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Murri Courts

Murri Courts are courts for sentencing Indigenous offenders who have pleaded guilty to an offence that can be dealt with in a Magistrates Court. A Murri Court differs from a normal Magistrates Court in a number of ways: it is more informal, Indigenous elders assist the Magistrate with cultural issues, and an attempt is made to work out why the offender committed the offence. The main reason that Murri Courts were introduced was to try to reduce the over-representation of Indigenous people in Queensland's prisons.

This Research Brief describes a Murri Court, explains why Murri Courts were introduced, and sets out the benefits of such courts and the concerns that have been expressed about them. It also describes the Aboriginal Courts operating in other Australian jurisdictions.

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EXECUTIVE SUMMARY

A Murri Court is a court for sentencing Aboriginal, Torres Strait Islander and South Sea Islander offenders who have pleaded guilty to an offence which is able to be heard by a magistrate. It is less intimidating than a normal Magistrates Court and the magistrate is assisted in a number of ways by Indigenous Elders. The first Murri Court sat in Brisbane in 2002. Murri Courts have since been established in Rockhampton and Mt Isa: **pages 1 – 3**.

Murri Courts were introduced with the overriding aim of reducing the number of Indigenous offenders in prison: **pages 3 – 4**. They have been credited with reducing recidivism rates and increasing Indigenous attendance in court: **pages 4 – 5**. However, concerns have been expressed that Murri Courts are too lenient and divisive to the community: **pages 5 - 6**.

Aboriginal courts have been established in a number of Australian jurisdictions. This Research Brief describes the Nunga Court of South Australia and the Victorian Koori Court, as well as Circle Sentencing in New South Wales and the Australian Capital Territory: **pages 6 - 13**. It briefly mentions the Northern Territory where Indigenous customary law can be taken into account when sentencing an offender: **page 13**.

1 INTRODUCTION

In November 2005, the Queensland Attorney-General and Minister for Justice the Hon Linda Lavarch MP released a discussion paper titled “Review of the Murri Court: Have your say” (the Discussion Paper). It sought comment on a number of issues related to the Murri Court prior to a review of the court by the Department of Justice and Attorney-General. The Department’s report, which will summarise the responses received during the consultation period and recommend improvements to the Murri Court, was to be provided to the Attorney-General in February 2006.

This Research Brief describes the way the Murri Court is conducted and why Murri Courts were introduced. It looks at the benefits which can be derived from Murri Courts, as well as criticisms that have been levelled against them. Some of the other Australian jurisdictions have similar courts (the Circle Court in New South Wales, the Koori Court in Victoria, the Ngambra Circle Court in the Australian Capital Territory and the Nunga Court in South Australia); this Research Brief will discuss each of these courts.

2 WHAT IS A MURRI COURT?

A Murri Court is a Magistrates Court for sentencing Aboriginal, Torres Strait Islander and South Sea Islander offenders who plead guilty to an offence. The offence must fall within the jurisdiction of the Magistrates Courts of Queensland.¹

A magistrate presides over the Murri Court and decides the sentence for the offender. However, before deciding on an appropriate sentence, the magistrate talks to the offender, his or her support person and legal representative, the police prosecutor, an Elder and a Corrective Services representative seeking their input.²

Murri Courts are held in the Roma Street Magistrates Court in Brisbane (on Wednesday afternoons), as well as at the Mt Isa Courthouse and at Rockhampton (one afternoon a month for adults and one afternoon a month for juveniles). In most Murri Courts, the magistrate does not wear robes, the police prosecutors do not wear uniforms, the defendant can bring a support person as well as a lawyer,

¹ Department of Justice and Attorney-General, *The Murri Court*, Fact Sheet C11, May 2005, p 1 downloaded on 14 February 2006 from website at <http://www.justice.qld.gov.au>

² Department of Justice and Attorney-General, *The Murri Court*, Fact Sheet C11, May 2005, p 1 downloaded on 14 February 2006 from website at <http://www.justice.qld.gov.au>

and all relevant parties sit around a conference table with an Elder sitting next to the magistrate.³

In a Murri Court, Elders assist the magistrate in a number of ways including:⁴

- advising the magistrate on cultural issues;
- providing background information about the offender;
- explaining the meaning of the magistrate's questions or concerns to the offender if required;
- acting as a liaison with local indigenous communities; and
- providing advice to the magistrate on the appropriateness of proposed court orders and conditions.

The magistrate may ask Corrective Services to prepare a case plan for an offender. This may be prepared in consultation with an Elder, the offender's family and the local community.⁵ The case plan may include drug, alcohol, psychological and violence treatment agencies.⁶

Murri Courts are not expressly provided for in legislation;⁷ they "operate under the goodwill and commitment of individual magistrates".⁸ Section 9(2)(o) of the *Penalties and Sentences Act 1992* (Qld) requires a court in sentencing an Aboriginal or Torres Strait Islander offender to have regard to any relevant submissions made by a representative of the community justice group in the offender's community that are relevant to sentencing the offender, including, for example:

- the offender's relationship to the offender's community; or
- any cultural considerations; or

³ Department of Justice and Attorney-General, *Review of the Murri Court: Have your say*, downloaded 14 February 2006 from website at <http://www.justice.qld.gov.au/courts/MurriCourtReview.htm>

⁴ Department of Justice and Attorney-General, *The Murri Court*, Fact Sheet C11, May 2005, p 2 downloaded on 14 February 2006 from website at <http://www.justice.qld.gov.au>

⁵ Department of Justice and Attorney-General, *The Murri Court*, Fact Sheet C11, May 2005, p 1 downloaded on 14 February 2006 from website at <http://www.justice.qld.gov.au>

⁶ Department of Justice and Attorney-General, *The Murri Court*, Fact Sheet C11, May 2005, p 1 downloaded on 14 February 2006 from website at <http://www.justice.qld.gov.au>

⁷ One of the reasons for the review of the Murri Court was to determine whether new laws are needed for its continued operation.

⁸ Hon Linda Lavarch MP, Minister for Justice and Attorney-General, Ministerial Statement, *Queensland Parliamentary Debates*, 8 November 2005, pp 3713 – 3714, p 3713.

- any considerations relating to programs and services established for offenders in which the community justice group participates.

The magistrate is also to take into account any other relevant circumstance: s 9(2)(q). When section 9(2)(o) of the *Penalties and Sentences Act 1992* (Qld) was introduced in 2000,⁹ the Chairperson of the Palm Island Community Justice Group, Peena Geia, stated: “I think it’s a very wise move on the part of the government. We’re the ones that know our people best. Nobody knows and understands our people better than us”.¹⁰

3 WHY WERE MURRI COURTS INTRODUCED?

In 1991, the Royal Commission into Aboriginal Deaths in Custody released its report which contained a number of recommendations related to reducing the number of Aborigines in prison.¹¹ Amongst other things, it recommended that Aboriginal people be recruited as court staff and interpreters, that there be cross-cultural training for court personnel, and “that there should be consultation with ‘discrete’ or ‘remote’ Aboriginal communities in relation to appropriate sentencing.”¹² In an article on Aboriginal Courts in *Current Issues in Criminal Justice*, Mark Harris commented:¹³

The need for innovations in ... [the area of sentencing] is understandable given that something approaching 90 per cent of Aboriginal offenders are dealt with in courts of the first instance and nearly 80 per cent of these matters proceed by way of a guilty plea. Given that much of the focus is upon the sentencing of the offender, there is clearly a strong case for a sentencing program that acknowledges the importance of Indigenous community concerns.

The Murri Court Fact Sheet produced by the Queensland Department of Justice and Attorney-General states that Murri Courts were introduced in Queensland to give magistrates “more culturally appropriate sentencing options”¹⁴ to try to redress the

⁹ Mirror provisions were introduced into the *Juvenile Justice Act 1992* (Qld) and the *Children’s Court Act 1992* (Qld) at the same time.

¹⁰ Mark Harris, ‘From Australian Courts to Aboriginal Courts in Australia – Bridging the Gap’, *Current Issues in Criminal Justice*, 16(1) July 2005, p 32.

¹¹ Elena Marchetti and Kathleen Daly, ‘Indigenous Courts and Justice Practices in Australia’, *Trends & Issues in Crime and Criminal Justice*, No 277, May 2004, pp 2.

¹² Harris, p 30.

¹³ Harris, p 30, citing C Cunneen, ‘Judicial Racism’ in S McKillop (ed), *Aboriginal Justice Issues AIC Conference Proceedings No 21*, AIC, Canberra, p 121.

¹⁴ Department of Justice and Attorney-General, *The Murri Court*, Fact Sheet C11, May 2005, p 1 downloaded on 14 February 2006 from website at <http://www.justice.qld.gov.au>

imbalance between the percentage of indigenous Queenslanders in the community (2.5% of Queensland's population¹⁵) and the percentage of indigenous Queenslanders in the State's prisons (25% of Queensland's prison population¹⁶).

It was also hoped that less indigenous offenders would fail to appear in court as this can lead to a warrant for arrest and imprisonment. Other aims of the Murri Court are to decrease the recidivism rate of Murri offenders and reduce the number of court orders which are breached.¹⁷

4 WHAT ARE THE BENEFITS OF MURRI COURTS?

The Discussion Paper states that the benefits of the Murri Court are as follows:¹⁸

The Murri Court can be very powerful on a spiritual or emotional level. It uses the natural authority of Elders to condemn the offender's actions but support him or her as a person. It formalises the authority of Elders, enhances respect for Elders and encourages the community and different government agencies to work together. It is less alienating for Indigenous people and as a result, Indigenous people may be more likely to attend court and less likely to re-offend.

A Murri Court is less intimidating than a normal Magistrates Court because the Magistrate does not wear robes and sits at the same level as everyone else (except in Rockhampton), and the offender is able to bring a support person who can contribute to the sentencing discussion. Because the court is less intimidating, more offenders appear when required.¹⁹ In a Murri Court, the offender, Elders and other relevant parties discuss why the offender committed the offence and make recommendations to the magistrate as to the sentence. This provides for a more "culturally appropriate" sentence than would a normal Magistrates Court. While

¹⁵ Department of Justice and Attorney-General, *The Murri Court*, Fact Sheet C11, May 2005, p 1 downloaded on 14 February 2006 from website at <http://www.justice.qld.gov.au>

¹⁶ Department of Justice and Attorney-General, *The Murri Court*, Fact Sheet C11, May 2005, p 1 downloaded on 14 February 2006 from website at <http://www.justice.qld.gov.au>

¹⁷ Department of Justice and Attorney-General, *The Murri Court*, Fact Sheet C11, May 2005, p 1 downloaded on 14 February 2006 from website at <http://www.justice.qld.gov.au>

¹⁸ Department of Justice and Attorney-General, *Review of the Murri Court: Have your say*, p5, downloaded 14 February 2006 from website at <http://www.justice.qld.gov.au/courts/MurriCourtReview.htm>

¹⁹ Judge MP Irwin, Chief Magistrate, 'Queensland Magistracy – Past Present and Future', Bar Practice Course, 23 July 2004, p 8, downloaded on 24 February 2006 from website at <http://www.courts.qld.gov.au>

offenders will be imprisoned in “appropriate cases”,²⁰ sentences are aimed at encouraging the person not to reoffend by placing him or her in relevant programs, such as drug rehabilitation.

Annette Hennessy, the Regional Coordinating Magistrate, Central Region of Queensland, states that four out of every five offenders who have appeared before the Murri Court have not re-offended, “and that rate of success should be proof enough to anybody.”²¹

5 WHAT CONCERNS ARE THERE ABOUT MURRI COURTS?

Murri courts have been described as a “soft option”²² and as “divisive, racially discriminatory”²³. It has also been said that Murri Courts “represent a continuance of the colonial practice of co-opting members of the indigenous community to police members of their own community.”²⁴ In addition, it has been argued that Murri Courts only recognise customary law which is acceptable to non-Indigenous people and this means that there is not full recognition of Indigenous law.²⁵

When the Queensland Labor Party introduced the Penalties and Sentences and Other Acts Amendment Bill 2000 into Parliament to provide for the input of community justice groups when Aboriginal and Torres Strait Islander offenders are sentenced, concerns were raised by a National Party Member of Parliament that there may be “dissent and division” in the community if changes went beyond

²⁰ Judge MP Irwin, Chief Magistrate, ‘Queensland Magistracy – Past Present and Future’, Bar Practice Course, 23 July 2004, p 9, downloaded on 24 February 2006 from website at <http://www.courts.qld.gov.au>

²¹ Russell Grenning, “In Black and White: Magistrate Annette Hennessy and the Murri Court”, *Proctor*, 25(1) February 2005, p 16.

²² Hon Matthew Foley MP, Attorney-General and Minister for Justice and Minister for The Arts, Penalties and Sentences and Other Acts Amendment Bill 2000, *Queensland Parliamentary Debates*, 5 October 2000, pp 3539 – 3542, p 3540.

²³ Peter Prenzler MP, Penalties and Sentences and Other Acts Amendment Bill 2000 (Qld), *Queensland Parliamentary Debates*, 5 October 2000, pp 3536 – 3539, p 3537.

²⁴ Harris, p 34.

²⁵ Harris, p 36.

“consideration of cultural issues and customary law issues”.²⁶ Another Member²⁷ stated:²⁸

Any legislation that specifies a particular group or race to the exclusion of others is obviously discriminatory and divisive. ... We do not agree with a percentage of Australia’s population having separate services, a separate welfare system, separate land title rights and now sentencing laws separate from the rest of our population. We believe that this is highly divisive ...

6 OTHER AUSTRALIAN JURISDICTIONS

This section of the Research Brief discusses the Aboriginal Courts which have been introduced in South Australia, Victoria, New South Wales and the Australian Capital Territory to sentence Aboriginal offenders. It also briefly mentions the Northern Territory which, unlike the other States and Territories, legislatively recognises customary law when sentencing Aboriginal offenders.

South Australia was the first jurisdiction to introduce an Aboriginal Court – the Nunga Court. The Nunga Court seeks to be less alienating to Aborigines by allowing offenders and their support persons to speak directly to the magistrate. Elders assist the magistrate with cultural issues and help formulate a suitable sentence for the offender. However, it is the magistrate who decides the sentence. Both Queensland and Victoria based their Aboriginal Courts – the Murri Court and the Koori Court, respectively – on the Nunga Court.

New South Wales and the Australian Capital Territory have introduced Circle Sentencing for the sentencing of some Aboriginal offenders. Circle Sentencing involves the offender, victim, Elders and other participants sitting in a circle to discuss the offence and determine a suitable sentence for the offender.

6.1 SOUTH AUSTRALIA

South Australia was the first jurisdiction to introduce an Aboriginal Court²⁹ for sentencing Aboriginal offenders. The Nunga Court was the model for the Queensland Murri Courts and Victorian Koori Courts.

²⁶ Lawrence Springborg MP, Penalties and Sentences and Other Acts Amendment Bill 2000 (Qld), *Queensland Parliamentary Debates*, 5 October 2000, pp 3529 – 3536, p 3533.

²⁷ A member of the City Country Alliance.

²⁸ Peter Prenzler MP, Penalties and Sentences and Other Acts Amendment Bill 2000 (Qld), *Queensland Parliamentary Debates*, 5 October 2000, pp 3536 – 3539, p 3537.

²⁹ In South Australia the Aboriginal Court is called the Nunga Court.

6.1.1 History of the Nunga Court

South Australian Magistrate Chris Vass set up the first Nunga Court in 1999 after discussions with others including Aboriginal community groups, State Government agencies, the Aboriginal Legal Rights Movement, police prosecutors, solicitors, other magistrates and Aborigines.³⁰ The reason that Mr Vass considered such a court would be beneficial was because:³¹

there was enormous dissatisfaction with the court system as it was. There was a lack of trust, a lot of frustration about [Aborigines] not being able to have their say in court ... they felt that lawyers were often not putting their story across the way they wanted.

Aboriginal Court Days are held at Port Adelaide Magistrates Court (one day a fortnight) and at the Magistrates Courts at Murray Bridge and Port Augusta (one day a month).³² To be eligible to be sentenced by a Nunga Court, an offender must plead guilty to an offence committed within the relevant Magistrate Court area, and the charges must be able to be heard by a Magistrate. Charges can only be transferred from another court to a Nunga Court in certain circumstances.³³

There is no specific legislation covering Nunga Courts. Like other courts, Nunga Courts are bound by the *Criminal Law (Sentencing) Act 1988 (SA)*.³⁴

6.1.2 Aims and Features of the Nunga Courts

In an Information Bulletin on Nunga Courts prepared for the South Australian Office of Crime Statistics and Research, a number of aims of the Courts were identified. These are:³⁵

³⁰ Colleen Welch, "South Australian Courts Administration Authority: Aboriginal Court Day and Aboriginal Justice Officers, *Indigenous Law Bulletin*, 5(14) January 2002, pp 5 – 6, p 5.

³¹ Chris Vass quoted in John Tomaino, *Aboriginal (Nunga) Courts* (Information Bulletin), Office of Crime Statistics and Research, Government of South Australia, p 2, downloaded 14 February 2006 from website at http://www.ocsar.sa.gov.au/docs/information_bulletins/IB39.pdf

³² John Tomaino, *Aboriginal (Nunga) Courts* (Information Bulletin), Office of Crime Statistics and Research, Government of South Australia, p 2, downloaded 14 February 2006 from website at http://www.ocsar.sa.gov.au/docs/information_bulletins/IB39.pdf

³³ Welch, p 5.

³⁴ John Tomaino, *Aboriginal (Nunga) Courts* (Information Bulletin), Office of Crime Statistics and Research, Government of South Australia, p 2, downloaded 14 February 2006 from website at http://www.ocsar.sa.gov.au/docs/information_bulletins/IB39.pdf

- to provide a more culturally appropriate setting than mainstream courts;
- to reduce the number of Aboriginal deaths in custody;
- to improve court participation rates of Aboriginal people;
- to break the cycle of Aboriginal offending;
- to make justice pro-active by seeking opportunities to address underlying crime-related problems with a view to making a difference;
- to recognise the importance of combining punishment with help so that courts are used as a gateway to treatment;
- to involve victims and the community as far as possible in the ownership of the court process; and
- to ensure that the court process is open and transparent to victims and the community at large.

To help achieve these aims, Nunga Courts differ from normal Magistrates Courts in a number of ways. In a Nunga Court, the magistrate sits at the same level as the other parties. An Aboriginal Justice Officer or a respected Aboriginal person sits beside the magistrate to advise the Court on cultural and community issues.³⁶ Not only does the magistrate take into account the prosecutor's and defence counsel's arguments in determining the offender's sentence, but also information provided by the offender, his or her family, community members and the victim (if present) as well as a Bail Enquiry Report and other pre-sentence information.³⁷ This enables the magistrate to more easily identify rehabilitation options than in a normal court.³⁸

Aboriginal Justice Officers are employed by the Magistrates Court to assist offenders, the Aboriginal community and the Court in a number of ways including helping Aborigines to meet non-custodial sentences, promoting links between the courts and Aboriginal communities, and raising the awareness of court staff and the judiciary about Aboriginal issues, social structures, culture and traditions.³⁹

³⁵ John Tomaino, *Aboriginal (Nunga) Courts* (Information Bulletin), Office of Crime Statistics and Research, Government of South Australia, pp 3 - 4, downloaded 14 February 2006 from website at http://www.ocsar.sa.gov.au/docs/information_bulletins/IB39.pdf

³⁶ Welch, p 5.

³⁷ Welch, p 5.

³⁸ John Tomaino, *Aboriginal (Nunga) Courts* (Information Bulletin), Office of Crime Statistics and Research, Government of South Australia, p 5, downloaded 14 February 2006 from website at http://www.ocsar.sa.gov.au/docs/information_bulletins/IB39.pdf

³⁹ John Tomaino, *Aboriginal (Nunga) Courts* (Information Bulletin), Office of Crime Statistics and Research, Government of South Australia, p 3, downloaded 14 February 2006 from website at http://www.ocsar.sa.gov.au/docs/information_bulletins/IB39.pdf

6.1.3 Have Nunga Courts been Successful?

Both the limited statistical information that is available as well as anecdotal information suggest that Nunga Courts have been successful. The Port Adelaide Magistrates Court regularly has a 90-95% attendance rate compared with rates for Aboriginal attendance in the normal Magistrates Courts of about 50%.⁴⁰ It has been commented that this is because “the court is less alienating and more culturally relevant to Aboriginal people.”⁴¹ In addition, the South Australian Law Society Bulletin reported that some members of the Aboriginal community feel empowered in the Court because offenders and their families are able to speak directly to the magistrate.⁴²

6.2 VICTORIA

6.2.1 Magistrates’ Court (Koori Court) Act 2002 (Vic)

In 2002, the Victorian Parliament passed the *Magistrates’ Court (Koori Court) Act 2002* (Vic) to provide for the establishment of an Aboriginal Court (called a Koori Court) division of the Magistrate’s Court. The Koori Court has jurisdiction when an Aboriginal offender pleads guilty to an offence which falls within the jurisdiction of the Magistrates Court, unless the offence is a sexual offence or involves a breach of an intervention order under the *Crimes (Family Violence) Act 1987* (Vic).

The *Magistrates’ Court Act 1989* (Vic) requires the proceedings to be conducted with as little formality and technicality and as much expedition as possible: s 4D(4). The proceedings must be as comprehensible as possible to the defendant, his or her family and any Aboriginal person present in the court: s 4D(5). Section 4G of the *Magistrates’ Court Act 1989* (Vic) allows the Magistrate in determining the offender’s sentence to take into account oral statements made by an Aboriginal elder or respected person as well as reports, statements or submissions by:

⁴⁰ John Tomaino, *Aboriginal (Nunga) Courts* (Information Bulletin), Office of Crime Statistics and Research, Government of South Australia, p 4, downloaded 14 February 2006 from website at http://www.ocsar.sa.gov.au/docs/information_bulletins/IB39.pdf

⁴¹ ‘Specialty courts on target – pt 2’, *Law Society Bulletin* (SA), June 2001, p 31. See also John Tomaino, *Aboriginal (Nunga) Courts* (Information Bulletin), Office of Crime Statistics and Research, Government of South Australia, p 4, downloaded 14 February 2006 from website at http://www.ocsar.sa.gov.au/docs/information_bulletins/IB39.pdf

⁴² ‘Specialty courts on target – pt 2’, *Law Society Bulletin* (SA), June 2001, p 31.

- an Aboriginal justice worker; or
- a community corrections officer; or
- a health service provider; or
- a victim of the offence; or
- a family member of the defendant; or
- anyone else whom the Koori Court Division considers appropriate.

Section 4D(6) allows the Koori Court Division to regulate its own procedure. In an article evaluating the Koori Court Division, Bridget McAsey notes:⁴³

Potentially, this provision is a positive feature which could enable the Division to be developed in a responsive and innovative manner. However, the potential fluidity of procedure can also raise the issue that a move away from formal legal processes threatens the impartiality of outcomes, the right to be heard and a fair hearing generally.

6.2.2 Koori Courts

There are currently four Koori Courts in Victoria – Shepparton, Broadmeadows, Warrnambool and Mildura⁴⁴ – and a Children’s Koori Court is planned.⁴⁵ The primary aim of the Koori Courts is to address Aboriginal over-representation in the criminal justice system because Aborigines in Victoria are 13 times more likely to be imprisoned than non-Aboriginal people.⁴⁶ In a media release, Rob Hulls, the Victorian Attorney-General stated: “The Koori Court is not about incorporating traditional law but about attempting to apply mainstream law in a more appropriate way to Koori people.”⁴⁷

In a Koori Court, all participants sit around an oval table. The magistrate sits with two Elders or respected people. Alongside are an Aboriginal Justice Officer, a Correctional Services representative, the prosecutor, the offender’s solicitor, the

⁴³ Bridget McAsey, ‘A Critical Evaluation of the Koori Court Division of the Victorian Magistrates’ Court’, *Deakin Law Review*, 10(2), 2005, pp 654 – 685, p 659.

⁴⁴ Sam Davies, ‘Warrnambool Koori Court: Improving Relations Between Indigenous People and Victoria Police’, *Indigenous Law Bulletin*, 6(14), October 2005, pp 6 – 7, p 6.

⁴⁵ ‘Australia’s first children’s court for Koories’, Media Release from the Minister for Community Services, Office of the Attorney-General, 4 March 2004 downloaded 14 February 2005 from website at <http://www.dpc.vic.gov.au>

⁴⁶ McAsey, p 661.

⁴⁷ ‘Australia’s first children’s court for Koories’, Media Release from the Minister for Community Services, Office of the Attorney-General, 4 March 2004 downloaded 14 February 2005 from website at <http://www.dpc.vic.gov.au>

offender and a member of the offender's family or another person who is in attendance to support the offender. McAsey states:⁴⁸

The main purpose of having all these people in Court is to encourage the Offender and members of the Koori community to have a voice, to hopefully not feel marginalised or alienated by the process and to give the Offender's criminality a context which helps the Division carry out its unique approach to sentencing.

In her article, McAsey addresses some of the criticisms of the Koori Court Division. These criticisms include:

- that the Koori Court is a “soft option”;⁴⁹
- there is a weakened role for the offender's solicitor which may mean that legal considerations are given insufficient weighting;⁵⁰
- if service providers are not nearby, it reduces the chances of offenders successfully completing their Orders;⁵¹
- the requirement to plead guilty may mean that some offenders make false guilty pleas to be sentenced by the Koori Court;⁵² and
- some legal representatives are not aware of the Koori Court.⁵³

McAsey, however, is positive about the impact of the Koori Courts, particularly concerning the role of the Elders.⁵⁴

6.3 NEW SOUTH WALES

6.3.1 Circle Sentencing

The New South Wales government introduced Circle Sentencing in 2002 following recommendations from the NSW Aboriginal Justice Advisory Committee and the NSW Law Reform Commission.⁵⁵ The Circle Sentencing program “is based on the

48 McAsey, pp 659 - 560.

49 McAsey, p 681.

50 McAsey, p 660.

51 McAsey, p 680.

52 McAsey, p 684.

53 McAsey, pp 680 - 681.

54 McAsey, p 681.

⁵⁵ Harris, p 32.

Canadian model that requires the offender to face their victims and explain their behaviour before tribal experts in an informal group sentencing circle.”⁵⁶ Circle Sentencing is used in New South Wales for sentencing Aboriginal offenders who plead guilty or are found guilty of an offence.⁵⁷ The Aboriginal Justice Advisory Council stated that Circle Sentencing is “designed for more serious or repeat offenders and aims to achieve full community involvement in the sentencing process”.⁵⁸

Circle Sentencing is not held in a Magistrates Court; it is held in a place which is “more culturally appropriate for the offender and the Indigenous community”.⁵⁹ Offenders must apply to appear before the Circle which has the full sentencing powers of a Magistrates Court.⁶⁰ Participants in Circle Sentencing include community Elders, the magistrate, the offender, the offender’s family or support persons, the victim, the victim’s family or support persons, defence counsel and the police prosecutor.⁶¹ Observers are unable to watch unless given permission by the magistrate and elders. The participants, who sit in a circle, work out an appropriate sentence for the offender. The Circle reconvenes on the matter a few months later to assess the offender’s progress.⁶²

The Sentencing Circle operates at eight locations in New South Wales. The aims of the program are set out in Schedule 4 (Circle Sentencing Intervention Program) of the *Criminal Procedure Regulation 2005*. The objectives include:

- including members of Aboriginal communities in the sentencing process;
- increasing the confidence of Aboriginal communities in the sentencing process;
- providing more appropriate sentencing options for Aboriginal offenders;
- increasing the awareness of Aboriginal offenders of the consequences of their offences on their victims and the Aboriginal communities to which they belong; and

⁵⁶ Harris, p 33.

⁵⁷ Seranie Gamble, ‘Criminal Justice Initiatives for Indigenous Offenders’, *Indigenous Law Bulletin*, 6(14), October 2005, pp 8 – 9, p 8.

⁵⁸ Marchetti and Daly, p 3.

⁵⁹ Marchetti and Daly, p 3.

⁶⁰ Crime Prevention Division Attorney-General’s Department of NSW, ‘Crime Prevention: Circle Sentencing’, *2005 Fact Sheet*, November 2005 downloaded 30 March 2006 from website at <http://www.lawlink.nsw.gov.au>

⁶¹ Harris, p 33.

⁶² Marchetti and Daly, p 3.

- reducing recidivism in Aboriginal communities.

A review of the Nowra Sentencing Circle concluded that it had been a success (even though only thirteen cases had been heard). Amongst other observations, the review stated: “Facing one’s own community – respected people who have known the offender his or her life – is the most powerful aspect of this process.”⁶³

6.4 AUSTRALIAN CAPITAL TERRITORY

6.4.1 Ngambra Circle Sentencing Court

A trial of the Ngambra Circle Sentencing Court was commenced in May 2004 in the Australian Capital Territory.⁶⁴ The Court sentences Aboriginal and Torres Strait Islander persons who have pleaded guilty to an offence that can be heard by a magistrate.⁶⁵

A magistrate, the offender, prosecutor, four members of a Community Panel and the Circle Sentencing Court Coordinator participate in the Sentencing Circle. Other people such as a member of the offender’s family, or a support person, any legal representative of the offender, the victim and his or her support person may also be involved. The participants, who sit in a circle, reach a consensus on a sentence.⁶⁶

6.5 NORTHERN TERRITORY

In the Northern Territory, certain statutes, such as the *Sentencing Act* (NT) recognise Aboriginal customary law in sentencing; therefore the courts may take “payback” into account when sentencing an offender. “Payback”, such as spearing in the thigh, is punishment for an offence under traditional law.

⁶³ Harris, p 33.

⁶⁴ Gamble, p 8.

⁶⁵ Gamble, p 8.

⁶⁶ Gamble, p 8.

7 CONCLUSION

Queensland's Murri Courts were modelled on South Australia's Nunga Courts which have been very successful in improving the attendance rate of offenders.⁶⁷ While there have been criticisms of the Murri Courts, such as leniency and divisiveness, many are in favour of the Courts because they allow better communication between the magistrate and the defendant than in a normal Magistrates Court, they are less intimidating for the offender, and appropriate penalties are imposed.

In describing the Murri Court at a Bar Practice Course, Judge MP Irwin, Chief Magistrate, stated:⁶⁸

There is more of a feeling than normal in court that you actually understand the problems the person before you has. There is also a feeling that when you are sentencing the person that your words are not just empty words that are floating out through the windows and open doors never to be thought of or heard again, but they are actually being taken in by the person that you are addressing. That's not to say that in appropriate cases people won't be sentenced to terms of imprisonment and it's important to bear in mind that the magistrate is not abrogating his or her sentencing discretion. The magistrate is simply seeking advice from people who understand the cultural background of the people who are appearing before them and are imposing sentences which are consistent with the sentencing principles under the Penalties and Sentences Act. But it is an innovative approach which is proving very effective in terms of reoffending by aboriginal people.

⁶⁷ Department of Justice and Attorney-General, *The Murri Court*, Fact Sheet C11, May 2005, p 1 downloaded on 14 February 2006 from website at <http://www.justice.qld.gov.au>

⁶⁸ Judge MP Irwin, Chief Magistrate, 'Queensland Magistracy – Past Present and Future', Bar Practice Course, 23 July 2004, p 9, downloaded on 24 February 2006 from website at <http://www.courts.qld.gov.au>

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