strait Islander referrals. This suggests that there will be serious implications for diversionary opportunities for Aboriginal and Torres Strait Islander young people as a result of the recent changes to the legislation that preclude the courts from referring to YJC. It also suggests that much more needs to be done by way of advocacy to promote systems reform in the way that Queensland Police view YJC as a diversionary option for Aboriginal and Torres Strait Islander young offenders.

The evaluation highlighted effective coordination and collaboration with officers from other government agencies at local and regional levels in terms of attendance at conferences in order to provide information to the young person about the broader impacts of their offending behaviour. For example, partnerships exist with the Queensland Fire and Rescue Service, the Ambulance Service and Local Government Officers who attend conferences to discuss the impacts of arson, driving and graffiti offences. YJC also had links with two education programs that were run by the Queensland Fire and Rescue Service, the Juvenile Arson Offenders program and the Motor Vehicle Offenders program, which facilitated access for young offenders to these programs and allowed for attendance at these programs to form part of conference agreements. However, recent funding cuts have seen both programs cease.

Feedback was also provided in relation to collaboration between YJC Services and the ATSILS. Feedback from ATSILS legal practitioners, Field Officers and YJC personnel indicated a high level of support from the ATSILS for YJC. This is exemplified by an issue that was referred to in stakeholder feedback – namely the conflict between the requirement for a young person to make an admission of guilt for a referral to be made by a Police Officer to YJC, and the ATSILS community campaign around the right to decline a Police interview. ATSILS representatives reported that there are policies in place whereby ATSILS legal practitioners and Field Officers will (if given the opportunity) advise the young person and their family to take part in an interview if it appears that diversion from court via referral to YJC is an option. It was acknowledged by these stakeholders that more community education was

required around YJC, particularly in light of the strength of the ATSILS campaign around declining an interview. However, it was clear that ATSILS have been willing to work in partnership with YJC Services to resolve these issues and promote YJC.

Effective mechanisms were in place for internal service coordination and collaboration among the various YJC Services to ensure program delivery improvement and information sharing across regions at a Regional Coordinator and Service Leader level, as discussed in Theme 8 below. Theme 8 also highlights opportunities to support ICSOs in terms of information-sharing and exchanging of experiences across regions.

The evaluation highlighted the need for culturally appropriate community support services to supplement the YJC process, as well as scope for a greater focus on the support needs of Aboriginal and Torres Strait Islander young offenders. Opportunities exist for stronger partnerships with Aboriginal and Torres Strait Islander community organisations and service providers to ensure that access to available services for young people is facilitated through the YJC process. If resources were available, opportunities may also arise to explore ways in which young Aboriginal and Torres Strait Islander offenders could be supported to access community services and programs, perhaps through the piloting of a youth worker initiative to support YJC conference clients. The evaluation also revealed limitations in relation to the level of support that YJC has among Queensland Police, particularly in relation to the referral of Aboriginal and Torres Strait Islander young people.

***Theme 7: Advocating for systems reform and improving relationships among key stakeholder groups***

It is important to remember that YJC is a mainstream program and that systems advocacy and reform is not one of its aims. However, YJC has the capacity to increase understanding of issues facing young Aboriginal and Torres Strait Islander offenders in the community as a result of the participation of victims and community representatives in the conferencing process and the dialogue between participants that the process promotes. Increased engagement and involvement of community Elders in the YJC process would also raise the profile of issues facing Aboriginal and Torres Strait Islander people and communities.

Given their direct involvement in the process, it would appear that one of the greatest opportunities for advocacy and systems reform lies with the potential for improved relationships between Police Officers and Aboriginal and Torres Strait Islander young people, their families and communities. Evaluation feedback indicated that the involvement of Police Officers in the YJC process can contribute to improved relationships and the breaking down of barriers between them and young offenders. It was also noted that it can have a big impact on the young person's self-esteem if a Police Officer comments on seeing a difference in them since the time of the incident in question, particularly in circumstances where the officer knows the young person and their family.

It was also consistently noted that once Police attend YJC they tend to become more supportive of the process because they realise it is not an easy option for the young person to have to acknowledge and take responsibility for their offending behaviour in a room full of adults, particularly when the victim of their offence is present. However, the Police referral data cited above suggests that more needs to be done to promote YJC among Police Officers if YJC is to achieve any substantial systems reform, particularly now that Police are the only avenue of referral.

## Program management

### *Theme 8: Effective governance and management processes*

The governance, management and legislative framework for delivery of the program changed dramatically over the course of the evaluation. Significantly, the management of YJC moved from the Department of Communities to the Department of Justice and Attorney-General. As noted previously, the recent legislative amendments, passed in November 2012, will have considerable implications for the staffing and management structure of YJC.

Youth Justice Policy, Performance, Programs and Practice in the Department of Justice and Attorney-General centrally manages YJC.[57] Regional Coordinators in each of the six Youth Justice Regions used to manage delivery of YJC to the respective regions under the management of the Regional Director. It is understood that these positions will no longer exist under the revised staffing structure for service delivery. At the time of consultation for the evaluation, Regional Coordinators supervised the YJC Service Leaders, who are responsible for the management of all referrals to YJC in the various YJC Services (in 2011/12 there were 14 YJC Services within the six regions).

The evaluation found that YJC is centrally well managed, with a strong practice improvement focus. Youth Justice Improvement provides ongoing practice support to YJC personnel through the Regional Coordinators and Service Leaders. As outlined in Theme 9 below, there is program documentation that clearly outlines the process for delivery of the program and its aims and objectives, and these are regularly updated to reflect changes to the service delivery framework. At the time of the evaluation, depending on the extent of the changes to service delivery, changes to the practice framework were presented to the Regional Directors and then communicated to the Service Leaders via the Regional Coordinators or, for more significant amendments, workshops were conducted with Service Leaders. For example, a three-day workshop was conducted with Service Leaders in November 2011 to present the new data system and discuss the updates to the Practice Manual (discussed above in Theme 6) in relation to referral pathways to services for young offenders.

[57] Youth Justice Improvement, formerly the Youth Justice Conferencing Practice Support Unit when YJC was delivered by the Queensland Government Department of Communities, is the unit within Youth Justice Policy, Performance, Programs and Practice that provides practice support to the YJC Services.

Monthly Regional Coordinator telelinks are conducted to discuss regional best practice initiatives, statewide issues and projects of a strategic nature relevant to YJC. These meetings were implemented in December 2009 following the inaugural combined YJC Regional Coordinators and Youth Justice Managers meeting, held in September 2009, as a key strategy intended to ensure a continued focus on program delivery improvement and address a need for improved regional information-sharing. The combined YJC Regional Coordinators and Youth Justice Managers meetings were held quarterly, and annual forums were held with Service Leaders to discuss issues relevant to and associated with the delivery of YJC. It is understood that, as a result of recent funding freezes, limitations on travel have meant that these meetings can no longer take place. Youth Justice Improvement is considering a videoconferencing approach to discussing program delivery and practice issues with Service Leaders on a more regular basis, particularly as, under the proposed staffing structure, Service Leaders will no longer have practice support via the Regional Coordinators. It was also reported that team meetings take place at a YJC Service level to discuss specific referrals and any other issues relevant to the delivery of YJC for the team. This tends to take place in the larger YJC Services in which Convenors are employed on a part-time or full-time basis rather than casually. Some stakeholders raised concerns that there are risks of 'practice drift' and difficulties in maintaining adequate supervision in those services that employ casual YJC Coordinators, who work from home and attend the office periodically. The peer support element of a permanent workforce was also highlighted by many.

The evaluation indicated that staff training forms part of the practice improvement focus for YJC. Under the Act, a YJC Convenor must be approved (accredited) by the Chief Executive. Accreditation involves the successful completion of a four-to-five-day YJC training course, and appointment as a YJC Convenor requires demonstrated competency in a series of observed practice situations within a prescribed timeframe. YJC Convenors are required to annually maintain accreditation by conducting a minimum of three conferences per year and by a satisfactory reassessment of observed practice skills. A training or information session was conducted with Regional Coordinators following the pilot of the ICSO positions to discuss the results of the pilot and outline the role of the ICSO and its associated practice considerations. As discussed in Theme 3 above, the evaluation highlighted opportunities for greater emphasis on cultural capability training for non-Aboriginal and Torres Strait Islander YJC staff.

Training for the ICSO positions involves an introductory two-day training package and subsequent refresher training. The consultations revealed a need to support ICSOs in their roles and provide opportunities for information-sharing and exchanging of experiences, particularly given the high demands of the role and the fact that the ICSO may be the only Aboriginal and Torres Strait Islander staff member in a YJC team. Monthly or bi-monthly teleconferences could be convened as a forum for discussing issues associated with program delivery in the various sites.

It is understood that Elders and respected community representatives do not undergo training to participate in YJC beyond a pre-conference briefing. It is understood that a scoping exercise was

conducted in one location that identified that Elders were suitably prepared for participation in YJC as a result of their involvement in other justice initiatives. Part of any community engagement strategy with Aboriginal and Torres Strait Islander communities at a local level should include identifying any information and training needs of Elders and respected community representatives from the community who may participate in YJC.

Participation in YJC by Elders and respected community representatives is voluntary. However, funds are available to reimburse or provide an allowance to community representatives for expenses associated with participating in YJC, including transport, overnight travel expenses (where relevant), conference-related telephone calls, meals and incidentals. Some stakeholders felt that this does not place suitable value on the important role that Elders play, but this was not raised by the Elders interviewed.

Concerns in relation to the key performance indicators for YJC were consistently raised by stakeholders during the evaluation consultations. In particular, it was felt that applying a statewide KPI model in circumstances in which YJC Services are operating under significantly different conditions was problematic, particularly for those YJC Services whose remit covers a wide geographical spread, including many remote communities in Far North Queensland and the Gulf. The challenges of delivering services in remote locations have already been identified in Theme 5 above. These services lose significant staff time as a result of travel, and it was felt that is not taken into account when setting conference completion targets. Issues associated with having staff performing the same role under significantly different conditions across the state for the same remuneration were also raised, with travel allowances and incentives for being employed in certain remote settings being viewed as inadequate compensation for the discrepancy in roles. Stakeholders felt that the focus on certain KPIs had the propensity to compromise the quality of client outcomes. Consideration could be given to reviewing and developing regionally based KPIs.

Monitoring and evaluation is an important component of good governance. The evaluation highlighted limitations in the data collection system for YJC, many of which will be addressed by CRIS and the introduction of the Single Person Identifier currently being implemented by the Queensland Government. In order to properly assess the outcomes of YJC for Aboriginal and Torres Strait Islander young people, it will be necessary for data in relation to whether or not Elders, ICSOs and victims or victim representatives were involved in the YJC process to be monitored and recorded centrally. Consideration should also be given to collecting and monitoring data on the facilitation of referrals to community services.

Considerable emphasis was placed in the evaluation feedback on the importance of ensuring monitoring and evaluation processes collect qualitative feedback from relevant stakeholders and participants, in order to gain a clearer understanding of whether and how the YJC process is achieving its aims and objectives, particularly in relation to Aboriginal and Torres Strait Islander young people.

Many stakeholders felt that a focus on quantitative data fails to capture the complexities of the situation and that a lot of relevant information in relation to outcomes is lost. The participant satisfaction surveys conducted and monitored as part of YJC only go part of the way to telling this story, and consideration should be given to incorporating qualitative techniques for monitoring and evaluation.

***Theme 9: Clear articulation of program intent***

The intent of YJC to provide a restorative justice process for dealing with juvenile offending was well understood across the evaluation, and this was true for all stakeholders consulted. The YJC model is well documented via two significant documents: the *Youth Justice Conferencing Practice Manual* and *Youth Justice Conferencing: Restorative Justice in Practice* (2010). The manual provides a detailed procedural guide to YJC for program staff and stakeholders and outlines all the required documentation and processes for administration of the program. It was first released on 1 July 2007, and any changes to the practice framework since that time were documented in subsequent releases in 2008 and 2010. The current version of the manual was released in 2012. *Youth Justice Conferencing: Restorative Justice in Practice* was compiled as a complementary resource to the manual. It provides a comprehensive history of YJC, outlines the program's aims, goals and values, and provides a detailed description of the YJC framework and process and associated theoretical concepts, the model's legislative basis and other relevant legislative provisions, as well as the skills and practices associated with the delivery of YJC.

The documentation does not particularly highlight the specific aspects of delivering the program for Aboriginal and Torres Strait Islander people. *Youth Justice Conferencing: Restorative Justice in Practice* does outline the over-representation of Aboriginal and Torres Strait Islander young people in the youth justice system, as well as the roles of ICSOs, Elders and respected community representatives. In terms of the manual, reference to the fact that consideration must be given to inviting an Elder or respected community member to attend a conference forms a small part of a broader section entitled 'Identifying other participants to attend the conference (including community representatives)' (Department of Justice & Attorney-General, 2012:32). Given the importance of Elder involvement in YJC, this would benefit from greater emphasis in the manual. Other sections of the manual discuss identifying Aboriginal and Torres Strait Islander status, that the Service Leader must consider the YJC Convenor's awareness of protocols and ability to engage members of the Aboriginal or Torres Strait Islander community, and assigning a 'conference support officer' (what the manual calls an ICSO) to a referral. This latter section outlines that the Service Leader may assign an ICSO to a referral if the young person, the victim, their supports or a potential conference participant identifies as an Aboriginal and Torres Strait Islander person. The section goes on to outline that the Service Leader may also consider whether the ICSO's involvement will assist the Convenor, the participants and/or Aboriginal and Torres Strait Islander participants in the preparation and conduct of the conference (Department of Justice & Attorney-General, 2012:9). Again, given the importance of the

ICSO's role in supporting effective program delivery to Aboriginal and Torres Strait Islander people, greater emphasis could be placed on the significance of this role in the documentation. The documentation would also benefit from greater emphasis on the importance of engaging with and providing feedback to Aboriginal and Torres Strait Islander communities.

Despite the general level of understanding and acceptance of YJC among program stakeholders, there is a perception, particularly in regional locations, that YJC is seen as a 'soft option' in the wider community and that this is a result of a lack of understanding of the process and is at times driven by negative portrayals in the media.

***Theme 10: Sustainability of the program/s over time***

The YJC program was funded by the previous Queensland Government with a recurrent budget of $9.68 million in 2009/10, $8.19 million in 2010/11 and $10.32 in 2011/12 (Departmental System Applications and Products (SAP) records).[58] These funds are distributed across the 13 YJC Services. For 2010/11, YJC received 2,858 referrals with an estimated cost per referral of $2,869, and 238 conferences were held with an estimated cost per conference of $3,438 (Regional Data Compilation, June 2011).[59] It is worth noting that youth justice conferencing in NSW was recently found to be more cost effective than similar matters eligible for conferencing but dealt with in the Children's Court (the average cost was found to be approximately 18% less) (Webber, 2012).

Stakeholders reported that included in this was a commitment to recurrently fund the 12 FTE ICSO positions to support program delivery to Aboriginal and Torres Strait Islander young people and communities. Referrals to YJC had generally been increasing over time, and delivery of the YJC program had been expanding. Additional investment was made from 2007/08 to 2008/10 which aimed to increase operational funding to ensure YJC Services were resourced to deal with increasing referrals, introduce and expand ICSO positions, and to provide funding to reimburse costs for Aboriginal and Torres Strait Islander community members associated with attending YJC (Department of Communities, 2010).

However, despite this growth and despite the program's legislative basis, the current Queensland Government, via the *Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012*, made legislative changes removing court referrals as an avenue for accessing YJCs. The resultant

[58] The Youth Justice Conferencing Practice Support Unit costs were not included in this budget as they are not involved in direct service delivery for conferencing.

[59] The total statewide budget was divided by the number of referrals received and conferences held for the year across the state. This method has consistently been used by Griffith University and the Department of Communities to calculate the direct cost of processing in Queensland. There is a proportion of referrals that, for various legitimate reasons, do not progress to a conference. As a result, the Department of Communities had traditionally used the 'Estimated cost per referral received' figure when reporting on conferencing costs to include the level of work invested in referrals that do not progress to conference.

staff cuts have meant a reduction in the number of ICSO positions from 12 FTE to 3.5 across the state.

The recent cuts to YJC service delivery and funding suggest that the program's capacity to improve outcomes for Aboriginal and Torres Strait Islander young people will be dramatically reduced. The inadequacy of the previous resourcing of the ICSO positions and the resulting limitations on the capacity for effective service delivery for Aboriginal and Torres Strait Islander young people have been noted above. Feedback also highlighted that the AO3 classification and the associated salary component of the ICSO position were insufficient in comparison with that of YJC Convenors. Similarly, a lack of resources was highlighted in regard to facilitating access to appropriate and targeted community services for Aboriginal and Torres Strait Islander young people, adequately supporting Aboriginal and Torres Strait Islander young people's participation in YJC, and supporting strategies to enhance Aboriginal and Torres Strait Islander community and Elder participation and engagement in YJC. Difficulties with recruiting and retaining staff were also identified, especially in the outpost locations. In these cases, the need for practical and tangible support from regional management is greater and the revised staffing framework compromises the level of support that will be available to these employees via the Regional Coordinator positions.

## 6.6 Assessment against the good practice themes

The following table provides an overall assessment of Queensland Youth Justice Conferencing as it applies to Aboriginal and Torres Strait Islander young people against the 10 good practice themes identified in the Monitoring and Evaluation Framework (as outlined in Table 3a in Chapter 3).

| Area of Focus | Excellent to Very Good Practice | Adequate Practice | Poor Practice | Comments |
|---|---|---|---|---|
| **Program design** | | | | |
| **Theme 1: Focusing on crime prevention and aiming to reduce the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system** | | Mainstream program focused on reducing crime among young people in Queensland with steps taken to adapt approach for Aboriginal and Torres Strait Islander offenders, including employment of Aboriginal and Torres Strait Islander staff and involvement of community representatives.<br><br>There was not a direct focus on reducing recidivism as opposed to diverting and undertaking restorative justice processes for young offenders.<br><br>Prior research completed on mainstream populations is unclear on whether youth justice conferencing has an impact on recidivism in comparison with mainstream court processes. For this program a specific recidivism study could not be completed as the program could not disaggregate the Indigenous status of participants from participant data. | | |

| Area of Focus | Excellent to Very Good Practice | Adequate Practice | Poor Practice | Comments |
|---|---|---|---|---|
| **Theme 2: Meeting needs and addressing a service gap** | Given the substantial over-representation of Aboriginal and Torres Strait Islander young people in the youth justice system, their involvement in YJC appears to have been appropriate given national support for this approach for dealing with young offenders. | The ICSOs available to support conferences involving Aboriginal and Torres Strait Islander people were stretched over large geographic areas and therefore their capacity to improve outcomes and service delivery for Aboriginal and Torres Strait Islander people was constrained by available resources. These issues will be exacerbated by the reduction of the number of ICSO positions in the 2012 Queensland Government amendments to YJC. | | |
| **Theme 3: Culturally appropriate program design and implementation** | | Provisions in legislation to encourage conferences to be culturally appropriate by considering the involvement of Elders and/or respected community representatives and Community Justice Groups in the process. The extent to which this happens varies across locations.<br><br>Employment of some ICSOs to support conferences; however these positions appear to be undervalued and overworked particularly in the context of regions where the majority of YJC referrals are for Aboriginal and Torres Strait Islander young offenders.<br><br>While cultural capability training is available for non-Aboriginal and Torres Strait Islander staff, it is delivered on an ad-hoc and informal basis. | | |

| Area of Focus | Excellent to Very Good Practice | Adequate Practice | Poor Practice | Comments |
|---|---|---|---|---|
| **Program delivery** | | | | |
| **Theme 4: Achieving outcomes in line with program intent** | | Outcomes were achieved in diverting young people from court processes via direct police referrals to conferencing. The extent to which this took place varied by location.<br>There was evidence through feedback from Elders, convenors, ICSOs of raised awareness of offending and its consequences as a result of offender participation in the programs. Published research findings support the positive benefits of group conferencing for mainstream young offenders in increasing their awareness of the consequences of their offending.<br>Some concern that conference agreements were at times inadequate for the incident often due to limitations in offering appropriate supervision for community and voluntary work. However, self-reported satisfaction with conference agreements was high among both offenders and victims. | | |
| **Theme 5: Promoting inclusive community participation and engagement** | | Despite broad geographic coverage, the depth and quality of the service was limited by the availability of ICSOs and the large areas that they are intended to service.<br>Programs have had some involvement and ongoing consultation with Aboriginal and Torres Strait Islander communities during the delivery process though this has occurred on an ad-hoc basis rather than being embedded in the model. | | |

| Area of Focus | Excellent to Very Good Practice | Adequate Practice | Poor Practice | Comments |
|---|---|---|---|---|
| **Theme 6: Effective service coordination and collaboration** | | | Program limited in its capacity to develop service partnerships and facilitate effective referral processes to services for young people. Program does not have a strong focus on engaging young people with support services to address the underlying causes of their offending behaviour. Links with Aboriginal and Torres Strait Islander support organisations could be strengthened to better meet the needs of Aboriginal and Torres Strait Islander young people.<br><br>As a result of both the availability of support services and resources to facilitate access and referral, there was limited follow-up available to young Aboriginal and Torres Strait Islander offenders. | |
| **Theme 7: Advocating for systems reform and improving relationships among key stakeholder groups** | | | Limited evidence that YJC is having an impact on systems reform more broadly. Some evidence that there is capacity for the program to have this impact. | |

| Area of Focus | Excellent to Very Good Practice | Adequate Practice | Poor Practice | Comments |
|---|---|---|---|---|
| **Program management** | | | | |
| **Theme 8: Effective governance and management processes** | | The evaluation found that YJC is centrally well managed with a strong practice improvement focus. However, the governance, management and legislative framework for delivery of the program changed dramatically over the course of the evaluation and will have considerable implications for the staffing and management structure of YJC.<br>While the data management system had limitations, the program has now redeveloped its performance data management system with higher capabilities for recording monitoring data and providing reports. | | |
| **Theme 9: Clear articulation of program intent** | | The mainstream model is well documented with accompanying practice manual. The Aboriginal and Torres Strait Islander customisation of the program is not as well documented. | | |
| **Theme 10: Sustainability of the program/s over time** | | | The availability of ongoing and recurrent funding is unclear. Already limited resourcing for culturally specific elements of the program, particularly funding for the ICSO positions, have been further reduced as a result of the 2012 Queensland Government amendments to YJC. | |

## 6.7 Key lessons

Youth Justice Conferencing has the capacity to provide a meaningful, culturally relevant restorative justice process for dealing with the criminal activity of Aboriginal and Torres Strait Islander young people. The recent amendments to program delivery removing the ability for courts to refer to YJC via the passing of the *Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012*, and the associated revisions to resourcing, are likely to have a significant impact on access to and delivery of YJC for Aboriginal and Torres Strait Islander young offenders. This will result in a reduction in the capacity for the program to deliver meaningful and effective outcomes for Aboriginal and Torres Strait Islander young offenders. The following key lessons were identified through the evaluation.

### YJC can provide a more meaningful process for young offenders

The evaluation found that the focus on engagement in the YJC process as a result of the participatory nature of the conference and the opportunity for storytelling and dialogue between participants was a strength of the process that makes it more relevant for Aboriginal and Torres Strait Islander people. The process can have a family-strengthening role, with parents seeing their child take responsibility for their actions, and young people hearing the impact of their behaviour on their parents. This creates a greater sense of wellbeing and was felt to be culturally relevant.

The YJC process can give young offenders a greater understanding of the impact of their offending behaviour in comparison to a court process. YJC provides for a more meaningful process as young people are forced to acknowledge and take ownership of their offending behaviour rather than being a disengaged participant in a courtroom where legal practitioners speak on their behalf.

### Elders are key to effective engagement of young people and their families

The involvement of Elders or respected community representatives was seen as essential for effective engagement in the YJC process by Aboriginal and Torres Strait Islander young people and their families. Their participation enhances the level of understanding of the conferencing process through their knowledge and understanding of the offender, their family and their background. The moral authority that Elders bring to the table can impact on the young person's perception of their offending behaviour and its effect on others and the community. Elders offer guidance to the young person, as well as adding weight to the process and outcome. Elders also lend support to the young people's families, who may be struggling to maintain authority. Young people also benefit from the cultural learning that comes from the opportunity for community Elders to tell them their own story and the history of their community. Elder involvement also helps to emphasise to young people that they are part of a community with a strong cultural identity.

### ICSOs enhance the cultural capability of YJC and are crucial to its delivery

An ICSO's knowledge of the community increases the young person's and their family's acceptance and engagement with YJC, and ICSO involvement in the process was seen to increase understanding and build trust. ICSOs provide critical advice and information in relation to cultural issues and factors that are relevant to conference proceedings and outcomes. They enhance engagement with Aboriginal and Torres Strait Islander communities and are instrumental in identifying suitable community representatives to participate in conferences.

ICSOs need to be supported in their roles and provided with opportunities for information-sharing and exchanging of experiences among their peers, particularly given the high demands of the role and the fact that the ICSO may be the only Aboriginal and Torres Strait Islander staff member in a YJC team.

### Opportunities exist for greater engagement of community members

While it occurs in some locations, community engagement happens on an ad-hoc basis and is not embedded in the model. There was a perception that this has had an impact on the overall understanding and acceptance of YJC among Aboriginal and Torres Strait Islander community stakeholders. Elder and community involvement differs across the various YJC Service locations, and it was reported that in some instances the level of involvement was inadequate, that the process does not sufficiently include or engage Aboriginal and Torres Strait Islander people, and that many conferences take place without their involvement.

Restructuring under the 2012/13 budget and workplace changes will likely mean that some of the existing avenues for community engagement may no longer be available. As a result, significant gaps exist in terms of mechanisms to support greater community consultation, input and engagement with Aboriginal and Torres Strait Islander communities, including feeding back to community members about the outcomes of YJC for Aboriginal and Torres Strait Islander young people. Greater attention to developing avenues for engagement is required, such as greater engagement with CJGs, where they exist. It is also important that mechanisms have the flexibility to adapt to the needs of local communities.

### The model could be made more suitable for Aboriginal and Torres Strait Islander young offenders

It was identified by some YJC Convenors that the mainstream model for facilitating a YJC, in particular the order for speaking in the 'telling the story' stage of the conference when participants convey the facts and express their feelings surrounding the incident and the young person speaks first, was not always appropriate for Aboriginal and Torres Strait Islander young people, particularly if community Elders were present. In response to the issues identified, an alternative model was devised based on feedback from an Aboriginal and Torres Strait Islander working party. This was known as 'responsive storytelling' and involved the Police Officer or victim initiating the storytelling around the offence so

that the young offender could take responsibility for their actions by responding to rather than initiating discussion. Although this adaptation was trialled successfully in several conferences, the revised model was not officially endorsed and an opportunity to enhance the cultural appropriateness of the YJC model was missed.

### Work needs to be done to improve relationships with Police and encourage increased Police referrals to YJC

Feedback indicated that many Police Officers see YJC as a 'soft option' and feel that conferencing agreements often produce inadequate results, with apology letters consistently raised as examples. Time constraints appear to compound these feelings, with Police Officers finding that the time involved in participating in YJC places high demands on already challenging schedules. The Police referral data suggests that these sentiments are more keenly felt in terms of YJC for Aboriginal and Torres Strait Islander young people. Given that the recent legislative amendments remove the ability of the courts to refer to YJC, leaving Police referrals as the only pathway to accessing YJC, much more needs to be done by way of advocacy and promotion to alter/improve the way that Queensland Police view YJC as a diversionary option for Aboriginal and Torres Strait Islander young offenders.

### There are considerable challenges to delivering YJC in remote communities

Significant challenges were identified in delivering the program across such a wide geographical area that encompasses so many disparate communities, particularly in remote Aboriginal and Torres Strait Islander communities. Limitations on the number of ICSO positions available to service these communities across the state pose challenges to the depth and quality of the service that can be delivered. Concerns were raised over timelines blowing out as a result of these challenges and not being able to achieve KPIs in relation to conferencing targets and the timely finalisation of matters. Consideration could be given to reviewing and developing regionally based KPIs.

### Community-based culturally appropriate services are key, and adequate resources are needed to address underlying issues associated with offending behaviour

The evaluation highlighted the need for culturally appropriate community support services to supplement the YJC process, as well as scope for a greater focus on the support needs of Aboriginal and Torres Strait Islander young offenders. Opportunities exist for stronger partnerships with Aboriginal and Torres Strait Islander community organisations and service providers to ensure that access to available services for young people is being facilitated through the YJC process.

The extent to which facilitating access to support services can be achieved is limited as a result of funding and resource constraints, with no YJC funding attached to engaging young people in services. The availability of appropriate and necessary community-based services for young people, as well as the funding that existing services receive, limits the capacity of YJC to facilitate appropriate and

targeted service delivery to Aboriginal and Torres Strait Islander young people – an issue that is amplified in the more remote communities. If resources were available, opportunities exist to explore ways in which young Aboriginal and Torres Strait Islander offenders could be supported to access community services and programs, perhaps through the piloting of a youth worker initiative to support YJC conference clients.

### It is important for CRIS to have the capacity to centrally report on relevant information, and qualitative techniques should also be considered

Monitoring and evaluation is an important component of good governance. The evaluation highlighted limitations in the data collection system for YJC, many of which will be addressed by the new CRIS system and the introduction of the Single Person Identifier currently being implemented by the Queensland Government. In order to properly assess the outcomes of YJC for Aboriginal and Torres Strait Islander young people, it will be necessary for data in relation to whether or not Elders, ICSOs and victims or victim representatives were involved in the YJC process to be monitored and recorded centrally. Consideration should also be given to collecting and monitoring data in relation to the facilitation of referrals to community services.

Considerable emphasis was placed in the evaluation feedback on the importance of ensuring monitoring and evaluation processes also collect qualitative feedback from relevant stakeholders and participants, in order to gain a clearer understanding of whether and how the YJC process is achieving its aims and objectives, particularly in relation to Aboriginal and Torres Strait Islander young people. Consideration should be given to incorporating qualitative techniques for monitoring and evaluation.

### Without sufficient resources, program capacity to meet the needs of Aboriginal and Torres Strait Islander people will be further reduced

The 2012 Queensland Government amendments to YJC service delivery and funding suggest that the program's capacity to improve outcomes for Aboriginal and Torres Strait Islander young people will be dramatically reduced. The changes to YJC will see the already insufficient number of ICSO positions funded across the state reduced – from 12 to 3.5 FTE positions. ICSOs are already stretched, and their capacity to provide cultural support to the mainstream process can be limited, particularly in those regions that cover large geographical areas.

The evaluation also identified a lack of resources to facilitate access to appropriate and targeted community services for Aboriginal and Torres Strait Islander young people, to adequately support Aboriginal and Torres Strait Islander young people's participation in YJC, and to support strategies to enhance Aboriginal and Torres Strait Islander community and Elder participation and engagement in YJC.

# 7. Findings: Northern Territory Community Courts (Northern Territory)

## 7.1 Summary of program

The Community Court model is an Aboriginal sentencing court designed to promote community involvement in court processes by engaging the offender, victim, families and community members in the sentencing process. The presiding Magistrate is assisted by a panel of respected community members, but the final decision on sentencing remains with the Magistrate. Both adults and young offenders can be referred to Community Court, and matters can be heard with co-defendants.

While it is not intended that the Community Court be limited to Aboriginal defendants, almost all defendants have been Aboriginal.[60]

The Community Court is administered by Court Support Services within the NT Department of the Attorney-General and Justice. One Community Court Coordinator is responsible for the implementation of Community Courts across the NT. There is no legislative basis for the Community Court in the NT.

The Community Court model was piloted in Darwin, Nhulunbuy and Tiwi Islands in 2005, based on an understanding that community, cultural and other factors may play a significant role in reaching sentencing outcomes which are beneficial and meaningful to the community. The pilot was expanded to program status in 2008, under the NT Government's 'Closing the Gap' Generational Plan of Action. Recurrent funding was allocated for 2008 to 2012 to expand the Community Court to a total of 10 communities. From the pilot's commencement in 2005 to 30 June 2012, 217 individual Community Court listings have been heard in 18 locations.

The Community Court has both criminal justice and community engagement aims. The criminal justice aims include providing more meaningful and culturally relevant sentencing options, increasing community safety, decreasing rates of offending, and reducing repeat offending and breach of court orders. The community engagement aims include increasing community participation in the sentencing process, increasing community knowledge of and confidence in the sentencing process, enhancing defendants' prospects of rehabilitation and reparation, and supporting victims.

Community Court participants include the Magistrate, at least one community representative, the offender, the victim or a victim representative, the Police Prosecutor, the Community Court Coordinator and Correctional Services representatives. Any offence that can be heard and finalised in the Magistrates Court is eligible for consideration in the Community Court, except for sexual

[60] Up until the end of June 2012, 179 of the 182 defendants in the Northern Territory Community Court were recorded as Aboriginal.

assaults.[61] The sentence is ultimately determined by the Magistrate. The offender must plead guilty or be found guilty to be eligible to participate in the Community Court, and must consent to being involved.

The Community Court operates in conjunction with the Circuit Courts, with additional time (usually one day) scheduled at the end of the court circuit. The guidelines specify that the participants are to be arranged in a circle. An application for a Community Court can be received from the prosecution or the defence. If deemed by the Magistrate to be suitable for referral to the Community Court, the offender may be bailed for assessment by the Community Court Coordinator. This assessment includes informing the offender(s) of the process, contacting members of the community to assess their availability/suitability to participate, and providing a report to the court. The victim is also informed of the process and invited to participate via a victim contact person, usually from a victim support agency. After receiving the assessment report, the Magistrate may refer the offender to the Community Court for sentencing.

In October 2011 the adult Community Court was suspended by the Chief Magistrate, Hilary Hannam, due to a conflict with the *Sentencing Act 1995* (NT), section 104A, although the youth Community Court continued to operate, as this is under different legislation. Section 104A details the formal requirements for accepting information in the courts (such as through an oath, an affidavit or a statutory declaration), which is in conflict with the intent of the Community Court, which aims to encourage community participation and relational dialogue.

In December 2012 the newly elected NT Government released a mini-budget that did not provide funding for the Community Court or for the Substance Misuse Assessment and Referral for Treatment (SMART) Court or the Alcohol and Other Drugs Tribunal.[62] As a result, these courts are no longer operating.

## 7.2 Profile of defendants

The Data Warehouse within the NT Department of the Attorney-General and Justice provided a statistical overview of the adult Community Court. The youth Community Court was excluded from this analysis. This section summarises the statistical profile of the Community Court. Analysis was conducted covering the period from 1 January 2008 to 31 December 2011. The data was extracted from the NT Integrated Justice Information System (IJIS), which includes anyone who has had contact

[61] The criminal division of the NT Magistrates Court is the Court of Summary Jurisdiction that hears summary offences. Cases involving charges of criminal offence all begin at the Magistrates Court. However, more serious indictable offences then proceed to the Supreme Court.

[62] Although the Community Courts are not specifically referred to in the Ministerial statement presenting the mini budget, the NT Department of Treasury and Finance advised the Department of Attorney-General and Justice that the Community Courts will not be funded.

with the NT criminal justice system, including those who are required to appear in court. Each individual is given a unique IJIS ID number.

Data extracted over this four-year period included 93 adult Community Courts where cases were finalised, and this involved 74 unique defendants.[63] These Community Courts were conducted in 15 locations across the NT, with almost all conducted in the Top End (the northern part of the NT) (for details on locations see Table 7d). Almost half of the 74 defendants included in this data analysis were aged 18 to 24 years (46%). Of the 93 Community Courts matters, 27 (29%) solely involved one offence and a further third (33%) involved two offences. The number of Community Court matters was lower in 2011 at 18 compared to 30 in the previous year, partly due to the suspension of the adult Community Court in October 2011.

***Number of cases per year***

Table 7a outlines the number of finalised cases heard in the Community Court based on the year in which the case was finalised. The number of cases heard increased steadily from 2008 to 2010, with fewer cases heard in 2011. A total of 32,685 cases involving Aboriginal defendants were finalised in the Magistrates Court for all of the NT over the same period, with an even spread in relation to the proportion of cases heard each year.

**Table 7a – Year case finalised**

| | Community Court | | Magistrates Court | |
|---|---|---|---|---|
| | Number | % | Number | % |
| 2008 | 19 | 20.4 | 7,956 | 24.3 |
| 2009 | 26 | 28.0 | 8,579 | 26.2 |
| 2010 | 30 | 32.3 | 8,115 | 24.8 |
| 2011 | 18 | 19.4 | 8,035 | 24.6 |
| **Total** | **93** | **100.0** | **32,685** | **100.0** |

Table 7b shows the number of cases for which defendants appeared in the Community Court. Most individuals (57 out of 74, 77%) recorded only one case during the four-year period, while 22% recorded two cases, no-one recorded three cases, 1% recorded four cases, and no-one recorded five or more cases. In comparison, the number of cases per Aboriginal defendant appears to be greater in the NT Magistrates Court overall, with less than half (45%) involving only one case and 15% involving five or more cases.

[63]There were 74 unique defendants and 93 Community Courts conducted because several defendants had attended more than one Community Court in this time period.

**Table 7b – Number of cases per discrete defendant**

| | Community Court | | Magistrates Court | |
|---|---|---|---|---|
| **No. of cases** | No. of defendants | % | No. of defendants | % |
| 1 | 57 | 77.0 | 5,671 | 45.0 |
| 2 | 16 | 21.6 | 2,606 | 20.7 |
| 3 | 0 | 0 | 1,510 | 12.0 |
| 4 | 1 | 1.4 | 919 | 7.3 |
| 5 or more | 0 | 0 | 1,885 | 15.0 |
| **Total** | **74** | **100.0** | **12,591** | **100.0** |

### *Number of individuals and age*

Table 7c shows the age of defendants at the time of their first appearance for cases finalised via the Community Court. Where age was recorded, just under half (46%) of defendants were under 25 years of age, while a further 20% were aged 25 to 29 years. Few defendants were in the older age ranges, with only 4% of defendants aged 45 and over at the time of their first court appearance for a matter heard in the Community Court. For the Community Court the age profile was much younger in comparison to Aboriginal defendants in the Magistrates Court.

**Table 7c – Age of defendant at first appearance**

| | Community Court | | Magistrates Court | |
|---|---|---|---|---|
| **Age range** | No. of defendants | % | No. of defendants | % |
| 18 to 24 | 34 | 45.9 | 4,003 | 27.0 |
| 25 to 29 | 15 | 20.3 | 2,852 | 19.3 |
| 30 to 34 | 10 | 13.5 | 2,428 | 16.4 |
| 35 to 39 | 6 | 8.1 | 2,067 | 14.0 |
| 40 to 44 | 6 | 8.1 | 1,622 | 11.0 |
| 45 to 49 | 1 | 1.4 | 960 | 6.5 |
| 50 to 59 | 2 | 2.7 | 693 | 4.7 |
| 60 or more | 0 | 0 | 146 | 1.0 |
| Less than 18 | 0 | 0 | 32 | 0.2 |
| **Total*** | **74** | **100.0** | **14,803**[64] | **100.0** |

[64] The total number of defendants in the Magistrates Court in Table 7c (age at first appearance) differs from the total in Table 7b, which captures discreet defendants, because those defendants who had more than one finalised case have been counted more than once where his/her age at the first appearance differed.

### *Location of Community Courts*

The following data on location of Community Courts was included in the NT Review of Community Courts, commissioned by the Department of the Attorney-General and Justice and conducted by Local Knowledge in 2012 (NT Department of Justice, unpublished). The time period for this analysis includes Community Courts conducted since the pilot in 2005 through to 30 June 2012. In this time there were 217 Community Courts conducted across 18 different locations. As Table 7d shows, the initial pilot was conducted in Darwin, Nhulunbuy and Tiwi Islands, with Darwin accounting for a large proportion. After 2008 the number of Community Courts conducted reduced, and the locations in which they were conducted expanded as a result of the focus on remote communities from 2008. The data also indicates that the majority of Community Courts conducted to date have been held in Darwin, Nhulunbuy, Wurrumiyanga and Alyangula. For most of the other locations, six or fewer Community Court matters were heard over this time period. The data below is based on the IJIS database and includes all Community Courts conducted with adults and young offenders.

**Table 7d – Community Court by location**

| | Year | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| **Venue** | 04/05 | 05/06 | 06/07 | 07/08 | 08/09 | 09/10 | 10/11 | 11/12 | Total |
| Alyangula | - | 1 | - | 3 | 4 | 4 | 5 | 4 | 21 |
| Borroloola | - | - | - | - | - | - | - | 2 | 2 |
| Daly River | - | 1 | - | - | - | - | 2 | 1 | 4 |
| Darwin | 3 | 32 | 14 | 7 | 7 | 1 | - | 3 | 67 |
| Galiwinku | - | - | 1 | 1 | 2 | 2 | - | - | 6 |
| Gapuwiyak | - | - | - | - | - | 1 | - | - | 1 |
| Jabiru | - | - | - | - | 1 | - | 3 | - | 4 |
| Katherine | - | 1 | - | - | - | - | - | - | 1 |
| Maningrida | - | 1 | - | - | 1 | 1 | 1 | 2 | 6 |
| Milikapiti | - | 1 | 1 | - | 1 | - | - | - | 3 |
| Nhulunbuy | 1 | 11 | 12 | 2 | 5 | 3 | 6 | 1 | 41 |
| Numbulwar | - | - | - | - | - | 2 | 1 | - | 3 |
| Oenpelli | - | - | 2 | - | - | 4 | 5 | - | 11 |
| Pularumpi | - | 1 | 3 | 2 | - | - | - | - | 6 |
| Tennant Creek | - | 1 | - | - | - | - | - | - | 1 |
| Wadeye | - | - | - | - | 8 | 2 | 3 | - | 13 |
| Wurrumiyanga (Ngui) | - | 5 | 11 | 1 | 3 | 3 | 2 | 1 | 26 |
| Yuendumu | - | - | - | - | - | 1 | - | - | 1 |
| **Total** | **4** | **55** | **44** | **16** | **32** | **24** | **28** | **14** | **217** |

***Offences recorded***

This section outlines the total number of offences recorded for each finalised case from 1 January 2008 to 31 December 2011. Table 7e shows the distribution of offences per case. As shown, under one-third of Community Court cases (29%) involved only one offence and 75% involved fewer than five offences per case. No cases involved 20 or more offences, with 14 being the highest number of offences recorded for the Community Court.

Aboriginal defendants in the Magistrates Court tended to show similar numbers in relation to offences per case, with 35% of cases involving only one offence and a further 29% involving two offences per case.

**Table 7e – Number of offences per case**

| | Community Court | | Magistrates Court | |
|---|---|---|---|---|
| **No. of offences** | No. of cases | % | No. of cases | % |
| 1 | 27 | 29.0 | 11,407 | 34.9 |
| 2 | 31 | 33.3 | 9,565 | 29.3 |
| 3 | 8 | 8.6 | 5,486 | 16.8 |
| 4 | 9 | 9.7 | 3,184 | 9.7 |
| 5 | 7 | 7.5 | 1,403 | 4.3 |
| 6 to 9 | 7 | 7.6 | 1,344 | 4.0 |
| 10 to 19 | 4 | 4.3 | 256 | 0.7 |
| 20 or more | 0 | 0 | 40 | 0 |
| **Total** | **93** | **100.0** | **32,685** | **100.0** |

The Australian Standard Offence Classification (ASOC) system used in the NT categorises offences into 16 groups and assigns a unique number to each offence type. Table 7f shows the distribution of offences across the groups, based on the most serious offence that was handed the most severe penalty on finalised cases. This section describes the type of offences that defendants recorded as the major charge they were found guilty for in each case.

For under half of Community Court cases (45%) the major charge with a guilty outcome was acts intended to cause injury. For almost one in five (18%) the major charge was unlawful entry with intent/burglary, break and enter, and for 11% the major charge was an offence for illicit drug offences. In contrast, for over one-third (37%) of Aboriginal defendants in Magistrate Courts, the major charge with a guilty outcome was traffic and vehicle regulatory offences, and the proportion of Aboriginal defendants in the Magistrates Court being found guilty of acts intended to cause injury was much lower (22% compared with 45% for Community Court cases).

**Table 7f – Major charge found guilty per case**

| | Community Court | | Magistrates Court | |
|---|---|---|---|---|
| **Offence category** | No. | % | No. | % |
| 1 Acts intended to cause injury | 42 | 45.2 | 7,144 | 21.9 |
| 2 Dangerous or negligent acts endangering persons | 3 | 3.2 | 1,003 | 3.1 |
| 3 Illicit drug offences | 10 | 10.8 | 1,048 | 3.2 |
| 4 Offences against government procedures, government security and government operations | 3 | 3.2 | 3,998 | 12.2 |
| 5 Prohibited and regulated weapons and explosive offences | 7 | 7.5 | 960 | 2.9 |
| 6 Property damage and environmental pollution | 4 | 4.3 | 911 | 2.8 |
| 7 Public order offences | 2 | 2.2 | 2,841 | 8.7 |
| 8 Theft and related offences | 5 | 5.4 | 938 | 2.9 |
| 9 Unlawful entry with intent/burglary, break and enter | 17 | 18.3 | 1,099 | 3.4 |
| 10 Abduction, harassment and other offences against the person | 0 | 0 | 119 | 0.4 |
| 11 Fraud, deception and related offences | 0 | 0 | 121 | 0.4 |
| 12 Homicide and related offences | 0 | 0 | 57 | 0.2 |
| 13 Miscellaneous offences | 0 | 0 | 45 | 0.1 |
| 14 Robbery, extortion and related offences | 0 | 0 | 48 | 0.1 |
| 15 Sexual Assault and related offences | 0 | 0 | 185 | 0.6 |
| 16 Traffic and vehicle regulatory offences | 0 | 0 | 12,168 | 37.2 |
| **Total** | **93** | **100.0** | **32,685** | **100.0** |

## 7.3 Program logic

The following table shows the program logic that was developed for the Northern Territory Community Courts. This was developed with representatives from NT courts and tribunals and the NT Department of the Attorney-General and Justice, and shows the connection between the inputs and outputs of the Community Courts, and the expected results in the medium term (outcomes) and longer term (impacts).

| Program | Input | Output | Outcomes | Impacts |
|---|---|---|---|---|
| **NT Community Courts** | Funding<br>Coordinator<br>Magistrates<br>Elders and respected persons<br>Victim support<br>Aboriginal Liaison Officers (ALOs)<br>Aboriginal community police officers<br>Service agencies (e.g. Anglicare & CatholicCare)<br>Court time/listing | Operation and support of Community Courts in 10 Aboriginal communities<br>Identification and involvement of acknowledged Elders to advise Magistrate<br>Involvement of offenders, families and community members in sentencing process<br>Involvement of victim<br>Conduct of community awareness building | Increased range of sentencing options available<br>Increased use of meaningful and culturally relevant sentencing options<br>Decreased breach of court orders<br>Increased community participation in justice process<br>Increased community knowledge and confidence in sentencing process<br>Increased accountability of offenders for crimes<br>Promotion of restoration of trust and positive community relations with justice system<br>Increased support to victims and recognition of their importance in the sentencing process<br>Enhanced partnerships between individual agencies involved in the justice system (e.g. interpreters, Aboriginal Community Police, Anglicare, CatholicCare, Parole Officers) | Increased community safety<br>Decrease in rate of offending and recidivism<br>Improved rehabilitation of offenders (where services available)<br>Improved recovery and wellbeing of victims<br>Increased community trust in justice system<br>Increased sensitivity and appropriateness of justice system to Aboriginal needs including needs of local communities |

## 7.4 Methodology

The evaluation framework and methodology are outlined in Chapter 3. Evidence for the evaluation of the NT Community Courts was gathered for this evaluation through analysis of documentation and data, and through interviews and consultation, as shown in the following table. Finally, based on the evidence gained, key lessons were identified.

| | |
|---|---|
| **Documentation and data analysed** | The literature on Aboriginal and Torres Strait Islander sentencing courts<br><br>Department of the Attorney-General and Justice (NT) policy and program documentation<br><br>Court data in relation to referrals, attendance and outcomes (data provided by the Data Warehouse, Department of the Attorney-General and Justice (NT)) |
| **Interviews and consultations conducted** | Semi-structured interviews with: Chief Magistrate Hilary Hannam; Magistrate Fong Lim; Community Court Coordinator; Director of Courts & Tribunals, Department of the Attorney-General and Justice (NT); Deputy Director Courts, Department of the Attorney-General and Justice; Judicial Registrar, Court Support Services, Alice Springs Law Court; North Australian Aboriginal Justice Agency (NAAJA) (2 lawyers, and one community legal education); Witness Assistance Service; North Australian Aboriginal Family Violence Legal Service; 3 Police Prosecutors; Probation & Parole Case Manager, Rural & Remote Community Correction.<br><br>Consultations during site visit to Wurrumiyanga, Tiwi Islands with: 3 Community Court panel members; Youth Diversion Coordinator; Probation and Parole Officer, Department of Corrections; Youth Diversion Officer; Interpreter, Wurrumiyanga. |

## 7.5 Findings against the good practice themes

This section provides an assessment of the NT Community Court against the 10 good practice themes identified in the Monitoring and Evaluation Framework, as outlined in Table 3a in Chapter 3.

## Program design

### *Theme 1: Focusing on crime prevention and aiming to reduce the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system*

The Royal Commission into Aboriginal Deaths in Custody made a number of recommendations in relation to increasing Indigenous participation in the criminal justice system by incorporating culturally sensitive practices in the dominant criminal and legal justice systems (Marchetti, 2009). As noted earlier, the Community Court has both criminal justice and community engagement aims. The criminal justice aims, as detailed in the Community Court Guidelines developed by (then) Chief Magistrate Hugh Bradley in May 2005, include to provide more meaningful and culturally relevant sentencing options, increase community safety, decrease rates of offending, and reduce repeat offending and breach of court orders. This demonstrates that from the outset Community Courts have been focused on crime prevention and reducing the over-representation of Aboriginal people in the criminal justice system.

There are also a number of community aims of Community Courts, and these include increasing community participation in, knowledge of and confidence in the sentencing process, and enhancing the offender's prospects of rehabilitation and reparation to the community. The underlying philosophy is that by making the process more meaningful and relevant for the defendant, enhancing the offender's opportunity to make reparation to the community, and improving access to rehabilitation, the Community Court will have a positive impact on offending behaviour.

In previous evaluations of Aboriginal sentencing courts in other jurisdictions, there has been considerable discussion about the potential impact of Aboriginal sentencing courts on reducing recidivism rates. The literature confirms the philosophy underlying the Community Court, in that it is assumed that community input and participation is likely to make a court process more meaningful and relevant for the defendant, which may in turn ultimately assist in changing offending behaviour. This evaluation indicated that Community Courts have increased the level of community input and participation in the sentencing process, although the extent of this has been limited given the small number of matters heard to date. From when the Community Court was piloted in 2005 to 30 June 2012, 217 individual Community Court listings were heard and 179 individuals were sentenced and received a punishable order through the Community Court.[65] It is also worth noting that the number of Community Court matters heard has dropped in recent years (see Table 7a), as 70% of all Community Court listings were heard prior to 30 June 2009. This decrease was partly due to the suspension of the adult Community Court in October 2011.

[65] This data is based on analysis conducted by Local Knowledge for the NT Community Court review in 2012, and reported on in August 2012.

The 2012 review of the NT Community Court conducted by Local Knowledge (referred to in section 7.2 above) analysed data to assess the reoffending rate for defendants who had participated in the Community Court. As discussed in the literature review (Chapter 4), reoffending analyses have been criticised for using inappropriate comparison groups, for using inadequate follow-up periods (too short), and for reaching conclusions based on insufficient reoffending data or without a comparative control. Limitations on conducting quantitative studies also exist as a result of a lack of reliable and complete court data, which should routinely be collected (Payne, 2005a). These cautions should be taken into account in examining the finding of the analysis conducted as part of the 2012 review, as the reoffending rate for the Community Court defendants was compared to that of all Aboriginal defendants in the Magistrates Court, so is not matched to reflect the age, gender or offending profile of the Community Court dataset.

The analysis included all offenders who had received a punishable order from the Community Court from 1 January 2005 to 30 June 2010, to allow a reoffending period of a maximum of 24 months from the first offence (to 30 June 2012). The total number of individual offenders included in the analysis was 140 individual IJIS ID holders.[66] The reoffending period of measurement was from 1 January 2005 to 30 June 2012. Reoffending is based on an offender committing a second offence within 24 months of the first offence. The Community Court dataset for this analysis included adults and young people, and 17% of the sample (or 31 of a total of 179) were young people who participated in the youth court.[67]

The reoffending rate for the Community Court dataset was 51%, with 71 of the 140 offenders reoffending within 24 months of their first offence. A similar analysis was conducted on all adult Aboriginal defendants who received a punishable order from the Magistrates Court across the NT, and the reoffending rate was found to be 53%. However, this is not an appropriate control group as no matching has been conducted to reflect age,[68] gender, offence type, offending history or location, so considerable caution is needed in drawing any conclusions from this. It is also worth noting that the Northern Territory Department of Correctional Services conducted an analysis on adult Indigenous prisoners released in 2008/09 and returning to prison within two years of release. The analysis shows that the overall recidivism rate for Indigenous prisoners was 49%, with younger Indigenous prisoners recording higher recidivism rate than older prisoners. Prisoners aged 18–24 and aged 25–34 had the highest recidivism rate among all age groups at 52%, which was considerably higher than the 46% for those aged 35–44 and 37% for those aged 45 and over (NT Government Department of Correctional

[66] The data was extracted from the NT Integrated Justice Information System (IJIS). IJIS includes anyone who has had contact with the criminal justice system in the NT, and each individual is given a unique IJIS ID number.

[67] Analysis of the total 179 individual IJIS ID-Holders who received a punishable order within the Community Court program found that 31 participated in the youth court (17%) and 82% were heard in the Magistrates Court.

[68] Not matching age is an important limitation because the Community Court dataset includes young people and adults with 17% of the dataset juvenile offenders.

Services, unpublished data). This is of relevance given that 78% of adult defendants of Community Courts are aged 18–34 (see Table 7c).

There are also other challenges when drawing conclusions about the impact of Aboriginal sentencing courts on reoffending (Daly & Proietti-Scifoni, 2009; Fitzgerald, 2008; CIRCA, 2008; Harris, 2006; Payne, 2005a; Potas, et al., 2003; Tomaino, 2004). The literature identifies the complex and interrelated factors that have an influence on why Aboriginal people are more likely to come into contact with the criminal justice system, including disadvantage in relation to education, employment and housing, substance abuse, limited access to services, and the effects of intergenerational trauma. Given these complex factors impacting on offending rates, it is important to consider Aboriginal sentencing courts within a suite of interventions and programs that aim to address these underlying factors together, rather than in isolation. The literature also highlights another key challenge: often Aboriginal sentencing courts are not resourced to target behaviour that contributes to reoffending. These include "association with criminal peers, poor impulse control, alcohol and drug abuse [and] unemployment" (Fitzgerald, 2008:7). This challenge applies to, and is particularly significant for, Community Courts given they are conducted in remote communities, where access to appropriate services is limited, and therefore the need for innovative sentencing outcomes and supervision strategies based on the involvement of community members and organisations is greater, with examples including bush camps and Elders supervising the completion of orders.

It is worth noting that the Community Court Guidelines indicate that one of the intentions of the Community Court is to enhance the offender's prospects of rehabilitation and reparation to the community. The significance of this aim is highlighted in the literature, where it is noted that there is a crucial need for more culturally appropriate community services and programs to support the process undertaken in Aboriginal sentencing practices (Dawkins et al., 2011; CIRCA, 2008; Morgan & Louis, 2010). However, there is little evidence to suggest this aim has been addressed for Community Courts, due to a myriad of factors, the most significant of which being the lack of rehabilitation services in the NT, particularly in the Top End. Clearly, without appropriate community services to address underlying factors that influence offending behaviour, the ability of the sentencing process to influence recidivism is limited.

While the absence of an appropriate control group limits the ability to draw conclusions on the impact of the Community Court on recidivism, the results do reflect the findings of previous evaluations, in which several studies found that Indigenous sentencing courts have not had a significant impact on recidivism (Borowski, 2010; Fitzgerald, 2008; Morgan & Louis, 2010). Several studies have also concluded that a major focus on the reduction of offender recidivism is limited in its own right, with suggestions that reoffending should be used as only one measure of success in an evaluation process (CIRCA, 2008; Harris, 2006; Payne, 2005a; Potas, et al., 2003; Tomaino, 2004). The literature supports the notion that the impact of Aboriginal sentencing courts needs to be assessed within a suite of programs and/or interventions that an offender is exposed to, rather than in isolation.

Therefore, it is important that this evaluation consider the results above in light of the range of outcomes achieved, as discussed in Theme 4 below.

***Theme 2: Meeting needs and addressing a service gap***

The Community Court model was piloted in Darwin, Nhulunbuy and Tiwi Islands in 2005. The prompt for the pilot originally came from Raymattja Marika, a respected Yolngu educator, linguist and community worker, who approached Magistrate Blockland in Nhulunbuy requesting a Yolngu Court in response to concerns about the over-representation of Aboriginal people in the criminal justice system, and knowledge that there were Aboriginal sentencing courts operating in SA, Victoria and NSW. This led to an agreement with the then Chief Magistrate, Mr Hugh Bradley, and with the Yilli Rreung ATSIC Regional Council to trial an Aboriginal sentencing court, called the Community Court.

The guidelines developed in May 2005 identified the need for an Aboriginal sentencing court. It was acknowledged in these guidelines that the Community Court may provide better outcomes for the community by taking into account social, community and cultural factors behind offending. The guidelines also acknowledged the additional complexities in the NT given the diversity of languages spoken and cultural backgrounds. It should be noted that the guidelines have not been updated since this time, which is a considerable limitation, and this is discussed further in Theme 8.

In 2007, the *Little Children are Sacred* report of the Northern Territory Board of Inquiry into the protection of Aboriginal children from sexual abuse identified that there were requests from many community members for a court in which Elders could participate on a regular and not an ad-hoc basis, with a clear recommendation that the NT Government commence dialogue with Aboriginal communities aimed at developing language group-specific Aboriginal courts in the NT (Wild & Anderson, 2007).

In response to this, the NT Government made a commitment in *Closing the Gap of Indigenous Disadvantage: A Generational Plan of Action* (2007) to establishing 10 Community Courts with a budget of $2.1 million over the following five years (2008–2012). The commitment stated that the Community Court model is based on community participation in sentencing, rehabilitation and reintegration for matters heard in the Magistrates Court.

Data also demonstrates the significant need for an Aboriginal sentencing court given the number of Aboriginal defendants in the NT. In the Magistrates Court in the NT in 2010/2011, 3,956 or 72% of defendants identified as Aboriginal or Torres Strait Islander (ABS, 2012b). Eighty-three percent (83%) of the prison population in the NT are Aboriginal and Torres Strait Islander, and the NT has the highest incarceration rate per 100,000 in Australia (ABS 2011a). In comparison, 30% of the NT population are Aboriginal or Torres Strait Islander (ABS 2011b).

As discussed above, the data on over-representation of Aboriginal people in the criminal justice system in the NT, as well as requests for Community Courts from respected Elders, indicates a clear need for a culturally appropriate sentencing process that accounts for cultural background and language and enhances community participation. However, the significant gaps in the implementation, and the limited number of Community Courts conducted to date, suggest there is a significant unmet need. Stakeholders consulted prior to the Community Court being suspended noted that there was an interest in Community Courts from a number of communities that had heard about Community Courts but where it had not been made available. For example, stakeholders in Wurrumiyanga noted that there was interest among other Tiwi Island communities, with program staff also noting that a number of community representatives had expressed interest in the Community Court model. This emphasises a significant unmet need, particularly given that as of December 2012 Community Courts are now no longer available in the NT.

***Theme 3: Culturally appropriate program design and implementation***

Previous evaluations of Aboriginal sentencing courts have found that they provide a more culturally appropriate sentencing process that encompasses the wider circumstances of offenders' (and victims') lives and has facilitated increased participation of the offender and the broader Indigenous community in the process (Aquilina, et al., 2009; Borowski, 2010; CIRCA, 2008; Mark Harris, 2006; Morgan & Louis, 2010; Parker & Pathe, 2006; Potas, et al., 2003; Tomaino, 2004). This evaluation indicated that this has been achieved to some extent but, given the diversity of the NT Aboriginal population, this has also presented considerable challenges.

*Community input into design and implementation*

During the design of Community Courts, consultations with the then Chief Magistrate, officers of the Department of the Attorney-General and Justice and officers and representatives of the Yilli Rreung ATSIC Regional Council were conducted, and this shaped the development of the model. General public meetings and education sessions were also conducted, with assistance from Dr Kate Auty, the then Magistrate of the Shepparton Koori Court in Victoria, and a number of restorative justice practitioners and educators in allied professional groups. This was appropriate given the model was initially trialled in Darwin, Nhulunbuy and Tiwi Islands. A reference committee supported the initial pilot; it included representatives from the Department of the Attorney-General and Justice, the NT Magistracy, the North Australian Aboriginal Justice Agency (NAAJA), the Central Australian Aboriginal Legal Aid Service and the NT Legal Aid Commission.

Over time, community consultation on the design and implementation of the Community Court was conducted informally among the Project Coordinator, Judicial Officers, Elders, Police Prosecutors, Corrections staff and NAAJA staff, but the lack of resources dedicated to development and the lack of a framework for implementation of the Community Court were considerable limitations. This was particularly relevant given that the recommendation from the *Little Children are Sacred* report states

that the Government should commence dialogue with Aboriginal communities (Wild & Anderson, 2007). It is worth noting that the report also noted that at the time the Community Courts were under-resourced and under-promoted.

*Elder involvement*

In relation to implementation, as indicated in the literature, the involvement of Elders in the sentencing process is critical to enhancing the cultural appropriateness of the approach. Feedback from all participants indicates this is perceived to be a key strength of the Community Court model, and many felt this was the critical factor on which success of the Community Court depended. Data is not available centrally on the involvement of Elders in the Community Court, so it is not possible to draw conclusions on this. Police Prosecutors noted that there were challenges in some communities in accessing and engaging Elders in the Community Courts, which had an impact on community participation.

In each location where the Community Court operates, panel members are recruited by the Community Court Coordinator, and the approach and effectiveness varies across communities. In some communities there are well-organised community justice committees, and these provide advice and support for the selection and oversight of the community panels. As well, consultations with key local community organisations and existing men's and women's groups may be conducted to recruit Elders. Where possible, the selection of Elders takes into account family groups and skin groups to ensure cultural protocols are accommodated.

Challenges for recruiting Elders are greater in communities that do not have active justice groups, and in these cases the Coordinator liaises with leadership groups, Elders, Night Patrol, Aboriginal Community Police Officers, respected community organisations and/or local government associations in order to identify panel members. The process for selecting panel members also involves a check with Police to ensure the Community Court process has credence. It should be noted that there are no clear guidelines on the selection of panel members, although a draft document was developed by the Coordinator that details recommended numbers of panel members, approaches for selecting panel members and their roles, including their role in assisting Community Corrections in supervising defendants. It is also important to acknowledge the significant challenge in developing and maintaining relationships with panel members, especially given the small and infrequent number of Community Court sittings in each community. For example, between 2010 and 2012, 42 individual Community Court listings were heard in 11 communities, and in eight of these communities three or fewer Community Court matters were heard over the two-year period.

The Community Court Coordinator works closely with the panel members to provide information on the Community Court process. As well, NAAJA, through its Legal Education and Training Program, was funded by the Department of the Attorney-General and Justice (NT) to conduct legal education with panel members. This includes information on the legal system, sentencing and the Community Court,

as well as role-plays to help Elders feel comfortable 'speaking up'. The process usually involved NAAJA conducting training with panel members the day before the Community Court, with a focus on the particular Community Court where appropriate. Qualitative feedback suggests this education was provided for around half of the Community Courts conducted in the last two years. Prior to the Community Court being conducted, the Coordinator also meets with the Elders to discuss the case and the recommendations the panel members intend to provide to the Magistrate.

*A good practice example*

In Wurrumiyanga there is a well-organised system for selecting panel members, with a strong focus on ensuring the right people are on the panel. The 15–20 panel members include respected men and women who represent all the skin groups and all the family groups in the community. In the draft guidelines developed by the Coordinator, it is recommended that 6–8 panel members are needed for each community, indicating a high level of participation in Wurrumiyanga. This also provides a positive example of the cultural appropriateness of the process, as for each Community Court in Wurrumiyanga the correct skin group representatives are selected. The selection is based on including people who "have standing in the community and influence with the defendant" but who are "not so close that they cannot provide balanced advice to the Magistrate" (NT Community Court Guidelines, 2005). Responding to the needs in relation to skin groups is a key consideration for effectively conducting the Community Court in the NT. Elders and service providers in Wurrumiyanga spoke positively about the ability of Community Court to strengthen kinship ties and encourage defendants to consider their obligations based on these kinship ties. These stakeholders also spoke positively about Community Court enabling 'two cultures' to work together. The range of benefits that the participation of Elders generated included:

- Knowledge and understanding of the offender, their family and their background
- Knowledge and understanding of the community and services available (e.g. mental health, domestic violence and drug and alcohol services)
- Creating an environment that enhances the level of understanding of the court process and the sentence outcomes
- Providing an environment that encourages defendants to reflect on their offending behaviour
- Informing the sentences.

It should be noted that panel member participation is voluntary, and no payment is received for involvement in Community Courts. This represents a significant time commitment from the panel members.

The approach in relation to the cultural appropriateness of the Community Court varies depending on the individual Elders involved, the local context and the Magistrate. The process in Wurrumiyanga was highlighted as a positive example. Consultations with Elders and other stakeholders in Tiwi Islands

found that there was a strong belief that the Community Court process is culturally appropriate, with several aspects of the model identified as good practice. The primary aspect of good practice was the involvement of a large pool of dedicated Elders, who participate through the panel. Wurrumiyanga has a strong community justice group that meets regularly, and this group also works closely with other key local agencies, including Youth Diversion and Ponki[69] mediators. Elders and community-based stakeholders were positive about the Community Court process and about the capacity within this forum for people to have a say, including the victims, the defendants and the Elders themselves. There was positive feedback about the Magistrate 'sitting and listening'.

*Access to support*

The ability to identify factors underlying offending behaviour, and facilitate access to support services to address these concerns, is seen to be a key component of the cultural appropriateness of the Community Court, because it provides an opportunity for people to provide information on the particular case in a forum that is comfortable and that encourages engagement and participation. The evaluation suggested that the facilitation of access to support services is occurring inconsistently, with a more effective approach in those locations with active panel members and existing services. These issues are discussed further in Theme 6 below.

*Environment*

In relation to environment, this varies depending on the availability of appropriate venues in the communities where Community Courts operate. Generally, they are conducted in the same venue as the normal Circuit Courts, with all relevant parties sitting around a table, at the same level. There are guidelines for the seating arrangements for Community Courts, although there is flexibility to enable the seating arrangements to vary depending on cultural protocols in relation to kinship groups. Participants from the Tiwi Islands noted that community participation in the Community Court is high in comparison to the Circuit Court, which means the Community Courts sometimes have a lot of family members there, and often this includes the family members of both the victims and the defendants. It was felt to be encouraging having this level of attendance at the Community Court.

The evaluation also indicated that in some locations the physical space in the courtrooms was too small to enable effective Community Court processes to be implemented, especially when a number of family members attend.

[69] Ponki mediators aim to unify traditional Tiwi dispute resolution practices with western mediation practices, and a 12-month project was conducted with the community justice group and NAAJA to build capacity in mediation in order to achieve restorative justice outcomes. An important aspect of this approach is the emphasis placed on skin groups.

*Language*

While there was considerable discussion about the cultural appropriateness of the Community Court, the evaluation indicated that there are significant challenges when English is the second, third or sometimes fourth language of the defendant. This extends the need for cultural understanding even further when conducting Aboriginal sentencing courts in the NT, and working with interpreters is critical in relation to effectively conducting a Community Court in remote communities. NAAJA supported this view in their submission on restorative justice, in which they noted that it is important that Community Court proceedings be conducted in the first language of the participants to ensure engagement and open dialogue between Elders, other community members, the Judiciary, the victim and the defendant. The evaluation indicated that, while there is a commitment to working with interpreters, the use of interpreters is mixed, primarily depending on availability. It was also noted that commitment from the Judicial Officers to work with interpreters influences the extent to which interpreters are used. Legal practitioners commented that the effective use of interpreters should be based on ensuring the dialogue happens in the community member's first language, with the interpreter acting to support the legal practitioners and Judicial Officers.

There may also be opportunities to utilise audiovisual technology, which has been adopted in other jurisdictions, in order to include members of the defendant's family and community who are unable to travel to participate in the Community Court. The use of this technology may also help facilitate the coordination of appropriate interpreters.

## Program delivery

### *Theme 4: Achieving outcomes in line with program intent*

As outlined in Theme 1 above, the Community Court has both criminal justice aims (more meaningful and culturally relevant sentencing outcomes, and a reduction in breaching of court orders and reoffending) and broader community aims (increased community participation and increased community knowledge and confidence in the sentencing process, thereby enhancing defendants' prospects of rehabilitation and reparation, increasing the accountability of the community, family and offenders and providing support to victims and enhancing the rights and place of victims in the sentencing process). This section discusses the extent to which the Community Court is meeting these aims.

To address the first aim – providing more meaningful and culturally relevant sentencing outcomes – the Community Court enables panel members and other agency representatives to advise the Magistrate in order to enhance the appropriateness of the sentencing outcomes. The literature identifies this aspect of the Aboriginal sentencing courts as a key strength, noting that a greater amount of information about an offender is presented in an Indigenous sentencing court process than a standard court, allowing the Indigenous sentencing court to better tailor penalties to suit the needs of

the offender (Aquilina, et al., 2009; CIRCA, 2008; Harris, 2006; Sentencing Advisory Council, 2010). Stakeholders generally agreed that involvement of Elders in the Community Court led to more meaningful and relevant sentencing outcomes, although outcomes are influenced by the style of the Magistrate. Stakeholders emphasised the critical role Magistrates play in the effective implementation of the Community Court. The extent to which everyone has an opportunity to talk about the impact of the offending depends on the Magistrate's approach.

In Wurrumiyanga all stakeholders consulted felt the Community Courts resulted in more meaningful sentencing outcomes in comparison to the standard Circuit Court, with examples given of bush camps for juvenile defendants, attendance at strong women's groups, participation in family violence and anger management programs, and the involvement of the school and health centre in the supervision of community orders and in community-based training. This information in relation to the support available in the community was felt to be very useful for Judicial Officers, especially new Judicial Officers, in enabling them to deliver more meaningful sentencing outcomes.

It is also worth noting that the evaluation conducted in 2012 by Local Knowledge found that the potential for Community Courts to enhance sentence outcomes was substantiated throughout the stakeholder discussions, with many recounting examples of panel members and agency representatives providing advice which directly informed sentencing outcomes. A youth court was observed as part of this evaluation, and in this situation one panel member provided the Magistrate with information on an employment program that the two male offenders had been attending, with a government representative supporting this discussion by indicating that they had noticed an improved sense of purpose as a result of this participation. In this case the Magistrate referred to the value of this employment program, and the court orders reflected the court's expectation that the defendants would continue in the employment program.

The evaluation highlighted the benefits of the Community Courts in providing additional information to inform the sentence and enable access to interventions to address the underlying causes of offending. While there is evidence to suggest this is a potential benefit, the evaluation also highlighted considerable challenges, given that there are limitations on the resources within Community Courts dedicated to this, and limitations on the availability and resources of the community service providers. For example, it was noted that the family violence program run by the Council for Aboriginal Alcohol Program Services[70] does not allow those charged with aggravated assault to participate; this highlights a significant gap in service provision for this group of offenders. It was also noted that family violence, alcohol and anger management programs were often not available in the locations where Community Courts were conducted. There was also discussion about the need for 'meaningful'

[70] The Council for Aboriginal Alcohol Program Services Inc. (CAAPS) is the largest not-for-profit family-focused residential alcohol and other drug rehabilitation centre in Northern Australia. In addition to rehabilitation and withdrawal, we are also a Registered Training Organisation delivering nationally accredited courses in community services.

training and employment opportunities when developing post-sentence support, and there were requests for 'serious' support for communities to provide rehabilitation services for offenders, such as 'bush camps on country'. Providing links to employment support was also raised. As well as the limitations on service availability in remote communities, facilitating access to services and support has minimal focus in the guidelines for the Community Court, and this aspect of the process appears to be the responsibility of the panel members.

In relation to the second criminal justice aim – reducing breach of court orders and reoffending – the absence of an appropriate control group in the recidivism analysis conducted as part of the 2012 review limits the ability to draw conclusions on the extent to which Community Courts are achieving this aim, as discussed in Theme 1 above. However, qualitative feedback provided as part of this evaluation indicated that, when Community Courts provide meaningful sentences that Elders agree to and that provide for panel members to assist with post-sentence supervision, this is felt to reduce reoffending. This is explored in the example of the Wurrumiyanga Community Court discussed below.

In regard to addressing the community aim of increasing community participation in the administration of the law and sentencing process, the evaluation indicated the level of community participation in the Community Court is greater than in mainstream court proceedings. The primary difference in participation is the involvement of panel members. In Wurrumiyanga there is significant involvement of the panel members, with members indicating that they enjoy being part of the panel. These members meet every Thursday before the Circuit Court at a pre-court meeting. The Youth Diversion Officers coordinate this meeting, and attendees include the NAAJA Community Education Trainer, the Police, members of the Ponki ('peace') Mediation Team, and members of the panel. In this meeting decisions are made in relation to whether the defendant will proceed to the Community Court and the sentencing plan to be provided to the Magistrate. Panel members noted that they have, at times, recommended that the defendant not go to the Community Court, in response, for example, to a defendant who is in 'constant trouble' and shows 'no interest in ceasing their bad behaviour'. It was also noted that in Wurrumiyanga the attendance at the Community Court by community members, especially families, is greater than in the regular Circuit Court, because families often avoid attending the regular court because of a high level of fear. There were also examples cited where the Community Court had resulted in improved understanding of sentencing outcomes among families, and this had led to resolutions both within families and between different families.

The evaluation found that the panel members play an important role after sentencing, which was felt to be a positive and significant difference in comparison to mainstream court processes. They noted that in the Circuit Court the responsibility for the supervision of the sentence is given to Department of Corrections staff, whereas in Wurrumiyanga the panel members develop a plan for who will supervise the sentence, with the community taking responsibility rather than the Department. This responsibility for supervision post sentence was felt to help stop reoffending. Feedback from stakeholders suggested that involvement of Elders in supervision occurred in a number of communities, and this

was perceived as valuable, especially in cases where the sentence involved a community work order. This demonstrates the capacity for Community Courts to increase the accountability of the community.

The evaluation highlighted other positive outcomes of Community Courts for panel members. Feedback was gathered in Warrumiyanga that Community Courts strengthen culture and traditional law by giving back respect to traditional lawmakers and Elders. This was achieved by providing a framework for community members to work with the judicial system to enable 'blackfella and whitefella law to work hand in hand'.

The extent to which these positive outcomes are achieved in other locations was difficult to assess in this evaluation, although the general perception was that there has been mixed success. Furthermore, the small number of Community Courts conducted in recent years, and the spread across a large number of communities, created considerable challenges. Therefore, this evaluation indicated that, while the Community Court model offers potential to increase community participation, the realisation of this aim is mixed and limited because of a lack of resources. This is exacerbated by the resource-intensive nature of providing Aboriginal sentencing courts in a regional and remote community context, and the lack of community-based agencies for post-sentence support. The submission from NAAJA to the Standing Committee on Attorneys General (SCAG) on the National Guidelines or Principles for Restorative Justice Programs and Processes for Criminal Justice Matters (1 September 2011) also noted their concern with the lack of resourcing to support Community Courts.

A similar theme emerged when assessing the impact of Community Courts on increasing community knowledge and confidence in the sentencing process. That is, while there is evidence that this is happening to some extent in locations where the Community Court is operating well, the reach of this is significantly limited. Again, Warrumiyanga stakeholders spoke of the enhanced level of understanding and confidence gained as a result of the involvement with Community Courts. Advice given by the community panel members to the Magistrate was highly valued. Panel members also felt that they are 'doing something worthwhile' through 'working together with the legal system'. Corrections staff noted that defendants have an improved understanding of the sentence, and that the community (including families and defendants) are briefed before the Community Court so they know what to expect. However, the need for legal education was also highlighted in this case study.

The Community Courts have restorative justice goals, as one of the aims of the Community Courts is to provide support to victims and enhance the rights and place of victims in the sentencing process. Feedback was not gathered from victims about their experience in the Community Court, and there is also no central record of victim participation, so it is not possible to draw conclusions on the outcomes in this regard. Consultations with victim support agencies suggested that victim involvement and access to support from victims is limited, with challenges identified in service collaboration, and the willingness of victims to be involved, especially when related to domestic violence cases.

In assessing the ability of the Community Court to achieve intended outcomes, the evaluation found that where communities have a strong group of Elders who are actively engaged with the justice process and supported the positive outcomes are significant. On the other hand, without this group of strong Elders and local organisational support, and where there are high levels of tension between family groups, the success of the Community Court is restricted. This finding is supported by comments in the SCAG submission by NAAJA on restorative justice programs, where NAAJA emphasised that the success of the Community Court is almost entirely due to the relationship between Elders and the particular defendant, and that it is important to have a wide pool of Elders so that the correct Elders can be selected for the particular defendant. Warrumiyanga is an important case study, as good practice was evidenced because of the strong group of Elders in the community, the high level of support provided by organisations in the community (especially Youth Diversion), and the presence of well-established ancillary services and groups in the community, including a Community Corrections Officer based in this community.

***Theme 5: Promoting inclusive community participation and engagement***

Consultations and community engagement in relation to program design included consultation with representatives from the Yilli Rreung ATSIC Regional Council, but outside this group limited community consultations were conducted. This indicates that community participation was limited in the design stage of the Community Court. Also, there have been no subsequent formal community engagement mechanisms to enable the implementation of the Community Court to be reviewed and developed over time. While feedback in communities suggested the approach to the Community Court is responsive to particular circumstances, there was little evidence of management-level consideration given to consulting with and responding to community needs.

A significant challenge to equitable access is the limited awareness and support of Community Courts among Judicial Officers and legal practitioners, as this influences the extent to which Community Courts are offered. The high number of cases on Circuit Courts also has an impact on the interest and willingness to participate in Community Courts. It was also noted that there is considerable turnover of NAAJA staff, and this results in limited knowledge of the Community Court process. There was no evidence of education and promotion strategies targeting Judicial Officers and lawyers, therefore limiting their awareness of Community Courts, and as a consequence limiting community access to Community Courts. This is likely to be a result of the limited resources available, as well as limited commitment from within the Judiciary and the Department of the Attorney-General and Justice to this program.

Another consideration when assessing equitable community participation is the level of involvement of Elders on the panel. Recruitment and engagement with Elders occurs through a number of mechanisms (see Theme 3 above). The evaluation suggested that effectiveness in recruiting panel members is influenced by the presence of community justice committees and other local agencies.

Some stakeholders also suggested that across communities the availability of appropriate and committed Elders for a program such as the Community Court varies considerably, and in some communities is significantly limited. The evaluation indicated that, for the benefits of Community Courts to be maximised, considerable resources need to be dedicated to working with communities in order to engage a larger pool of Elders in the program.

It is also worth noting that, given the small number of Community Courts conducted in recent years and the focus on the Top End, there were significant gaps in relation to the geographic coverage and therefore equitable access to Community Courts.

***Theme 6: Effective service coordination and collaboration***

Some of the literature highlights the importance of effective coordination and collaboration across government and non-government agencies (AIC, 2012; Calma, 2008; Stacey and Associates, 2004; Stewart, Lohoar & Higgins, 2011). Effective coordination is viewed as essential because it increases access to resources and service delivery and helps the offender navigate through complex systems to access the required services (Denning-Cotter, 2008; Simpson et al., 2009).

Service coordination at the local level is managed by the Community Court Coordinator. When conducting the Community Courts, the Coordinator will contact the panel members, Police, Community Corrections and other key agencies to discuss the matter. This occurs during the assessment phase and just prior to the scheduled court date. This allows for the consultations to focus on the specific case or cases of relevance and consider appropriate service and support needs in response to these. However, the extent to which service and support needs are addressed varies across locations due to variation in availability of support services, particularly in remote communities.

While the guidelines provide for service providers to attend Community Court if required, they do not provide any information on service coordination, highlighting the lower priority this aspect of the Community Court process receives. Consideration should be given to promoting the capacity of the Community Court model to facilitate involvement of culturally appropriate services during and after the court to inform the court of available services, support offender needs and link offenders with services and programs to address factors underlying offending behaviour.

One of the major challenges in effective service coordination for the Community Court is a lack of resourcing. While there is consultation between the Community Court Coordinator and key community representatives, Elders and services at the local level, this is limited given there is only one Coordinator position, based in Darwin, with this position being responsible for the implementation of the Community Courts in all locations in which the court operates across the NT. The funding allocation in 2008 included a budget to cover part-time locally based coordinators, but these positions were not filled at the time. The lack of regionally or locally based staff is a significant limitation on the capacity of the Community Court program to engage in effective service coordination.

The feedback from Warrumiyanga provides an example of good practice via its Youth Diversion Program[71] in relation to service coordination at the local level. Within Warrumiyanga, the Youth Diversion Program is responsible for coordinating and supporting the community panel members who participate in the Community Court. The Youth Diversion workers liaise with the Community Court Coordinator and provide the defendant with support to meet pre-sentencing conditions such as enrolling for training or actively looking for work. The Youth Diversion Coordinator contacts the defendant and ensures they understand 'what needs to be done' before the Community Court, and assists with bringing the defendant to court. This support is given voluntarily by the Youth Diversion team within their limited budget and human resources, and is not funded.

At a Territory level, a number of agencies are important. The Community Court Coordinator and the Community Legal Education team from NAAJA[72] work together both before and during the Community Courts. A NAAJA Community Education Trainer visits with the Circuit Courts to provide legal education and training to panel members, and the defendant, where required. Within Warrumiyanga, the Community Legal Education Trainer also often provides legal education for the community panel members prior to court, and this includes a discussion about the defendants coming up for a Community Court hearing. It should be noted that in Warrumiyanga this coordination happens consistently in relation to justice matters, as the Community Justice Group meets before every Circuit Court to discuss the cases to be heard in the Circuit Court and to develop advice for the Magistrate where deemed relevant.

In relation to service coordination around victim support, the Community Court Coordinator works with the Witness Assistance Service (WAS) and the North Australian Aboriginal Family Violence Legal Service (NAAFVLS). WAS is part of the Director of Public Prosecutions and its role is to provide support to victims of crime and their families, and witnesses and their families. The primary focus of NAAVFLS is to provide assistance to Aboriginal victims of family violence in a professionally and culturally appropriate manner. When the Community Court Coordinator receives a referral with details of a victim, these details are passed on to WAS or NAAVFLS. NAAVFLS has locally based Community Legal Workers who are employed on a monthly basis to support the Circuit Court and conduct outreach to 18 communities. Prior to the Community Court, NAAVFLS will contact the victim, explain the support they offer, and participate in the Community Courts (NAAVFLS provides this support for Circuit Courts as well). Depending on the preferences of the victim, NAAVFLS will support the victim during the Community Court or attend as a representative of the victim. NAAVFLS is also involved in developing the Victim Impact Statement. Where the victim does not attend, NAAVFLS provides feedback on the outcome of the court to the victim. At the time of the evaluation (2012), NAAVFLS had been involved in approximately five Community Courts in the previous 18 months; in three cases they

[71] The Youth Diversion Program is funded by the NT Department of Justice and managed by the Tiwi Islands Shire Council.

[72] NAAJA is funded by the NT Department of Attorney-General and Justice to provide community legal education.

attended with the victim and in two cases they represented the victim. NAAVFLS also liaises with WAS when assessing the best way to provide support to victims across a large number of communities. WAS follows a similar process in providing support to victims, although staff are based in Darwin and visit in conjunction with the Circuit Court, so the majority of support for victims is provided during this time. The evaluation indicated that, while there was regular contact between the victim support services and the Community Courts, this could have been improved by time being spent on developing a clear process for referral with the relevant parties and formalising and documenting this.

The previous interim evaluation, conducted in 2006,[73] found that the communication lines between Director of Public Prosecutions (DPP), Corrections, Police and NAAJA were not well established, particularly when setting down matters for the Community Court. This evaluation confirmed the lack of formal mechanisms to enable communication and clear processes, and this lack of collaboration and coordination was a significant limitation. While there was evidence of strong working relationships between the Community Court Coordinator and key representatives from many key agencies, this would have benefited from a more formalised approach to coordination at a higher level. The evaluation found that there were no formal mechanisms for developing service coordination and collaboration at an NT level, with no steering groups of Community Court users operating. There was a steering group that guided development when the Community Court was first piloted in 2005, but this did not continue, so the recent approach did not have an avenue for key agencies to discuss and address issues associated with effective program delivery and improvement. Given Community Courts directly involve a number of NT agencies, it is a significant gap that there is no formal coordination across the agencies to review, develop and revise the Community Courts.

### *Theme 7: Advocating for systems reform and improving relationships among key stakeholder groups*

Systems advocacy and reform was not a key focus of the Community Court, so it is limited in its capacity to contribute to a reduction in barriers in the criminal justice system, aside from the Community Court process itself, which aims to reduce barriers to engagement with the sentencing process. Qualitative feedback indicated that, where positive relationships are developed between the community, Elders and Judicial Officers, this has a ripple effect in improving the level of understanding and attitudes to the criminal justice system more broadly among those community members who had been involved. This was felt to be demonstrated by the large number of family members that attended the Community Court in comparison to the Circuit Court.

There are also capacity-building opportunities for panel members, as the evaluation indicated that where appropriate legal education training is conducted the capacity of panel members is increased. There is also an opportunity for Community Courts to enhance the skill base within communities in

[73] This evaluation is an internal evaluation of Community Courts that is not published.

order to enhance the Elder pool that can be involved in Community Courts and build the capacity of Elders and respected members in communities where there is currently not a strong Elder base, although this is a long-term strategy that requires a sound funding base. While this capacity-building was happening to some extent when the Community Court was in operation, this tended to be on an ad-hoc rather than programmatic basis.

Similarly, there are opportunities to enhance capacity and understanding among Judicial Officers and justice agencies through Community Courts. There is limited awareness of Community Courts among legal practitioners, and it is important that greater promotion and education be provided. This was also raised in the internal evaluation conducted in 2006. This is particularly problematic given the high staff turnover of NAAJA legal practitioners.

## Program management

### *Theme 8: Effective governance and management processes*

The evaluation indicated that, while the Community Court model is resource intensive, its implementation had been operating with limited resources. It is therefore not surprising that the evaluation identified significant challenges that limit the effectiveness of the governance and management processes.

Community Courts are managed within the Department of the Attorney-General and Justice, with one Community Court Coordinator employed to implement the courts across all NT locations in which the Community Court operates. The coordinator is responsible for implementing the Community Courts, including conducting assessments, informing the defendant about the process, contacting panel members to assess their suitability to assist, providing information about the victim to the relevant service, providing a report to the court assessing the suitability of the offender, briefing the defendant and panel members prior to the Court, and assisting in the administration of the Community Court.

Given the diversity of NT communities accessing Community Courts, the resource-intensive nature of managing Community Courts and the travel involved, having one Coordinator presents considerable challenges. For example, logistic management has been challenging given that for each Community Court a pre-assessment visit is conducted, so two visits are required for each Community Court. As already mentioned, the proposed funding model for Community Courts from 2008 to 2012 included 10 part-time Indigenous Community Court Liaison Officers, and feedback was given that these positions were difficult to fill part time so have not been part of the implementation. The evaluation suggested that having locally based liaison officers would have provided benefits in developing strong relationships with panel members and locally based service agencies, which would enhance the effective management of Community Courts.

Many stakeholders noted that there is no clear framework or direction in relation to the Community Courts and that this has inhibited implementation. The guidelines developed in 2005 by the then Chief Minister, Hugh Bradley, have not been updated or revised since. This is of particular concern given the Community Courts were operating in Darwin, Nhulunbuy and Tiwi Islands in 2005, but since 2008 the majority of Community Courts have been conducted in remote communities in the Top End, with few conducted in Darwin. It also highlights a significant gap given an interim evaluation conducted in August 2006 indicated that there was a high level of dissatisfaction with the processes and operational procedures of the Community Court, with concerns that there was not agreement from the major stakeholders on what the procedures of the Community Court should entail, roles and responsibilities, what the exact model or operating principle should be, and what the strategic direction of the Community Court should be.

As a result of the lack of framework, there has been considerable variation in the conduct of Community Courts depending on the individual Magistrate. This influences the extent to which these models are offered to defendants, as well as the delivery of the models. It is acknowledged that there is a need for flexibility and judicial independence so that there are 'acceptable variations'; however, the evaluation indicated that there was a need for the Department of the Attorney-General and Justice, in consultation with the Judiciary, to develop specific policies and processes that would have enhanced the consistency and effectiveness of the delivery of Community Courts across the NT.

In particular, there is a lack of adequate assessment procedures for referring cases to the Community Court and for assessing the appropriateness once referred. The original guidelines indicated that the defendant must plead guilty or be found guilty of the offence, and also indicated that sexual assaults are not eligible for Community Courts. Aside from this, a number of factors are mentioned in the guidelines that should be taken into account, but this is an extensive list that is open to interpretation (e.g. 'effect of the offence on a community'). It would be beneficial for these criteria to be reviewed and clarified. Balancing the heavy burden of the Magistrates Circuit Court with limited resources is a key challenge, and as a result the additional time needed for Community Courts was perceived by some as a considerable barrier. For example, a Police Prosecutor noted that when there are around 100 matters during the Circuit Court it is difficult to accommodate a Community Court that runs for several hours.

The evaluation highlighted the importance of developing close working relationships with key agencies and community representatives in the relevant communities in order to identify appropriate Elders, and there is evidence of the Community Court Coordinator working closely with community organisations, community justice groups, Community Corrections and Police to identify Elders to be involved with Community Courts. However, there are no clear processes or guidelines for selecting, briefing and training Elders. It would therefore be beneficial for consideration to be given to developing clear policies and processes for selecting, briefing and training Elders. This was raised in the interim evaluation in 2006, where the report highlighted a need for a process for Elder selection and a

structured training package to be delivered to Elders on an ongoing basis. To some extent this training gap has been addressed with the funding of NAAJA to provide community legal education.

It is important to acknowledge the reality of the communities in which the Community Court operates, where there are considerable challenges in selecting and training Elders, especially given it is a voluntary position and the Elders often have a number of community responsibilities. Consideration is also needed of the neutrality and impartiality of Elders, especially where there are distinct clan or skin groups. It will also be important for the Community Court process to enhance the development of community justice groups. These groups, when functioning well, are the key contact point for working with Elders in communities. Where communities do not have a strong community justice group, there is an opportunity through Community Courts to develop community capacity. Capacity-building in communities is an important potential for the Community Court model. While all of these issues necessitate a personal and flexible approach to Elder selection, support and training, it is important that the individual community approach is developed within a broader policy framework. There are also opportunities to learn from previous experience and engage existing Elders in the development of these policies.

Monitoring and evaluation is important for the effective management of the Community Court. There have been two independent evaluations conducted (in 2006 and 2012), but there was no evidence of processes for ongoing monitoring. This is a significant limitation in the effective management of the Community Court and an area that requires adequate resources and attention. A blend of qualitative and quantitative measures should be considered as a means to better understand perceptions and outcomes and to inform decisions about program modifications.

***Theme 9: Clear articulation of program intent***

Given the lack of an operating framework, it is not surprising that the evaluation noted that the intent of Community Courts is not articulated clearly. While the original guidelines did identify aims, it is important these be reviewed to reflect the current operating environment.

An improved understanding of the intent of the Community Courts would have been achieved if governance and management structures were developed in consultation with the key agencies involved in Community Courts at a Territory level and at a local level. This would have also provided opportunities to develop and continually review processes and policies in order to ensure the shared goals of Community Courts are realised.

Despite this, the evaluation suggested that among the stakeholders consulted there is a shared understanding that Community Courts aim to involve communities in the justice system, improve knowledge of communities, and improve relationships between communities and the justice system. There was agreement that these intentions are important, given the high number of Aboriginal people in prison and in contact with the justice system. However, the evaluation suggested that, outside those

with direct contact with the Community Court, understanding is minimal. Stakeholders also noted that some Police Prosecutors are not supportive of Community Court, primarily because of the impact on resources and because of a lack of awareness of the process.

***Theme 10: Sustainability of the program/s over time***

The Community Courts were funded from 2008 to 2012 by the NT Government through a recurrent budget of $417,000 per year. This annual budget covered 70% of the cost of a Magistrate, one Community Court Coordinator, 10 part-time (or four full-time equivalent) Indigenous Community Court Liaison Officers and the program travel budget. This budget did not compensate other key parties involved in Community Court, such as Elders, legal practitioners, Police Prosecutors and Community Corrections Officers. In December 2012 the newly elected NT Government released a mini-budget that did not provide funding for the Community Courts, the Substance Misuse Assessment and Referral for Treatment (SMART) Court or the Alcohol and Other Drugs Tribunal.

Prior to this, the adult Community Courts were suspended in October 2011 by the Chief Magistrate, Hilary Hannam, due to a conflict with section 104A of the *Sentencing Act*. The youth Community Court continued to operate, as this falls under different legislation. Section 104A details the formal requirements for accepting information in the Courts (such as through an oath, an affidavit or a statutory declaration), which is in conflict with the intent of the Community Court's aim of encouraging community participation and relational dialogue.

No legislative basis exists for Community Courts in the NT, and this clearly resulted in the courts being vulnerable to changes within the government and the Judiciary.

It is also worth noting that the interim evaluation in 2006[74] identified a lack of resources as a significant concern and noted that this was a contributing factor to the level of dissatisfaction with the processes and procedures of the Community Court; it further noted that the Community Court is a resource-intensive model and it must have adequate resources for it to operate effectively.

[74] This evaluation is an internal evaluation of Community Courts conducted in 2006 that is not published.

## 7.6 Assessment against the good practice themes

The following table provides an assessment of the NT Community Courts against the 10 good practice themes identified in the Monitoring and Evaluation Framework (as outlined in Table 3a in Chapter 3).

| Area of Focus | Excellent to Very Good Practice | Adequate Practice | Poor Practice | Comments |
|---|---|---|---|---|
| **Program design** | | | | |
| **Theme 1: Focusing on crime prevention and aiming to reduce the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system** | | Although program is no longer operational, original program guidelines focused on crime prevention and contribution to reduction in reoffending rates. Analysis of recidivism data did not demonstrate any impact on recidivism in comparison with mainstream court processes. | | The small numbers of offenders who had access to Community courts during 2005–2012 significantly limited the program's contribution to reducing offending. |
| **Theme 2: Meeting needs and addressing a service gap** | | Stakeholders suggested Indigenous offenders appeared to have engaged more positively with Community Courts as compared with experiences in mainstream justice settings due to presence of direct community participation and input. Such direct community input does not necessarily occur in mainstream sentencing processes. However, this has only been achieved when program has been effectively implemented, and community participation and input has not been consistent across program sites. | Limited Community Courts conducted to date, and the fact that the Community Court is no longer available demonstrates significant unmet need. | |

| Area of Focus | Excellent to Very Good Practice | Adequate Practice | Poor Practice | Comments |
|---|---|---|---|---|
| **Theme 3: Culturally appropriate program design and implementation** | | Culturally appropriate program design involving Elders and opportunities for family and community support with direct engagement of offender in dialogue around their offending behaviour. Coordinator limited in ensuring process was culturally appropriate according to level of resources (Elders and other services) available in each community. | | |
| **Program delivery** | | | | |
| **Theme 4: Achieving outcomes in line with program intent** | | Due to program's limited resource base and ad-hoc delivery, potential to achieve program outcomes across program sites not been reached.<br><br>However, in one case study conducted there was evidence through stakeholder feedback that program had worked effectively due to characteristics of that particular community, high level of community participation and ownership, and range of complementary services available such as Community Justice group, Ponki mediators and Youth Diversion program. This would indicate that, under such conditions, program model is effective in achieving positive client and community justice outcomes. | | |

| Area of Focus | Excellent to Very Good Practice | Adequate Practice | Poor Practice | Comments |
|---|---|---|---|---|
| **Theme 5: Promoting inclusive community participation and engagement** | | | Variable coverage, with some areas better serviced than others due to differential take-up by Magistrates and limitations in having one coordinator for NT. | |
| **Theme 6: Effective service coordination and collaboration** | | | Program resources available for coordination functions limited due to one position only being available which then restricted capacity for building service collaboration. As well, poor service infrastructure in remote communities limits capacity for effective service collaboration. In addition, service collaboration would ideally need to take place within each of 20 Growth Towns as part of Local Implementation Planning process and there were insufficient program resources available to participate in localised networks. | |
| **Theme 7: Advocating for systems reform and improving relationships among key stakeholder groups** | | | Systems advocacy not a key focus of the Community Court, and program resources available for advocacy and systems reform were limited due to only one position being available. No forum in place to bring together key stakeholder groups such as the Judiciary, Police, NAAJA, to identify and address common issues. | |

| Area of Focus | Excellent to Very Good Practice | Adequate Practice | Poor Practice | Comments |
|---|---|---|---|---|
| **Program management** | | | | |
| **Theme 8: Effective governance and management processes** | | | Management of program was challenged by absence of efficient structures and processes to develop program guidelines and develop sufficient resource base from which to deliver program. Reliance on manual data collection processes prevented routine monitoring and reporting from taking place. Recruitment of personnel did not proceed as intended and program was not sufficiently supported for success. | |
| **Theme 9: Clear articulation of program intent** | | | Insufficient documentation of program aims and objectives. | |
| **Theme 10: Sustainability of the program/s over time** | | | Program funded through Closing the Gap initiative to 2012. Part of that funding initially included 10.25 Indigenous Community Court Liaison Officer positions which were not filled. Program was initially funded to establish 10 Community Courts. If program were to be reintroduced it would need to be based on sustainable staffing model that is regionally based for coverage of NT. | However, the adult program ceased operating at the end of 2011 due to a conflict with Section 104a of the NT *Sentencing Act*. The program is no longer operating as funding was not allocated in the mini-budget delivered by the NT Government in December 2012. |

## 7.7 Key lessons

The Community Court is an alternative sentencing model that provides a more culturally appropriate environment than mainstream courts and recognises the integral role of the family and community in the lives of Aboriginal people. The model also enables Judicial Officers to make more informed decisions when sentencing Aboriginal defendants. However, to date limited resources have been devoted to the Community Court. While there is evidence that the Community Court enhances the cultural appropriateness of the sentencing process, increases the level of understanding and engagement in the process and improves the appropriateness of the sentence delivered, resulting in an increased range of justice outcomes, the extent to which this has been achieved has been limited as a result of a lack of resources.

### Limited resources constrain capacity to achieve outcomes in line with program intent

The evaluation highlighted the potential of the Community Court model to provide additional information to inform the sentence and enable access to interventions to address the underlying causes of offending, as well as the potential to increase community participation. However, the evaluation also highlighted that the realisation of these goals is considerably inhibited by the limitations on resources within Community Courts dedicated to these goals (one Community Court Coordinator), and the lack of community-based agencies, particularly in regional and remote communities, for post-sentence support. The resource-intensive nature of providing Aboriginal sentencing courts in a regional and remote community context is also a factor.

### There is a significant unmet need for culturally appropriate sentencing processes

In the Magistrates Court in the NT in 2010/11, 3,956 defendants (72%) identified as Aboriginal or Torres Strait Islander, and overall 83% of the prison population in the NT are Aboriginal and Torres Strait Islander (ABS 2011a). In comparison, 30% of the NT population are Aboriginal or Torres Strait Islander (ABS 2011b). The evaluation feedback highlighted the value that Elders and other stakeholders place on increased engagement in the justice process by community members, victims and defendants, and it was found that offenders appear to have engaged more positively with Community Courts as compared with their experiences in mainstream justice settings.

The evaluation also identified gaps in the implementation of the Community Court, including the lack of access to the Community Court process outside the Top End and the limited number of Community Courts conducted to date. Given the diversity of the NT Aboriginal population, and the high need, significant resources are required to implement the Community Court model effectively. This is a significant concern given that Community Courts and a number of other alternative sentencing processes are no longer available in the NT as a result of the mini-budget released in December 2012 by the newly elected NT Government.

### Elders are critical to the process, and resources are needed to engage this group

Feedback from all participants indicated that Elder involvement is perceived to be a key strength of the Community Court model, and many felt this was the critical factor on which the success of the Community Court depended. The evaluation found that, where communities have a strong group of Elders actively engaged with the justice process and supported, the positive outcomes of the Community Court are greatly increased. However, the engagement of Elders varied across locations, and there were no consistent or documented processes for engagement, selection or training of Elders. While the value of personal and trusting working relationships is significant in encouraging Elders (and community justice groups more broadly) to participate in Community Courts, it is also important that a framework for Elder engagement be developed. Done well, this will not only have positive benefits for the implementation of the Community Court model, it will also offer broader community capacity benefits in the long term.

### Implementation has been limited by a lack of framework and clear organisational processes

The evaluation indicated that the implementation of the Community Court has been limited due to a lack of formal planning, development and clear and well-documented organisational processes. There was a lack of clarity about the processes and operational procedures of the Community Courts, including roles and responsibilities, operating principles and strategic direction. Significantly, there was also lack of clarity about acceptable assessment procedures for referring cases to the Community Court. Furthermore, there were no formal processes for ongoing consultation and collaboration with key NT agencies on both a Territory and local level in order to provide formal community engagement processes that enable the implementation to be reviewed and developed over time. The evaluation found that there were no formal mechanisms for developing service coordination and collaboration at a Territory level, with no steering groups of Community Court users operating. This lack of framework, organisational structures and processes is a significant gap that would need to be addressed for the effective implementation and continuous quality improvement of Aboriginal sentencing in the NT in the future.

### Lack of community support services in the Top End constrains capacity

It is worth noting that the Community Court guidelines indicate that one of the intentions is to enhance an offender's prospects of rehabilitation and reparation to the community. However, there is little evidence to suggest this aim has been addressed for Community Courts, due to a myriad of factors, the most significant being the lack of rehabilitation services in the Top End. Without appropriate community services to address underlying factors that influence offending behaviour, the ability of the sentencing process to influence recidivism is limited. Furthermore, service collaboration processes appear to be the responsibility of the panel members, and therefore tend to be ad hoc rather than programmatic.

Consideration should be given to enhancing the capacity of the Community Court model to facilitate involvement of culturally appropriate services during and after cases. An ideal model would be to include service providers in the Community Court where possible and to develop innovative sentencing outcomes and supervision strategies based on the involvement of community members and organisations.

### A focus on monitoring and evaluation is needed to measure program outcomes against intent

Accessing reliable data is a key challenge in monitoring the outcomes of the Community Courts, and deficiencies in recording data should be addressed. It is also important to ensure monitoring and evaluation processes allow for the collection of qualitative feedback from relevant stakeholders and participants given the goals of the Community Court to provide a culturally appropriate sentencing process and the difficulty in measuring this quantitatively as numbers often ignore the complexities of the situation. A review of monitoring and evaluation capabilities should also consider the relevance of collecting information on participation of victims, families and Elders, and the links and referrals made to support services.

### There is variability in how cultural needs are being met by Community Courts

The extent to which culturally appropriate practices and community participation and engagement is embedded into program delivery varied across program sites depending on:

- The capacity of the Community Courts to accommodate the diversity of the NT Aboriginal population
- Lack of consistency and clear policies and processes for selecting, briefing and training Elders
- Lack of resources dedicated to the development of a framework for the implementation of the Community Court
- Challenges accessing and engaging Elders, which was influenced by the presence (or lack) of community justice groups.

Wurrumiyanga provides a good practice example of the capacity for the Community Courts to provide a culturally appropriate process that meets the community's needs.

### There is limited awareness of and support for Community Courts among Judicial Officers and legal practitioners

Limited awareness and knowledge of Community Courts among Judicial Officers and legal practitioners (influenced somewhat by high turnover of NAAJA staff) affects the extent to which the Community Courts are offered. The high number of cases on Circuit Courts also has an impact on

their interest in and willingness to participate in Community Courts. There was no evidence of education and promotion strategies targeting Judicial Officers and lawyers; this limits their awareness of Community Courts and as a consequence limits community access to Community Courts. This is likely to be a factor of a lack of available resources, as well as limited commitment from within the Judiciary and the Department of the Attorney-General and Justice to this program. These issues would need to be addressed if the Community Courts are to continue.

# 8. Overall lessons about good practice

This chapter draws on the literature and individual program findings to describe the attributes of a *good program design*, the attributes of *good program delivery* and the attributes of a *well-managed program*, and how these fit together to produce good practice. It presents key lessons in terms of good practice for Aboriginal and Torres Strait Islander Sentencing Courts and Conferences.

## 8.1 Framework for assessing what works

Six programs were selected for examination within Project A: Aboriginal and Torres Strait Islander Sentencing Courts and Conferencing. All programs selected for Project A had been previously screened and identified as being either 'good practice' or 'promising practice' and included in the Good Practice Appendix to the National Indigenous Law and Justice Framework.

*Good practice:*

- Port Lincoln Aboriginal Conferencing (SA) (reviewed by SA Office of Crime Statistics and Research in 2008)
- Community Courts, Northern Territory (evaluation of Nhulunbuy Court 2007)
- Youth Justice Conferencing, Queensland (model consistently reviewed in Australia)

*Promising practice:*

- Port Adelaide and Murray Bridge Nunga Courts (SA)
- Port Augusta Aboriginal Sentencing Court (SA)
- Section 9C (*Criminal Law Sentencing Act 1988*) Aboriginal Sentencing Conferences (SA)

The programs were diverse in nature, ranging from court based to conferencing programs and covering adult and juvenile jurisdictions. Despite this diversity, the programs shared common program aims, including:

- Increasing the sensitivity and appropriateness of the legal system for Aboriginal and Torres Strait Islander people
- Increasing community trust in the legal system
- Increasing the use of appropriate and constructive sentencing options
- Reducing the frequency and seriousness of offending and recidivism
- Improving recovery and wellbeing of victims
- Promoting wider community acceptance of justice processes.

The literature reviewed has provided reasonable consensus as to aspects of 'good practice' in Aboriginal and Torres Strait Islander courts and conferences. These principles were included in the Project A conceptual framework that was applied to each of the six programs in order to identify

common good practice principles. Some of the main concepts derived from the literature that have been used to construct the evaluation's analytical framework are summarised below.

### Focus on crime prevention and reducing over-representation

It is also considered to be a good practice principle that programs do directly focus on crime prevention and aim to make a contribution to a reduction in the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system. However, while this is a valid longer term program aim, the literature has indicated that the success of innovative justice programs is often solely measured according to whether the programs concerned have had any impact on reoffending behaviour. Rather, the literature has suggested that the focus of programs should also be on whether or not these programs are working effectively in improving court and criminal justice experiences of offenders and victims, increasing the participation of Indigenous communities, providing opportunities for better tailoring of sentencing outcomes, and improving offender remorse and understanding of the impact of their crime.

### Meeting a need and filling a service gap

The literature has affirmed that Aboriginal and Torres Strait Islander court and conference initiatives do meet a service gap by providing more culturally appropriate forums for dealing with the administration of sentences and penalties. This includes making the sentencing process more suitable for Indigenous offenders by modifying the court environment and the manner in which various participants interact, and including cultural and community knowledge about the circumstances of the offender in the decision-making process.

### Culturally appropriate design and implementation and inclusive community participation and engagement

Evaluations completed have indicated that Aboriginal and Torres Strait Islander Courts and Conferences do provide a more culturally appropriate process that encompasses the wider circumstances of the offender and the victim's lives. The literature has found that access to culturally appropriate justice programs may work to enhance the likelihood that Indigenous offenders successfully access opportunities that will lead them to desist from further criminal activities.

A good practice principle drawn from the literature for Aboriginal and Torres Strait Islander Courts and Conferences is that such programs are designed to be culturally appropriate in their intent and are effective in promoting inclusive community participation and engagement.

### Achieving outcomes in line with program intent

Evaluations have established a number of positive benefits of Aboriginal and Torres Strait Islander Courts and Conferences for individuals and communities. They have identified reconciliation and empowerment for Aboriginal and Torres Strait Islander communities and ownership of the process

and pride among Aboriginal and Torres Strait Islander participants. Studies have noted increased participation as having a positive impact on developing understanding and accountability between participants. Community involvement has been found to provide increased accountability of the offender to their community and provided offenders with community support. The literature has supported Aboriginal and Torres Strait Islander Courts and Conferences as meeting these intermediate-level program aims and objectives, which has ensured their continued existence and support in most Australian jurisdictions.

### Service coordination and collaboration

The need for effective service coordination and collaboration has been affirmed in the literature as providing opportunities for integrated and holistic interventions to address the wide range of risk factors related to offending. Effective coordination has been found to increase access to resources and service delivery capacity, as well as assisting offenders to navigate complex systems in order to access the required services. Evaluations undertaken have indicated a crucial need for culturally appropriate community support services to support the court and conferencing processes undertaken.

### Effective governance and program management

The literature has affirmed the principles of effective program design, including the importance of clear program intent and the monitoring of the progress of outcomes achieved. The literature has affirmed the importance of developing performance management systems with adequate funding and a focus on outcomes and continuous improvement.

Key challenges for justice programs operating for Indigenous peoples are to establish a valid program design with realistic and achievable aims and objectives, ensure access to adequate governance and management structures and resources that will ideally result in the achievement of these aims and objectives, and develop a monitoring and evaluation framework capable of capturing the outcomes achieved for individuals, communities and the broader service system.

The 10 good practice themes that form the conceptual framework for Project A are outlined in Table 3a in Chapter 3, and have been examined in detail in Chapters 5–7. Table 8a draws together the assessments of all eight programs against these themes.

## 8.2 Assessment of all programs against the good practice themes

**Table 8a: Assessment of all programs**

| Good practice theme | South Australian programs: Port Adelaide and Murray Bridge Nunga Courts; Port Augusta Aboriginal Sentencing Court, Section 9c Conferences | Youth Justice Conferencing, Queensland | Northern Territory Community Courts |
|---|---|---|---|
| **Program design** | | | |
| **Theme 1: Focusing on crime prevention and aiming to reduce the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system** | *Adequate:* All programs focused on reducing crime in Aboriginal communities through delivering a more effective court process by providing a more culturally appropriate environment in comparison with mainstream courts, recognising the integral role of family and community in the lives of Aboriginal people and enabling Judicial Officers to make more informed decisions when sentencing Aboriginal people.<br><br>*Comments:* There was not a direct focus on reducing recidivism; rather, focus was on creating a more culturally appropriate sentencing process for defendants and engaging them more positively with the justice process. Analysis of recidivism data did not demonstrate any impact on recidivism in comparison with mainstream court processes. | *Adequate:* Mainstream program focused on reducing crime among young people in Queensland with steps taken to adapt approach for Aboriginal and Torres Strait Islander offenders, including employment of Aboriginal and Torres Strait Islander staff and involvement of community representatives.<br><br>*Adequate:* There was not a direct focus on reducing recidivism as opposed to diverting and undertaking restorative justice processes for young offenders.<br><br>*Adequate:* Prior research completed on mainstream populations is unclear on whether youth justice conferencing has an impact on recidivism in comparison with mainstream court processes. For this program a specific recidivism study could not be completed as the program could not disaggregate the Indigenous status of participants from participant data. | *Adequate:* Although program is no longer operational, original program guidelines focused on crime prevention and contribution to reduction in reoffending rates. Analysis of recidivism data did not demonstrate any impact on recidivism in comparison with mainstream court processes.<br><br>*Comments:* The small numbers of offenders who had access to Community courts during 2005–2012 significantly limited the program's contribution to reducing offending. |
| **Theme 2: Meeting needs and addressing a service gap** | *Excellent to very good:* Aboriginal courts and conferences meet a need for a culturally appropriate sentencing process that includes input from Aboriginal community members.<br><br>*Adequate:* The Nunga Court Treatment Program is only available in the Port Adelaide Nunga Court and as a result its reach is limited. | *Excellent to very good:* Given the substantial over-representation of Aboriginal and Torres Strait Islander young people in the youth justice system, their involvement in YJC appears to have been appropriate given national support for this approach for dealing with young offenders.<br><br>*Adequate:* The ICSOs available to support | *Adequate:* Stakeholders suggested Indigenous offenders appeared to have engaged more positively with Community Courts as compared with experiences in mainstream justice settings due to presence of direct community participation and input. Such direct community input does not necessarily occur in mainstream sentencing |

| Good practice theme | South Australian programs: Port Adelaide and Murray Bridge Nunga Courts; Port Augusta Aboriginal Sentencing Court, Section 9c Conferences | Youth Justice Conferencing, Queensland | Northern Territory Community Courts |
|---|---|---|---|
| | | conferences involving Aboriginal and Torres Strait Islander people were stretched over large geographic areas and therefore their capacity to improve outcomes and service delivery for Aboriginal and Torres Strait Islander people was constrained by available resources. These issues will be exacerbated by the reduction of the number of ICSO positions in the 2012 Queensland Government amendments to YJC. | processes. However, this has only been achieved when program has been effectively implemented, and community participation and input has not been consistent across program sites.<br>*Poor:* Limited Community Courts conducted to date, and the fact that the Community Court is no longer available demonstrates significant unmet need. |
| **Theme 3: Culturally appropriate program design and implementation** | *Excellent to very good:* The design is culturally appropriate as it involves Elders and AJOs and provides opportunities for family and community support with direct engagement of the offender in dialogue around their offending behaviour.<br>*Adequate:* Environment of the court is modified to increase cultural responsiveness to varying degrees within the programs.<br>*Comments:* Greater challenges in delivering a culturally appropriate process for those for whom English is not their first language. The high level of mobility of people from the APY Lands and the diversity of communities from which defendants come imposes challenges in relation to the availability of suitable interpreters. | *Adequate:* Provisions in legislation to encourage conferences to be culturally appropriate by considering the involvement of Elders and/or respected community representatives and Community Justice Groups in the process. The extent to which this happens varies across locations.<br>*Adequate:* Employment of some ICSOs to support conferences; however these positions appear to be undervalued and overworked particularly in the context of regions where the majority of YJC referrals are for Aboriginal and Torres Strait Islander young offenders.<br>*Adequate:* While cultural capability training is available for non-Aboriginal and Torres Strait Islander staff, it is delivered on an ad-hoc and informal basis. | *Adequate:* Culturally appropriate program design involving Elders and opportunities for family and community support with direct engagement of offender in dialogue around their offending behaviour. Coordinator limited in ensuring process was culturally appropriate according to level of resources (Elders and other services) available in each community. |
| **Program delivery** | | | |
| **Theme 4: Achieving outcomes in line with program intent** | *Excellent to very good:* Models are effective in providing a more culturally appropriate sentencing process.<br>*Excellent to very good:* There was evidence through offender, AJO and Elder feedback of greater engagement with Aboriginal courts and conferences as compared with their | *Adequate:* Outcomes were achieved in diverting young people from court processes via direct police referrals to conferencing. The extent to which this took place varied by location.<br>*Adequate:* There was evidence through feedback from Elders, convenors, ICSOs of raised awareness of offending and its | *Adequate:* Due to program's limited resource base and ad-hoc delivery, potential to achieve program outcomes across program sites not been reached.<br>*Adequate:* However, in one case study conducted there was evidence through stakeholder feedback that program had |

| Good practice theme | South Australian programs: Port Adelaide and Murray Bridge Nunga Courts; Port Augusta Aboriginal Sentencing Court, Section 9c Conferences | Youth Justice Conferencing, Queensland | Northern Territory Community Courts |
|---|---|---|---|
| | experiences in the mainstream justice settings due to direct community participation and input. Outcomes included raised awareness of the impact of offending and changed attitudes to offending as a result of offender participation in the courts and conferences. There was evidence of increased knowledge and confidence in the justice system, improved understanding of the process and sentence outcomes and acceptance of justice outcomes by individuals participating.<br><br>*Excellent to very good:* More informed decision-making and sentencing remarks occurring as indicated by Magistrates.<br><br>*Adequate:* Attendance rates for the Aboriginal courts and conferences similar to those of the mainstream courts.<br><br>*Adequate:* Judicial Officers are critical to the success of the models, and implementation varies depending on the individual Judicial Officer. As a result, the operation of the programs is not consistent and gaps in delivery can occur.<br><br>*Adequate:* Models enable access to support services to some extent, although this is limited by lack of adequately resourced services.<br><br>*Comments:* Analysis of recidivism data did not demonstrate any impact on recidivism in comparison with mainstream court processes. For Nunga Courts, 64% (of 254 defendants) reapprehended in the year following their case finalisation, equivalent to reoffending rate for a matched sample of Aboriginal defendants processed entirely through Magistrates Courts (65%). For Port Augusta Aboriginal Sentencing Court, 53% of defendants reapprehended in the year following their case finalisation, slightly below but comparable with reoffending | consequences as a result of offender participation in the programs. Published research findings support the positive benefits of group conferencing for mainstream young offenders in increasing their awareness of the consequences of their offending.<br><br>*Adequate:* Some concern that conference agreements were at times inadequate for the incident often due to limitations in offering appropriate supervision for community and voluntary work. However, self-reported satisfaction with conference agreements was high among both offenders and victims. | worked effectively due to characteristics of that particular community, high level of community participation and ownership, and range of complementary services available such as Community Justice group, Ponki mediators and Youth Diversion program. This would indicate that, under such conditions, program model is effective in achieving positive client and community justice outcomes. |

| Good practice theme | South Australian programs: Port Adelaide and Murray Bridge Nunga Courts; Port Augusta Aboriginal Sentencing Court, Section 9c Conferences | Youth Justice Conferencing, Queensland | Northern Territory Community Courts |
|---|---|---|---|
| | rate for a matched sample of Aboriginal defendants processed in Magistrates Courts (57%). For Port Lincoln, 57% of conference defendants reapprehended in year following their conference, comparable with reoffending rate recorded for a matched sample of Aboriginal defendants processed entirely through Magistrates Court (53.3%). | | |
| **Theme 5: Promoting inclusive community participation and engagement** | *Adequate:* Geographic coverage is limited as programs only operate in certain locations.<br><br>*Adequate:* Programs have had involvement and ongoing consultation with Aboriginal communities during the design and delivery of the courts and conferences and there are some ongoing operations groups (steering committees) with Elder involvement.<br><br>*Adequate:* Successful recruitment and engagement with Elders, although opportunity to increase pool of Elders involved. | *Adequate:* Despite broad geographic coverage, the depth and quality of the service was limited by the availability of ICSOs and the large areas that they are intended to service.<br><br>*Adequate:* Programs have had some involvement and ongoing consultation with Aboriginal and Torres Strait Islander communities during the delivery process though this has occurred on an ad-hoc basis rather than being embedded in the model. | *Poor:* Variable coverage, with some areas better serviced than others due to differential take-up by Magistrates and limitations in having one coordinator for NT. |
| **Theme 6: Effective service coordination and collaboration** | *Excellent to very good:* For Nunga Courts, Port Lincoln Conferencing and Section 9C Conferences, models supported by Aboriginal community service providers.<br><br>*Excellent to very good:* For Nunga Courts and Port Lincoln Conferencing, collaborative meetings held to identify common issues, barriers and strategies, including CAA, Magistrates, Elders, Police Prosecutors and community agencies.<br><br>*Adequate:* Programs have a strong focus on service coordination and collaboration but the extent to which this can be achieved is limited as a result of funding and resource constraints. Community Corrections Officers and other support services attend on occasion to support offender and inform the process but limited by available funding and resources for models | *Poor:* Program limited in its capacity to develop service partnerships and facilitate effective referral processes to services for young people. Program does not have a strong focus on engaging young people with support services to address the underlying causes of their offending behaviour. Links with Aboriginal and Torres Strait Islander support organisations could be strengthened to better meet the needs of Aboriginal and Torres Strait Islander young people.<br><br>*Poor:* As a result of both the availability of support services and resources to facilitate access and referral, there was limited follow-up available to young Aboriginal and Torres Strait Islander offenders. | *Poor:* Program resources available for coordination functions limited due to one position only being available which then restricted capacity for building service collaboration. As well, poor service infrastructure in remote communities limits capacity for effective service collaboration. In addition, service collaboration would ideally need to take place within each of 20 Growth Towns as part of Local Implementation Planning process and there were insufficient program resources available to participate in localised networks. |

| Good practice theme | South Australian programs: Port Adelaide and Murray Bridge Nunga Courts; Port Augusta Aboriginal Sentencing Court, Section 9c Conferences | Youth Justice Conferencing, Queensland | Northern Territory Community Courts |
|---|---|---|---|
| | themselves and for community-based services.<br><br>*Adequate:* Scope for formalising operations groups for Port Augusta Aboriginal Sentencing Court. | | |
| **Theme 7: Advocating for systems reform and improving relationships among key stakeholder groups** | *Excellent to very good:* Judicial officers reported their involvement in the courts and conferences had benefits for their awareness of needs of Aboriginal offenders in mainstream processes.<br><br>*Excellent to very good:* For Nunga Courts and Port Lincoln Conferencing, collaborative meetings help raise profile of issues related to Aboriginal offending within the relevant locations.<br><br>*Adequate:* Scope for more involvement of AJOs and Elders in policy development at statewide level. | *Poor:* Limited evidence that YJC is having an impact on systems reform more broadly. Some evidence that there is capacity for the program to have this impact. | *Poor:* Systems advocacy not a key focus of the Community Court, and program resources available for advocacy and systems reform were limited due to only one position being available. No forum in place to bring together key stakeholder groups such as the Judiciary, Police, NAAJA, to identify and address common issues. |
| **Program management** | | | |
| **Theme 8: Effective governance and management processes** | *Excellent to very good:* CAA provides AJOs with necessary support to perform their roles and AJOs expressed positive feedback in relation to their roles and working environment.<br><br>*Adequate:* AJO responsibilities include community education and promotion but this is limited by resources available to them<br><br>*Adequate:* Opportunities for Elders involved in programs to meet to share experiences and access broader knowledge around Aboriginal justice issues. Building capacity and skills development important given Elders receive nominal payments.<br><br>*Comments:* Disparity in data collection systems across all justice agencies and this has implications for the efficacy of routine | *Adequate:* The evaluation found that YJC is centrally well managed with a strong practice improvement focus. However, the governance, management and legislative framework for delivery of the program changed dramatically over the course of the evaluation and will have considerable implications for the staffing and management structure of YJC.<br><br>*Adequate:* While the data management system had limitations, the program has now redeveloped its performance data management system with higher capabilities for recording monitoring data and providing reports. | *Poor:* Management of program was challenged by absence of efficient structures and processes to develop program guidelines and develop sufficient resource base from which to deliver program. Reliance on manual data collection processes prevented routine monitoring and reporting from taking place. Recruitment of personnel did not proceed as intended and program was not sufficiently supported for success. |

| Good practice theme | South Australian programs: Port Adelaide and Murray Bridge Nunga Courts; Port Augusta Aboriginal Sentencing Court, Section 9c Conferences | Youth Justice Conferencing, Queensland | Northern Territory Community Courts |
|---|---|---|---|
| | monitoring, evaluation and research studies. Data extraction not readily available and manual matching was required. Also opportunities to collect qualitative feedback given goals of the courts and conferences are difficult to measure. | | |
| **Theme 9: Clear articulation of program intent** | *Excellent to very good:* Clear documentation of program aims and objectives.<br>*Adequate:* Scope for greater promotion re Section 9C Conferences among Judiciary and legal practitioners. | *Adequate:* The mainstream model is well documented with accompanying practice manual. The Aboriginal and Torres Strait Islander customisation of the program is not as well documented. | *Poor:* Insufficient documentation of program aims and objectives. |
| **Theme 10: Sustainability of program/s over time** | *Poor:* As programs do not receive quarantined funding but are funded through existing court budgets, programs prone to be scaled back when resources are limited. Funding model potentially militates against program uptake for Section 9C Conferences as they are perceived as resource-intensive. Nunga Court Treatment Program funded via the Interventions Programs, which makes it vulnerable.<br>*Comments:* Debate about whether programs should be legislated and embedded in justice systems, and a lack of specific legislation makes programs susceptible to closure and does not demonstrate a commitment to improve justice outcomes for Aboriginal defendants (excluding Section 9C). | *Poor:* The availability of ongoing and recurrent funding is unclear. Already limited resourcing for culturally specific elements of the program, particularly funding for the ICSO positions, have been further reduced as a result of the 2012 Queensland Government amendments to YJC. | *Poor:* Program funded through Closing the Gap initiative to 2012. Part of that funding initially included 10.25 Indigenous Community Court Liaison Officer positions which were not filled. Program was initially funded to establish 10 Community Courts. If program were to be reintroduced it would need to be based on sustainable staffing model that is regionally based for coverage of NT.<br>*Comments:* However, the adult program ceased operating at the end of 2011 due to a conflict with Section 104a of the NT *Sentencing Act*. The program is no longer operating as funding was not allocated in the mini-budget delivered by the NT Government in December 2012. |

## 8.3 Key lessons from all programs

### The importance of measuring intermediate client outcomes and contribution to reducing recidivism and crime prevention

The key lessons identified relate to the limitations encountered by all programs in Project A in being able to establish their longer term outcomes in terms of reducing recidivism. All programs could have benefited from adopting an increased focus on tracking intermediate-level results where intended behavioural and systems level changes could be identified and measured. There appeared to be little value in focusing on impact assessment alone (based on recidivism data) for Project A as there was limited data available to support this analysis and this was not the only aim of the programs.

All programs included in Project A were clearly focused on stating that crime prevention and/or reduction of reoffending was an overarching aim. However, the data gaps evident in many programs militated against the collection and analysis of robust data that could be used to indicate trends in program participant outcomes, particularly for establishing recidivism patterns. Reoffending data that was available often could not be matched against comparison benchmarks to enable changes to be determined in reoffending rates.

Programs needed to better articulate the hierarchy of their program aims and the relationship between the primary aim of crime prevention and influencing recidivism and the subsidiary aims of improving relationships between offenders and the justice system.

There was a need to focus more on the measurement of intended intermediate-level program outcomes such as engagement with court and conference processes, acknowledgement of the harm done by offending, victim participation, the provision of better informed and understood sentences and conference agreements, and links made with relevant interventions/support. These intermediate-level outcomes may potentially lead to a reduction in offending through the development of prosocial behaviours for communities and future generations (see Chapter 4).

While some programs demonstrated clear program intent, others required a clearer program logic that realistically linked program outputs with expected short, medium and longer term outcomes.

There is a need to develop other evaluative methods for establishing client outcomes in addition to tracking recidivism trends. More sensitive techniques such as Most Significant Change and case study methods could be developed.

The intermediate-level outcomes could be achieved through the delivery of justice models that incorporate culturally inclusive processes and room for community participation.

## The centrality of the concepts of cultural appropriateness and inclusion to program success

All program models were culturally based and culturally appropriate, and this was affirmed as a key foundation for achieving intermediate-level program outcomes. There were some lessons, however, in relation to the extent to which full engagement and inclusion could occur.

The evaluation affirmed cultural appropriateness as a foundation for achieving intermediate-level program outcomes. There were some lessons, however, in relation to the extent to which full engagement and inclusion could occur. Programs were inclusive and equitable by design. However, in some cases programs did not operate frequently enough, have sufficient coverage to meet demand, or have adequate human resources, and this limited the capacity of programs to be culturally inclusive in their implementation. Several of the SA programs benefited from the ongoing involvement of community members and respected persons in the development of the program through regular meetings, and this appeared to provide a positive basis for continuous program improvement.

Programs were successful when operating within a cultural framework and when based on the participation of Aboriginal and Torres Strait Islander people in program design and delivery.

All the programs displayed, to varying degrees, culturally appropriate designs which involved Aboriginal and Torres Strait Islander people in both design and delivery.

The programs were all reliant on effective engagement processes with local Aboriginal and Torres Strait Islander people and communities. Engagement during the delivery of the programs was seen to be an important precursor to acceptance and a sense of local ownership of the initiative.

Programs were inclusive and equitable by design. However, as in some cases programs did not operate frequently enough, have sufficient coverage to meet demand, or have adequate human resources, the capacity of programs to be culturally inclusive in their implementation was limited.

Some programs benefited from ongoing community involvement in the assessment of the challenges of issues around program delivery, and where this took place it appeared to provide a positive basis for program improvement.

## The critical role of service partnerships to program success

Effective service partnerships formed a basis for all programs, though this was an area that needed improvement for some of the programs, where relationships with allied services and supports could have been better developed.

Programs worked well when there were strong working relationships with allied services and related programs, rather than participants attending the sentencing court or conference as a one-off

intervention and not having additional post-intervention support to address issues related to their offending behaviour. Examples of effective relationships with allied services and programs included Aboriginal community organisations, community-based youth diversion programs, community corrections, alcohol and drug rehabilitation services and programs, and victim support services.

The importance of service coordination and collaboration in developing partnerships and good relationships across key agencies and stakeholders was thus supported by the evaluation.

### The importance of a capacity for systems and individual advocacy

There appeared to be a need for Aboriginal and Torres Strait Islander specific programs, given the patterns of non-engagement of Aboriginal and Torres Strait Islander offenders with mainstream courts. Programs should have the capacity to influence the mainstream service system and to influence and improve relationships between Aboriginal and Torres Strait Islander communities and justice agencies overall.

It appeared to be important for programs to have some capacity for systems advocacy and/or capacity for the promotion of the unique needs of their target groups. While some programs were able to undertake these roles, other programs were significantly limited in undertaking these roles due to a lack of resources.

There was scope to support broader systems advocacy processes through bringing together key stakeholder groups to identify common challenges and appropriate strategies.

There was scope also to better promote Aboriginal and Torres Strait Islander courts and conferencing options available for use by justice professionals, such as through training and professional development.

### The critical importance of ensuring sustainability in programs funded

A lack of stable and/or sufficient funding underlined many of the performance issues identified in this evaluation. Capacity to undertake performance monitoring to establish client outcomes, to develop collaborative service partnerships and to undertake systems advocacy were all limited by such capacity constraints.

All programs could have been better resourced for success, especially for planning and monitoring and evaluation functions. This would have strengthened their capacity to be results based.

There was a need for adequate funding for the system as a whole in order to provide core functions and link offenders with complementary programs and services.

The achievement of positive program results was hampered by a lack of dedicated long-term funding, meaning ongoing delivery of Aboriginal and Torres Strait Islander courts and conferences could not be guaranteed.

### The importance of effective governance and management to program success

Programs in Project A were not able to identify their progress against their intended intermediate-level outcomes due to the absence of, or the under-developed nature of, their data collection systems. This militated against the capacity of programs to identify their achievements and modify their designs in light of findings about what works, for whom and under what circumstances. The adoption of a Results Based Management approach has been highlighted in all sections of this chapter as essential and should form an integral part of program management.

Identification of clear program intent through program logic mapping (or similar) is an important feature of good governance and management so that programs can be clear on their directions and main focus.

Program logic mapping should identify intended intermediate-level results to be attained, with a contributory link being made to the achievement of longer term results such as reducing recidivism.

A lack of stable funding and adequate resourcing levels was identified as a challenge for the programs in Project A, and this undermined their potential for success.

## 8.4 Strategies for improvement across all programs

The key lessons arising from this evaluation revealed a number of key challenges for achieving good practice in Aboriginal and Torres Strait Islander court and conferencing programs.

### Establish a valid program design and undertake program planning

Court and conference models need robust planning functions that include:

- Detailing a comprehensive program design document
- Specifying expected outcomes, both intermediate and longer term, and key indicators that will be measured to assess whether outcomes are being met
- Regularly reporting on progress in relation to intent, processes and critical issues.

### Ensure adequate resourcing to achieve program aims and objectives

All programs required increased levels of staffing and resources and a more consistent and stable funding base for their initiatives. Programs experienced challenges in ensuring adequate resources and sustainable funding.

### Develop a monitoring and evaluation framework capable of capturing outcomes achieved

Establishing whether or not programs are effective is particularly important for Aboriginal and Torres Strait Islander programs, where there may be a lack of clarity as to what works. All programs required improved attention to the development of their monitoring and evaluation capacity. This will require training in monitoring and evaluation and adequate resourcing to implement appropriate and customised performance management systems. Even within a limited budget, allowance should be made for monitoring and evaluation functions. Therefore around 10% of program budgets should be routinely set aside for monitoring and evaluation purposes. In other words, evaluation needs to be built in as a core program component in program design and implementation and not left to ad-hoc, one-off evaluation processes.

## 8.5 Final conclusion

This evaluation has affirmed the importance of Aboriginal and Torres Strait Islander Courts and Conferences in providing culturally appropriate and meaningful processes for engaging Aboriginal and Torres Strait Islander offenders and community members. Innovative justice programs, such as Aboriginal and Torres Strait Islander Courts and Conferences, although not necessarily proven to have a significant impact on reducing recidivism, are supported in the literature and through this evaluation as having a positive effect on Aboriginal and Torres Strait Islander offenders and communities by providing more culturally appropriate forums for dealing with the administration of sentences and penalties. The evaluation findings indicate that, when compared with mainstream justice settings, the Aboriginal and Torres Strait Islander Courts and Conferences have resulted in greater engagement, increased knowledge and confidence in the justice system, improved understanding of the process and outcomes, and improved outcomes in relation to conference agreements and sentencing by enabling more informed decision-making. Importantly, these intermediate-level outcomes may potentially lead to a reduction in offending through the development of prosocial behaviours for communities and future generations.

In order to establish a greater evidence base in regard to court and conferencing program models and the program characteristics required for their successful delivery, programs need to embed monitoring and evaluation processes into their operations. Each program design needs to outline the program's intended goals and objectives and specify the intended outputs, outcomes and impacts to be achieved over time. A focus on intermediate-level outcomes has been suggested as a focus of measurement.

Performance indicators and outcome measures need to be developed and agreed upon by stakeholders in line with program design. These should include indicators which signify progress towards the achievement of program goals and objectives, short- and intermediate-term outcomes which may be non-crime related (such as intended behavioural changes and system-level changes to be achieved), and the contribution of the program to intended long-term outcomes (impacts) which

may include reduced reoffending. In order to achieve this, programs require performance management systems which can facilitate the monitoring of accurate, reliable and relevant performance data that can be routinely collected and analysed. Evaluation activities can be periodically conducted to build on monitoring data collected and so to further establish program outcomes. To enable the evidence base to further develop, dedicated funding for monitoring and evaluation functions should be provided and quarantined within overall program budgets, and training and support provided to program personnel in order to undertake these functions.

There should be a focus on assessing whether practices used in Aboriginal and Torres Strait Islander Courts and Conferences are transforming mainstream court processes into something more meaningful for everyone present and, if so, whether such transformations are empowering Aboriginal and Torres Strait Islander communities. Initiatives that can achieve such cultural transformations will, as the Royal Commission into Aboriginal Deaths in Custody concluded, have a significant impact on reducing the social, economic and cultural disadvantages of Aboriginal and Torres Strait Islander Australians, which in turn should have an impact on the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system.

The findings of this evaluation will provide information for the Standing Council on Law and Justice as it considers future whole-of-government Aboriginal and Torres Strait Islander justice initiatives, and for all governments and service providers as they plan and implement programs and policy to reduce Aboriginal and Torres Strait Islander interactions with the criminal justice system and improve community safety. The evaluation's insights on how to promote positive changes in offenders' behaviour are intended to make a useful contribution to these ends.

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