

# **YOUTH KOORI COURT REVIEW OF PARRAMATTA PILOT PROJECT**



**WESTERN SYDNEY UNIVERSITY  
ABORIGINAL AND TORRES STRAIT ISLANDER  
EMPLOYMENT AND ENGAGEMENT ADVISORY BOARD**

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Cover page shows the smoking ceremony celebrating the opening of the Youth Koori Court in Parramatta in February 2015. It shows Uncle Greg Simms, Uncle Wes Marne, Uncle David Williams, Aunty Sandra Lee, Uncle Rex Sorby, Magistrate Sue Duncombe, The Hon. Brad Hazzard, and Daniel Daylight at the launch of the pilot for a Youth Koori Court. Photograph courtesy of NSW Children's Court.

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<sup>1</sup> 'Acknowledgment of Traditional Owners', borrowed with permission from the Western Sydney University Office of Aboriginal and Torres Strait Islander Employment and Engagement, available online at: [http://www.uws.edu.au/oatsiee/aboriginal\\_and\\_torres\\_strait\\_islander\\_employment\\_and\\_engagement/acknowledgement\\_of\\_country](http://www.uws.edu.au/oatsiee/aboriginal_and_torres_strait_islander_employment_and_engagement/acknowledgement_of_country) (accessed 22 July 2016)

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## ACRONYMS

AH&MRC	Aboriginal Health and Medical Research Council
ALS	Aboriginal Legal Service
ATSIEEAB	Western Sydney University Aboriginal and Torres Strait Islander Employment and Engagement Advisory Board
BOCSAR	New South Wales Bureau of Crime Statistics and Research
CCLS	Children's Civil Law Service, part of Legal Aid NSW
FACS	NSW state Department of Family and Community Services
JJ	Juvenile Justice, part of the NSW Department of Justice
MLC	Macquarie Legal Centre
NSW	New South Wales
OATSIEE	Office of Aboriginal and Torres Strait Islander Employment and Engagement
WSU	Western Sydney University
YKC	Youth Koori Court
YP	Young person

## TERMINOLOGY

In keeping with its decolonising research approach (see Chapter 4) this report complies with the Western Sydney University Office of Aboriginal and Torres Strait Islander Employment and Engagement's *Guidelines for the use of terminology relating to Aboriginal and Torres Strait Islander peoples*.<sup>2</sup> Although most of the relevant literature describes the court models under review here as 'Indigenous courts' the preferred term used here is 'First Peoples' courts'. In NSW and Victoria, the courts are referred to, both officially and by participants, as 'Koori', in South Australia 'Nunga' and in Queensland 'Murri', so these terms are used in reference to those states.

Terminology reference

"Koori" is generally used in NSW and the ACT

"Goori" is used in North Eastern NSW

"Murri" is used in Queensland and North inland NSW

"Koorie" is generally used in Victoria

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<sup>2</sup> Western Sydney University Office of Aboriginal and Torres Strait Islander Employment and Engagement 'Workplace relations Guidelines for the use of terminology relating to Aboriginal and Torres Strait Islander peoples', available online at:

[http://www.westernsydney.edu.au/oatsiee/aboriginal\\_and\\_torres\\_strait\\_islander\\_employment\\_and\\_engagement/workplace\\_relations](http://www.westernsydney.edu.au/oatsiee/aboriginal_and_torres_strait_islander_employment_and_engagement/workplace_relations) (Accessed 10 August 2016)

“Nunga” is used in parts of South Australia

“Palawa” is used in Tasmania

In the Northern Territory traditional names are used e.g. “Yolgnu” or “Walpiri” or “Anangu”  
Western Australia “Nyoongah”, “Yamagi”, “Wongai”

The term First Peoples is used instead of ‘Indigenous’ with relation to collective International First Peoples and projects (e.g.: ‘Indigenous research methodologies’ becomes ‘First Peoples research methodologies’). When speaking about Aboriginal and Torres Strait Islander people, specifically of country and clan (e.g.: ‘Tribe/clan of the Burramattagal of the Darug) is prioritised, or if a person’s country is not known to the authors or cannot be revealed as that person is de-identified, then ‘Aboriginal’ and/or ‘Torres Strait Islander Person’ is used.

Naturally we have not changed the terms used by persons interviewed for the project or employed in written documents that we quote.

## EXECUTIVE SUMMARY

This review of the Parramatta Youth Koori Court (Youth Koori Court) pilot program looks at how the program works, how it is organized and how it addresses the needs of program participants. In this report, we describe the approach, people, processes, systems and practices that make up the Youth Koori Court and the network of relationships that make it possible. The study also provides a preliminary assessment of its impact on addressing the personal and social issues facing the young Aboriginal and Torres Strait Islander people who come before the court, reducing risk factors related to re-offending, and keeping the young people out of custody. We also look at how it addresses its longer-term objectives of investing in Aboriginal capacity building, and increasing Aboriginal and Torres Strait Islander peoples' confidence in the criminal justice system.

To put the Youth Koori Court in context, we review a range of special-purpose forums, which share a commitment to improving access to justice, making their processes understandable, and giving justice participants a voice. First Peoples' courts additionally give priority to strengthening cultural connections, and do so by including Elders and other members of the communities in question. However, First Peoples' courts focus their energies where they think they can have most impact. As with some restorative justice and therapeutic jurisprudence programs, they generally do not deal with sexual offences, and with the exception of one Canadian Aboriginal court and one pilot project in the Northern Territory they limit their coverage to participants who plead guilty (or are found guilty by another court). This means that such courts are limited in their formal mandate to sentencing, thus excluding by definition persons on remand as well as those who decide not to plead guilty. The Youth Koori Court further limits its target group to young people who are serious offenders – those who face serious penalties, such as youth detention or supervision orders.

The young people who come before the Youth Koori Court are therefore high risk by almost any definition – most of them experience educational exclusion and limited job prospects; many do not even have basic identity documents like a birth certificate or Medicare card; they also tend to have insecure housing, poor health and families in which many members also experience the same difficulties. Another perspective of the First Peoples' court, is that some young people have lost their cultural connections with their family clan and country.

To address this complex range of challenges the Youth Koori Court delays sentence to allow the identified risk factors to be addressed. The deferred sentence model has proved effective in drug courts, community courts and other special-purpose courts. The Youth Koori Court defers sentence for between six months and a year, although the young person can choose to be sentenced before this – the program is voluntary. The team that comes together in a hearing develops and monitors what are known as 'Action and Support plans'. These plans are the key document of the court's operations. They provide a comprehensive list of the young person's needs in the areas of accommodation, health (including mental health), drugs, education and employment, civil law issues (such as identity documents and unpaid fines) and cultural



## Youth Koori Court Review

connection (creating opportunities for young people to be with their family clan and connect with country). The Action and Support plans are developed and endorsed at an initial hearing, reviewed regularly in review hearings and then finally at the time of graduation used to judge the progress made over the course of the journey as a Youth Koori Court participant.

The regular Children's Court configuration of the courtroom is modified to provide cultural perspectives that reflect aspects of Aboriginal and Torres Strait Islander culture, including symbols such as flags and art work. At each hearing there are usually between six and a dozen people sitting around the oval table. The Magistrate sits not at the Bench but on one side of the table flanked by Elders and other respected persons from the Aboriginal and Torres Strait Islander community. Opposite the Magistrate sits the young Aboriginal and/or Torres Strait Islander person, alongside a lawyer from the Aboriginal Legal Service. A police prosecutor typically sits at one end of the table, and a civil lawyer from the Legal Aid Commission at the other. At other places at the table one or more of the following often also come: support people such as a partner, relative or friend, a Juvenile Justice officer, a representative of a support agency, an employer, or a social worker at a residential facility or drug and alcohol service.



The Youth Koori Court layout, view from the Bench  
Photograph courtesy of Children's Court of NSW

The Rangatahi court in Aotearoa New Zealand deals with a similar population to the Youth Koori court. While the experiences of First Peoples in the two countries are somewhat different, there are also some differences in how the courts operate that provide useful points of

comparison. In Aotearoa New Zealand the action plan is developed in a family group conference. In this setting victims are explicitly included, and the young person has an active role in shaping the plan. The plan is monitored by the Rangatahi court, chaired, as in the Youth Koori Court, by a judicial officer. The hearings are held in a culturally significant setting, a marae (meeting house). Traditional rituals, including sharing of food and drink, open the meetings. The demands placed on the participants are quite high – they have to learn their language sufficiently to deliver a greeting and present a statement about their own link to land and people. Instead of a lawyer beside them in court they have a Māori mentor who coaches them in cultural knowledge.

It is anticipated that this research, supported by other research and advice, can be used to inform the model of Youth Koori Courts, learning from experiences elsewhere. This report has the potential to shape the development of other NSW Youth Koori Courts, and refine and emphasise the infrastructure support required to make the courts work effectively. This report is likely to be of interest to current and future Youth Koori Court staff and stakeholders, First Peoples, Advisory groups, potential funders, potential collaborating organisations, as well as to governing bodies.

### METHODOLOGY & PROTOCOLS

The research involved

- Quarterly meetings with the Aboriginal and Torres Strait Islander Employment and Engagement Advisory Board which included the Elders on Campus Advisory group ( 12)
- Observing Youth Koori Court hearings (31)
- Interviews with Elders (5), some young people (7), the Magistrate
- Interviews with other participants who were involved in the court's activities: lawyers, case workers, representatives of NGOs, religious organisations and family members (19)
- Examining Action and Support plans for one year (33)
- Coding transcripts of graduation hearings to identify outcomes from Action and Support plans for a six month period (19)
- Comparing days in custody and number of times in custody for young people before and during Youth Koori Court (18)

These different types of information together provide a snapshot of the Youth Koori Court pilot project as it completes its second year of operation. It enables us to describe how the court works, how it seeks to meet the needs of the young people who come before it, and – at least to some extent – with what success.

The study did not match individual information from observations on the one hand and Action and Support plans or custody records on the other, in accordance with guidelines of research ethics committees. This precaution was designed to protect the anonymity of the participants. Furthermore, the conversations, yarning and stories used to illustrate the issues at various points of the study involve composite accounts in which demographic details are changed, and pseudonyms. This study captures the Aboriginal and Torres Strait Islander young people's

voices in text. However, to protect the identity of the young people and confidential information about their lives stories have been de-identified.

This project originated through collaboration between the Children's Court, Western Sydney University Office of Aboriginal and Torres Strait Islander Employment and Engagement and researchers based in the School of Humanities and Communication Arts, the Office of Aboriginal and Torres Strait Islander Employment and Engagement and the Institute for Culture and Society at Western Sydney University. It has ethical clearance and ongoing oversight from the Western Sydney University Human Research Ethics Committee (HREC) and the NSW Aboriginal Health and Medical Research Committee (AH&MRC) Ethics Committee. The formal ethical and methodological protocols for this study have been developed in the context of co-creative partnerships with the Western Sydney University Office of Aboriginal and Torres Strait Islander Employment and Engagement Advisory Board, (including the Elders on Campus Advisory Group). The report gives priority to the voices of Aboriginal and Torres Strait Islander people, which may not always align with policy positions of the NSW Government or the Children's Court. In particular we examine the case for expanding the jurisdiction of the Koori Court, rather than just assuming the current model of the court is the best one.

### ABORIGINAL AND TORRES STRAIT ISLANDER YOUNG PEOPLE'S ACTION & SUPPORT PLANS AND OUTCOMES

Action and Support plans were analysed for 33 individuals who completed sentencing in 2016. The plans outlined the issues identified by the court, specified what should be done about these problems and designated a person or organisation to take the lead in addressing the issue.

- Cultural connection: connecting with cultural heritage was identified as important for 26 of the 33 young people. Thirteen of the young people were recommended to participate in an Aboriginal cultural activity (such as a cultural camp) and nine young people were explicitly listed as potentially benefitting from cultural mentoring either by an Elder or a relative.
- Education and employment: 26 of the 33 young people had a problem with school or work. For 13 of them the issue mentioned was getting an apprenticeship or applying for TAFE, for 9 it was getting back to high school, and for 9 it was applying for jobs. The issues were connected – without some qualifications, or at least finishing school, the prospects for finding a job were limited. Almost none of the young people had completed high school and several of them had been suspended or expelled from school.
- Accommodation: A third of the young people (13 out of 33) were classified as having difficulty getting suitable accommodation, with 9 of these reported as homeless at some stage, 13 needed help finding independent accommodation or placement with suitable relatives and 3 were classified as in need of crisis accommodation.
- Health issues: Two out of every three young person (22 out of 33) had at least one health-related issue. These included: need for general health or dental check-ups (8), hospital care or attention to a current injury (7), disability support (6), as well as need for participation in more physical activity (5), or another type of intervention (10). At least one person mentioned a hearing problem, several mentioned mental health issues and three were suspected of having attention deficit hyperactivity disorder ADHD.

- Substance abuse was identified as an issue for almost all of the young people, 28 out of 33. Six of these explicitly mentioned methamphetamines including Ice, speed and ecstasy, while 16 reported using cannabis and 12 alcohol.
- Civil justice: More than a third (13 out of 33) of the young people coming to the Youth Koori Court lacked basic identity documents like a birth certificate, while 18 had unpaid fines. Another 5 needed help to get a bank account, 10 to register with Centrelink and 4 to get a Medicare card.

Most of the young people had many problems that needed addressing and complex support needs in their Action and Support plans. Housing insecurity, for example, was often accompanied by problems with finding employment or finishing education – 9 of the 13 people with a housing issue were also recorded as having a problem with education or employment, while 11 of the 13 people with a housing problem also had a personal health issue. This compounded the challenge to finding suitable accommodation. One young man lived with his grandmother, who was seriously ill, so he had become, in effect, her carer. Another young man tried living with his father for two months, but his father was addicted to ice and the arrangement broke down.

For most of the young people, considerable progress had been made in meeting the objectives specified in the Action and Support plans by the time of graduation. Details of these outcomes were obtained by examining 19 transcripts of the graduation hearings in the second half of 2016.

- Cultural connection: 7 of the 19 were recommended to attend a cultural camp of some sort in order to be around and learn from their mob. In the graduation hearing, only 1 was recorded as having attended such a camp, 2 had not attended a camp and for the others a camp was not mentioned. Information provided by the Executive Officer of the Parramatta Children's Court indicated that most of them did in fact attend a camp, but in most cases after they graduated from the program.
- Education and employment: 18 had some goals specified in this area, 7 in schooling, 7 in some form of apprenticeship, and 9 in applying for or obtaining a job. (Some had more than one objective identified). 3 had resumed their schooling, 4 had taken up an apprenticeship, 3 had secured a job and another 3 were in the process of looking for one. This leaves 6 where no progress was reported.
- Accommodation: 10 were considered to have some sort of accommodation issue when the Action and Support Plan was developed, including 2 who were in custody and needed somewhere to stay on their release. Of the 10, 4 had had their problem sorted out by the time of the graduation from Youth Koori Court, for 3 a response was in process, while 3 was classified as being unsuccessful at the time of graduation.
- Health: 12 of the 19 were recorded as having a health issue that needed addressing. Of these 5 were recorded as being successfully completed by the time of graduation – mostly getting a health check - 2 were on track, while for the remaining 5 information was not available.
- Drugs: 15 of the 19 were recorded as having some issue with drugs or alcohol. By the time they graduated from the court, progress was reported for 13. 5 of the young people were reported as having desisted completely, at least from drugs like

ice that had been associated with offending. Sometimes the young person reported some ongoing use of marijuana or occasional binge drinking.

- Civil law matters: 18 had at least one issue in this area. Of the 9 who needed birth certificates, 7 had been able to get one successfully, and for the other 2 the process was still under way. All 5 of those who needed a Medicare card had received one, the same was true for the 3 who needed to set up a bank account. 2 of the 3 who needed proof of Aboriginality had received this by the time of graduation.

The overall pattern is one of considerable progress towards the goals set down in Action and Support plans. The achievements made in helping the young person get birth certificates and Medicare cards meant they could take part in society in a way that had previously excluded them. In terms of drugs, the success achieved would be likely to reduce risk both of serious harm to the person and potentially to family members and members of the public. In areas like education and accommodation, the achievements made during the Youth Koori Court period were first steps on a longer journey, and future progress would depend on ongoing support outside the control of the court.

### ROLES, RESPONSIBILITIES AND WORK-FLOW

If the Action and Support plans provide the roadmap, it is the support network of Aboriginal and Torres Strait Islander Elders, court workers, lawyers and service agencies that move the plan forward. None of these groups are funded specifically to contribute to the additional demand on their resources and time required to support the Youth Koori Court. But, at least for the duration of the pilot project, the support network mentioned have been willing to invest in the idea of helping Aboriginal and Torres Strait Islander young people to move towards a more promising future.

Given the complex needs identified by the court, co-ordination of the follow-through for the Action and Support plans is important. Sometimes the co-ordination is undertaken by Juvenile Justice officers, the assigned agency (for example Leadership, Empowerment, Ability Prosperity (LEAP) or Daramu) or the civil Legal Aid lawyer (for the matters they may have responsibility for), but there have remained gaps that the court's Aboriginal Liaison Officer or the Aboriginal Legal Service lawyer frequently step in to fill. This typically involves setting up meetings, negotiating with service providers, reminding the young person about the arrangements and often driving the young person to the meeting. While the effect of this close contact between the young person and court staff and lawyers was reported to increase trust in the process and provide continuity, those interviewed for the project did not regard it as sustainable in the long term. Staff burnout was seen as a likely outcome, and future incumbents of the positions might not be willing to work 12-hour days to carry out work that fell outside their job description. Dedicated case-coordinators attached to the court were generally felt to be a more appropriate longer-term solution. This is an important cultural respect protocol and needs to be considered in future infrastructure support requirements.

Central to the court's operations are Aboriginal and Torres Strait Islander Elders and other respected members of the local Aboriginal and Torres Strait Islander community. They were



acknowledged as the experts in cultural matters, as well as relationships with police, and sometimes employment opportunities for young Aboriginal and Torres Strait Islander people. The presence and contribution of Aboriginal and Torres Strait Islander Elders was publicly visible in hearings. Behind the scenes they also acted as mentors, confidants and sometimes drivers for the young people who came before the court. Yet Elders were not financially compensated for their role in the process. The discrepancy between paying the (mostly non-First Nations) professionals who participated in hearings and not adequately remunerating the Elders was felt by many to be sending the wrong message to the community.

Some agencies identified in the Action and Support plans as suitable for providing the appropriate services were not able to follow through on allocated tasks, or unable to provide the intensive case management that would be required to ensure that the young person was able to take advantage of the service. From the court's perspective – communicated at hearings – the agencies were sometimes not delivering what they promised. From the agency's perspective, they have to balance a range of demands and cannot pay undue attention to clients from any single source. How to fund services is part of a wider debate, reflected in the development of the National Disability Insurance Scheme (NDIS). The option used in the NDIS is to fund individuals, allocating them a set payment based on need, allowing the individual to choose the service mix they require. The second option, used in the Neighbourhood Justice Centre in Melbourne, is for the court itself to have direct control over resources that it can bring together according to need as determined by the court. The third model, used by the Youth Koori Court, is the power to persuade – agencies are funded and assessed according to their own varying sets of rules, and the court must convince them that the clients sent by the court both meet the agency's criteria and are high priority. Which of these models – or perhaps which combination of models – is to be used is a policy matter for government. However, people interviewed for the project thought that as a minimum there should at least be dedicated case coordinators attached to the court. The court's power to persuade would be more effective if it was followed up by someone who both had professional understanding of the services and had a specific mandate to keep track of progress. Relationships with agencies, some of whom may have rotating staff positions, need to be nurtured and maintained, our interviewees reported.

The study highlights the particular qualities of commitment, consistency, trust and relationships that are key to facilitating collaboration between Aboriginal and Torres Strait Islander young people and the case workers, service providers and Aboriginal and Torres Strait Islander Elders that they work with and are supported by in order to complete the Youth Koori Court goals identified in their Action and Support plans.

### INTERACTIONS AND DYNAMICS OF YOUTH KOORI COURT HEARINGS

Hearings mark the stages of a young person's journey through the Youth Koori Court program: they first attend their first hearing for a suitability assessment, followed by a meeting to develop their Action and Support plan, several reviews, and, finally, sentencing and graduation from the Youth Koori Court. This section addresses the question of how these hearings—which require considerable time, court resources, co-ordination, and emotional investment—contribute to the overall process.

To address this question, we brought together information from interviews with 33 participants with observations of 82 Youth Koori Court meetings (these came from attending 18 Youth Koori Court days over a 7 month period), plus transcripts of graduation hearings for 19 participants.

To some extent the hearings follow well-established practices of special-purpose courts. The process is informal, participants speak in plain English not legalese, everyone gets a chance to have their say and there is a minimum of hierarchy. And yet, from another perspective, hearings of the Youth Koori Court involve an elaborate ceremony: they follow a carefully-scripted ritual. Every hearing begins with a welcome to country, and participants in the room introduce themselves. In review hearings, the Magistrate invites the young person to report on how they are, the police prosecutor reports on whether any new offences have been recorded, the other professional participants provide an update on progress in relation to the Action and Support plan, and future steps are identified to achieve the objectives of the plan.

The rituals of the hearing may also help the young person to develop their sense of self-worth, their identity as a 'proud Koori young man' for example (as the Magistrate would sometimes say). The young person is given the opportunity to speak freely, define their own preferred career options and address any comments made about them. While the formal business of the meeting might be about Action and Support plans the symbolic purpose of the meeting could be seen to be to affirm the worth and dignity of the young people themselves, as well as the important role played by other Aboriginal and Torres Strait Islander people sitting around the table. The hearing therefore serves in a small way as part of a training in citizenship – developing skills in listening, responding to comments made, providing justifications or apologies, engaging with others as an equal, and affirming the role of First Peoples in Australian society. In general, the young people displayed an increased willingness to take part in these different ways during the hearings over the course of their time on the program. Whether these positive rituals can be shown to have a positive impact on behaviour or perceived legitimacy of the justice system is something that is hard to measure conclusively, but increased willingness to engage in the process could be seen as one possible indicator of this.

As well as performing an important ritual function, the meetings serve several practical purposes. Participants form a team around each young person, and pool resources and knowledge (Aboriginal and Torres Strait Islander knowledge systems and ways of knowing from the Elders) during the course of the hearing in order to deal with things that have come up (such as accommodation difficulties, health issues, pregnancy, bail variations, acknowledging young people's efforts, and techniques for staying out of trouble).

The meetings are also a site in which both young people and the services/caseworkers they are connected to can be held accountable for the Action and Support plan items they have committed to and work through obstacles that may have arisen in seeing this through. Besides connecting young people with the appropriate services, the Youth Koori Court has in some instances enabled young people who are already involved with multiple service interventions to have their cases managed in a more integrated manner.

One important change in the way hearings are organised from what was initially anticipated is an increasing role for the Magistrate. The original plan called for some hearings to be chaired by a Children's Court Registrar, and for reviews to be less regular for the young people who were seen to be doing well. In practice, all hearings are chaired by the Magistrate and reviews are held regularly, on average once a month. This change to intensive judicial supervision partly reflects the high threshold for entry into the court – the young person needs to be facing a serious penalty, which means the offending history is likely to be extensive – but also the uncertainty about whether service agencies were carrying out their requested tasks. Intensive judicial supervision has proved effective in drug courts, and some jurisdictions, such as the Victorian County Court, have moved to a judicial supervision model post-release for some categories of offenders. Intensive judicial supervision may be less necessary if the court had dedicated case coordinators to ensure plans were kept on track. On the other hand, for some high-risk young people, even more frequent reviews may be beneficial, such as the two-weekly reviews that drug courts impose in the early stages of engagement with that court.

Graduation ceremonies were positive and lively affairs, with handshakes and hugs, clapping, congratulations and tears, and presents to the young person of a cake or even a football. Included in the graduation ceremony was a formal element – sentencing. For this the Magistrate left the room, robed and came back to deliver sentence from the Bench. Lawyers made formal submissions, using legal language that the Magistrate explained was necessary, even if not entirely intelligible to most of the people present. The Magistrate similarly passed sentence, following the wording of the relevant legislation closely. Given that the court's jurisdiction was primarily that of a sentencing court, this concession to the formal justice system was probably necessary. Compared to restorative justice processes, where 'outcomes' negotiated by the parties can sometimes exceed what a court would impose, this relatively short incursion of formal legality can be seen as protecting the young person's rights to a fair and proportionate sentence, based on the rule of law. Whether some of the legalese could be provided in writing, or plain English versions of the legal rulings could be provided, could be something that the court continues to explore.

One issue the report raises is whether additional cultural elements could be built into the rituals of the court, particularly ones that get the young Aboriginal and Torres Strait Islander people themselves actively involved. The Magistrate sometimes invites graduates of the program to 'come back to see us' in an unspecified way. One possible way is for some of them to return to take part in Aboriginal cultural rituals that are part of the Youth Koori Court process for subsequent participants in the program. This would reflect the investment the court had made in the young people and provide another form of role model for the participants. Another possible practice could be for young people to identify their clan and country, and their link to country in their own language for their graduation ceremony, which is similar to what young people do in the Rangatahi court in Aotearoa New Zealand. This could be an opportunity to assist young people with cultural preservation of their languages. Efforts to do so would need to take into consideration that, as Aboriginal society has over 250 or so languages<sup>3</sup> and Torres

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<sup>3</sup> Australian Institute of Aboriginal and Torres Strait Islander Studies and Federation of Aboriginal and Torres Strait Islander Languages (2005) National Indigenous Languages Survey Report 2005. Canberra: Department of Communications, Information Technology and the Arts



Strait Islander society has over 6 dialects<sup>4</sup>, with numerous and diverse clans and disfranchisement that occurred with colonisation. Several of the participants disclosed artistic abilities, whether in performing or visual arts, so a graduation ceremony could potentially provide an opportunity for these skills to be appreciated by other members of their Youth Koori Court team.

Overall the hearings were conducted in a respectful manner that took advantage of the team gathered around the table, provided affirmation to the young person and focused on the key issues facing the young person.

### CRIMINAL JUSTICE OUTCOMES

Reducing the harm done to the community caused by re-offending is one of the goals of the Youth Koori Court. Measuring the time to re-offending or the number of new offences could be a useful measure of this, but it not realistic to measure these in a pilot study, given the small sample size and the waiting period required to get statistically significant results. Further, the report suggests that re-offending levels should be monitored in relation to outcomes of interventions in relation to key risk factors such as homelessness, unemployment and family stability.

For the purposes of this study a comparison was made between periods in custody during the young person's time on the Youth Koori Court and an equivalent period afterwards. We used files for 18 of the 20 young people who graduated from the Youth Koori Court in the July-December 2016 period. Generalising from such a small group is problematic, nevertheless there are some tentative conclusions that can be drawn from their experience, using two measures of custody.

First, the *number of days* the person spent in custody during the period they were in the Youth Koori Court compared to an equivalent period beforehand. The average young person coming before the Youth Koori Court spent 25 days in custody during their Youth Koori Court period, compared to 57 days in custody in the equivalent period beforehand. Expressed in percentage terms, the average participant spent 9 per cent of their time in Youth Koori Court in custody compared to 20 per cent beforehand. The number of days in custody during Youth Koori Court ranged from 0 to 141; before entering Youth Koori Court the range was from 0 to 279 during an equivalent period.

The second measure is the *number of times* the person entered custody. Of the 18 young people, 14 had experienced a period of custody before entering Youth Koori Court (2 of them for less than a day), while 7 had been in custody at some stage during their period in Youth Koori Court.

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<sup>4</sup> State Library of Queensland (2016) Languages of the Torres Strait Islands, available at: <http://www.slq.qld.gov.au/resources/atsi/languages/torres-strait> (accessed 24 October 2017)

The comparison provided a conclusion that was consistent with the claim that participation in the Youth Koori Court reduces re-offending, specifically the more serious forms of offending that result in detention. Reducing the harm that the community does to the youth offender was also addressed by the Youth Koori Court, in keeping with the principles established by the Royal Commission into Aboriginal Deaths in Custody. Fewer young people were locked up in youth detention as a result of the Youth Koori Court than would have otherwise been the case. Days in custody were reduced, diminishing risk of harm to the young people through incarceration. Even when the young people did spend time in detention during their Youth Koori Court journey, they knew they had a support team monitoring their welfare. From another perspective, the fact that many of the young people continued to spend time in custody did not mean that being on the program provided a 'get out of jail free' card. On the contrary, not only did many of them serve time in detention, they also had an additional set of responsibilities and expectations to deal with.

While it is relevant to measure negative indicators like days in detention, the court's philosophy suggests that as much attention should be given to developing precise measures of positive indicators for its clients. Examples include being in a safe living environment, engaging in productive activities and restoring contact with Clan and Country. These are the types of indicator that the report suggests the court should continue to develop, measures that can also be seen as risk factors relevant to re-offending.

As well as managing the offending behaviour of individuals, and helping these young people get their lives into some sort of order, did the program contribute to wider objectives of improving relationships between police and the Aboriginal and Torres Strait Islander community, and enhancing the legitimacy of the justice system? We did not collect direct evidence about such issues; indeed, it would be hard to find relevant data. However, the program did appear to contribute to some intermediate outcomes that would be expected to contribute to the longer-term goals of the Youth Koori Court. Stronger bonds within the Aboriginal and Torres Strait Islander community were developed, thanks to the active role Elders played as mentors. The police officers who served as prosecutors tended to come away with a greater appreciation of the challenges facing the youth people and their resilience in meeting the challenges. They also saw the respect shown Elders and the value placed on their contribution. It would be anticipated that as these officers rise up through the ranks this enhanced mutual respect would be reflected in changes in police behaviour.

Nevertheless as long as young Aboriginal and Torres Strait Islander young people are largely excluded from meaningfully participating in society, many of them will continue to feel marginalised and act in ways that others consider anti-social. What the Youth Koori Court does through its Action and Support plans is offer the possibility of a better future, one that provides opportunity for the young people themselves and increased safety for the wider community. Increased legitimacy is something the police and the justice system itself have to earn.

## CHAPTER 1. INTRODUCTION

The Youth Koori Court in Parramatta is a small but important innovation within the NSW Justice system. Operating as part of the Children's Court of NSW it provides targeted supervision and support for some of the most disadvantaged young people in western Sydney. It does this by identifying the issues that confront the Aboriginal and Torres Strait Islander young people, writing these into Action and Support plans and, through regular review meetings that keep service agencies in conversation, tries to bring about positive change for the young people and their families.

The most striking feature of the court is the way it carries out its hearings. Each hearing begins with a welcome to country ceremony performed by Elders or other respected members of the Aboriginal and Torres Strait Island communities. The participants sit around an oval table, with a Magistrate acting as chair. All participants are able to contribute information, advice or suggestions. One person is the centre of the hearing, a young person of Aboriginal or Torres Strait Islander heritage. Around the young person are gathered representatives of different community groups, government agencies and court officials. Two of the key players are a lawyer from the Aboriginal Legal Service and an Aboriginal court liaison worker.

This description would suggest that the court operates within a protective jurisdiction, that its primary job is to provide care and support for children who are neglected, abused or marginalised. Yet its central task is to act as a sentencing court, or more specifically to case manage matters within the sentencing phase of criminal proceedings. It does not handle child protection applications, nor does it run trials where matters are contested. Its job is to manage cases where the young person has already been found guilty of a criminal offence. A sentencing court normally hands down sanctions – punishments, warnings, exclusion from certain areas or curfews, for example- within a legislative framework provided by Parliament. But a deferred sentencing court, based on the drug court model, delays sentence until the end of the process, and focuses on addressing the underlying issues that gave rise to the offences in question. Further, children's jurisdictions are required to give greater priority to the development needs and welfare of the child than equivalent adult courts<sup>5</sup>. So even though the court operates within a criminal jurisdiction, its practices emphasise care, protection and education.

Any new program takes a while to find its feet. Carrying out a review like this can document some of the lessons learned and frame some policy issues that will allow the program to be rolled out to other parts of the state. It is useful to distinguish several features of the court's operation:

1. The First Peoples' court model itself, one that is shared with slight variations between most Australian states and territories

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<sup>5</sup> See section 6 of the Children's (Criminal Proceedings) Act 1987

2. The characteristics of the Parramatta Youth Koori Court that distinguish it from other equivalent courts
3. The personalities of the professional participants
4. The social, economic and cultural context of western Sydney

With any innovation, there may well be enthusiastic leaders committed to the new program, and some of the successes of the program could be due to the charisma of the first generation of leaders rather than the program design itself. Some of the most committed participants may also burn out, working beyond the call of duty to prove the concept. The geographical setting of the innovation meanwhile is likely to shape the way it develops and the way priorities are shaped.

A study that looks only at the organisation itself runs the risk of missing the importance of context, while a study that accepts uncritically the value of the model can miss some of the lessons that a careful examination of the experience of the innovation can teach us. In this review, we have tried to consider the advantages and disadvantages of the model of First Peoples' courts in Australia, features that characterise the model itself rather than being unique to Parramatta. In examining the model, we have placed it within the framework of special-purpose forums more generally, including the drug court model that the Youth Koori Court partly borrows from. In the introduction to this chapter we suggest that the court takes on a protective role, as indeed does one of its counterparts that we review, the Scottish Children's Panels. We also compare the model to its counterpart in Aotearoa New Zealand, the Rangatahi court for Māori young people. While there are important differences in national context, it is suggested that a comparison like this at least provokes important questions, in this case about how to give Aboriginal and Torres Strait Islander young people a fuller voice in hearings and whether to place greater emphasis on cultural education.



Cards prepared by the Youth Koori Court featuring images of the artworks hung for Youth Koori Court meetings. The original artworks were made by young Aboriginal and Torres Strait Islander artists in juvenile custody (we are unable to disclose their names), and donated by the artists to the Youth Koori Court program. Photograph courtesy of NSW Children's Court.

The geographical diversity of western Sydney comes into hearings when young people talk about their family, their country and their heritage, although many have also come from country NSW. Suburbs are identified where the temptation to commit crime is greatest, where relationships with police are most fraught or simply where friends and family gather. The huge geographical distances across western Sydney feature in many of the young people's stories, in explaining why they turned up late to hearings, or how they could not get to appointments or jobs because of transport problems.

A defining moment in understanding how the criminal justice system impacted on Aboriginal and Torres Strait Islander peoples was the Royal Commission into Aboriginal Deaths in Custody (1987-1991). This placed the issue of Aboriginal custody firmly on the national agenda, and so First Peoples' courts have identified lowering detention rates as a key objective. We therefore devote a chapter to measuring how successful the Youth Koori Court was in keeping their clients out of detention. We have also attempted to place this attempt within a wider political context in which bail laws have been tightened, increasing the proportion of persons in detention who are on remand. The wider context is also relevant to understanding the social and economic conditions which affect crime rates and opportunities for desistance. We review the sorts of outcomes such a court could realistically aim for, particularly lifestyle and social inclusion outcomes for the Aboriginal and Torres Strait Islander young person, which can in turn reduce risk factors for crime. So one chapter outlines the types of social outcome the court

outlines in Action and Support plans, the next chapter asks to what extent these goals were realised.

Another important contextual element of the court is its service environment. Most of the objectives the court sets for the young people are ones that it has no direct control over. It relies on service agencies from around western Sydney and beyond to provide counselling, treatment, legal advice, training, financial support and other services. Some of these agencies are already stretched, and some might be able to take on new clients but not provide transport for them to get to the agency's offices. Whether courts should be in a position to purchase services (rather than plead with, shame or persuade the agencies) is an important funding issue. So too is the location of the services – should they be co-located, or at least have a staff member based somewhere in the Parramatta justice precinct? The court's approach is to use hearings as a way of getting the relevant agencies on board; regardless of where their offices are, they are all together in the hearing.

A major empirical chapter in the report looks at the hearing process, seen as a ritual of affirmation, a ceremony that attempts to bring the young person into the society from which he or she has been largely excluded. Justice processes can be full of rich symbolism, images and drama, so we try to capture some of this in the chapter. We examine the types of hearing, the roles different participants play and the narratives about the young person that they build together. While the hearing may bring together the relevant agencies and try to elicit a commitment from them to support the young person, it does not control the resources that the agency needs to carry out the task, or identify the relative priority to be given to the clients referred to it by the court and those who came from other sources. From the point of view of a homeless person, a successful outcome might be getting a safe dwelling rather than having a court recommend that they be put on a waiting list for one. So while powerful rituals and culturally-appropriate ceremonies are important for bringing communities together, asserting shared values and giving hope to young people, individual outcomes for each young person might depend on the court's ability to convince service agencies to deliver on their promises.

This study tries to understand how an innovation in the way courts are run affects the lives of young people who came before it. We don't have a matched comparison group to be able to compare outcomes attributable to the new court process, but we can describe the comprehensiveness of the process of developing Action and Support plans, and the outcomes reported from these plans some months later. It is possible of course to compare the types of experience offered by different court processes: other courts do not use Action and Support plans, and they don't follow up on details like getting the young person a birth certificate, ensuring they have a dental check-up or find an educational opportunity at TAFE. In a longer-term study, it would be useful to track the education and employment pathways followed by the young people on the Youth Koori Court program and equivalent young people who appeared before regular courts, and then try to establish how the different pathways as young people led to different health, employment, family and criminal profiles as adults.

We can make comparisons, however tentative, about the design features of the program. Entry rules that seem less restrictive, rituals that seem more engaging, or programs that give the

young person a more intensive cultural experience – comparisons with equivalent courts elsewhere that have these features can provide useful material for consideration and reflection.

## CHAPTER 2. BACKGROUND

### ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES AND INCARCERATION

In the early days of white settlement on the Australian continent, prisons were used more for the settlers rather than the original inhabitants of the land. This was because Aboriginal communities were largely left to regulate their own disputes<sup>6</sup>. When it came to conflict between settlers and First Peoples it was another matter; these were often settled by 'summary execution and mass murder'<sup>7</sup>. Apart from the use of detention by Western Australia from the 1840s to address disputes over cattle grazing, the rate of Aboriginal imprisonment throughout Australian states and territories continued to be low until the 1960s. Then two major events occurred at about the same time – many Aboriginal people were displaced from their traditional lands as jobs in the pastoral industry disappeared, while alcohol prohibitions in Aboriginal communities were lifted<sup>8</sup>. This happened against a backdrop of continuing dispossession: loss of land and livelihood, child removal policy, bringing together previously hostile tribes into town settlements, and the destabilisation of community structure associated with these changes. These changes contributed to increased violence and unemployment amongst Aboriginal communities, followed by a sharp increase in the Aboriginal incarceration rate<sup>9</sup>.

By the time of the Royal Commission into Aboriginal Deaths in Custody some twenty years later, Aboriginal people were being imprisoned at more than twenty times the rate of non-Aboriginal people, and for this reason more likely to die in custody<sup>10</sup>. In 21 per cent of cases the Aboriginal person who died was in custody because of a motor vehicle offence. The Royal Commission noted that a disproportionate share of Aboriginal and Torres Strait Islander people in detention were there for minor offences. Young Aboriginal and Torres Strait Islander children were more likely than non-Aboriginal and Torres Strait Islander children to be taken to court – and therefore risk youth detention - rather than being diverted. Aboriginal people in Australia are also more likely than others to be victims of violent crime– two to three times more likely,

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<sup>6</sup> Finnane, Mark, and John McGuire (2001) The uses of punishment and exile: Aborigines in colonial Australia. *Punishment & Society* 3(2): 279-298.

<sup>7</sup> Weatherburn, Don (2014) *Arresting incarceration: Pathways out of Indigenous imprisonment*. Aboriginal Studies Press, p11; citing studies by Rowley (1970) and Karskens (2010)

<sup>8</sup> Anthony, Thalia (2007) "Reconciliation and Conciliation: The Irreconcilable Dilemma of the 1965 'Equal' Wage Case for Aboriginal Station Workers." *Labour History*: 15-34; Weatherburn (2014), p15.

<sup>9</sup> Weatherburn, Don (2014: 17) The additional explanations were kindly provided by Don Weatherburn (personal communication).

<sup>10</sup> Preface, National reports Volume 1, Royal Commission into Aboriginal Deaths in Custody (henceforth 'Royal Commission', at <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol1/2.html>), last accessed September 12 2016.



according to the Australian Institute of Criminology, and four to six times more likely in the case of family violence<sup>11</sup>.

Of particular relevance to this report, one recommendation of the Royal Commission spoke in forceful terms of the plight of young people:

*That governments and Aboriginal organisations recognise that the problems affecting Aboriginal juveniles are so widespread and have such potentially disastrous repercussions for the future that there is an urgent need for governments and Aboriginal organisations to negotiate together to devise strategies designed to reduce the rate at which Aboriginal juveniles are involved in the welfare and criminal justice systems and, in particular, to reduce the rate at which Aboriginal juveniles are separated from their families and communities, whether by being declared to be in need of care, detained, imprisoned or otherwise<sup>12</sup>.*

A major focus of the report's recommendations was therefore keeping young Aboriginal and Torres Strait Islander people out of various forms of detention, so the Youth Koori Court program made this a major priority. The Royal Commission report placed contact with the criminal justice system within a wider historical and political context, referring to the importance of connection to land and an ongoing struggle for recognition:

*However, there are issues underlying the alienation of Aboriginal people and their continuing conflict with the law which cannot be solved by police and Aboriginal people alone. The key is to be found in the hearts and minds of all Australians. It lies in the recognition of the Aboriginal people as a distinct people, the indigenous people of Australia who were cruelly dispossessed of their land and until recent times denied respect as human beings and the opportunity to re-establish themselves on an equal basis<sup>13</sup>.*

As noted above, some of the dispossession and eviction from customary lands was within living memory for many people. The Australian Law Reform Commission enumerated other current issues, including poor housing, lack of educational and employment opportunities, mental health, poor general health, higher rates of physical disability and drug dependency issues<sup>14</sup>.

In the 25 years since the Royal Commission report was published the number of First Peoples individuals in prison, far from being reduced, has doubled, and some 340 have died in custody

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<sup>11</sup> Australian Institute of Criminology (2015) Indigenous Justice, available at: [http://www.aic.gov.au/crime\\_types/in\\_focus/indigenousjustice.html](http://www.aic.gov.au/crime_types/in_focus/indigenousjustice.html) (last accessed August 1 2017)

<sup>12</sup> Royal Commission report, Volume 2, p 252.

<sup>13</sup> Preface, see footnote 5 above.

<sup>14</sup> Australian Law Reform Commission (2017) Incarceration Rates of Aboriginal and Torres Strait Islander Peoples (DP 84), available at: <https://www.alrc.gov.au/publications/indigenous-incarceration-rates-dp84> (last accessed 12 August 2017), p22.

in the subsequent period<sup>15</sup>. In 1991 the imprisonment rate for First Peoples individuals was 1,100, per 100,000 population; by June 2016 it was 2,373<sup>16</sup>. The Commonwealth Attorney General described this situation in 2017 as a 'national tragedy'<sup>17</sup>. By 2016, First Peoples prisoners accounted for 28 per cent of the prison population while First Peoples constituted only 2 per cent of the general population. As of 2016, young First Peoples individuals were 26 times more likely to be in custody than their non-First Peoples counterparts<sup>18</sup>. Reflecting on these trends, one of the former commissioners, Pat Dodson, concluded that little progress had been made in the following 25 years since the Royal Commission. He reflected that the contemporary criminal justice climate "permits the criminal justice system to continue to suck us up like a vacuum cleaner and deposit us like waste in custodial institutions" (Guardian, April 15 2016).

One statistic that encapsulates the tragedy for young Aboriginal and Torres Strait Islanders in NSW is provided by the state's Bureau of Crime Statistics and Research: some 25% of First Peoples in NSW have been detained at least once by the age of 23 compared to only 1% for the rest of the population<sup>19</sup>. This follows increased involvement in the court system relative to other young people: for First Peoples who first appeared before a Children's Court in 1995, they had an average of 8.3 court appearances by the end of 2003, compared to 2.3 for non-Indigenous young people<sup>20</sup>.

A second measure of detention levels is the 'stock' of persons in custody. The average overnight count of Aboriginal and Torres Strait Islander people in youth detention in NSW remained steady at about 100 from in 1994 to 2003, then rose steadily to 182 in 2008, before falling until 2013 to about 130 where it has stayed<sup>21</sup>. This represents the number of beds required to accommodate the number of those in custody at one time.

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<sup>15</sup> Aboriginal deaths in custody; 25 years on, the vicious cycle remains, *Guardian*, April 15 2016

<sup>16</sup> Australian Bureau of Statistics (2016) Corrective Services, 4512.0, available at: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4512.0>.

<sup>17</sup> Australian Law Reform Commission (2017) Incarceration Rates of Aboriginal and Torres Strait Islander Peoples (DP 84), p19.

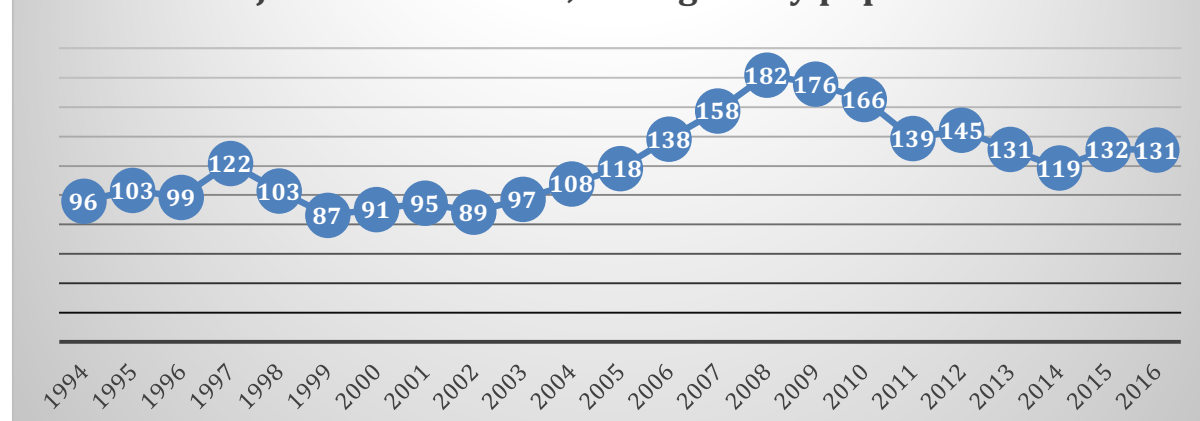
<sup>18</sup> Australian Institute of Health and Welfare (2016) Youth detention in Australia, *AIHW Bulletin 138*, No. AUS 210. Canberra: AIHW.

<sup>19</sup> Weatherburn, D. & Holmes, J. (2017). Indigenous imprisonment in NSW: A closer look at the trend (Bureau Brief No. 126). Sydney: NSW Bureau of Crime Statistics and Research.

<sup>20</sup> Chen, S et al 2005, BOCSAR, The transition from juvenile to adult offending careers, *Crime and Justice Bulletin No 86*, <http://www.bocsar.nsw.gov.au/Documents/CJB/cjb86.pdf> [last accessed September 1 2017]

<sup>21</sup> An alternative way of calculating the stock of young persons in juvenile detention is provided by BOCSAR for the period since 2011. This uses a census count of those in custody on a single day, the first day of the month. The figures cited above, from the Australian Institute of Criminology and the Australian Institute of Health and Welfare are the average for every night in the quarter, which were averaged to produce an annual estimate. The estimates used here are therefore less subject to fluctuations. The BOCSAR census count estimate are considerably higher from 2011 to 2014, but are consistent with the AIHW estimates from 2015 with a figure about 130 persons.

**Figure 1. NSW: Indigenous persons aged 10-17 in juvenile detention, average daily population**



Sources:

Kelly Richards & Mathew Lynham, AIC, *Juveniles in detention in Australia, 1991-2008*, Table 8  
 Australian Institute of Health and Welfare 2014. *Youth detention population in Australia 2014, 2015, 2016*, Juvenile justice series no. 16. Cat. no. JUV 53. Canberra: AIHW

Much of the increase in the levels of adult Aboriginal and Torres Strait Islander detention levels since 1991 was driven by a growth in the remand population associated with harsher bail conditions (and more recently, court delays). The number of Aboriginal and Torres Strait Islander people on remand in NSW grew by 238 per cent between 2001 and 2015, according to the NSW Bureau of Crime Statistics and Research<sup>22</sup>. As the Australian Law Reform Commission pointed out in a 2017 report “a ‘large proportion’ of Aboriginal and Torres Strait Islander people held on remand do not go on to serve a custodial sentence”<sup>23</sup>. Most of the detention that Aboriginal and Torres Strait Islander people experience is not imposed by a court after a finding of guilt<sup>24</sup>.

How do these patterns impact on young people? Whereas just under a third of adult First Peoples in detention in NSW are on remand<sup>25</sup>, over half of the young First Peoples in detention in NSW are there because they have been refused bail. (Figure 2). In other words, the problem of remand detention is relatively more acute for young people than adults. How has this changed since the time of the Royal Commission?

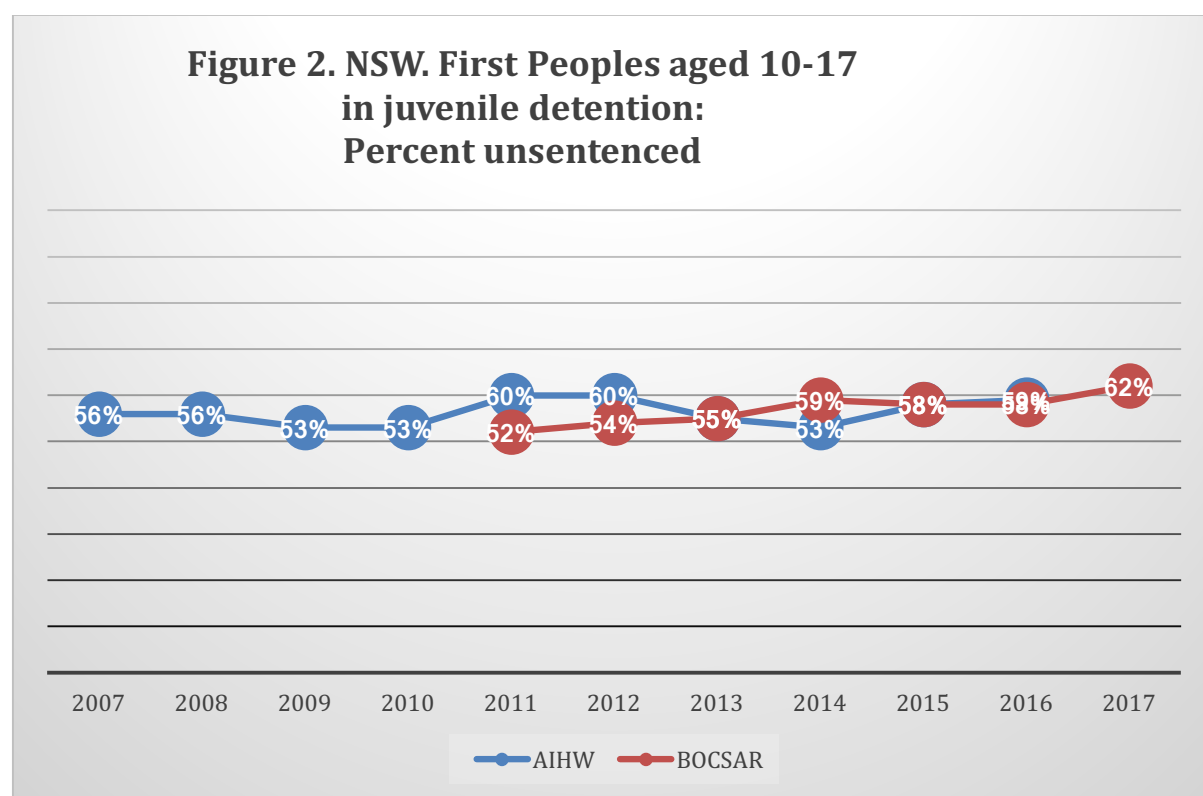
<sup>22</sup> Don Weatherburn and Stephanie Ramsay (2016) *What’s Causing the Growth in Indigenous Imprisonment in NSW?* Bureau Brief Issue Paper No 118, NSW Bureau of Crime Statistics and Research, p8.

<sup>23</sup> Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples* (DP 84), 2017

<sup>24</sup> See Brown, D. (2010) *The Limited Benefit of Prison in Controlling Crime. Current Issues in Criminal Justice*, 22 (1): 137-148.

<sup>25</sup> NSW Bureau of Crime Statistics, *Custody statistics, Quarterly estimates*  
[http://www.bocsar.nsw.gov.au/Pages/bocsar\\_custody\\_stats/bocsar\\_custody\\_stats.aspx](http://www.bocsar.nsw.gov.au/Pages/bocsar_custody_stats/bocsar_custody_stats.aspx) {last accessed September 1 2017}

Using Australia-level data, the Australian Institute of Criminology showed that the proportion of young Aboriginal people in detention who were on remand went up from 20 per cent of the detainee population in 1991 to about 50 per cent by 2008<sup>26</sup>. Equivalent data for NSW have been produced by the Australian Institute of Health and Welfare (AIHW) from 2008 and BOCSAR from 2011. The AIHW estimates show the rate of Aboriginal or Torres Strait Islander people in youth custody who were on remand fluctuating between 53% and 60% from 2008 to 2016. The BOCSAR estimates fluctuate within the same range, and both estimates converge on about 60% by 2016. This pattern is similar for non-Aboriginal and Torres Strait Islander young people in NSW: for them the proportion of detainees who were on remand went up from 51% in 2011 to 63% for the first six months of 2017.



Sources:

Australian Institute of Health and Welfare 2014. Youth detention population in Australia 2014, 2015, 2016, Juvenile justice series no. 16. Cat. no. JUV 53. Canberra: AIHW.

BOCSAR, Custody statistics, quarterly from December 2012 to September 2017

Figures are average of four quarters to June of each year, except for 2013 where only three quarters are available.

The Royal Commission into Aboriginal Deaths in Custody saw all detention of Aboriginal people as a risk, so a court that is limited to dealing with only half the relevant population – those serving a sentence – might be said to be able to tackle only half the problem. The Australian Law

<sup>26</sup> Kelly Richards (2011) *Trends in juvenile detention in Australia*, Australian Institute of Criminology, Trends & Issues in crime and criminal justice, No 416, Figure 7, p5.

Reform Commission argues that high levels of bail refusal could be due both to the marginal position of many First Peoples in the housing and labour markets, and also because cultural obligations sometimes make it hard to comply with conditions of bail, leading to higher levels of breaches<sup>27</sup>. However given that the proportion of youth detainees in NSW who are on remand are comparable between young First Peoples and others, economic and cultural reasons are unlikely to be a major part of the explanation.

The statistics referred to above however understate the magnitude of the problem: they refer only to the numbers in detention at any one point in time. We know that risks of death are highest shortly after entering custody<sup>28</sup> and just after release<sup>29</sup>, and higher for unsentenced than sentenced prisoners<sup>30</sup> so flow statistics are particularly relevant for estimating the number of these risk points. Of the NSW Aboriginal and Torres Strait Islander young people leaving custody between 2013 and 2017, only 20 per cent of them had been sentenced by a court (Table 1). The remaining 80 per cent had been on remand<sup>31</sup>. So the overwhelming majority of young Aboriginal and Torres Strait Islander people in NSW who experience custody do so because they are refused bail.

**Table 1: NSW young First Peoples discharged from custody, quarterly average, 2013-2017, by custody status**

	<i>Number</i>	<i>Percent</i>
Young First Peoples discharged from custody (flow)		
Remand only	242	80%
Sentence only	18	6%
Remand to Sentence	42	14%
Total	302	100%

Source: BOCSAR Custody statistics. Based on 19 quarters, June 2013 to September 2017

The total number of young Aboriginal and Torres Strait Islander people who were discharged from custody has fallen between 2012 and 2017. It fell from a quarterly average of 434 in the three quarters to June 2013 to 259 in the year to June 2015, and remained stable since then. Based on the pattern reported for the stock of persons in custody for which a longer time series is available (figure 1), this probably means that the number of young First Peoples entering or leaving custody has fallen to about its 2006 levels, but is still above the level experienced between 1998 and 2004. These data are generated from custody statistics, collated and

<sup>27</sup> Australian Law Reform Commission (2017) *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples* (DP 84), p35.

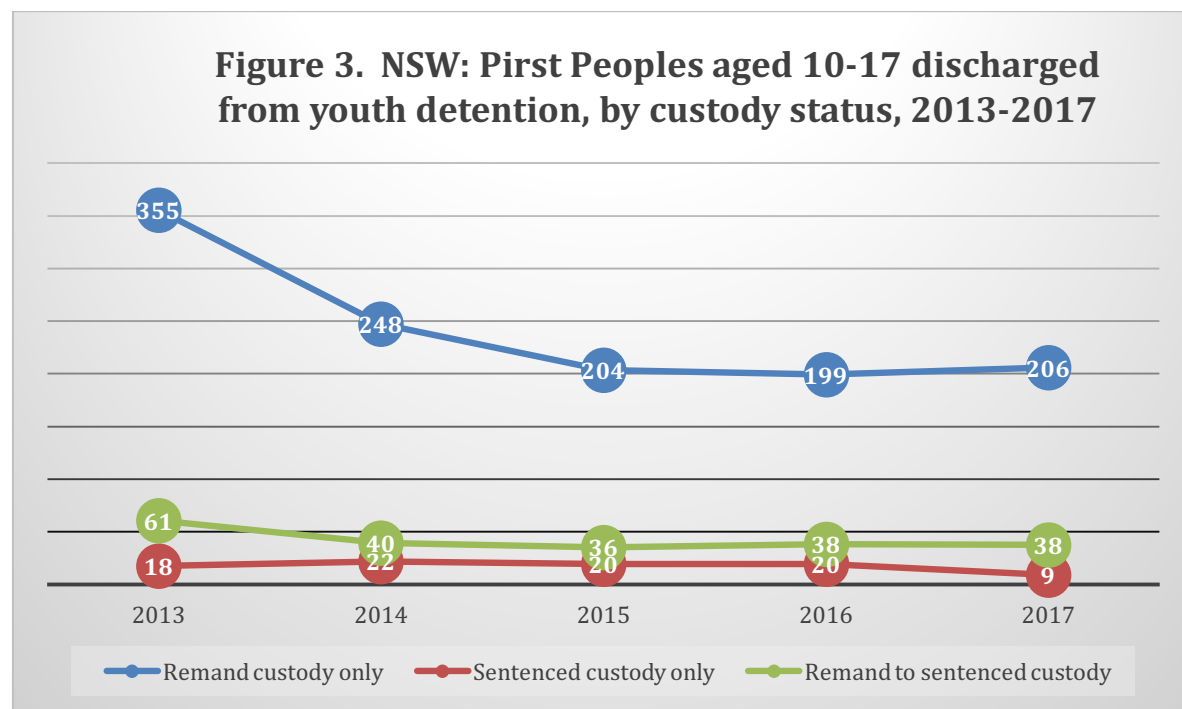
<sup>28</sup> Matthew Willis, Ashleigh Baker, Tracy Cussen and Eileen Patterson (2016) *Self-inflicted deaths in Australian prisons*, Trends & issues in crime and criminal justice no. 513, Australian Institute of Criminology, Table 1.

<sup>29</sup> van Dooren, Kate, Stuart A. Kinner, and Simon Forsyth (2013) Risk of death for young ex-prisoners in the year following release from adult prison. *Australian and New Zealand journal of public health* 37(4): 377-382.

<sup>30</sup> Willis et al (2016) p3.

<sup>31</sup> The proportion in each group is relatively stable across this period, with between 78% and 82% of persons discharged from custody on 'remand only', so only the overall average is presented here.

presented by BOCSAR. Another flow measure is the number of young people *sentenced* to youth detention, statistics generated from decisions of the Children's Court, collated by BOCSAR. This shows that the number of young First Peoples sentenced to custody fell by 23 per cent from 2012 to 2016, from 433 to 342, a similar decline in flow to that recorded for persons leaving custody<sup>32</sup>. Looking more closely at sentencing statistics helps to explain this decline – the number of young First Persons convicted of each of the two largest offence groupings, offences against persons and offences against property also declined by 23 per cent between these two periods. This was part of a longer-term decline in the NSW crime rate: the number of reported homicides, robbery and burglary was falling sharply from 2000 to 2016.



Source: BOCSAR, Custody statistics, quarterly from December 2012 to September 2017  
 Figures are average of four quarters to June of each year, except for 2013 where only three quarters are available.

Another important detention measure is the number of days in custody (Figure 4). A young Aboriginal or Torres Strait Islander person on remand stays in detention for an average of 12 days if they walk out the door of the court on the day of sentencing. If he or she is on bail at time of sentence, the average number of days in detention is just under four months (112 days). For those who are in custody at time of sentence and are given a sentence of youth detention, the average days in custody is just under six months (171 days). These periods of detention remained relatively constant over the five years until September 2017.

<sup>32</sup> BOCSAR, NSW Criminal Court Statistics, 2016, Table 1: Indigenous summary by year, [http://www.bocsar.nsw.gov.au/Pages/bocsar\\_court\\_stats/bocsar\\_court\\_stats.aspx](http://www.bocsar.nsw.gov.au/Pages/bocsar_court_stats/bocsar_court_stats.aspx) [last accessed September 15 2017]



Source: BOCSAR, Custody statistics, quarterly from December 2012 to September 2017

Figures are average of four quarters to June of each year, except for 2013 where only three quarters are available.

Putting together the various estimates of youth detention, we can say that

- Young First Peoples are currently 26 times more likely to be in custody than their non-Indigenous counterparts
- Some 25 per cent of NSW First Peoples have been in detention at least once by the age of 23 (compared to about 1 per cent of other young people)
- About 60 per cent of NSW young First Peoples in detention (‘stock’) are there because they have not been granted bail
- about 80 per cent of young First Peoples who are discharged from detention (‘flow’) are given a non-custodial sentence

Source: BOCSAR, Custody statistics, quarterly from December 2012 to September 2017

Figures are average of four quarters to June of each year, except for 2013 where only three quarters are available.

## INNOVATIVE JUSTICE PROCESSES

### SPECIAL-PURPOSE LEGAL FORUMS

Koori Courts have developed within the wider context of what can be termed special-purpose legal forums. Some of these are *courts*, presided over by judicial officers, including drug, domestic violence, mental health and community courts. Some are *tribunals*, presided over for the most part by lay members: bodies that review government decisions, provide protection for people with mental illnesses or decision-making disabilities, and resolve disputes. A third type of legal forum are *panels or conferences* in which decisions are made collectively. The term ‘alternative dispute resolution’ forum covers a range of mediation procedures designed to settle disputes between individuals, groups or organisations. One type of conference is the restorative justice conference, in which offenders and victims may come together to address the ‘harm’



produced by an offence, and get the offender to take responsibility<sup>33</sup>. Circle sentencing groups are one variant of this, with Aboriginal and Torres Strait Islander Elders playing a prominent role, and victims being included in the circle. What these different legal forums have in common is a commitment to making the justice process simpler and more accessible to their relevant populations. They share a commitment to the use of conversational language, participation by lay parties and lower levels of formality compared to traditional courtroom hearings.

Special-purpose legal forums in the criminal jurisdiction share another key feature as well: their primary official task is typically sentencing. Drug, mental health, and domestic violence courts, as well as some restorative justice conferences (called forum *sentencing* conferences in NSW) can only be accessed if the person pleads guilty, or has been found guilty by another court. There is no trial, no opportunity for the person charged to protest their innocence — at least not if they want to access the more user-friendly processes of the special-purpose courts. The Neighbourhood Justice Centre in the Melbourne suburb of Collingwood similarly restricts its criminal jurisdiction to those who plead guilty — contested matters are adjourned to the Melbourne Magistrates' Court.

Family group conferences, while sometimes used as sentencing forums, can also operate within a protective role. They may address issues such as the child's safety, parental responsibilities, dividing or re-uniting families, or any other matters where the child's welfare might be at risk. These were incorporated into legislation in Aotearoa New Zealand in 1989, and used as the foundation for children's justice matters in Aotearoa New Zealand<sup>34</sup>. They have used on a smaller scale in Victoria since 1992 and subsequently in NSW for protective matters<sup>35</sup>. Many of the young people whose lives are the subject of a family group conference have both protective issues as well as conflict with the law. A key feature of the model is the 'private time' given to the family in the middle of the hearing to come up with solutions that are acceptable to them. This tends to give the young person more status in the hearing: typically the young person is given a whiteboard marker, asked to write down the proposed outcomes, and then calls back the rest of the group when he/she is happy to discuss the plan with others. In the meantime the others have a cup of tea in an adjoining room.

In Scotland children who are in trouble with the law and those who need protection are dealt with under the Children's Hearing System. The core principle of this approach is that 'whether they require care or have offended, children or young people in trouble have similar needs and those needs should be met through a single system.'<sup>36</sup> The term 'children in trouble' covers both

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<sup>33</sup> Levine, M. (2000). The family group conference in the New Zealand children, Young Persons, and their Families Act of 1989 (cyp&f): review and evaluation. *Behavioral sciences & the law*, 18(4), 517-556.

<sup>34</sup> Connolly, M. (2006) Fifteen years of family group conferencing: Coordinators talk about their experiences in Aotearoa New Zealand. *British Journal of Social Work*, 36(4), pp.523-540.

<sup>35</sup> Nathan Harris (2008) Family group conferencing in Australia, 15 years on, Australian Institute of Family Studies, available at: <https://aifs.gov.au/cfca/publications/family-group-conferencing-australia-15-years>, [Last accessed August 1 2017].

<sup>36</sup> See The Children's Hearings Scotland (2017) Background, available at: <http://www.chscotland.gov.uk/the-childrens-hearings-system/background/> [last accessed August 1 2017].



categories.<sup>37</sup> This includes children who have not been charged with an offence but are: engaging in risky behaviour, have ‘a close connection’ with someone who has carried out domestic abuse or an offence against a child, are truanting, are likely to be forced into a marriage, are abusing alcohol or other drugs, or face a range of other risks. A Children’s Reporter acts as a gatekeeper to ensure that the risk is sufficiently serious to warrant intervention. The hearing itself does not formally determine guilt. Where appropriate, criminal matters are referred to the procurator fiscal (the Scottish term for prosecutor) to consider prosecution. In other matters, such as when the young person is ‘falling into bad associations or is exposed to moral danger’, the reporter has to decide whether the evidence is strong enough for referral, a lower standard of culpability. Even then the reporter has to decide whether compulsory measures of supervision are required before arranging a meeting of the panel<sup>38</sup>.

One of the first special-purpose courts in Australia was the NSW Drug Court, developed in 1999, in Parramatta. This provided for close judicial supervision for offenders as they underwent treatment for their drug problems over the period of a year or longer. In the same year the first First Peoples’ sentencing court, the Nunga court in South Australia began operations. In 2002 NSW began operating a sentencing circle procedure in Nowra in 2002. Since then every state and territory has developed some form of First Peoples sentencing procedure<sup>39</sup>. The first youth First Peoples’ court was also in South Australia – a Youth Aboriginal court, as it was called, in Port Augusta in 2003. Youth Murri courts in Queensland were established in five sites between 2004 and 2006, closed down by an incoming government, before being re-instated and by 2017 was operating out of 14 courthouses around the state. Meanwhile a Children’s Koori Court began in Victoria in 2006, with sittings of the court currently in nine sites. The establishment of a Youth Koori court in Parramatta in 2015 was thus part of a well-established tradition of Aboriginal and Torres Strait Islander sentencing courts.

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### FIRST PEOPLES JUSTICE PROCEDURES

Courtroom layouts for First Peoples oriented justice procedures in most parts of Australia look fairly similar. Participants gather around an oval or round table, one used for other matters as the bar table. Symbols that Aboriginal and Torres Strait Islander people may identify with, such as flags and wall hangings, are displayed, together with culturally invested paintings. Elders and respected persons join the Magistrate at the table to offer advice or ask questions, but are not involved in sentencing. Each hearing begins with a welcome to country (or an Acknowledgement of Country) in which recognition is paid to the traditional owners, Elders past and present and any persons of Aboriginal or Torres Strait Island heritage who are present. In Victoria – perhaps elsewhere as well – the person appearing before the court sometimes provides additional introduction about his or her own country and people. As with other special-purpose courts, proceedings are informal and conversational English is used.

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<sup>37</sup> Ibid.

<sup>38</sup> The process is outlined in *The Scottish Hearing System Training Resource Manual*, <http://www.gov.scot/Publications/2003/01/16151/16391> [last accessed August 1 2017]

<sup>39</sup> Marchetti, E. and K. Daly (2004) Indigenous Courts and Justice Practices in Australia, *Trends and Issues in Crime and Criminal Justice* 277(May): 1-6.

Participants, including family members and support people, have the opportunity to speak and interact with each other.



A Victorian Koori Court hearing, 2004. Watercolour by Noelle Herrenschmidt. This image illustrates the use of an oval table, art work and Aboriginal and Torres Strait Islander flags

Apart from admitting guilt as the price of admission to a First Peoples' sentencing court, the person coming before the court must identify as a person with Aboriginal or Torres Strait Island heritage (in the Northern Territory South Sea Islanders are also included) and be accepted as such by the local community. First Peoples' sentencing courts may also limit the types of cases they consider – like most restorative justice or alternative sentencing programs, they generally exclude serious cases that could be heard by a jury such as sexual offences and homicide. Most do not have a target risk group, so a youth court's clients may comprise a mixture of lower- and higher-risk young people. In the Youth Koori Court in Parramatta, many of those accepted into the program had extensive criminal records and were by every measure, high risk. Many were on remand; in Queensland by contrast, a requirement for accessing the Youth Murri court was that the young person had to be on bail. So the populations served by the courts in different jurisdictions might be somewhat different<sup>40</sup>.

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<sup>40</sup> In practice there might not be too much difference. In Queensland a magistrate could grant bail to an offender and then immediately hear the case using Murri court principles. In NSW the young person might come into court in custody but then as part of the hearing be granted bail. Nevertheless, in NSW sometimes the person leaves the court still in custody, but as a result of a prior sentence not on remand.

While the Youth Koori Court has similarities to its counterparts in other states, it also draws lessons from other special-purpose courts. In particular the ongoing judicial supervision it provides can be seen as somewhat similar to that of a drug court. Victorian Koori courts tend to deal with matters in a single sentencing hearing. An order may include a supervision order, but then the matter is handed over to community corrections officer to supervise<sup>41</sup>. In the Parramatta Youth Koori Court, however, follows a model closer to that used in Kalgoorlie in Western Australia: there are multiple hearings for each person, and discussion about an appropriate sentence is deferred until the final hearing. The Magistrate together with the other hearing participants monitor progress on an Action and Support plan developed in the initial hearing.

The level of judicial oversight makes the Youth Koori Court in Parramatta similar in some respects to one of the other models of First Peoples' court: the Rangatahi court in Aotearoa New Zealand for young Māori people who come before the courts, or the Pasifika courts for young people from other Polynesian and Melanesian backgrounds. Presided over by Youth Court judges, Rangatahi courts hold their hearings on marae (Māori meeting houses), while Pasifika hearings are held in churches or community centres. The sentence is deferred to allow underlying issues to be addressed. Before young people come to the Rangatahi or Pasifika courts, an action plan has already been developed in a family group conference. The plan identifies the variety of needs of the young person, and specifies the actions required to achieve particular outcomes. One task of the court is to monitor progress on the plan. Just as importantly, the court provides an opportunity for the young person to deepen their understanding of their culture's practices and in the Rangatahi courts specifically to develop Māori language skills.

Youth Murri courts in Queensland and Community Conferences in Ontario also provide extended supervision and support, but in different ways. In Queensland an Elder and someone from a Community Justice Group (CJC, a voluntary community organization funded by the state government) writes a report about the person's background that is forwarded to the court to determine eligibility. The Elders and the CJC also assume responsibility for referring the person to appropriate services. The person's progress is subsequently reviewed by the CJC and this report provided to the court. As with Rangatahi courts, the action plan is developed outside the court. In Aotearoa New Zealand, the group that develops the action plan, in that case a family group conference, hands over responsibility to the Rangatahi court to monitor (although for other types of matter the conference may re-convene). In Queensland, the same group continues to monitor the plan and advise the court.

In Ontario, the Aboriginal Youth Court may divert young people to community conferences, which establish a 'resolution plan' or individualised programs for the young person to follow,

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<sup>41</sup> On the other hand Victorian magistrates may include judicial supervision as one of the conditions of an order, particularly at the Neighbourhood Justice Centre. See Australian Centre for Justice Innovation (2013) Innovative Approaches to Justice: the NJC experience, p12, at [http://www.monash.edu/\\_data/assets/pdf\\_file/0004/946831/Module-3Background-Materials.pdf](http://www.monash.edu/_data/assets/pdf_file/0004/946831/Module-3Background-Materials.pdf)

effectively an action plan<sup>42</sup>. Like Rangatahi courts, the Aboriginal Youth Court monitors progress of the young person on this plan. Unlike most other Indigenous courts, it may also have bail hearings, following the practices developed in the adult Aboriginal court in Toronto. That court holds bail hearings for persons who have pleaded guilty, and follows the provision that it should: “Interpret bail provisions liberally so that pre-trial detention is not imposed unnecessarily and does not lead more directly to custodial sanctions”<sup>43</sup>. The Youth Aboriginal Court can hold bail hearings itself, but because it meets only twice a month, most of the bail hearings are actually carried out by bail justices associated with the court. The court then takes on the responsibility of monitoring and varying bail conditions.

In the initial design of the process for the Youth Koori Court, the Magistrate was expected to step back somewhat from the process and allow the various agencies to carry out their assigned tasks. The court would get involved again for an initial review a month or so later, but then reduce the frequency of reviews according to need, like a less intensive version of the drug court model. However as this study documents, there were ongoing difficulties in getting necessary services, ensuring that plans were followed up and getting the young people to appointments. The frequency of reviews was therefore adjusted to this reality; the reviews became regular and monthly. The Rangatahi court similarly holds regular reviews for its participants, in its case even more frequently at once a fortnight. The increased oversight – compared to what was originally planned - moved the Youth Koori Court towards the tighter court supervision of its Aotearoa New Zealand counterpart. Even this is less intensive oversight than that provided in drug courts – in NSW the standard hearing frequency in the first phase of participation on the program is weekly, while a BOCSAR study shows that twice-weekly reviews are even more effective<sup>44</sup>.

The idea for sentencing circles in their contemporary form originated in Canada. The first documented such gathering was held in the Yukon, shortly after the Australian Royal Commission handed in its report<sup>45</sup>. Chaired by a judge, the circle included Elders sitting around in a circle reflecting traditional decision-making practices. The Aboriginal offender received an innovative sanction: they were required to live on the trap line with relatives learning traditional hunting skills. The social and historical context of the offending was addressed by the judge, mirroring the insights of the Australian Royal Commission. As the sentencing judge, Barry Stuart explained, in an eloquent justification for a historically-informed sentencing procedure:

*First, the criminal justice system had miserably failed the community of Mayo. Born and raised in Mayo, his family in Mayo, Philip instinctively returned to Mayo after each of the*

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<sup>42</sup> Clark, S (2016) Evaluation of the Aboriginal Youth Court, Toronto, available at [www.aboriginallegal.ca/assets/ayc-evaluation-final.pdf](http://www.aboriginallegal.ca/assets/ayc-evaluation-final.pdf) [last accessed August 4 2017]

<sup>43</sup> Scott Clark, 2016. *Evaluation of the Gladue Court, Old City Hall, Toronto*, Aboriginal Legal Services <http://www.aboriginallegal.ca/assets/gladue-court-evaluation---final.pdf> p.16 [last accessed August 1 2017]

<sup>44</sup> Jones, Craig (2011) Intensive judicial supervision and drug court outcomes: Interim findings from a randomised controlled trial. *BOCSAR NSW Crime and Justice Bulletins* 152(November), pp 16.

<sup>45</sup> R v Moses, 1992, CNLR, 116, Yukon Territorial Court

*previous seven jail sentences. He would again return after any further jail sentences; each time returning, less capable of controlling either his anger or alcohol abuse; more dangerous to the community and to himself. The criminal justice system had not protected, but had endangered the community.*

*Secondly, the criminal justice system had failed Mr. Moses. After ten years, after expending in excess of a quarter of a million dollars on Mr. Moses, the justice system continues to spew back into the community a person whose prospects, hopes and abilities were dramatically worse than when the system first encountered Philip as a wild, undisciplined youth with significant emotional and general life skill handicaps. His childhood had destined him for crime, and the criminal justice system had competently nurtured and assured that destiny.<sup>46</sup>*

The judge emphasized the responsibility of the criminal justice system for the path followed by the defendant. Rather than focusing on the actions of the accused, the judge turned his attention to the failings of the system that made the offending more likely. He also pointed out the way incarceration made the community less, rather than more, safe. The hearing was the forum in which the community assumed its share of the responsibility for the damage it had done. The approach to placing crime within a broader social context is something that also shapes First Peoples' courts in Australia and Aotearoa New Zealand. It is one of the underlying principles behind the development of Action and Support plans used in the youth Koori Court – programs that target areas where the community has failed to provide the necessary support for the young person.

### RATIONALE FOR FIRST PEOPLES' SENTENCING COURTS

There are several common goals for First Peoples' sentencing courts in Australia, New Zealand and Canada. Two of these can be seen as aimed at *reforming the judicial process*:

1. To provide more culturally and personally respectful treatment in court for offenders from First Peoples backgrounds. This seeks to enable the person before the court to better understand the sentencing process and provides a counterpoint to negative experiences with the law.
2. To increase the perceived legitimacy of the Western legal system and simultaneously acknowledge First Peoples' traditional authority figures by enrolling Elders and respected persons to assist in managing and supporting the process and the offender.

Other aims are targeted at *producing measureable outcomes*, relevant to justice processes:

1. To reduce high levels of imprisonment of First Peoples individuals, and reduce the number of deaths in custody

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<sup>46</sup> Case available online at <http://www.usask.ca/nativelaw/factums/view.php?id=124>

2. To improve court processing of offenders by reducing the number of no-shows in court and increase the number of offenders who successfully discharge their sentence
3. To link offenders with necessary services, as well as education programs and training / employment opportunities

Participating in a more user-friendly court experience might be expected to make the young person less suspicious of courts, but how this would translate to attitudes to police or other parts of the justice system would need to be established. An evaluation of the Victorian Children's Koori Court, showed that young people who went through that court engaged with community corrections more consistently than those who went through the regular court system<sup>47</sup>. Reducing high levels of incarceration is, as reviewed extensively above, a major priority. Reducing no-shows is something that court procedures can realistically address. The young offenders in the Youth Koori Court were more likely than those who went through the regular Children's Court to turn up in court and complete their sentences successfully<sup>48</sup>.

Some programs additionally set as a goal the reduction of re-offending. An evaluation of the Aboriginal sentencing court in Kalgoorlie found that the six-months recidivism rate for young Aboriginal people who went through this system was 10 percentage points *higher* than those who went through the mainstream system – 51% compared to 41%<sup>49</sup>. While most of this difference was probably due to the fact that the Aboriginal court participants had more extensive criminal records, the conclusion from this comparison could be that participation in the alternative process was unlikely to have reduced recidivism. Meanwhile evaluations of the NSW circle sentencing program and the youth justice sentencing program carried out by the NSW Bureau of Crime Statistics and Research did not detect any measureable short-term impact in re-offending<sup>50</sup>. These studies suggest that First Peoples' sentencing courts, by themselves, would be unlikely to show any impacts in terms of recidivism.

'By themselves' is perhaps the key phrase here. Desistance from crime is most likely when the person has a job, has found safe housing and is in a stable family situation<sup>51</sup>. A benefit-cost analysis by Washington State Institute for Public Policy shows that one of the most effective programs for reducing recidivism amongst young offenders is Education and Employment

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<sup>47</sup> Borowski, A., 2010. Indigenous Participation in Sentencing Young Offenders: Findings from an Evaluation of the Children's Koori Court of Victoria. *Australian & New Zealand Journal of Criminology*, 43(3), pp.465-484.

<sup>48</sup> Ibid.

<sup>49</sup> Shelby Consulting (2009) Evaluation of the Aboriginal Sentencing Court of Kalgoorlie, P53, at: [http://www.courts.dotag.wa.gov.au/files/Kalgoorlie\\_Sentencing\\_Court\\_Report.pdf](http://www.courts.dotag.wa.gov.au/files/Kalgoorlie_Sentencing_Court_Report.pdf), [last accessed August 1 2017]. The authors of the report did not control for the quite different characteristics of those who appeared before the two types of court making this comparison misleading. The method used by BOCSAR (used in the study referred to below), known as propensity score matching, largely eliminates this problem.

<sup>50</sup> Fitzgerald, J. (2008) Does circle sentencing reduce Aboriginal offending?. *BOCSAR NSW Crime and Justice Bulletins*, p.11; Nadine Smith and Don Weatherburn, (2012) Youth Justice Conferences versus Children's Court: A comparison of re-offending, *BOCSAR NSW Crime and Justice Bulletin no. 60*

<sup>51</sup> Laub, John H., and Robert J. Sampson (2001) Understanding desistance from crime. *Crime and justice* 28: 1-69



Training, which for one type of such program provides a return of \$42 for every \$1 invested<sup>52</sup>. At a society-wide level, if young men who were long-term unemployed finished high school and got a job, the rate of home burglaries in NSW would drop by an estimated 16 per cent<sup>53</sup>. A US study estimated that a one percentage point increase in the poverty rate would lead to an increase in the violent crime rate of 24 per 100,000 inhabitants and an increase in the property crime rate of 121 per 100,000 – both effects stronger than either changes in unemployment or education<sup>54</sup>. So to the extent that the Youth Koori Court process facilitates educational and work opportunities and reduces poverty it might be expected that a measureable reduction in recidivism could be expected, at least in the longer-term. To the extent that the court, or the wider society cannot unlock these opportunities, it would be expected that any impact on re-offending levels would be minimal.

### NSW YOUTH KOORI COURT PILOT

Parramatta was chosen as the site for the pilot Youth Koori Court pilot in part both because of the high concentration of Aboriginal and Torres Strait Islander individuals in the region, and also because one of the Children's Courthouse that serves western Sydney is located there. Parramatta has an integrated justice precinct, the hub for a number of justice initiatives, potentially providing a range of on-site services for justice participants. Parramatta had been a site of resistance by the warrior Pemulwuy to early colonists and is a source of pride to Eora people, whose descendants still live there. Parramatta also had an important connection with Aboriginal and Torres Strait Islander children and Australia's history of dispossession: in 1814 it was the site where Governor Lachlan Macquarie launched a 'Native Institution' to educate children from the tribes of the Cumberland Plain. At the meeting convened by Macquarie with the Cumberland Plains tribes, it was reported in the Sydney Gazette in 1814 that some local people were reluctant to come, 'suspiciously imagining that they were to be forcibly deprived of their children' but, the article continues, in the end 'three children were yielded up to the benevolent purposes of the institution'<sup>55</sup>.

The atmosphere at the opening of the Youth Koori Court almost exactly 200 years later was a very different affair, and the impact of generations of stolen children was to feature in many of the court's hearings. The court opened in February 2015 with a smoking ceremony and an inauguration at the Parramatta Children's Court. After the inaugural formalities, the Youth Koori

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<sup>52</sup> Washington State Institute for Public Policy, June 2016. Inventory of evidence-based, research-based and promising practices, available at: [http://www.wsipp.wa.gov/ReportFile/1640/Wsipp\\_Updated-Inventory-of-Evidence-Based-Researched-Based-and-Promising-Practices-For-Prevention-and-Intervention-Services-for-Children-and-Juveniles-in-the-Child-Welfare-Juvenile-Justice-and-Mental-Health-Systems\\_Inventory.pdf](http://www.wsipp.wa.gov/ReportFile/1640/Wsipp_Updated-Inventory-of-Evidence-Based-Researched-Based-and-Promising-Practices-For-Prevention-and-Intervention-Services-for-Children-and-Juveniles-in-the-Child-Welfare-Juvenile-Justice-and-Mental-Health-Systems_Inventory.pdf) [last accessed August 1 2017].

<sup>53</sup> Chapman, B et al (2003) Unemployment duration, schooling and property crime, Crime and Justice Bulletin 74, BOCSAR.

<sup>54</sup> Ajimotokin, Sandra, Alexandra Haskins, and Zach Wade (2015) The Effects of Unemployment on Crime Rates in the US, pp12, available at <https://smartech.gatech.edu/bitstream/handle/1853/53294/theeffectsofunemploymentoncrimerates.pdf> [last accessed August 1 2017]

<sup>55</sup> Sydney Gazette, 28 December 1814, at: <http://www.mq.edu.au/macquarie-archive/lema/1814/sydgaz31dec1814.html> [last viewed August 1 2017].

Court had its first sitting for a suitability assessment presided over by two Elders and a Magistrate.

Like all other First Peoples' sentencing courts in Australia (except Victoria) the Youth Koori Court operates within existing legislation but its procedure is established by way of a Practice Note, a direction issued by the President of the Children's Court under s23A of the Children's Court Act 1987. Its rules and constraints are the same as those for other Children's courts. While most of the features of the Youth First Peoples' sentencing court model are similar to those used elsewhere in Australia, there are several features that have particular significance in the local context.

Firstly, the role of Elders. Covering such a wide area, the Elders and the young people represent a wide range of clans, countries, languages, lores and histories. The Elders (and other respected persons) took an important role from the outset not just in participating in hearings, but providing ongoing advice and support. As one of the court's Elders, a Bundjalung man, David Williams, told the ABC :

*"I always advise the young people that it doesn't take brains to do the wrong thing, any dipstick can do that. But if you want to stay on the right side of the fence, I'm here to give you a hand," he said.<sup>56</sup>*

Some of the Elders are associated with Western Sydney University, and have an active commitment to education as a key to success, although they see TAFE as one of the more immediate possibilities for many of the young people who come before the court. As Auntie Thelma Quartey, a Torres Strait Islander woman, explained:

*the great thing is that nowadays if you look at it 2016 and 2015 we have more kids graduating from high school...from TAFE....from university as compared to the last five ten years ago. So there is definitely an improvement. We have a lot of people in higher positions, mostly in Canberra really.... but it's going to take a while. And I think we still need to be represented in the field...in the justice system. And we do have that in the justice system, we do have more police officers, as opposed to five-ten years ago. There is a lot on Queensland. But we still need people in the judicial system. In saying that there are more lawyers coming out. But I still think there is a way to go, a long way to go, but if I look back ten years we have improved in that field.*

Second, the link to services. A critical issue for most First Peoples' sentencing courts is providing access for the offender to relevant services, including drug and alcohol treatment, health care more generally, housing, employment and education. One model for achieving this is by co-locating services, as is provided in the Neighbourhood Justice Centre (NJC) in Melbourne. Offenders are referred to services within the building, and representatives from the services may attend case management conferences at short notice. A second model is a form of 'voucher

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<sup>56</sup> ABC, *The World Today*, February 9 2015



system' in which individuals are allocated money to purchase services based on need. This is the principle of the National Disability Insurance Scheme. Most special-purpose legal forums rely on persuading external agencies to provide services. The Youth Koori Court model uses the hearing as the occasion when commitments are elicited from the relevant service agencies, and performance of the agencies is monitored. In the NJC model even external agencies (like community health centres) are paid for their services. In the regular work of courts and tribunals, persuasion is the key. The court was in a sense a gateway to services as Magistrate Duncombe and an Aboriginal Elder, Uncle Rex Sorby, explained in interviews given the ABC several months before the opening of the court.

*Aboriginal Elder Uncle Rex Sorby, who will sit with offenders in the trial, said young Aboriginal and Torres Strait Islander people often fell into crime because of a lack of social support. "They get involved in all sorts of crime, they don't know their parents, they come to the city, they don't know anybody and they get stuck," he said.*

*"I think [the Koori Youth Court] is one of the essential services that should be introduced for Aboriginal people, particularly for Aboriginal children."<sup>57</sup>*

A third feature of the model that deserves comment is the flexibility of process, modelled in part on Drug Courts, although quite similar in this respect to the Kalgoorlie court. Offenders move through the court process on a number of tracks depending on whether they turn up for their hearing, whether they comply with their orders and the complexity of their needs. This multi-stage process was captured in an iconic representation of a sacred healing space developed by the court (see Figure 1 below). However as described below, the court moved towards regular judicial review rather than having hearings chaired by registrars or delegating supervision out to other agencies.

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<sup>57</sup> ABC News, November 15, 2014

## YOUTH KOORI COURT (YKC) MODEL



## CHAPTER 3. EVALUATION

### AIMS

This research is a qualitative and quantitative assessment of the Youth Koori Court pilot program. The stated objectives of the program are to:

- a) Increase Aboriginal and Torres Strait Islander community (including young people's<sup>58</sup>) confidence in the criminal justice system,
- b) Reduce the risk factors related to young people's re-offending,
- c) Promote adherence to court requirements amongst young people, i.e., reduce the rate of non-appearances and breaches of bail and increase compliance with court order.

In addition to the program's stated objectives, this research also considered how the Youth Koori Court program achieves objectives of Aboriginal and Torres Strait Islander empowerment, by:

- d) Improving the capacity of young people to take up social and economic opportunities advantageous to them and,
- e) Taking a long view, the program's broader impact on cultural, socio-economic and employment outcomes for Aboriginal and Torres Strait Islander individuals.

Specifically the research aims were:

1. To capture how the Youth Koori Court program works by mapping its under-girding processes, networks, responsibilities and relationships.
2. To identify the qualities, features, circumstances and practices that contribute to the Youth Koori Court program achieving its objectives (listed above) and the longer term objective of investing in Aboriginal capacity.
3. To identify the sentencing, community empowerment, behavioural, compliance and attitudinal outcomes that can be anticipated for each stage, and for the process as a whole.

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<sup>58</sup> Following the Children Court's working terminology for people aged 18 and under who appear in court, we use 'young people/person' with reference to those involved in the Youth Koori Court.

4. To provide recommendations to improve the process and expected outcomes of Parramatta Youth Koori Court.

### RESEARCH QUESTIONS

1. What features, conditions and practices of the Youth Koori Court program might contribute to it addressing its objectives?
2. What do the stages of the program, and the program as a whole, realistically achieve in terms of changing an offender's attitudes, behaviour and the circumstances informing their offending behaviour?
3. And what can each stage of the program, and the program as a whole, realistically achieve towards improving community capacity to engage in court processes?
4. How could the Parramatta Youth Koori Court process be improved?

This study should be seen as a process evaluation. It provides feedback to the participants, the Children's Court and the NSW Department of Justice as the model evolves and is fine-tuned based on experience. Attention is therefore paid to features of the model, such as the Action and Support plans, or service provision approaches, rather than global measure of success.

As will be clear from the subsequent discussion, some objectives could be measured more easily than others. A reduction in risk factors could be measured because this was something that was recorded in Action and Support plans and subsequent hearings. Improving the capacity of the young people to take up social and economic opportunities could be similarly measured, but the real issue was often whether the opportunities were provided rather than whether they were taken up. The complexity of criminal records for many of the young people meant that compliance with bail and other court orders would require accessing unit record files, which we did not have access to. However most young people did turn up for their hearings at the Youth Koori Court, on the correct day, even if not always at the time they were listed for. As for identifying increased confidence in the justice system by the Aboriginal and Torres Strait Islander community, this would be hard to measure in the short term. But the Elders as the official representatives of their community actively took part in supporting the program. This increased familiarity resulted in a ringing endorsement of the Youth Koori Court program. However, it did not make them any more supportive of other parts of the criminal justice system that detained their people at internationally high levels. Legitimacy was not something that Aboriginal and Torres Strait Islander people should be expected to give the criminal justice system; it was something the system first had to earn.

This was not a commissioned evaluation in the sense that there was a client and contractor. There was no contract, and indeed no funding. The study was done at the Western Sydney University (at the recommendation of the Bureau of Crime Statistics and Research) and carried out under the auspices of the Western Sydney University Office of Aboriginal and Torres Strait Islander Employment and Engagement Advisory Board, (OATSIEE, including the Elders on

Campus Advisory Group). It has ethical clearance and ongoing oversight from the Western Sydney University HREC and the NSW AH&MRC Ethics Committee.

The study involved a partnership with the Children's Court, who initiated the project and provided ongoing advice and information. The analysis and recommendations however are the responsibility of the authors and the OATSIEE which oversaw the writing of the report. There are diverse audiences for the report. It provides information and analysis relevant to policy-makers, members of the court, and members of the Aboriginal and Torres Strait Islander peoples of New South Wales. It is also directed at a wider audience of scholars and activists working on issues of justice processes for First Peoples.

## CHAPTER 4. RESEARCH DESIGN

### SUMMARY

The research design brought together several methods including observations, cultural interpretations of those observations, interviews, analysis of Action and Support plan items, and their outcomes, and analysis of detention statistics. These approaches will be described in more detail in the Methodology chapter in their various parts, namely:

1. Observations of Youth Koori Court meetings
2. Cultural interpretation of Youth Koori Court meetings
3. Observations of Working Party meetings
4. Interviews with Youth Koori Court stakeholders and participants
5. Interviews with Aboriginal and Torres Strait Islander Elders involved in Youth Koori Court
6. Interviews with young people who have participated in or are participating in Youth Koori Court
7. Review of Action and Support plans
8. Analysis of sentencing transcripts for outcomes of Action and Support plans at time of sentencing
9. Criminal justice outcomes

This study's design originated in and is informed by a decolonising research framework. We discuss this in detail below.

### DECOLONISING RESEARCH

Researchers, just as policy makers, journalists or other members of the public, bring their own assumptions and frameworks when they try to understand the experience of Aboriginal and Torres Strait Islander peoples<sup>59</sup>. A decolonising framework gives priority to Aboriginal and Torres Strait Islander perspectives and protocols. This includes:

- Broadening definitions of 'knowledge' to specify how it is created, and identifying who is authorised to keep and transmit that knowledge<sup>60</sup>.
- Being aware of the role research plays in First Peoples' spaces<sup>61</sup>; sometimes intrusive and serving the interests of regulation rather than emancipation
- Waiting to be invited before carrying out research on First Peoples' experiences<sup>62</sup>

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<sup>59</sup> Juanita Sherwood (2013) Colonisation – It's bad for your health: The context of Aboriginal health. *Contemporary Nurse* 46(1): 28–40, and Linda Tuhiwai Smith (1999) *Decolonising methodologies: Research and Indigenous Peoples*. London: Zed Books.

<sup>60</sup> Linda Tuhiwai Smith (2012) *Decolonising methodologies: Research and Indigenous Peoples* (2<sup>nd</sup> Edition). London: Zed Books, pp 61-71.

<sup>61</sup> Ibid, pp 5.

<sup>62</sup> Karen L. Martin (2008) Please knock before you enter: Aboriginal regulation of Outsiders and the implications for research and researchers. Teneriffe, Brisbane: PostPressed, pp 131.

Such reform is particularly pertinent in Australian contexts, where non-Aboriginal-led research in Aboriginal space has long had a troubling relationship with colonialism, academic exploitation of communities, state violence, and the marginalisation of Aboriginal and Torres Strait Islander Peoples' perspectives. The central themes (not an exhaustive list) emerging from the experiences of First Peoples and their communities include:

- feeling alienated from decision making opportunities that affected their social and emotional well-being
- being consulted often but with the perception that the motivation was to enable decision makers to 'tick a box'
- not being in control of operationalising initiatives that directly affect them, their life chances and life quality
- interventions and actions focusing on problems and ignoring strengths; and
- feeling that real and intellectual property under Aboriginal and Torres Strait Islander control is often at risk of exploitation.

To redress such issues, this study was coordinated by a team of Aboriginal and non-Aboriginal researchers who have a collective interest in updating research praxis so as to conduct a rigorous, respectful, and culturally informed study of Aboriginal space (bearing in mind that the Youth Koori Court itself straddles Aboriginal and Western judicial-bureaucratic spaces). As the researchers have varying amounts of experience conducting research in Aboriginal spaces, working in a decolonising framework has also entailed reflection, discussion, and cross-cultural mentorship over the course of the study. In addition, the formal ethical and methodological protocols for this study have been developed in the context of co-creative partnerships with the Western Sydney University Office of Aboriginal and Torres Strait Islander Employment and Engagement.

Here, we summarise the ways this framework has been realised in the methods and protocols of this study as well as in the preparation of this report. In referring to protocols we assert appropriate cultural protocols as respecting the customs, lore/law, and codes of behaviour of Aboriginal and Torres Strait Islander Peoples and communities. This guided the ethical approach of the research, which focused on enabling and recognising the input and expertise of Aboriginal and Torres Strait Islander individuals.

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### CO-CREATION

The project framework was based in a concern for the *co-creation* of knowledge. As outlined above, literature on appropriate research praxis refers to the importance of collaborative processes of research design, data collection, representation, and dissemination<sup>63</sup>. For this project, this concern is formalised into a framework of co-creation, which recognises and

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<sup>63</sup> See also Koster, R., Baccar, K. and Lemelin, R. H. (2012) Moving from research ON, to research WITH and FOR Indigenous communities: A critical reflection on community-based participatory research. *The Canadian Geographer / Le G'oeographe canadien*, 56(2): 195–210; and Morton Ninomiya, M. E. and Pollock, N. J. (2017) Reconciling community-based Indigenous research and academic practices: Knowing principles is not always enough. *Social Science & Medicine*, 172, 28–36

acknowledges Aboriginal and Torres Strait Islander leaders and participants as co-creators of the research and its outputs.

As outlined below, the research design ensured that Aboriginal voices were present at all stages of the research through inclusion of the Elders on Campus and reporting to the Elders on Campus Advisory Group meetings throughout the project's duration. Intellectual property rules do not provide a suitable framework for recognising and protecting Aboriginal and Torres Strait Islander Peoples' knowledges<sup>64</sup>. The project framework of co-creation formalises the contribution of Aboriginal and Torres Strait Islander Elders and respected persons to the academic space. In line with the 14 principles espoused in the Guidelines for Ethical Research in Australian Indigenous Studies (GERAIS) (AIATSIS 2012), this asserts a practical and moral precedent regarding the recognition and sharing of knowledge. Hence in order to properly attribute such knowledge, we name these contributors with their consent. Those same individuals might be de-identified when cited in relation to specific Youth Koori Court cases. However, all such individuals who have given their consent are listed as co-creators of this report.

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### INVOLVEMENT OF THE WESTERN SYDNEY UNIVERSITY ELDERS ADVISORY BOARD

This evaluation was undertaken by the University at the request of the Parramatta Children's Court, following endorsement by the Western Sydney University Elders on Campus, and through their ongoing participation. The Youth Koori Court involves Elders who reside in the Greater Western Sydney metropolitan area, including some of the Elders on Campus. The research involved interviews with Elders on Campus and other Elders taking part in the Youth Koori Court process; all Elders participating in the Youth Koori Court received training from the court.

The project's co-creative partnership with the Western Sydney University Elders Advisory Board entailed ongoing conversation with the board during the research. Through this, the project's consideration of Aboriginal cultural and spiritual space was discussed, refined, and progressed. This approach enabled the creation of a diverse collective, authoritative Aboriginal voice through the Elders on Campus in the most direct way possible. Further, Elders taking part in the Youth Koori Court and not formally affiliated with the University were able to add to this voice by reviewing and feeding back into the project's research outputs, including by attending the Advisory Board meeting at which the draft of this report was discussed.

The project design was initially presented and subsequently progressed at an Elders on Campus Advisory Board meeting on 27<sup>th</sup> February 2015. The researchers regularly attended Western Sydney University Aboriginal and Torres Strait Islander Employment and Engagement Advisory Board meetings (on 19th November 2015, 16th March 2016, and 12th May 2016, 2nd June 2017, and 1st September 2017) in order to both discuss this project's progress and changes (e.g., updating methodology for interviewing young people, reviewing the representation of this

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<sup>64</sup> Terri Janke (2009). Writing up Indigenous Research: authorship, copyright and Indigenous knowledge systems. Sydney: Terri Janke & Company. Available at: <http://www.terrijanke.com.au/writing-up-indigenous-research>



study's protocol in the report), and to learn from discussions of other projects and issues amongst the board about working respectfully with Aboriginal frameworks.

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### CROSS-CULTURAL MENTORSHIP

Cross-cultural mentorship is vital for two-way learning between Aboriginal and non-Aboriginal researchers to broaden and deepen the knowledge and skills base of the whole research team. The model of 'deep listening' refers to the challenging, sometimes vexing, but ultimately productive and generative project of working across cultural assumptions/perspectives about knowledge production. This entails the willingness of all involved to explain, to listen, to learn reflexively, and prioritise the project's commitment to a decolonised framework.

Ultimately this is an assertion and enactment of values of trust, reciprocity, and honesty. It may require a degree of relinquishing control on the part of Western researchers, who may be used to being seen (and seeing themselves) as leading experts in their field, and to thinking that Western knowledge is all-encompassing and a reflection of an absolute truth. Cross-cultural work requires openness to multiple knowledge systems and being willing to learn. A commitment to this approach commits to recognising diverse bodies of knowledge and strengthening the capacity of current and future generations of researchers.

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### STORY

Story is an important qualitative and First Peoples research methodology through which insights can be captured. Capturing stories is an appropriate method for recording and acknowledging the significant knowledge bound up in and transmitted through oral traditions. The excerpts woven through this report often illustrate a point in the text, but they also accumulate detail that aggregates and analyses cannot capture, and allow a fuller picture of the Youth Koori Court process and its nuanced effects to emerge. This way, they accumulate a theoretical force that is conducive to this study's questions and objectives.

## CHAPTER 5. METHODS

This section describes the research process and methods. First, we give a brief overview of the proposed methods of data collection, and the actual methods of data collection this study involved. Next, we describe the process of enacting the methodology on the ground – in this section, the ethical processes surrounding research conduct, consent and the de-identification of participants are also described, as well as the research’s responsiveness to concerns and gaps that emerged in the process. Finally, we consider this project’s limits.

### OVERVIEW

#### PROPOSED METHODS FOR DATA COLLECTION

1. Observations of Youth Koori Court meetings (6 months, 20-30 cases)
2. Cultural interpretation of Youth Koori Court meetings (all)
3. Observations of Working Party meetings (TBD)
4. Interviews with Youth Koori Court stakeholders and participants (TBD)
5. Interviews with Aboriginal and Torres Strait Islander Elders involved in Youth Koori Court
6. Interviews with young people who have participated in or are participating in Youth Koori Court (10)

#### ACTUAL METHODS FOR DATA COLLECTION

1. Observations of Youth Koori Court meetings (7 months, 31 cases)
2. Cultural interpretation of Youth Koori Court meetings (2)
3. Observations of Working Party meetings (5)
4. Interviews with Youth Koori Court stakeholders and participants (19)
5. Interviews with Aboriginal and Torres Strait Islander Elders involved in Youth Koori Court (5)
6. Interviews with young people who have participated in or are participating in Youth Koori Court (7)
7. Review of Action and Support plans (35)
8. Analysis of sentencing transcripts for outcomes of Action and Support plans at time of sentencing (19)
9. Estimates of criminal justice outcomes drawing from Youth Koori Court graduates’ days in custody and number of times custody during Youth Koori Court compared to prior (18)

## ENACTING THE METHODOLOGY ON THE GROUND

### OBSERVATIONS OF YOUTH KOORI COURT MEETINGS

We observed 18 days of Youth Koori Court between 24 June 2015 and 15 February 2016, during which we witnessed 31 young people's involvement in the Youth Koori Court. In the process, qualitative data was captured on Youth Koori Court suitability meetings (12), conferences (12), reviews (45), and sentencing hearings (13). We followed 16 cases through 3 or more Youth Koori Court meetings.

During meetings, a researcher seated at the back of the room would take de-identified notes (which would be assigned a case number) focusing on what was discussed, the way things were discussed, conversational dynamics, jokes, how conflicts/sensitive subjects/offending/problems that could not be resolved by the court emerged and were handled. Under ideal methodological circumstances, these notes would always be accompanied by a cultural translation or interpretation of them, but with the structure and constraints of Youth Koori Court on all involved, this was only possible on two occasions (see below).

### CONSENT

Permission to observe the Youth Koori Court meetings was preliminarily sought from the Youth Koori Court Elders, the Magistrate and the court administration. The young person's lawyers would explain the research to them and seek their (and, if they were present, their family's) verbal consent for the researcher to sit in the meeting and make notes. Where possible, the researcher was introduced to the young person at this stage, but often this was not the case. Consent was re-clarified at the beginning of Youth Koori Court when the Magistrate asked those around the room to introduce themselves. As the observer, the researcher would introduce themselves at this stage as the young person's lawyer sought their permission to observe the session that day; the Magistrate would reiterate to the young person that the study observed the Youth Koori Court process and would respect the privacy of the young person's personal affairs; she re-asked them whether they mind the researcher sitting in court that day. On one or two instances, the young person's lawyer would request the researcher sit out that session.

### CULTURAL INTERPRETATION OF YOUTH KOORI COURT MEETINGS

A vital research method for this project at the outset was for researchers to practice attentiveness to Aboriginal protocols and practices. With relation to observational data collection, this entailed also inviting Elders to discuss and translate those observations, thus furnishing the notes with an Aboriginal perspective of what has transpired, and producing data co-created by the researchers and participating Elders. In this study, we were able to do this twice only; once when the court had finished early and the researcher had already scheduled interviews with the Elders after court, and once when the researcher was able to talk with an Elder in a lunch break.

On the ground, this was method not regularly practicable as there was not time for this on the court days. Lunch breaks were not possible because a) the court sittings can be quite emotionally

laborious and required a break, and b) lunch breaks with the Magistrates in the chambers are an important part of what the Youth Koori Court brings to the Children's Court culture more generally. It was generally not possible after court since Elders often had other commitments to attend to.

If this research had been able to involve regular cultural interpretations of the researcher's notes on Youth Koori Court meetings, being attentive this way would have contributed to:

- Illuminating more specifically the understandings Aboriginal and Torres Strait Islander Elders in the Youth Koori Court have of their own and each other's roles going in to the program, and of the program itself.
- Highlighting the interactions between formal and informal aspects of Youth Koori Court, and how these foster working and/or mentoring relationships amongst Youth Koori Court participants and convenors.
- Bringing out experiences and positionalities that Elders and other participants bring to their roles within Youth Koori Court as well as showing the role of Youth Koori Court within their lives, work and engagements.
- Making researchers aware of pertinent issues of which they were not previously aware.
- Illuminating ways of understanding and talking about issues relevant to the Youth Koori Court program and this research project within an Aboriginal framework.

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### CONSENT

Consent for the two instances that we were able to invite Aboriginal and Torres Strait Islander Elders to provide cultural translations was sought through the same consent forms used for Elders' interviews.

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### OBSERVATIONS OF WORKING PARTY MEETINGS

We attended and observed 4 Youth Koori Court Working Party meetings between February and November 2014. Observations of working party meetings have contributed to data by indicating the unseen work and networks behind Youth Koori Court, and suggesting areas to ask after in the interviews.

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### CONSENT:

Observational consent was facilitated through the Parramatta Children's Court Executive Officer.

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### INTERVIEWS WITH YOUTH KOORI COURT STAKEHOLDERS AND PARTICIPANTS

We interviewed 19 Youth Koori Court stakeholders and participants with meetings taking place in a room at the court, or in the interviewee's office. Interviewees were initially identified and invited

to an interview after observations of Youth Koori Court meetings and of working party meetings. This list was extended by snowball methods through conversations or asking interviewees to recommend other stakeholders whose perspectives ought to be captured (e.g.: registry staff, other Magistrates at the Parramatta Children's Court).

The interview guides used solicited information in three areas:

- 1) The interviewee's role in the Youth Koori Court program, how that came about, how it is structured, how it is supported, factors that make their tasks easier/harder,
- 2) Their contribution to the Youth Koori Court...
- 3) Their perceptions of the Youth Koori Court's structure, co-ordination, goals, and efficacy with examples to support these impressions

There are gaps in this data, specifically, we were unable to interview but could draw on ongoing conversations with representatives from Daramu (Marist Youth Care), Children's Court Registry Staff, and a Juvenile Justice representative experienced with the Youth Koori Court. We did not speak at length to or interview representatives from FACS, Residential out-of-home care facilities, Juvenile Custody officers and escorts, or any victims.

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### CONSENT

We offered participants their choice of a recorded or unrecorded (annotated live) interview. Participants were informed that while they would not be identified by name in the resulting report, their role in the Youth Koori Court would be attached to their contributions to the study.

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### INTERVIEWS WITH ABORIGINAL AND TORRES STRAIT ISLANDER ELDERS INVOLVED IN YOUTH KOORI COURT

Interviews with the Aboriginal and Torres Strait Islander Elders affiliated with Western Sydney University (5) were facilitated through the WSU OATSIEE. Interview appointments were arranged through this office, and took place over the phone (2), in person at the interviewee's home (1) and out for a meal (2) (as facilitated by OATSIEE). Participants were offered recorded interviews that would later be transcribed or unrecorded interviews that the interviewer would transcribe live.

The WSU OATSIEE lead the development of appropriate protocols for scheduling interviews with Elders as well as of an interview guide, which was designed as a set of prompts to use within a conversation (rather than a strict question / answer format).

Regrettably, interviews with the Aboriginal and Torres Strait Islander Elders appointed independently by the Youth Koori Court were not conducted for this project.

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### CONSENT

The participation consent agreement with Aboriginal and Torres Strait Islander Elders is very similar to that with other Youth Koori Court stakeholders and participants, with one distinction. The distinction is that Aboriginal and Torres Strait Islander Elders may (with their permission) be credited by name for contributions of cultural knowledge.

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### INTERVIEWS WITH YOUNG PEOPLE WHO HAVE PARTICIPATED IN OR ARE PARTICIPATING IN YOUTH KOORI COURT

As part of this study, we interviewed 9 young people during or shortly after their involvement with the Youth Koori Court. In these interviews, we asked broad open-ended questions inviting young people's opinion of Youth Koori Court – their favourite aspects, what could be improved, what advice they would give another young person going through the program, and whether they would do anything differently if they could go through the Youth Koori Court again. These interviews invitations were extended to young people through people they knew at the Youth Koori Court like their lawyers and case workers, and only those young people who were happy to talk to us were introduced to us to set up a time to talk. Interviews took place at the Children's Court or by Audio Visual Link facilitated by the Aboriginal Legal Service.

Young people who participated in the study by giving an interview are acknowledged by being given a \$10 Westfield vouchers or \$10 prepaid data top ups for their phones.<sup>65</sup> These \$10 prepaid phone data top ups or \$10 Westfield vouchers (for young people who choose them and/or do not have mobile phones) were offered to young people at the end of an interview as a way to thank them for their time, but were not used by the researchers as an incentive to give an interview, and thus were not be mentioned in consent forms or in participation information sheets. These efforts of ours are possibly countered by what young people might have told each other about being interviewed for this research when they talked amongst themselves.

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### CONSENT

Participants were offered the choice of a recorded or unrecorded interview. Consent forms were read out and explained to young people line by line before requesting their signatures. In some instances, rather than signing the consent form, we recorded the form being read out and their voiced agreement to the points along the way and at the end. A consent form explaining the study

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<sup>65</sup> This was suggested by Legal Aid lawyers who helped us schedule interviews with some young people. They were rightly critical of any data collection procedure where young people were contributing time, insight and input into our study without receiving any acknowledgement from the researchers that was meaningful to them. Their criticism has especial salience in the context of research involving Aboriginal and Torres Strait Islander people in Australia, where such relationships are historically characterised by extreme imbalance in favour of the researcher's needs, desires, careers and comfort. This suggestion was supported by the Aboriginal Community and Client Support Officer at Parramatta Children's Court, the lawyer from Aboriginal Legal Service (ALS) who represents all young people in Youth Koori Court, as well as by the Western Sydney University Aboriginal and Torres Strait Islander Employment and Engagement Elders Advisory Group.

and its confidentiality was also available for guardians and carers who attended with young people.

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### REVIEW OF ACTION AND SUPPORT PLANS

The inclusion of a review of Action and Support plans was developed over meetings with Youth Koori Court administrative staff in order to better understand how effectively the Youth Koori Court program targeted and addressed issues in young people's lives. In order to collect this data, with the approval of the President of the Children's Court, we obtained transcripts of sentencing hearings for 19 young people processed in the year 2016, and recorded the steps taken to identify a problem onto a table of key issues identified through the Youth Koori Court. While the data collected is identified with a young person's initials, this data is password protected and stored on the Western Sydney University network.

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#### CONSENT:

The inclusion of this method involved an ethics amendment that was processed and approved by the Western Sydney University ethics committee. While the necessary research ethics authorities approved this methodological amendment, we flag that it would have been more appropriate if the young person on whom information was being collected could have given their personal consent to this.

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### ANALYSIS OF SENTENCING TRANSCRIPTS FOR OUTCOMES OF ACTION AND SUPPORT PLANS AT TIME OF SENTENCING

Information on the outcomes of Action and Support plans has been recorded onto the table described above and was collected from transcripts of the graduation/sentencing hearings for young people in the second half of 2016. Where possible, this information has been correlated with the data described above (33) to give a fuller picture of the Youth Koori Court process.

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#### CONSENT:

As above.

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### CRIMINAL JUSTICE OUTCOMES

Over the course of this study it became apparent that an outcomes evaluation would give necessary impetus to our qualitative findings. In order to provide such insight within this project's time-frame, we draw on data prepared by the young people's lawyer for their sentencing hearing (based on records kept by Juvenile Justice) that compares young people's criminal justice involvement prior to Youth Koori Court and during Youth Koori Court. This data compares, for instance: days in custody prior to and during Youth Koori Court, duration between offences before

Youth Koori Court and during Youth Koori Court, number of offences in the period prior to Youth Koori Court and during Youth Koori Court. We have this information for 18 young people.

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### CONSENT:

As above.

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### PROTECTING CONFIDENTIALITY

With a few exceptions, the identities of research participants who are Youth Koori Court stakeholders have been disguised or obscured in this report. The young people described and cited in this have been de-identified, particularly in the stories, in which a cluster of information about that young person's case may be presented. In the stories that are written up, the dialogue attributed to people is faithful to the observational notes or the interview transcript, but with personal pronouns, names, ages, the young person's relative's identity and other identifying details have been altered to protect young people and their family's identities. (For example, the dialogue surrounding a young woman explaining that she missed her court appointment due to a kidney infection might be written up as a young man explaining that he missed his court appointment due to a broken arm).

### REFLECTIONS ON PROPOSED METHODOLOGY

A strength of this project's methodology has been our ability to be responsive to the pilot program as it took shape, and adapt our proposed methods appropriately. Consequently, we were able to develop new areas of data collection and analysis to meet the Youth Koori Court program's needs of an evaluation.

Some limits in this project's methodology, and areas in which a future study could improve, are as follows:

- This study observes interactions between young people and the Youth Koori Court (and its networks) only within the Youth Koori Court setting; it does not involve data on the range of other interactions that comprise Youth Koori Court (relying instead on the information volunteered in interviews for this)
- We did not collect data about failures to appear or completion of orders. Measuring no-shows was difficult because the court made allowance for transport and other difficulties, adjusting start times to when the young person and their supporters were ready. As for completion of orders these were almost all after the person's participation in the Youth Koori Court, so would have required accessing Juvenile Justice or other records some 6 or 12 months after graduation.
- We did not measure the 'behavioural, compliance and attitudinal outcomes that can be anticipated for each stage', in part because the concept of stage was almost impossible to measure. It all depended on the circumstances of each young people. The court could have



defined what it expected from each person at each stage, but because this changed so much across the course according to their life circumstance it would not have been very useful.

- We have suggested above that a comparison group would have been difficult to find, particularly as the deferred sentence approach, and the attention to risk factors, was not characteristic of other NSW Children's Courts. However a comparison group could be found in demographically matched areas with Murri courts in Queensland and Koori courts in Victoria.

## CHAPTER 6. STRUCTURE: THE YOUTH KOORI COURT MODEL

### STAGES OF THE YOUTH KOORI COURT PROCESS

#### ELIGIBILITY

To be referred to Youth Koori Court, young people must be Aboriginal or Torres Strait Islanders, aged under 18 at the time of the offence, who have plead guilty to the offence or where the offence has been proven (all children's court offences excepting sexual violence). According to the Youth Koori Court practice note, suitable candidates are also only those that at a minimum are highly likely to be sentenced to an order that would involve Juvenile Justice supervision. This limits the population to those who are particularly high risk.

#### REFERRALS

Referrals are usually requested in court by the young person's Aboriginal Legal Service solicitor. The ALS solicitor acts on instructions from their client, to whom they have explained the Youth Koori Court process. However there have been exceptions where a Magistrate may suggest a referral themselves, for example, if an eligible young person's lawyer was not aware of the Youth Koori Court program.

Another exceptional variation is when a Magistrate sitting at Bidura or Campbelltown will refer a young person they feel will benefit from Youth Koori Court to Parramatta, and notify the Youth Koori Court Magistrate in Parramatta that they will be coming.

*I take a very broad view & the criteria is broad ...so I'd refer them over and if Koori Court doesn't think it suitable, send them back. As many Indigenous kids as can be referred should be referred*

- A Children's Court Magistrate

Referrals to the Youth Koori Court are made by Magistrates sitting in the Children's Court, and under Practice Note 1,1 if a young person makes an application to be referred and the eligibility criteria is established, the magistrates is to refer the matter to the Youth Koori Court. However if the Magistrate has presided over a defended hearing he or she could decide to sentence the young person having heard the evidence presented at the hearing. Three of the four Children's Court Magistrates interviewed reported preferring to make a referral and let the Youth Koori Court suitability and screening process determine a young person's involvement with Youth Koori Court. One of the four Children's Magistrates reported reservations about having no general discretion to refer matters.

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### SCREENING TOOL

After a referral, a young person will go through a screening tool with a Youth Koori Court representative to help determine what areas they may need or want support with. This is expected to take place in the week or two between a referral being made and the suitability meeting with the Youth Koori Court, but it often takes place on the day of the young person's first appearance in the Youth Koori Court because a meeting cannot be arranged with key staff on days when the Youth Koori Court is not sitting.

The task was shared between the Youth Koori Court Officer (Aboriginal Liaison Officer) during the pilot and the Juvenile Justice representative in the first year of the pilot. Later the task was also undertaken by a Macquarie Legal Centre representative also, whose inclusion enabled the program to gender-match the young person to the person screening them. This screening is usually conducted in court either following a referral, or on the day of the young person's suitability meeting (due to this, days that the Youth Koori Court sits can get busy for those conducting the screening). Instances have been reported where the Juvenile Justice officer encountered a young person due to go through the screening at the Juvenile Justice office elsewhere, and was able to screen them then.

The screening tool is drawn on to consider the services relevant to the young people, the young person's capacity to commit to the program, and the capacity of the Youth Koori Court to include the young person in the process. Unsuitable young people are referred back to the Children's Court for sentencing and case management.

Next, a suitability meeting is arranged where the young person and their family/supports meet with the Magistrate and Elders in the Youth Koori Court.

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### SUITABILITY

Suitability meetings are a young person's first sitting with the Youth Koori Court. They involve a fairly brief introduction of young people to Youth Koori Court's participants, its tone and protocol, and of the Youth Koori Court to the young person and their supports. Over the course of this meeting, the issues raised by the screening tool are briefly discussed in terms of the program's capacity and the young person's capacity and willingness to address them.

In some exceptional circumstances, there are urgent matters to deal with in a suitability meeting, and so the process described above was fit in around addressing these.

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### CONFERENCE MEETING

The Youth Koori Court conference takes place 2-4 weeks after the suitability meeting. As the pilot progressed and the program grew, the gap between the suitability meeting and the conference lengthened up to 4 weeks. To maintain momentum, young people began engaging with identified service providers and supports as soon as possible after being accepted into the program. Stakeholders report that this makes for more productive conferences, as actions and support relationships have already been trialled and can be reported on.

The practical purpose of the conference is to develop an Action and Support plan based on the young person's needs as identified in the screening tool. As the Magistrate describes it to young people, "the action is you, the support is us". This entails revisiting the issues raised by the screening tool and in the suitability meeting, as well as anything raised by the Legal Health Check with Legal Children's Civil Law Aide lawyers, and any other new issues that may have come up, and preparing a flexibly worded draft Action and Support plan.

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### ACTION AND SUPPORT PLANS

Chapter 8 provides a detailed overview of Action and Support plan items and how they set out to address young people's complex needs. At the conference, the plan is prepared for participants to sign, though this has been difficult to accommodate on the actual day due to a lack of administrative support that is available to the Youth Koori Court under the pilot. On some occasions case participants have signed a hand-written draft of the Plan that has been prepared during the conference but mostly the plan is signed at the next scheduled appearance of the young person.

This model where the Magistrate organizes the details and the wording of the Action and Support plan enables a smoother more efficient conference than the model in which the plan is worded by a facilitator for the Magistrate to ratify, and this was realised by the Youth Koori Court pilot when they shifted from the first facilitator-run model to the Magistrate-run model that this research observed. The change was made early on in the pilot to avoid the duplication of conversations with the young person. Other studies also find that facilitator-run models can risk focusing on getting the group to pin down the wording and the details of the plan to the detriment of engagement amongst the group and with the young person in the meetings.<sup>66</sup>

Much of the work of helping young people meet their Action and Support plan objectives occurs outside of and parallel to Youth Koori Court formal meetings in the court. Chapter 7 (the next chapter) details the processes and networks involved in this work.

In the Youth Koori Court model, it is often the case that some of what is talked about at length is neither finitely resolved nor a part of the Action & Support Plan, though it may be instrumental in the relationships formed around the young person through Youth Koori Court and in providing

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<sup>66</sup> Meredith Rossner, Jasmine Bruce, Mythily Meher (2012) *The Processes and Dynamics of Restorative Justice: Research on Forum Sentencing*. New South Wales Department of Attorney General and Justice. Available at <http://www.forumsentencing.justice.nsw.gov.au/Pages/forumsentencing/researchpublications/research-publications-resources.aspx>

forms of support that are not tangible and measurable as per the Plan in the same areas. Chapter 10 provides a closer analysis of how Youth Koori Court meetings contribute to and support the work of Action and Support plans.

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### REVIEW MEETINGS

Review meetings tend to occur on a monthly to two-monthly basis during a young person's involvement in the program. These meetings consist of an attendance at court of all participants during which:

- Changes in the young person's circumstances are presented
- The Magistrate can talk directly to the young person rather than relying on reports about them.
- The young person's progress is reported on
- New offences, where relevant, are discussed
- The Police Prosecutor checks on the young person's conduct and any interactions with police since the previous meeting is presented
- Service providers report on their progress in the support promised earlier
- Applications to vary bail, including curfews, are presented and decided on
- Allocation of different responsibilities within that network of support for a young person is confirmed or revised
- Young people may meet new Elders they have not yet sat with in Youth Koori Court
- The commitment between young people and the Youth Koori Court is revisited.

This report examines how review and other meetings contribute to a case overall in more detail in Chapter 10.

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### SENTENCING

The sentencing date is determined in the process of review meetings. Sentencing takes place after a final review meeting. It is a formal process framed by mainstream Children Court sentencing hearings protocol, in which the Magistrate re-enters from her chambers robed and sentences the young person from the bench. The ritual involved with the transition from Youth Koori Court setting back to mainstream court is detailed in Chapter 9.

In sentencing, nature and circumstances of the charges, the young person's engagement with the Youth Koori Court program, their ALS lawyer's submissions, the specific provisions relevant to sentencing as set out in the Children (Criminal Proceedings) Act 1987 and relevant case law.

Section 6 of the Act identifies the following principles;

## 6 Principles relating to exercise of functions under Act

A person or body that has functions under this Act is to exercise those functions having regard to the following principles:

(a) that children have rights and freedoms before the law equal to those enjoyed by adults and, in particular, a right to be heard, and a right to participate, in the processes that lead to decisions that affect them,

(b) that children who commit offences bear responsibility for their actions but, because of their state of dependency and immaturity, require guidance and assistance,

(c) that it is desirable, wherever possible, to allow the education or employment of a child to proceed without interruption,

(d) that it is desirable, wherever possible, to allow a child to reside in his or her own home,

(e) that the penalty imposed on a child for an offence should be no greater than that imposed on an adult who commits an offence of the same kind,

(f) that it is desirable that children who commit offences be assisted with their reintegration into the community so as to sustain family and community ties,

(g) that it is desirable that children who commit offences accept responsibility for their actions and, wherever possible, make reparation for their actions,

(h) that, subject to the other principles described above, consideration should be given to the effect of any crime on the victim.

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### GRADUATION

If a young person has completed the program and has made some progress on addressing their needs, the Youth Koori Court will acknowledge the achievements through a graduation ceremony. This relatively brief stage follows the sentencing. The Magistrate steps down from the bench to shake the young person's hand and, in most cases, gives the young person a reward on behalf of the Youth Koori Court and stakeholders in honour of their achievement. The degree of celebration may vary depending both on the extent of that young person's engagement with the program. This study has not captured how this is determined and who decides. Celebratory graduations are a joyful affair, during which young people are given a certificate, a card signed by Elders and the Magistrate, gifts (some of which have been donated to the Youth Koori Court, some of which appear to be sourced by Youth Koori Court stakeholders), and there is sometimes a cake to

celebrate. They may also end with all Youth Koori Court participants chatting casually and eating with the young person and (if applicable) their supports.

### A CULTURALLY CONGRUENT COURT

#### REGULAR CHILDREN'S COURT SPACE

In regular Children's Court, the Magistrate sits in an elevated Bench at the front of the room, entering and exiting through a door that leads to judicial chambers. Spaces are clearly defined with the Magistrate's bench at the front of the room, and the prosecution and the defence on either side of the court usually on separate tables. (In most other courts, lawyers share a common bar table). Young people sit on a chair in the middle of the floor, behind or alongside their lawyer, or, if they are in custody they sit in a dock to the side of the courtroom. Their family and any support people occupy the rows of seats behind the bar table.

#### THE YOUTH KOORI COURT SPACE

The courtroom is re-arranged for Youth Koori Court meetings, with all participants seated around the bar table. Following the standard for Indigenous courts, the table is oval. Paintings on permanent loan to the Youth Koori Court by young Aboriginal and Torres Strait Island artists in juvenile custody in each of the juvenile detention facilities in NSW are hung on the walls; these are set up and de-installed by the court officer and/or the Aboriginal Liaison Officer.<sup>67</sup>

At the start of a session, the police prosecutor, the young person, the young person's legal supports, their family and/or community supports, and service providers wait around the oval table.<sup>68</sup> Youth Koori Court is called into order, and the participants all stand as the Magistrate and the Youth Koori Court Elders walk in and cross the courtroom to stand behind their own chairs at the bar table. The participants bow and they all take their seats.

The Parramatta Children's Court is built on Darug country. Each Youth Koori Court session begins by acknowledging this with either a Welcome to Country made by a Darug person or an Acknowledgement of Country made by an Aboriginal or Torres Strait Islander with links to clans

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<sup>67</sup> This set up follows the Nunga Court model (oval table, Aboriginal and Torres Strait Islander art and symbols, one or two Elders accompanying magistrate), rather than Circle Court model (usually up to 4 Elders, held in a venue of cultural significance rather than a court room, and usually involving victims) (Marchetti 2014: 274)

<sup>68</sup> Extra supports, family, friends and/or uninvolved service providers who also know the young person might occupy the seats at the back of the courtroom. These seats might also be occupied by prison escorts for young people who are in custody, though the young person would still sit at the table. Researchers for this project, occasional journalists, Department of Justice staff, other observers who attended Youth Koori Court sessions would also sit here when they did attend.



in countries other than Darug. The welcome to or acknowledgement of country is usually made by one of the Elders, but another Aboriginal and/or Torres Strait Islander person participating in the Youth Koori Court meeting may also make it, particularly if they are of Darug descent when none of the Elders present are. The Magistrate will follow this by also acknowledging that they meet on Darug land, and acknowledging Elders past, present and future. This is done each time a young person enters the room.

Next, there is a round of introductions around the table and others in the room—observers, researchers, other supports—are also asked to introduce themselves (with the exception of the escorts for young people who are in custody). These protocols preface every Youth Koori Court meeting.

The sample of stories below draw from observational and interview data from this study. They canvas some instances where first-time participants in the Youth Koori Court remark on the program's opening and framing rituals.

### First impressions of the Youth Koori Court

*One young person who came in for a suitability assessment expressed his amazement at the court's makeup by turning to look slowly over the room with widened eyes, commenting at, "all the blackfellas here". The Magistrate said "yes, there's a lot of people here" and he replied "I know most of them!" Other stakeholders at the meeting, who have known this young man a while, remarked at how "open" and "honest" he seemed to be during his sessions and claimed this was distinctive. When we interviewed him, he suggested that this was the case, saying "In other court, I would've just gotten angry with everyone". We clarified his comment, asking "So you didn't feel angry [in Youth Koori Court]?", and he replied that he didn't because it was "a lot less confronting".*

*Another young person came in accompanied by a parent who told the Youth Koori Court it was a very big deal for them to come to the court, and related some of their history to explain why, noting that he felt comfortable enough to attend and to be so frank with the court, but it was still a big deal. At the end of this young person's session, this parent shook hands with everybody around the room, including the people in attendance from a State department.*

These visible framing features of the Youth Koori Court are accompanied by subtle symptoms of a shift in court culture. We describe some of these subtle shifts later in this chapter. They include consistent affirmations of young people's connections to kin and country and a frank acknowledgement of colonisation and Aboriginal dispossession in Australia's history in conversations within the Youth Koori Court space.

There are other culturally resonant features of the Youth Koori Court that appear to have developed as a result of the individuals and identities involved. For instance, the Youth Koori Court Aboriginal Liaison Officer and the Aboriginal Legal Service lawyer can appear to act as big

brother and big sister figures, providing advocacy and non-adversarial support in settings that involve young people. Both are often involved in young people's lives and families as part of their position, taking on such responsibilities as driving young people to court when they need assistance and attending their sports games. Their detailed familiarity with young people's lives and positional advocacy for them fills out the dynamic of hearings. Studies of mentorship programs for Aboriginal youth in Canada suggest that this form of support, from people a young person might refer to as a friend rather than an authority, are congruent with Canadian Aboriginal perspectives on mentoring.<sup>69</sup> We suggest there is scope for the Youth Koori Court program to develop some of the potentials for peer mentorship.

Interviewees reported a few other less visible features of the shift entailed by the Youth Koori Court.

- The first is that the family members allowed in court with a young person extends beyond Anglo definitions of immediate family (parents, grandparents, brother and sisters) to include aunts, uncles, cousins.
- Another feature of note is the court's observation of Aunty Thelma (a Torres Strait Islander woman)'s customs surrounding men's business and women's business, such that she can readily engage with and advise a young girl but will only do the same to a young boy if there is no male Aboriginal and/or Torres Strait Islander Elder or other Aboriginal and/or Torres Strait Islander men around.

Aunty Thelma notes:

*That's the only thing I've been wary of from the start and I said so to the Magistrate. Only because it's my tradition, my culture. And I like the fact that they don't press us. They all understand that—they acknowledge that and respect that [with a young boy, when there is a male Elder at the table] I don't have to talk.*

- Beyond the Youth Koori Court space in the courtroom, several magistrates and Elders we interviewed remarked on the significance to them of court Magistrates and Elders coming together over their breaks in the staff lunchroom on Youth Koori Court days.

The Parramatta Youth Koori Court draws from the models developed in Victoria, South Australia and Western Australia: a focus on dialogue, members sitting around a table, and the Elders' engagement with offenders.<sup>70</sup> All of these use courts hold their hearings in court buildings while

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<sup>69</sup> Sinclair, Raven, and Sherri Pooyak (2007) *Aboriginal mentoring in Saskatoon: A cultural perspective*. Indigenous Peoples' Health Research Centre, available at: [http://iphrc.ca/pub/documents/mentorship\\_final\\_july30.pdf](http://iphrc.ca/pub/documents/mentorship_final_july30.pdf), pp 8; Bisanz, J., Cardinal, C., da Costa, J., Gibson, N., Klink, J., & Woodard, K. (2003) *Prospects for aboriginal mentoring: A preliminary review*. Prepared for Big Brothers and Big Sisters Society of Edmonton and Area. University of Alberta: Community-university Partnership for the Study of Children, Youth and Families; Aboriginal Capacity and Developmental Research Environments, pp 8.

<sup>70</sup> This list adapted from Elena Marchetti (2017) Nothing Works? A Meta-Review of Indigenous Sentencing Court Evaluations. *Current Issues in Criminal Justice* 28(3), pp260-261.

the Magistrate retains control over sentencing.<sup>71</sup> The Magistrate who preside over the first Koori court in Victoria, Kate Auty, referred to the court practices as “a process of reverse Aboriginal colonization”<sup>72</sup>: a description that reflects the incorporation of culturally appropriate rituals into a Western legal setting. Indigenous youth courts may potentially offer further opportunities to extent the process of reverse colonisation. The Rangatahi Court (Te Kooti Rangatahi) in Aotearoa New Zealand, also a youth process established in 2008, provides a useful case study, particularly in terms of setting and incorporation of language into the court process.

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### RANGATAHI COURTS: SETTING AND LANGUAGE

Rangatahi courts are held on a *marae* (traditional Māori meeting house).<sup>73</sup> They observe NZ criminal jurisdiction and law but incorporate Māori language and protocol, much like the Youth Koori Court incorporates Aboriginal protocol and, occasionally, language when an Elder acknowledges country in an Aboriginal or Torres Strait Islander language. However, being held at a traditional meeting house, Rangatahi courts also observe the meeting house’s ceremonial rituals which deepens the extent to which First People’s lore is practised in proceedings, and can help young people’s relationships with their community.

Aunty Pearl comments on possible lessons from the New Zealand experience:

*In this day and age young Aboriginal and Torres Strait Islanders are of mixed heritages through intermarriage over many decades. There is a struggle to find their personal identity as they navigate their way within the Aboriginal and Torres Strait Islander community and outside it. This pressure to fit a “mould” as to how they should think and act to be accepted as descendants of the First Peoples of Australia. I like the idea of the way they do it in New Zealand where “the action plan is developed in a family group conference and the young person has a more active role in shaping the plan” In the context of Australia’s’ First People the parents and extended bloodline family should be the first step in the healing of the person because too often in my experience too many others have a say in shaping the mind of a person and often causes more conflicts. Trust is often broken because people have not been sensitive enough in the process of healing. Families must start with each other.*

Māori language figures prominently in the Rangatahi process. Young people are required to learn a *pepeha* (formal statement that provides an account of the person’s ancestry and relationship

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<sup>71</sup> Elena Marchetti and Kathleen Daly (2007) Indigenous Sentencing Courts: Towards a Theoretical and Jurisprudential Model. *Sydney Law Review* 29, pp430

<sup>72</sup> Auty, Kate (2006) We teach all hearts to break—but can we mend them? Therapeutic jurisprudence and Aboriginal sentencing courts. *E Law Special Series* (1). Available at: [http://elaw.murdoch.edu.au/special\\_series.html](http://elaw.murdoch.edu.au/special_series.html), pp 112 & 127

<sup>73</sup> There is also a parallel Pasifika Court (of which there are 2 compared to 14 Rangatahi courts) for young Pacific Islander people which hold meetings in churches or community centres.

land) and *mihi* (greeting, used in welcome ceremony) in Māori over the course of their engagement with conferencing and rehabilitation through Family Group Conferencing Plans. Hon Judge Hēmi Taumanu (The National Rangatahi Courts Liaison Judge) explains that this is emphasised because many young people appearing in the court have “lost touch with their sense of identity as Māori” and that in learning to speak Māori, often for the first time, “can result in an intense personal journey of discovery”.<sup>74</sup>

Aunty Mae comments on cultural competence issues:

*Need to make sure that staff are culturally competent and how many positions are going to be filled with Aboriginal and Torres Strait Islander people.*

*Ensure staff who are teaching our youth are also highly educated.*

*More Female Elders need to be present if not already at the court proceedings.*

*When attending Ceremony this needs to happen from your own mob, not just anyone.*

*Cultural CAMPS - Need to have both Female and Male Elders attending.*

*Include Grandparents – camps, the education grandparents can provide is valuable – culturally, helps build self-esteem and family values.*

## CONCLUSION

Drawing from the practices of a parallel First Peoples’ youth court in Aotearoa New Zealand, from established practices of First Peoples mentorship and therapeutic jurisprudence in other contexts, and current Youth Koori Court practices and relationships, there is scope for the Youth Koori Court to develop its decolonising practices. Specifically, we suggest the following areas and activities may be developed:

- To invite Aboriginal and Torres Strait Islander Elders to other respected persons, court participants and former graduates of the court to participate in meetings to discuss and develop the design for Youth Koori courtroom
- Recruit Aboriginal and Torres Strait Islander people in their early twenties to act as mentors (and potentially role models) for participants in the Youth Koori Court background. These people could also serve as ‘other respected persons’ in hearings to increase the level of peer support to supplement the support from Elders

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<sup>74</sup> Judge Heemi Taumaunu (2014) Rangatahi Courts of Aotearoa New Zealand – an update. *Māori Law Review* November. Available online at: <http://maorilawreview.co.nz/2014/11/rangatahi-courts-of-aotearoa-new-zealand-an-update/>

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- For Aboriginal and Torres Strait Islander Elders to develop and incorporate activities that bring might deepen Youth Koori Court young peoples' knowledge of clan and country to learn and deliver at their graduation ceremony.
- To encourage young people to demonstrate any Aboriginal and Torres Strait Island cultural practices, lore and knowledge they have learned at their graduation ceremony, under the supervision of Elders and peers

It is worth flagging that Youth Koori Court stakeholder participants may be divided on the feasibility of some of the activities that involve young people taking on more commitments within their involvement with the program. Our interviews pointed to a difference of opinion on the prioritisation of cultural connection Action and Support plan items in relation to other items. Some stakeholders expressed disappointment towards young people who did not engage more with opportunities to develop cultural experiences and understandings. Some claimed that some young people's particularly complex circumstances and pressing housing and health needs had to sometimes be prioritised over cultural Action and Support plan items. Several young people voiced this latter point themselves in court, opting to pace themselves with their commitments so as not to get too overwhelmed. Others stressed that the program was not 'one size fits all' and had to be tailored to each young person.

## CHAPTER 7: ROLES AND PROCESSES IN RUNNING THE YOUTH KOORI COURT

The stages of Youth Koori Court discussed above comprise the more formal meetings that structure a young person's involvement with the program; however, the labour involved in running the Youth Koori Court extends beyond these tracked points. As a whole, the Youth Koori Court offers a multi-disciplinary, multi-agency means of addressing complex often inter-related factors in the lives of Koori young people in the criminal justice system. To do this, the program operates within existing systems and resources involving intensive case management.

This chapter maps these workflow processes in two parts. The first part considers the roles involved in making the Youth Koori Court work, and the responsibilities and qualities attached to each role. It demonstrates the types of work the Youth Koori Court entails and how this labour is disseminated across a diverse set of partners, collaborators and services that are coordinated around the Youth Koori Court. The second part consists of discussion points highlighting gaps and strained capacities, including issues about generalising the model to other sites within NSW

It is anticipated that this chapter's capture of workflow roles and processes contributes to the following objectives:

1. To present to members of the Parramatta Youth Koori Court pilot an overview of how their role fits in with the roles of others,
2. To highlight gaps in existing roles and processes, which require funding and/or infrastructural support,
3. In the interests of the Youth Koori Court being a scalable model, to present a detailed working template for other potential court centres that are running a Youth Koori Court

### WHO MAKES THE YOUTH KOORI COURT WORK? ROLES, RESPONSIBILITIES AND QUALITIES

The Youth Koori Court program operationalises resources and relationships that are already at or available to the Children's Court, however, it can be argued that the Youth Koori Court strengthens these existing resources through building coherent referral networks around young people, prioritising case management, and offering a framework of regular review meetings. This both demands a greater commitment from people performing additional or different roles and enables a number of effects that distinguish the Youth Koori Court process from that of the mainstream Children's Court, and contribute to its goals. We canvas these here, drawing on interviews with stakeholders, working party meeting observations and observations of hearings.

### MAGISTRATE

Magistrate Sue Duncombe ('the Magistrate' in this report) was critical in establishing the Youth Koori Court Koori Court pilot program at the Parramatta Children's Court. A significant part of the Magistrate's role in Youth Koori Court comes through in hearings, in her sustained conversations with young people and her mediation of the conversation. A detailed analysis of these qualities comes through in Chapter 10, where we detail the interactions in Youth Koori Court meetings.

The Magistrate's role also includes administrative organisation the Youth Koori Court:

- Coordinating Youth Koori Court Working Party meetings
- Taking and disseminating minutes (in the early stages)
- Meeting with stakeholders and partner agencies while establishing referral networks and infrastructural support for the Youth Koori Court
- Following up with organisations and individuals who may be able to support and collaborate with the Youth Koori Court

As the Magistrate chairs Youth Koori Court hearings, she must also prepare for Youth Koori Court days in court. This involves:

- Closely reading the case file
- Reviewing the screening tool
- Preparing a plan for care and draft Action and Support plans for each young person to take into court as a working document
- Preparing an analysis of each of the offences
- Meeting before court with the Elders/Respected Persons to discuss the cases for the day.

The Magistrate describes how her approach to Youth Koori Court differs to that of mainstream court:

*"My Magistrate colleagues I think all have very squarely in mind the principles under Section 6 of the Children's (Criminal Proceedings) Act. We're all promoting rehabilitation, we're all supporting, we're all trying. And we also have another job, which is to tell them that what they have done is very serious and an affront to humanity sometimes, what they've done you know. So we have dual roles. In the Koori Court I have that role, but I also had the role of encourager, supporter. I try and harness the positive nature of anything they've done, try and recognise the positive nature of anything they've done. And I try whilst saying this is serious, then immediately talk about what can we do to ensure this doesn't happen again. So it's future focused all the time for me."*

Qualities of the current Magistrate

- Has spent time on country (the Parramatta Youth Koori Court Magistrate referenced in this study has spent time in North East Arnhem Land learning about cross cultural



mediation and traditional conflict resolution with Elders, including participation in ceremony<sup>75</sup>)

- Mediation and conciliation background
- Trauma informed approach
- Youth specific approach
- Culturally specific approach

*The approach of anyone facilitator in that conferencing process has to be very youth specific [in terms of the informal flexible approach] and culturally specific ... you can't just have an accredited mediator being in there. That mediator has to then be attuned to what the Youth Koori Court is about because then you can make the process quite in accessible and a barrier in itself for a young person.*

- a Legal Aid Lawyer

*With the continuity of magistrate and I guess the limited numbers is that she knows everyone in there and knows what topics are sensitive topics, and what relationships are fraught, and knows to say well: "how's that going?". You know, gently and that's really important.*

- a Legal Aid Lawyer

*"The reason that our magistrate is so good is she has knowledge of country. Enough said. ...If ...he or she knows about country and who he or she is dealing with, which I expect him or her to know, that way they will then be able to do their job better, because there's a lot of factors involved in whatever the crime may be."*

- an Elder

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## ABORIGINAL AND TORRES STRAIT ISLANDER ELDERS

The Youth Koori Court was one of many community nodes that Youth Koori Court Aboriginal and Torres Strait Islander Elders were involved with. This responsibility must be balanced alongside multiple other commitments and cares.

Aboriginal and Torres Strait Islander Elders in the Youth Koori Court are one of the core participants in a hearing meeting. Elders acknowledge clan and country and demonstrate Aboriginal protocols at the start of meetings. They make a unique contribution to hearing as role

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<sup>75</sup> Jane Southward (2015) Professional development: A day in the life of... Magistrate Sue Duncombe. LSJ: Law Society of NSW Journal, 15(Sep): 50-52.

models, as mentors, passing on knowledge from their life experience, passing on knowledge of country and ancestry, introducing young people to or telling them about a relative they did not know they had, passing on knowledge about initiative and resources that might be of use to young people and their families, inviting young people and/or their relatives to participate in other initiatives they were involved in (such as inviting a young person who was pregnant to her parental training, or inviting a young person's mother to a Koori women's yarning circle). On several occasions, Elders invited young people to remain in contact with them. Some instances of this eventuating that have been recorded by this research include one Elder visiting a young person in custody, and bringing them some sports magazines and socks that the Aboriginal Liaison Officer and Juvenile Justice officer suggested that young person would like, and another Elder reported in their interview that they had passed their personal number on to a young person who got in touch, visited them, and ended up meeting others in that Elder's community.

At this stage, it has not been possible for the Youth Koori Court to match the same Elders to young people in hearings consistently, or to gender match, or to match Elders and young people by country or clan.

Prior to walking into the court with the Magistrate, Elders and the Magistrate meet in the Magistrate's chambers to go over the list of young people in court that day. Elders may already know some of the young people, and might be briefed on updates in their case, and are briefed on all listed young people they may not know.

Elders have been recruited to the Youth Koori Court through two processes:

1. Through collaboration with the Western Sydney University OATSIEE Elders Advisory Board – Advisory Board Elders were invited to participate in the project before the pilot launched. Those who volunteered were first asked to complete a Working with Children Check. Some Elders reported that this felt affronting. After this, there was a 2-day training and induction course, before Elders began attending Youth Koori Court hearings.
2. Other Elders have become involved in the program through personal invitation or through word getting out about the Youth Koori Court and through the Youth Koori Court Officer (Aboriginal Liaison Officer's) social networks and efforts to recruit Elders. It is unclear what kind of training or induction was there for Elders who joined the program when the pilot was already running.

The Youth Koori Court Officer (Aboriginal Liaison Officer) organises recruitment of Elders, organising Elders' attendance at court, and taking care of Elders at and (where necessary) getting to and from the court.

Elders' rosters and attendance are organised through phone calls between the Youth Koori Court Officer (Aboriginal Liaison Officer) and each Elder. As one Elder described this process:

*"he [the Aboriginal Liaison Officer] asks for our availability, and I get that to him as soon as I know my ----- days.... I'm sure he does that with all the Elders, asks us for our schedule and we'll stay in touch with him. ...If there is an emergency the last day before he gets in touch with me and I say yes or no.... [It] shouldn't be changed, works fine. Communication is always open."*

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### HOW IS THIS ROLE ENABLED/SUPPORTED?

The Parramatta Children's Court has had scarce resources to support the Aboriginal and Torres Strait Islander Elders in this role during the Youth Koori Court pilot. One of the main areas requiring support is transport to and from the Court. Elders attending the Youth Koori Court did so in an array of ways:

- Driving themselves in and parking a short walk away from the court, or parking in Court carparks when this is administratively enabled
- Catching trains or public transport
- Taxi vouchers arranged by the Youth Koori Court Officer (Aboriginal Liaison Officer)
- Being driven by the Youth Koori Court Officer (Aboriginal Liaison Officer), the Aboriginal Legal Service Lawyer, the Magistrate or the Macquarie Legal Centre representative.

A lack of systematic support means that methods of transport are organised spontaneously, adding to the business of Youth Koori Court hearing days. It also means that Elders' mobility and disability issues are not at this stage accommodated in a structurally supported way, rather, on Youth Koori Court participants' initiative.

Some Elders are supported in their role at the Youth Koori Court through other employment, where the organisation they work for (eg: The Macquarie Legal Centre and Catholic Education) supports their participation in the Youth Koori Court (e.g.: once a month, or once a week) and they attend as part of this existing role.

Other Elders who have been recruited through the Western Sydney University Elders Advisory Board or through the Youth Koori Court Officer's (Aboriginal Liaison Officer's) networks are volunteers.

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### POLICE PROSECUTOR

Prosecutors in the Youth Koori Court are police prosecutors based at the Children's Court who volunteer to participate in the Youth Koori Court. Those who have volunteered in this court claim an interest in Aboriginal and Torres Strait Islander affairs and support the rehabilitative, strengths-based principles of the Youth Koori Court. They suggest these orientations are important to taking up the role.

The Police Prosecutor is present in all the scheduled Youth Koori Court meetings, usually held once per week, from 9.30am until approximately 3.00pm. The police prosecutor plays a unique and key role around the table in Youth Koori Court meetings. Unlike most other participants, they speak primarily on behalf of other police, victims and community safety. They also potentially help to dismantle young people's negative assumptions about police.

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### TASKS DONE WITHIN THIS ROLE

This role entails preparation prior to Youth Koori Court sittings by checking police records on each young person's legal conduct since their last court appearance, including:

- Bail compliance
- Being stopped / spoken to police
- Public transport offences
- Fresh offences
- Suspected offences

The preparation time for this varies. As one interviewed police officer reported, if the young person has not been in much trouble it can take a few minutes to perform this check; if they have been stopped by police numerous times, it can take up to half an hour per person to read through the record and extract the key points. Consulting the database needs to be done after receiving the set-list, and done close to the meeting date, ideally the afternoon/evening before or on the morning of court. An interviewed police prosecutor said, "There's no point doing it two weeks before because a lot could happen."

In instances where there have been transgressions, these background notes can be drawn on if the prosecutor wants to talk to the young person about an issue on their police record that has not been raised in the Youth Koori Court meeting as yet, or to challenge an application for bail, or to talk to a young person about why they have not bought train tickets (which might raise needs that the Youth Koori Court can address).

In instances where the young person's conduct has been positive, the prosecutor is able to relay this to the court in detail also. At times, these descriptions have entailed comparing a young person's regular offending history to a relatively lengthy period of time in Youth Koori Court where there has been no offending, or to point out that a young person who used to have aggressive, hostile interactions with police is now having pleasant interactions that the officers who stopped them have noted down in their records. These details can demonstrate how far a young person might have come. The police prosecutor's conversation with young people might also focus on their aspirations and well-being person-to-person.

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### HOW IS THIS ROLE SUPPORTED/ENABLED?

Participation in Youth Koori Court entails work that police prosecutors take on in *addition* to existing responsibilities as a Children's Court prosecutor. The two police prosecutors interviewed for this study reported that they "make it work" and manage their workloads accordingly, and report in general being happy to participate in the program on principle, however, this can constitute an added pressure coming from an already short-staffed department if another staff member is absent and their workload needs to be shared around.

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## QUALITIES FOR A YOUTH KOORI COURT POLICE PROSECUTOR

Those who have volunteered in this court claim an interest in Aboriginal and Torres Strait Islander affairs and support the rehabilitative, strengths-based principles of the Youth Koori Court. They suggest these orientations are important to taking up the role.

"We are really fortunate to have a brilliant prosecutor at the moment who has got a really good balance between being a prosecutor, which is of course her role in kind of acting in the community's interests, but also understanding the process of Koori Court and she plays a hugely important role. And I think part of the success of Koori Court is because of her. She's not soft by any means, but she's just got a really good balance and-so she's-that's a fixed role that has to be there, and I think there needs to be someone that's sympathetic to the process, you know"

-- from an interview with an Aboriginal Elder

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## ALS (ABORIGINAL LEGAL SERVICE) LAWYER

The Aboriginal Legal Service was set up by activists and lawyers in 1970 to provide a free legal service, provided by volunteers with legal training, to Aboriginal people. As of 1971 the ALS has received government funding but remains an Aboriginal community controlled organisation.<sup>76</sup>

The ALS lawyer involved in the Youth Koori Court was part of the working committee that set it up. The lawyer represents young Koori people who appear in the Children's Court, acting on the young person's instructions in court rather than (as they might in a Family Court or guardianship matter for children not able to provide instructions) acting on what they perceive to be the young person's best interests.

### ALS lawyer describing the case management aspect of their role

"I've known a lot of the kids for a long time, or if I haven't known them, I might be able in my role to develop a really good strong working relationship with them, and so I often liaise with them and their family and play like a case management type role, or a case co-ordinator type role to make sure that everything that is meant to be doing through the process is getting done. I don't think strictly speaking that is meant to be my role ....but I think because I'm in a unique position,

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<sup>76</sup> Aboriginal Legal Service, 'A short history of the ALS', available at: <http://www.alsnswact.org.au/pages/history#A> short history of the ALS

because of the relationship I have with the kids, I think that that's just kind of the way it's played out"

As noted above, experience working with the ALS in a committed way has enabled the ALS lawyer to build trusting relationships with clients and their families. This role, much like that of CCLS (Legal Aid) lawyers, blends legal advocacy with case management aspects out of necessity. The emphasis on relationships resonates with the ALS model used since its inception of lawyers working alongside field officers who are from local communities and can help realise a culturally appropriate service delivery.

### TASKS DONE WITHIN THIS ROLE

Young people often learn of the Youth Koori Court through the ALS lawyer, who will discuss the Youth Koori Court with young people who appear eligible. Eligible young people are advised about the program if they plead guilty. The ALS lawyer then requests a referral to Youth Koori Court for young people who are interested. There are some exceptions, as the ALS lawyer explains:

*"...Because the suitability is a supervised order or control and because we know it is an onerous process in some respects that the young person has to go through, we know the client that going to be suitable for it or not. So we might just say to one client-look there is this Koori Court process-we don't think it is suitable for you for these reasons, so I think you should just get sentenced today, or just get a Juvenile Justice report and get the matter finished. They might have like challenges coming to court a few times, we know they're not going to engage with case workers very well, they are not ready to address their issues, the offences aren't really serious enough-a whole lot of reasons. Or we'll have what we see is the perfect candidate because we've known them for long period of time and we explain the whole process to them, and they are generally really enthusiastic about it."*

Part of the casework side of ALS lawyers' roles is that they take a proactive role in getting clients to court. This can involve finding them by calling family members, friends, relatives, or other services workers who may know where the young person is. They then try to address financial or mobility barriers to getting to court, sometimes paying for young people's train fare, giving them a lift, or arranging a lift for them.

The ALS lawyer represents the young person in Youth Koori Court hearings. Between hearings, they also maintain contact with their client and help check that caseworkers and service providers are carrying out the tasks agreed to do in the Action and Support plan.

In fostering trusting relationships with clients and demonstrating reliability to them over time, the ALS lawyer has become a key part of many young people's support network. Being a reliable supporter and advocate can entail making referrals for young people and their relatives, following up on referrals, organising appointments for them, checking on follow through, case working for

young people and also acting as a base young people approach when they are in need of food, transport fare, being taken to appointments, and adapting to young people's needs. The ALS lawyer remains a point of contact for young people after they have been sentenced and are no longer in the criminal justice system.

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### HOW IS THIS ROLE SUPPORTED/ENABLED?

The Aboriginal Legal Service is an Aboriginal run organisation that relies on funding and operates by stretching limited budget proportionate to the amount of Aboriginal and Torres Strait Islander people who are in the criminal justice system. At the time of our interview with the ALS lawyer, their office was reportedly seeking funding towards establishing an allocated ALS position with the Youth Koori Court.

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### QUALITIES FOR A YOUNG PERSON'S DIRECT LEGAL REPRESENTATIVE

- A dedicated Youth Koori Court solicitor role
- Field officer qualities such as developing or having developed relationships with clients and their families and amongst local Aboriginal community
- Ability and capacity to provide wrap-around case management service for young people
- Knowledge of service networks and experience with more effective organisations and workers

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### YOUTH KOORI COURT OFFICER (ABORIGINAL LIAISON OFFICER)

Youth Koori Court Officer's (Aboriginal Liaison Officer's) broader role in the Children's Court is the Aboriginal Client and Community Support Officer with the Department of Justice, and in this capacity, he was one of the people driving the formation of the Youth Koori Court program pilot.

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### TASKS DONE WITHIN THIS ROLE

Within the program, his role covers numerous areas and includes the following tasks, activities and relationships:

Youth Koori Court administration, for example:

- Organising Youth Koori Court lists and their distribution
- Setting up the flags and paintings for the sittings of the Youth Koori Court and removing the flags and paintings at the conclusion of the sittings
- Rostering Elders' Youth Koori Court appearances (see below for more detail)

## Youth Koori Court Review

- Distributing the Action and Support plans to relevant stakeholders after Youth Koori Court conferences
- Youth Koori Court suitability assessments and screening tools (shared with Juvenile Justice representative; these are usually done on the Friday's prior to a young person's first appearance in Youth Koori Court and during or between sittings, OR where possible, on another day that that young person might happen to be in court)
- Liaising between the Magistrate and other participants who cannot contact the magistrate directly (eg: solicitors, community services)
- Initially organised pilot group meetings
- Used to organise working party meetings

### Youth Koori Court Elders' consultation, recruitment, scheduling and support:

- Was the point of contact for the Western Sydney University Aboriginal and Torres Strait Islander Elders Advisory Board in the initial stages of co-developing the Youth Koori Court program
- Attends community Elders meetings to let people know about Youth Koori Court and to recruit more Elders for the program
- Delivering relevant paperwork to Elders who volunteer to be part of the Youth Koori Court
- Liaising with other officers within the Department of Justice to arrange initial criminal history and working with children's checks for the Elders
- Prepares rosters for Elders' appearances in Youth Koori Court; usually prepares these a month in advance, and confirms with the Elders closer to the event time
- As one Elder noted, "the line of communication to [the Aboriginal Liaison Officer] is always open", and so cancelling appearances in cases of sickness, or competing responsibilities etc is easy to do.
- Trying to organise parking for Elders who drive
- Arranging transport for some Elders, in some instances, this means arranging taxis and cab charges, in others it entails driving Elders to court and back home after a conference (sometimes shared with other Youth Koori Court members, for example the Magistrate or the MLC support worker).

Participating in case conferences occasionally. Comments on the circumstances under which he participates, and the kinds of contributions he tries to make:

- "I always try to participate in the ones I've done the screening tools for and/or ones where I've known the kids for a long time so I have a bit more inside knowledge... for a couple of kids, I've known them for five years."
- "...It might be the first two weeks of Koori Court, but I might know that person for four years of coming through the court. So I can see an improvement, I can see a change that might not be as noticeable as someone else."
- Also "if I go to a conference and I might not know that anyone there is Koori, I will sit at the table. Apart from the Elders, of course the Elders will be, but ...I'll want there to be as many people in there not so much just for the cultural knowledge that's involved there, it's also I think it's a really awesome if the kids can see role models. So if the kids can see [the Juvenile Justice officer] and know that this is a Mount Druitt boy...who's gone through a lot



of stuff, whose family has gone through a lot of stuff and he's there, you know what I mean? Like if you are from Mount Druitt its like you don't have to go the other way. You can be sitting there at the table”

Promoting the Youth Koori Court and building community/stakeholder awareness and relationships, through:

- Organising and presenting at meetings with community groups
- Organising and presenting at meetings with stakeholders within justice networks
- Talking about Youth Koori Court at legal/justice conferences

Supporting young people at the court; this covers tasks that are a part of the Aboriginal and Community Client Support Officer's role in general, but can also include “filling in the gaps” around other services/supports surrounding that young people for example:

- Explaining the Youth Koori Court / Children's Court process with listed young people and their families/supports when they first come in
- Making referrals
- Accompanying young people to meetings/appointments as a support person
- On some occasions, picking up a young person and/or their family supports (especially for elderly and/or unwell family members) and bringing them to court and dropping them home.

“On a day like today, I'll just be yarning to kids like I was just now, because I also realise that that's part of my process in the Koori Court is...I've known these kids for a while so I can speak to that because I've known them and it's about that trust.”

Supporting young people beyond the court, for example:

- Helping a young person move house
- Attending cultural camps organised by the Youth Koori Court
- Watching young people's sports games

Some of these roles are specific to Youth Koori Court cases, for instance the directly related areas and also the case management aspects. Others come under the Youth Koori Court's previous/existing pursuits, but might entail more in-depth engagement through young people's involvement in Youth Koori Court. Their extensive involvement in Youth Koori Court is supported within their role: “we all kind of have our own side projects in our roles as Aboriginal Community and Client Support people, so some people focus more on circle sentencing, if it's in their community...or it might be focused more on community Justice groups, all these different programs that we run”.

## Youth Koori Court Review

There can be a tension between providing case coordination functions for the young people who come before the court and providing administrative support for the court itself; also short term demands tend to take priority over longer-term infrastructural priorities like recruiting more Elders and liaising with community services.

### HOW IS THIS ROLE SUPPORTED/ENABLED?

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This role is supported and funded by the Aboriginal Services Unit within the Department of Justice. The Aboriginal Client and Community Support Officer attached to any court is an adaptable position.

### QUALITIES FOR AN ABORIGINAL LIAISON OFFICER

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"I don't know how much of this is in my role description but I see myself as- if I can do anything to stop any of my people from getting locked up, I'll do that. I believe that's my main job description... When I go and try and help someone, because I know that I have had cousins who are gone the wrong way, and maybe if someone stepped in and help them, they wouldn't be where they are. So that's my own personal beliefs..."

- the Aboriginal Liaison Officer

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### CHILDREN'S CIVIL LAW SERVICE, LEGAL AID

The Children's Civil Law Service (CCLS, established November, 2013) is a small practice team in the civil division of Legal Aid New South Wales. Upon hearing about the Youth Koori Court pilot, they discussed with Aboriginal Legal Service solicitor (with whom they had an established relationship) whether their services might benefit the program, and then approached the Magistrate and Youth Koori Court Officer (Aboriginal Liaison Officer) to further discuss how their services might be integrated.

CCLS started working with the Youth Koori Court program in May 2015 as part of the intake, and as a service young people were referred on to as part of the Action and Support plan; this then adapted to a format of involvement in which a member attended Youth Koori Court review meetings on Youth Koori Court days and would report on their progress with their items to the court, as well as catch up with their clients.

CCLS also offers Youth Koori Court clients continuity of support even when they are no longer part of the Youth Koori Court program.

### TASKS DONE WITHIN THIS ROLE

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The Children's Civil Law Service provides "wrap around" legal service support to young people with complex needs. Through involvement with the Youth Koori Court, they have been able to bring an array of services and possibilities to the young people in the program.

First, a member of the team goes through a Legal Health Check with young people who are assessed as suitable for Youth Koori Court as part of the subsequent intake process. This consists of a checklist of questions they go through with the young person to unearth civil law issues that the young person may not realise they have, that CCLS can assist with, for instance:

- Fines – In instances where a young person has accumulated public transport fines for periods during which they were homeless, for example, the CCLS can appeal to have these fines removed. Some fines can be worked off against the young person's other Youth Koori Court activities such as counselling sessions and the CCLS can organise this. A CCLS lawyer will report updates as these matters progress within Youth Koori Court review meetings.
- Centrelink debts. These are also reported on in review meetings.
- Work Development orders
- Police complaints – If a young person has complaints about police to report, the CCLS can investigate and deal with these through the appropriate legal channels. Such matters are not discussed within Youth Koori Court nor are they part of the Youth Koori Court process.
- Victim compensation – outsourced to a pro-bono private law firm CCLS has connections with
- Assistance advocacy with other services (see below); updates on this are reported in Youth Koori Court review meetings.
- Other civil law services, some of which are a part of realising Youth Koori Court Action and Support places, for example, sourcing birth certificates and tax file numbers for clients (see below), and others to do with civil law support for the young person's

Depending on a young person's needs, they also provide **assistance advocacy with other services**. In the Youth Koori Court this has mainly been with FACS, and the CCLS team can provide additional resources to complement FACS' or another service's casework.

In some cases, it is for young people who are recorded as being in the Care of the Minister but who do not have any contact with FACS and who might not know about the kind of support they could access. This can entail:

- Connecting young people back into FACS services, and involving appointed FACS caseworkers with the Youth Koori Court sittings.
- Providing additional resources to complement other service's casework
- Helping to hold caseworkers accountable for what they have agreed to do as per the Action and Support plan

## Youth Koori Court Review

- Making a guideline submission to FACS to have a client's case managed by an external agency which will be paid by FACS to act as a conduit between FACS and the young person and their family. This entails an extensive submission process that must be signed off at a high level. This option is turned to in rare occasions where a young person and their family's relationship with the initial agency is fraught to the point that it is an obstacle to their access; this measure enables such young people to access services they are eligible to access, and can take some caseload pressure off government agencies.

Young people may also be in need of legal advocacy with FACS in relation to their babies and children that have been removed or are at risk of being removed from them. CCLS lawyers can provide legal advocacy and support by assisting young people with attending parenting programs and meeting other criteria.

Accessing official documents and entitlements through Centrelink, Public Trustee and Guardians, and Births Deaths and Marriages:

- Birth certificates
- Tax file numbers
- Advocacy on behalf of young people to enable them to obtain financial assistance through Centrelink if appropriate.

Housing:

- Securing accommodation for young people
- Helping young people at risk of eviction to retain housing
- Civil advocacy for young people in out-of-home care who are approaching 18; pursuing their leaving care plans, reviewing the plans and ensuring the young person's relevant rights are enabled by the plan.

*A key point is that there is this presumption that if you are in the care, in the care of the Minister, that you are getting everything that you are entitled to and that the system is working effectively and it just isn't*

Children's Civil Law Service lawyer

Connecting clients' and their families to other Legal Aid services where necessary, for example:

- Supporting the young person's family to get housing assistance by connecting them to the Legal Aid Civil Services for Aboriginal Communities team
- In identifying other members of the young person's family who may need assistance accessing welfare benefits, dealing with wills or estates and getting identity documents

These supports are able to be provided in the context of established professional relationships the CCLS has with: other Legal Aid departments, private pro bono law firms, FACS, Centrelink, Public Trustee and Guardians, and Births Deaths and Marriages. CCLS have the direct relationship with

clients and collect instructions from them, and where relevant, these other offices act in the background.

*Our mandate is around providing our wrap around service, a targeted service to complex needs young people and these are very complex needs young people so we have the flexibility to be able to provide that service if it is identified as being needed.*

Children's Civil Law Service

### HOW IS THIS ROLE SUPPORTED/ENABLED?

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The services CCLS provide through Youth Koori Court (which include one CCLS social worker and a CCLS youth worker) were already part of their roles, but they have prioritised Youth Koori Court cases and were able to assign an additional lawyer to Youth Koori Court as well as a graduate programme employee. One member notes that as a result of prioritising Youth Koori Court, other less complex cases are less likely to be able to be taken on. If not through Youth Koori Court, this targeted, intensive case management model service can only be accessed through a referral pathway from the ALS.

CCLS's involvement with the Youth Koori Court is enabled through Legal Aid NSW. Members of the team also credit their manager's support for a committed service delivery that can be flexible, responsive, creative and based in strong relationships with clients:

### QUALITIES FOR A LEGAL ADVOCACY AND CIVIL SERVICES SUPPORT ROLE

*Legal Aid 1: "We are lucky to have that framework and [a manager] who doesn't see it as a poor use of time to go out to Western Sydney and do something seemingly innocuous—have lunch with a client or something... But once you do that, you can achieve so much more."*

*Legal Aid 2: "...Going out to lunch means we can get them to sign another document ...all that sort of stuff...it's another engagement with the young person, at the very best it enables them and provides them with an additional step forward to whatever outcomes we are trying to get them to."*

*Legal Aid 1: "And they always drop these clangers in, like 'oh by the way, I've got this letter...it does say that you've got 28 days to pay \$11,000'... [and we can say] okay, great, let's talk about that some more."*

*Legal Aid 2: "You need that sort of constant engagement...that opportune moment where it's just: 'Hey yah actually, while I think about it'. It's catching the moment in time and you don't get that unless you are regularly meeting up with that young person, and that's really important for service."*

....

*Legal Aid 2: "We've had to learn as well. Like we've had to really reflect and you know get responsive. We're still learning now, [things like] that worked last time but didn't work this time... But we are-you know we are not bound by anything other than being really client focused. ...We'll shift with them within the framework that we can provide which is only legal service... we'll jump and go and extend it further to meet where they are just to bridge that gap. So it's just that extra-extra commitment I think. And we are in a luxurious position that our service is able to do that."*

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## COMMUNITY SERVICE PROVIDERS

This category describes roles attached to various services that young people in the Youth Koori Court might be allocated to help them with their Action and Support plans.

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## TASKS DONE WITHIN THIS ROLE

This category describes the work of several community organisations, such as Daramu and LEAP. If allocated Lead Agency role, this role entails case management. The other tasks they might assist with through Action and Support plans include:

- Attending Youth Koori Court meetings and giving updates on the young person
- Mentoring young people
- Providing direct support for some issues listed in the plan, and facilitating referrals for other issues
- Supervised contact visits where the young person is a parent and the child is in care
- Helping young people with transport (rides, Opal cards, Opal top ups)
- Arranging housing
- Arranging temporary or emergency housing
- Arranging appointments with specialists (health, mental health etc) and transporting young people to appointments
- Organising cultural activities with/for young people

Staff working in the Youth Koori Court have noted that part of the pilot has entailed learning, through experience, which service providers suit which type of young person, depending on their personalities and capacity to meet young people's complex needs. Often, young people have been allocated to a service provider expected to provide intensive case management, but in many situations the task of intensive case management has fallen to people in other roles, like the Aboriginal Liaison Officer and the ALS lawyer.

ALS lawyer on clarifying expectations and capacity with service providers

*"We started referring [young people] to X----- but again maybe our expectations were too high, maybe we needed to be clear at the beginning what kind of supports they could offer. We thought they could provide kind of a case management role, but I think as it turns out it's more like a one time a week mentoring type role, cultural outings, they can support. So I think that the onus is on us to get clear about our expectations as well, and get clear about what supports an organisation can provide."*

## HOW IS THIS ROLE SUPPORTED/ENABLED?

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Community services workers have usually participated in the Youth Koori Court as part of existing supported roles. Some organisations (eg: LEAP) need to arrange for funding from FACS or other organisations to support a new client. This requires an organisational infrastructure skilled in making funding applications, keeping track of grants and providing reports to funding bodies.

Many community service organisations are subject to grant and funding cycles.

## QUALITIES FOR A SERVICE PROVIDER/CASEWORKER

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Six of the interviewed workers who had been called in to the Youth Koori Court program for a particular service cited being very excited to learn about the program and to be involved in it. The enthusiasm Youth Koori Court fostered amongst workers conducive to its goals points to the potentially good fit between the expectations set by the Youth Koori Court program and the type of workers who meet them. Amongst the overlapping qualities cited of a good service provider/case workers are:

- Flexibility towards young people's changing circumstances
- Training in intensive case management or casework
- The capacity to provide intensive case-management where necessary: e.g.: accompanying young people to appointments, helping them get to court, visiting their houses when they don't respond to phone calls
- Persistence with the goal
- A supportive management and workplace ethos
- Following up tasks promptly
- Taking initiative to creatively troubleshoot unusual problems

Community service provider describing Youth Koori Court program's flexibility:

*Ethically, I struggled at [my previous job] because we had so much research that just said for Indigenous young people, the system we have—where a young bloke has to report in, have to do this program have to do that program if they don't they get warning letters--doesn't work for them. But then that didn't change the methodology. So ...ethically I struggled with that... why do we have research if we are not going to use it to ... evolve or mould our methodology.*

*I think that goes you know to go back to one of your questions around what kind of workers are needed for this kind of model, I think it needs to be people that are in those powerful positions that are prepared to work in the system but also very prepared to voice ... an educated opinion on how that system is not benefiting the child or the young person. So it needs to be someone that's quite devoted to the system itself because they have to be devoted to the system because if they are just going to do it against the system that's not helpful. But they need to be devoted to the child as well but then also devoted to themselves that ethically and professionally this doesn't sit with me, I need to be able to voice this with someone not just go well it is what it is and I'm just going to go with it because you know this isn't right you know and be able to sort of function in that.*

## FAMILY AND COMMUNITY SERVICES

Tasks done within this role

- Organising Leaving Care plans for young people
- Following procedures through which young people in Care of the Minister can access funding and resources
- Some assistance with accommodation
- Some assistance with living expenses
- Casework

## JUVENILE JUSTICE

A Juvenile Justice caseworker based at the Parramatta Children's Court worked with several young people in the Youth Koori Court program.



### TASKS DONE WITHIN THIS ROLE

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The Juvenile Justice officer regularly attended Youth Koori Court hearings. Their contributions to the program include:

- Going through the screening tool with eligible young people prior to the suitability assessment,
- Supporting young people in custody with bail applications
- Drawing on established relationships with young people as a Juvenile Justice officer they have rapport with to facilitate other kinds of support, for instance, helping a young person travel to a rehabilitation centre they had left and decided to return to,

### HOW IS THIS ROLE SUPPORTED/ENABLED?

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Part of court team at Parramatta Children's court and an Aboriginal worker represented on the Youth Koori Court.

### QUALITIES FOR A JUVENILE JUSTICE REPRESENTATIVE

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"The juvenile justice-their role has been crucial. It has to be an identified position, so having an Aboriginal Juvenile Justice worker because that role is I suppose, is more offence focused so it often has to challenge the young person on some of the things that the young person is saying, whether it be about drug and alcohol, or risk of reoffending, or peers. And [the Juvenile Justice worker] has been amazing at being able to challenge the young person in a really supportive and positive way because he's Aboriginal, he lives in western Sydney and the kids can really relate to that."

### DISCUSSION POINTS

### THE MODEL WITHOUT THE PERSONALITIES?

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A longstanding concern amongst organisations in the community sector is with how to finesse frameworks and processes so that a program can be scaled up and reproduced in another locale. Parallel to this is also a desire for modelling a program so that it works regardless of who occupies

the roles in it. Yet success or failure of a program often concerns more than its structure.<sup>77</sup> Passionate staff who go above and beyond and who connect particularly well with those they work with can make a program succeed. This can be disconcerting when trying to extend a program without being able to bank on reproducing its staff. In order to shift from the concern about personalities, we have suggested qualities, skills and role criterion that have been selected by Youth Koori Court participants (including the person in the role being discussed) as key to making this role work.

This study has captured the importance of all Youth Koori Court stakeholders believing in and supporting the Youth Koori Court's principles on order for working processes (further explored in Chapter 10). Rather than personalities, it is relationships that appear key to the Youth Koori Court's processes: both relationships between core staff and young people, and relationships amongst services, lawyers, and caseworkers working in each young person's interests. Consistency of participants was regularly highlighted as important for the future of this Youth Koori Court and for other future Youth Koori Courts, with specialised Magistrates, Juvenile Justice representatives and Police Prosecutors.

Many interviewees who were intimately involved with the program asserted the importance of consistency of the same Magistrate running the same cases. This brings about particular pressure on the Magistrate's role as chair for Youth Koori Court meetings, particularly as the program potentially expands. What kind of support would enable this consistency to continue while also allowing for young people who might benefit from more regular meetings? We suggest two measures:

- Authorise the Aboriginal Liaison Officer (supported by a case management officer) to undertake assessments and reviews where appropriate. These reviews might be less formal than the meetings chaired by a Magistrate, and formalised versions of catch-ups between young people and the Aboriginal Liaison Officer or their legal representatives (from ALS and CCLS). The recommendations from these meetings would be subject to judicial review at a subsequent hearing
- For the appropriate agencies to support ongoing training and support for Youth Koori Court magistrates, building on the experience of current magistrates, leaders of the Aboriginal and Torres Strait Islander communities in NSW and others with expertise in the issues facing young persons who come before the court

Professional and personal relationships are shown to be key to many aspects of the Youth Koori Court pilot's development and function. Several of the gifts donated to the Youth Koori Court to be awarded at young people's graduations (Coles vouchers, NRL tickets, traditional hand-woven baskets, traditional wood carvings) came about through relationships established by the Magistrate and the Youth Koori Court officer as they promoted the program in wider judicial and community networks.

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<sup>77</sup> Tess Lea (2008) Housing for Health in Indigenous Australia: Driving change when research and policy are part of the problem. *Human Organization* 67: 77–85.

Relationships are also important to the referral networks (eg: referrals to a lead agency, and then the agencies the lead agency refers young people to) to provide cohesive case management for young people. Multiple Youth Koori Court workers from co-ordinated organisations cited the importance of drawing on established professional networks in order to “get the job done”. This is reported as being both:

- Effective – because the task (whether that is securing housing or processing the paperwork for a leaving-care plan) is outsourced to somebody familiar with it, and
- Efficient – because the background for the request does not need to be explained afresh each time.

In some cases, managing the relationships and responsibilities surrounding a case has been confused in the process. Strategies suggested that have helped smooth this out:

- An email trail in which all the stakeholders relevant to a particular young person’s case are cc’d in on one thread and updated on progress with that young person’s case. This allows questions that may arise to be swiftly raised and responded to, and documents that one party needs to be requested and provided.
- Allocating responsibilities and clearly identifying a lead agency for a young person’s case management in the Youth Koori Court conference and reviews.

Professional and personal relationships are shown to be the key to many aspects of the Youth Koori Court pilot’s development and function. Several of the gifts donated and awarded at young people’s graduations (Coles vouchers, NRL tickets, traditional hand-woven baskets, traditional wood carvings) came about through relationships established by the Magistrate and the Youth Koori Court officer with the Department of Prime Minister and Cabinet and staff at the Judicial Commission as they promoted the program in wider judicial and community networks.

Over the duration of the Youth Koori Court pilot, workers also cited learning by trial and error what other individuals in other departments or areas of expertise could be called upon to assist with specific types of issues that young people faced. A service or person who delivered a good outcome in a timely manner would be called on again, and their relationship with the program strengthened.

FACS (Housing): “Like you’ve got Aboriginal services all over the western suburbs, and we all work together.”

CCLS: “We used our relationships with the Western Sydney FACS office to then get better relationships drilled down to the relevant units that will assist us in the Youth Koori Court process. ...We now have an arrangement with the Parramatta Office where if there is a Youth Koori Court young person and we need to make initial enquiries about their status we can email her, and she undertakes to give us information about the status and who we need to contact then....And that's the sort of stuff that is a huge advantage because you wouldn't have been able to get the information for weeks on end, you'd be sending authorities to letters to your community service centres seeking, you know, information or clarification of information and it just

formalises it all and it's just a bureaucratic barrier.”

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## GAPS IN THE PROCESS

There is an array of services within NSW for young people in need of support with drug addiction, alcohol abuse, rehabilitation, mental health, family care, family planning, and general health. The Youth Koori Court is in a position to provide young people with a single point of entry to a range of services. Our observations suggest that program stakeholders take advantage of their unique position to draw on past experiences with various services in order to continuously build, understand and refine the range of services they have relationships with, so as to connect young people to services more judiciously, with each young person’s specific needs in mind.

The Youth Koori Court is distinct within the criminal justice and therapeutic landscape surrounding young people for providing this consistent, centralised, and regular point of overall case management. Youth Koori Court participants prioritise intensive case management because young people in the Youth Koori Court program generally have an array of difficulties (for instance, housing, drug and alcohol abuse, and mental illness) occurring in their lives at once, sometimes unpredictably, and on top of this, they may have to also meet requirements set by the criminal and humanitarian interventions they are involved with (e.g.: FACS, Juvenile Justice) (see also Chapter 8).

Our analysis of workflow processes demonstrates that in the current arrangement, this case management role is either

1. Fulfilled by a stakeholder it is tasked to, or
2. Tasked to a stakeholder who lacks the capacity to fulfil it, or
3. Falls to a stakeholder who must fulfil it but lacks the capacity to take this on in addition to their existing role in a long-term, sustainable way.

This suggests a weakness in the model that could be addressed through **funding and structural support for one dedicated Youth Koori Court casework co-ordinator** based at the court. This would involve a list of tasks currently managed across the roles of Youth Koori Court Officer (Aboriginal Liaison Officer), Juvenile Justice officer, ALS children’s solicitor, MLC, Legal Aid in addition to their role-specific responsibilities:

- Completing the screening tool with the young person
- Ascertaining the availability of appropriate services
- Coordinating young person’s caseworkers
- Following up on referrals to see how they went
- Accompanying young people to meetings/appointments
- Keeping case coordination and service support moving along

## Youth Koori Court Review

- Checking in with young people and their support workers/case workers on how items in the Action and Support plan are moving along
- Ensure that employment and training opportunities that reach the court could be matched to young people who meet the criteria
- Reporting back to the court on the young person's progress

*The coordinator-the Youth Koori Court coordinator is absolutely critical because I think that there could be consistency of the availability of opportunities for young people who participate in the process because sometimes opportunities, in a really ad hoc way and not everybody gets the opportunity to have that be a part of something that is available to them.*

- Legal Aid lawyer

There is also need for a dedicated Youth Koori Court Officer to carry out the administrative functions to support the operation of the court have to date been undertaken by the Aboriginal Client and Community Support Officer and court registry staff. The delineation of the administrative support functions to assist the Magistrate and the court more broadly and the casework co-ordination functions to assist the young person are important to ensure that the impartiality of the court is not questioned.

- Organising Youth Koori Court papers and lists and their distribution
- Setting up the flags and paintings for the sittings of the Youth Koori Court and removing the flags and paintings at the conclusion of the sittings
- Organise preliminary assessments (with the support of a case management worker)
- Lead the recruitment of Elders
- Lead the facilitation and development of productive cultural programs for court participants.
- Rostering Elders' attendance at Youth Koori Court
- Undertaking court monitoring and court officer duties
- Help type up Action and Support plans after meeting for others to sign
- Preparation of court paperwork at the conclusion of the each sitting day
- Acting as the liaison point between the Court and the stakeholders
- Organising working party meetings
- Collecting data and keeping in-house statistics to provide back to the working party

A dedicated Youth Koori Court officer would allow the Aboriginal Client and Community Support Officer to continue to fulfil his/her usual role with specific focus on supporting young people appearing in the Youth Koori Court.

Finally, though the Youth Koori Court works by leveraging existing resources, there is a need for financial support with formalising the involvement of Elders and respected persons. This would be consistent with the payment of Elders in the Victorian Koori Court and community members of the NSW Civil and Administrative Tribunal.

As part of these measures, we anticipate that Elders might be well placed to advise the court on how more opportunities for young people to deepen their involvement with their cultural heritage may be integrated into the rituals of the program.

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### FUNDING MODEL

This chapter has demonstrated how the Youth Koori Court works by leveraging existing resources and bringing representatives of the relevant agencies together in court hearings, supported where possible by a case manager. This model brings with it several advantages which are demonstrated in this report's findings: it enables regular progress updates from agencies concerned, and a client-centred approach brings the agencies together around the needs of the young person. The Youth Koori Court hearing process provides a monitoring role both in relation to the young people who come before it, and also in respect of the service agencies. Most costs are transferred to other agencies.

There are disadvantages to this model too. Various services have their own sets of priorities and funding constraints. Some services may be hard or time-consuming to access. Services that are available may not always be the ones the young people need. Service agencies are not always able or willing to follow up with young people who do not meet their appointments. A dedicated case coordinator to manage this complex network of agencies and services would increase the likelihood of Action and Support plans being put into operation within a reasonable period.

A full discussion of some of alternative finding models is provided in Chapter 12, Policy Reflections.

## CHAPTER 8: ACTION AND SUPPORT PLANS AND LIFE ISSUES FOR PARTICIPANTS IN THE YOUTH KOORI COURT

Most of the young people who come before the Youth Koori Court have difficult and stressful lives: they may have had few opportunities to connect with their mob and their Aboriginal heritage, missed out on educational opportunities, found it difficult to get a job, experienced violence at home, attempted self-harm, live in unsuitable housing, have accumulated debts, or have major health or disability issues. In most cases participants in the court have experienced more than one of these problems.

When someone is referred to the Youth Koori Court an assessment is made to see if they meet the criteria for entry into the program, and if so, an Action and Support plan is developed with the young person to identify the issues facing them. Understanding this context is relevant to understanding the risk factors affecting the young person, the risk factors being conditions that make it harder to stay out of trouble. It also represents an opportunity to assist the young people to get their lives together, to address the issues that face them and increase involvement with their community. The action plans were prepared to guide the court when the young person came for their first hearing. It was only a starting point; typically the Magistrate and Elders or other respected persons would ask the young person about all aspects of their lives – their family, friends, hobbies and aspirations – not just matters that were listed on the assessment interview report or the action plan. The plans outline, as the Magistrate often explained to young people, “what you have to do, and what we have to do to support you”.

Aunty Pearl: Creating a new narrative and new partnerships with Action and Support plans

*The involvement of Elders in the processes and working with the legal people in mutual respectful relationships is an excellent example for the youth. They see that people care enough to make time to spend with them and genuinely support them to navigate the tensions of their lives and improve their quality of life. Too often our young people grow up with a negative view of the legal system and see it as being against Aboriginal and Torres Strait Islander People. This program helps them to create their own story and experience with it and this helps them change their stereotype views of the legal system which has become so engrained in their minds and they have no confidence in it. This program gives them HOPE and they can then change and develop a new narrative with respect to the legal system and correctional service.*

*The “actions and support plans” are a great idea and the follow up and outcomes are a testimony to its success.*

Information about the life circumstances of the young people was sought from the court files of those who completed Youth Koori Court in 2016 – 35 in all - and information was coded to allow

patterns to be identified. For 25 of these young people an action plan was located, and for an additional 8 the relevant information was (mostly) available from the assessment interview sheet. Two files could not be located.

Because this was a pilot project, the administrative systems for recording information developed organically along with other features of the court's organisation, so the information is more complete for some participants than others. Further, not all of the issues affecting a young person would emerge from a single interview or enquiry: some matters emerged later in hearings, others were too difficult to talk about, or too private. It is likely that the estimates provided here miss some issues and under-state the enormity of the challenges that many of the court's clients face. Nevertheless the Action and Support plans do provide valuable glimpses into the complex lives of the young people who came before the Youth Koori Court.

The plans were generally organised into the following topic areas: cultural connection, accommodation, family issues, education and employment, mental health, other health, civil justice issues (such as getting identity documents) and other. Within each area, the specific problems were specified, together with proposed action and a person or organisation who would be responsible for this action. For the purposes of this analysis mental health and other health issues are grouped together, and accommodation and family issues are also grouped together.

This chapter will present an overview of each topic area. Within each area we provide a vignette, or case study, to give a human face to the statistics and show the complexity of the issues facing the young people. These vignettes are composites of several participants in the program to avoid identifying any particular person. We also review how issues tend to be made more difficult because of other issues they are typically associated with.

### CULTURAL CONNECTION

The first issue, and in terms of the charter of the Youth Koori Court, one of the most important issues is cultural connection. This is in a sense a foundation for many of the other issues. Do the young people have some contact with their traditional lands and relatives, do they know their ancestral stories and clan lores, do they attend activities that bring them into closer contact with other Aboriginal and/or Torres Strait Islander people? For 26 of the 33 young people for whom we have information, this was identified as an issue that needed addressing. For almost all the rest it was identified as an issue but one that was already being attended to.

#### ***CASE STUDY: Emma***

*Emma, 17, lives with her father who is of Indonesian and Fijian descent. She is Koori though her mother and maternal grandmother – she has never met her grandmother and her mother has been an inconsistent figure in her life. Emma's offences are often associated with drug and alcohol consumption. In the past, she has been hospitalised for self-harm. In her*



*first appearance at Youth Koori Court, she says she would like to explore her Aboriginal heritage and would welcome having some female mentors.*

Many of the young people coming before the court had limited contact with their mob (in many cases the young person had links to several clan groups). Sometimes the lack of contact was because of the family's migration to Sydney from the far west or south coast of the state, or disruptive family experiences. The history of forced migration of the Stolen Children generation was never far from the memory of the older family members who came to the hearings. Sometimes there were issues in the immediate family that the young person was seeking to avoid, so one of the tasks of the court was working out which family members should be involved in supporting the young person – typically grandparents or aunts.

For 13 of the young people, attending camps that would bring them together with other Aboriginal and/or Torres Strait Islander people, and involved with Aboriginal and Torres Strait Island cultural practices, lore and knowledge, was recorded as an activity that should be considered. The most widely-recommended outdoor adventure was the Cultural Warriors program, one that was particularly popular with young men. However cultural camps were also specifically recommended for two young women as well. Get fit and football programs with an Aboriginal framework were also suggested, while the plan for one young man including spending time with an uncle learning hunting on his clan's lands. Nine of the group were explicitly listed as potentially benefitting from cultural mentoring either by an Elder (sometimes one associated with the court) or a relative. Elders and the court's Aboriginal Liaison Officer played an important role in exploring and developing opportunities for young people to deepen their cultural connection, both in hearings and over the following months.

Aunty Fran comments on cultural activities:

*Team Work – Learn about each other camp activities.*

*Need to ensure reading and writing skills are taught by highly educational staff – cultural staff.*

*Re-education – challenge the youth to think outside the box ie, life skills become self-sufficient.*

*Education on health food, bush tucker.*

## ACCOMMODATION

A second major issue facing many of the young people who came before the Youth Koori court was finding safe and secure housing. A third of the young people (13 out of 33) were classified as having an accommodation issue, with 9 of these reported as homeless, 13 needed help finding

independent accommodation or placement with suitable relatives and 3 were classified as in need of crisis accommodation.

*CASE STUDY: LEWIS*

*Lewis, 15, had been brought up by his grandmother in a NSW country town, with three brothers and two sisters. When he turned ten, his grandmother fell ill and he was sent to live with an aunt in Sydney, together with several cousins. He had an argument with his uncle and left this home, to stay on a temporary basis with his older brother. This house was too small – there were three young children as well in a three bedroom house, so he was asked to leave. More recently, he has been living with his girlfriend and her parents, but is intermittently kicked out after arguments with his girlfriend's father (with whom he has a strained relationship). During these periods of homelessness, Lewis is less inclined to attend school. He attributes some of his Ice and alcohol consumption to these stressors, and attributes his violent offences to Ice and alcohol.*

In many cases the housing sought was not just for the young person themselves – at least six of those who came before the court were already parents and two more were about to be. Bringing a partner to live in a family home was sometimes a point of contention – some parents or relatives providing a roof for the young person did not feel it was appropriate to accommodate a boyfriend or girlfriend as well. In some cases the young person had been involved in a family violence incident involving a partner, or their child had been removed from them. One young person had stayed for a while in a refuge, but had reportedly been abused there as well.

Sometimes the housing need reflected family poverty: one young person lived with 14 other people in a relatively modest house, others moved between relatives all of whom had limited space. In one case the most suitable housing option appeared to be staying with an uncle, but the place was too small. In another case a grandmother was willing to provide a shelter for her grandson but needed financial assistance to do so. For one young man the grandmother appeared to be the most suitable carer, but this was not possible because of an apprehended violence order brought against the young person by another member of the household.

Housing insecurity was often accompanied by problems with finding employment or finishing education – 9 of the 13 people with a housing issue were also recorded as having a problem with education or employment. One type of training that was identified as useful for some of the young people was living skills programs, designed to allow the person to make a successful transition to independent living. Several of the Action and Support plans made reference to this. Proximity of accommodation to potential schooling or job opportunities was one issue raised in relation to suitable housing. Distance from previous co-offenders and sites of likely trouble were also identified as desirable. For one young man it was the residential home he was living in that provided both the opportunities and the companions for his misdemeanours.

Housing insecurity was sometimes associated with health issues; 11 of the 13 people with a housing problem also had a personal health issue. This compounded the challenge to finding suitable accommodation. One young man lived with his grandmother, who was seriously ill, so he had become in effect her carer. Another young man tried living with his father for two months, but his father was addicted to ice and the arrangement broke down.

### EDUCATION AND EMPLOYMENT

Education and employment was the most frequently recorded item on action plans, with 26 of the 33 young people raising at least one issue in this area. For 13 of them the issue mentioned was getting an apprenticeship or applying for TAFE, for 9 it was getting back to high school, and for 9 it was applying for jobs. The issues were connected – without some qualifications, or at least finishing school, the prospects for finding a job were limited. Almost none of the young people had completed high school and several of them had been suspended or expelled from school (sometimes from more than one school). One person completed his year 10 studies while in detention. Jobs that were reported tended to be short term and casual, although there is reference in the Action and Support plans to some employers in western Sydney who had made special provision to employ young Koori people. While the overall prospects for finding work were limited, the action plans did identify the pathways that were possibly available.

#### CASE STUDY: REG

*Reg's learning and hearing difficulties meant school was always a challenge. He was suspended several times for fighting, and once for smoking cannabis on campus. He eventually stopped attending when he was 13. Now, at 15, he prefers the idea of finding work rather than returning to school. He lives with an older cousin and her two young children, and there is little structure to his days. As a child, Reg was a victim of family violence and is no longer in contact with his parents but has close relationships with several relatives.*

The action plans described the type of study or work the person was most interested in – these included carpentry and bricklaying, landscaping, child care, bakery and hospitality. The most suitable local TAFEs and training organisations to get skills in these areas were identified. Sometimes literacy or job readiness programs were identified as a necessary step prior to further study. Getting a forklift truck license was the goal for one young man, while obtaining a white card to work on construction sites was the objective of several.

Even more basic documents were sometimes required to help the young person obtain employment or education, including birth certificates, Medicare cards, public transport cards (Opal cards) and driving licenses. These were included on action plans as 'civil law' matters, a category that also included opening bank accounts and addressing accumulated unpaid fines.

Altogether 19 of the 26 young people with an education or employment issue were also recorded as needing support with a civil law matter.

An additional obstacle to getting back to school or into a stable job was possible substance abuse. The majority of those with an education or job issue (18 of the 26) were also recorded as having a problem with drugs. One young person lost his job after failing a drug test. Several had used Ice from time to time, causing damage or injuring others. Most had some experience with marijuana, and several were regular users. Many said their use of alcohol or other drugs was under control. The issue was nevertheless noted on the action plan for the court to monitor.

### HEALTH AND SUBSTANCE ABUSE

Two out of every three young person assessed as eligible to enter the Youth Koori Court (22 out of 33) had at least one health-related issue. These included need for general health or dental check-ups (8), hospital care or attention to a current injury (7), disability support (6), as well as need for participation in more physical activity (5), or another type of intervention (10). At least one person mentioned a hearing problem, several mentioned mental health issues and three were suspected of having ADHD. Coming to Youth Koori Court provided an opportunity for this wide range of health issues to be addressed.

Health was interpreted broadly to include fitness, and physical and emotional wellbeing. One of the consistent themes in action plans was an emphasis on sport, particularly sport with a cultural dimension. The Breaking Barriers fitness program was listed as something that should be explored, as well as various forms of football.

Substance abuse was identified as an issue for almost all of the young people, 28 out of 33. Six of these explicitly mentioned methamphetamines including Ice, speed and ecstasy, while 16 reported using cannabis (or 'yarndi' as most of them called it) and 12 listed alcohol. Of the 28 people recorded as having a drug-related issue, 18 also had problems with education or employment, while 15 also had a problem with fine debt. Some of the thefts and burglaries that the young people had taken part in appeared to be focused on getting money for drugs.

#### *CASE STUDY: DAVE*

*Dave is 16 years old. He was placed in the care of the Minister as a child, and has grown up in a string of foster care placements around Sydney. His housing situation has always been precarious. Dave started smoking cannabis when he was nine, and has been regularly using Ice since he was 12, which is around the time that his juvenile criminal record begins. He is currently in custody for breaching bail – he uses the periods of time in custody to force himself away from drug use, and claims he sometimes seeks them out for this purpose. Dave's father also lives in Sydney; he remains in contact with him even though he cannot legally live with him. His older siblings are in adult custody.*

Several organisations were typically identified as having programs relevant to the health and drug abuse needs of the young people who came to the court. These included the Aboriginal Medical Service, Justice Health, Headspace and Daramu. Counselling was listed as a recommended approach for many drug-related problems, with the Ted Noffs Foundation and the Salvation Army's FYRST scheme being listed as useful agencies for helping people break drug habits.

### CIVIL JUSTICE MATTERS

Establishing one's identity is an essential part of getting a job, access to services and allowing people to take part in modern society. Yet more than a third (13/33) of the young people coming to the Youth Koori Court lacked basic identity documents like a birth certificate. Another 5 needed help to get a bank account, 10 to register with Centrelink and 4 to get a Medicare card. The action plans documented these critical gaps and specified how the problem was to be addressed.

#### CASE STUDY: AIMEE

*Aimee, 16, was born and raised on the Central Coast, and shifted to Sydney with her parents when she was 10. She comes from a close family who take care of one another as best they can. The family have longstanding financial hardship and have difficulty accessing many of the supports they are entitled to. Aimee's own birth was not registered so she doesn't have any ID, which keeps her from accessing Centrelink and Medicare. She has accumulated several public transport fines since living in Sydney. She also has a baby who was taken out of her care.*

Unpaid fines were a problem for over half (18/33) of the young people. Several of them had fine debts of over \$1500, amounts that they mostly unemployed frequently homeless young people were not in any position to pay. Indeed 15 of the 18 people with unpaid fine issues were identified as having difficulties with education or employment. The action plans flagged Work Development Orders and other approaches that could be followed with support of Legal Aid's civil justice lawyers. One common reason for getting a fine was not paying fares on public transport, so getting an Opal card was identified as an issue for a few people at the action plan stage, and for more people subsequently during hearings.

People with unpaid fines were highly likely also to have drug (15) or employment/education issues (15).

## CONCLUSION

The Youth Koori Court carried out a preliminary investigation of the social, cultural and legal context of the lives of those who came before it. The Action and Support plans recognised the disturbed family backgrounds and poverty-related challenges many of the young people had experienced. It documented their health and legal needs, including fine debt. It identified problems with accommodation, schooling and jobs and suggested possible strategies to address the issues. Not all of the plans were as thorough as others, but the general impression they provide is of a comprehensive and systematic approach to identifying and addressing the social disadvantages that were also risk factors for offending.

What comes through the Action and Support plans is a story of disadvantage, exclusion and hardship, mixed in with disorganisation and poor decisions. Despite this the story behind the action plans is also a story of hope, as strategies are laid out to address each of the identified problems. The extent to which the interventions were successful is taken up next in Chapter 9, Social Outcomes of the Youth Koori Court Process.

## CHAPTER 9: SOCIAL OUTCOMES OF THE YOUTH KOORI COURT PROCESS

### INTRODUCTION

The Youth Koori Court begins its relationship with each client with an assessment and an *Action and Support plan*. This document is developed during an initial hearing. It outlines what is expected to happen during the young person's involvement with the court. Issues are itemised using the headings reported in the previous chapter: accommodation, cultural issues, education and employment, substance abuse, health and mental health, and civil law matters. Persons or agencies responsible for carrying out the tasks are specified. The official completion of the process is a *graduation*, in which the outcomes of the action plans are reviewed, followed by a sentence that takes into account both the seriousness of the charges and the changes to the young person's life during their time on the program. This chapter reviews the progress reported in the final hearing towards reaching the targets outlined in the plans.

The Action and Support plan can be seen as having a double objective. It identifies challenges in the young person's lifestyle or support system that need addressing if the young person is to have a reasonable chance of getting their life back on track. At the same time the action plan identifies the risk factors in the young person's life that make offending more likely. For the most part the two objectives are the same – getting a skill, a job, a safe housing situation and giving up Ice allows the young person to develop a future to look forward to; these achievements are also expected to address some of the key risk factors associated with getting into trouble with the law.

Data for this analysis has been obtained from 19 transcripts of the sentencing hearings that took place from July to December 2016. This is approximately half of the sample used to describe the action plans themselves (which covered the whole year) and provides a reasonable variety of cases, allowing some tentative conclusions to be drawn. One of the sentencing hearings took place without an action plan ever being developed – several conferences had been scheduled to make a plan but for various reasons the young person had not managed to attend one. It was necessary to keep this case in the sample to provide a balanced picture of the outcomes of the Youth Koori Court process.

The hearings reviewed the issues that had been identified on the action plans, providing updates from the relevant support workers or organisations around the table, supplemented by written comments from persons with knowledge of the specific issue. Where new issues had emerged after the action plans were developed, these might also be reviewed. Similarly if issues were no longer relevant they might not be mentioned in the final hearing, having been addressed in a previous hearing. Participants commented on what they saw as successes or failures both in the provision of services and the responses of the young people concerned, and the magistrate then determined a sentence based on the submissions made by the prosecutor and the young person's solicitor, the performance of the young person during his or her time in the Youth Koori Court and the applicable legal principles, including the maximum sentence for each offence. Because the

young person was present, and their cooperation was essential for a successful graduation ceremony, comments about the young person were sometimes a little coded – for example about issues like attempted suicide - and euphemisms used to avoid embarrassment. Positive comments about progress by the defence lawyer could be countered by perspectives from the prosecution, but in practice the prosecutor avoided making negative comments about the young person and generally confined themselves to arguing for consistency of sentence with co-offenders or drawing the court's attention to the impact on victims. Overall the review can be seen as a reasonably frank account of the social outcomes of the Youth Koori Court process.

The review was not always comprehensive, with the comments focused on what the participants considered to be the critical issues; and as noted above, issues that had already been resolved were not necessarily mentioned. This means we sometimes do not know from the transcripts of the graduation hearings whether some of the issues originally identified as a problem had been resolved or not.

This chapter classifies outcomes in terms of the extent to which the objective initially specified had been achieved, partly completed, or not completed. It was anticipated that, given the severely traumatising backgrounds many of the young people had, successes could well be modest, take some time and there would be setbacks. In fact, what the data reveal is a general pattern of systematic, if sometimes uneven, progress; organisations working cooperatively to address very complex challenges; and young people initially hostile to any form of authority slowly developing greater self-assurance and commitment to less risky lifestyles. A major purpose of a pilot program such as this is to identify possible gaps between aspiration and achievement, so this chapter tries to describe these, providing a stronger foundation for the implementation of an ongoing program.

### HOUSING AND ACCOMMODATION

Of the 19 young people in this sample, 10 were considered to have some sort of accommodation issue when the action plan was developed, including two who were in custody and needed somewhere to stay on their release. Of the 10, four had had their problem sorted out by the time of the graduation from Youth Koori Court, for three a response was in process, while attempts to resolve three young people's accommodation issues were classed as being unsuccessful.

Five were classified in their action plan as being homeless or having an urgent housing need. For three of these, the housing problem had been addressed to some extent at the time of the graduation from Youth Koori Court, for one a solution had been found but was not yet put into action, and for the remaining two a solution had not yet been found. Two of those whose immediate housing crisis had been met were living in a youth refuge run by a Catholic organisation. One of those where a provisional solution had been found was living in emergency accommodation with his family awaiting transitional housing. One of those who had been in urgent need of housing had a short period of stable housing, but was back in custody by the time of sentencing.



Other issues identified included helping the young person develop independent living skills, get onto lists for independent housing and helping parents or guardians access financial support for housing. There was some success in getting young people onto lists for independent housing, but finding suitable housing in a tight housing market was a challenge. In one case the young person was too young to be eligible for independent housing, so the issue was flagged as a matter for future action.

One issue that restricted housing choice was conflict with partners or other family members. One young person could have found a more stable home environment if he moved into his grandmother's place, but another member of her household had taken out an Apprehended Violence Order against him. So the most obvious and ideal option of living with a relative was not available to this young person. This case illustrated the complex and multi-faceted nature of most housing issues. Rarely was the issue just a house to stay in, it usually had extra complications like violence (whether by or against the young person), conflict or drugs.

One exchange between the magistrate, the ALS lawyer and the young person sums up the housing crisis facing many young people who come before the court:

*HER HONOUR: So I know that you've tried really hard over the last year, but in terms of that primary need for you to have stable accommodation, we haven't been able to get that, have we?*

*ALS lawyer: Clearly since [name of town]--*

*HER HONOUR: It's your age that's been the problem - sorry.*

*ALS lawyer: Since leaving [town] J<sup>78</sup> was in a refuge in [suburb] for quite a few months and returned to school and was quite stable and J was doing really, really well and then when that accommodation was no longer available it really sort of hasn't been the same since, has it?*

*YOUNG PERSON: No.*

*ALS lawyer: It's been lots of transience and no stable accommodation.*

Another example of 'transience' is provided in a sentencing submission by the ALS lawyer:

ALS lawyer:

*Everything else is in the Juvenile Justice Report, your Honour. Reviewed an older Juvenile Justice Report in 2012, your Honour is aware of [young person M's] background but M was removed from M's mum's care in 2009 and placed into the care of M's [older sibling] and that was essentially because of domestic violence but also because of substance use. Then M was removed from [M's older sibling's] care in 2011 placed with [care organisation] and then*

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<sup>78</sup> These transcripts have been slightly modified to remove specific places, activities and relationships from the depiction, and to hide or obscure the young person's gender and age.

*[another care organisation] so M has had that background that we often see in the Children's Court of transience and moving around from different residential placements.*

The report documents the interlocking issues – housing insecurity, family violence, and substance abuse. The word ‘transience’ comes up often during graduation hearings when housing issues are discussed. Even when an apparent ‘solution’ is found at one point, by the time the next hearing comes around, the situation could have changed considerably and a new crisis emerged. So it would be anticipated that some of the ‘successes’ reported at the graduation hearing may evolve into a new crisis some time later. Further some of the ‘solutions’ – emergency housing or a place in a refuge – could hardly be considered acceptable longer-term options.

One of the issues that was sometimes associated with housing insecurity was family violence. Many of the young people had experienced family violence in their families of origin or with their own partners. This led to one of the partners having to find new accommodation. It also led to ongoing stress:

*HER HONOUR: It sounds like your relationship with K has not been very good.*

*YOUNG PERSON: No, I don't talk to her; not ideal, it's not good.*

*HER HONOUR: I know you'd always share that bond because she's the mother of your child, but - yes, it's still sometimes better to walk away from relationships that are helpless and do worse than that, because they continue to hurt us, you know. You can get that extra strength to say it's just not worth it, but it is a matter for you, I'm not ordering you terminate a relationship.*

*ALS LAWYER: The Court might recall that J was a victim also and had to attend Local Court when K was charged with an assault against J, so it's been a pretty toxic relationship for a while.*

Housing stress and ‘toxic’ relationships placed great pressure both on the young person appearing before the court and their families. However it was not uncommon for the partner of the young person, where family violence had been an issue, to be present in court as one of the major support people. Transience could apply as much to relationships as housing.

## CULTURAL CONNECTION

Developing opportunities for young people to connect with their Aboriginal and/or Torres Strait Islander heritage and community were regarded by the magistrate, Elders and others around the table as some of the most fundamental, even if not necessarily as urgent as matters like housing. These were also the Action and Support plan items that tended to get least mention in the graduation hearing. This was sometimes because they had already been addressed, at least initially – such as getting proof of Aboriginality. The lack of specific mention was also because contact with other people from an Aboriginal and Torres Strait Islander background was an integral part of the Koori Court experience:

*HER HONOUR: I think it's your last appearance before us?*

*YOUNG PERSON: Yes.*

*HER HONOUR: But I do know that you've met some wonderful Elders along the way and I hope you remember the Koori Court - working culturally respectfully with the Elders. I think it's more important for us to help you get out of here rather than adjourning, is that okay with you?*

*YOUNG PERSON: Yes.*

*HER HONOUR: All right, but you do have some respected people from the Aboriginal community here today and supporting you*

A criticism of the Victorian Youth Koori Court was that cultural issues received relatively little attention after the initial acknowledgement of country<sup>79</sup>. This comment was made in respect of the rituals of the hearing itself rather than the types of activities enabled by participation in the program.

One of the forms of cultural activity most frequently mentioned in the Action and Support plans was attendance at cultural camps. Cultural camps refer to camping experiences based around Aboriginal and Torres Strait Islander cultural practices, lore and knowledge that are lead by Aboriginal and/or Torres Strait Islander-run organisations. Of the 18 young people in the sample, seven were recommended to attend a cultural camp. In the graduation hearing, only one was recorded as having attended such a camp, two had not attended the camp and for the others the issue was not mentioned. One reason mentioned why the recommendation had not led to action, according to one report to the court, was lack of funding. However shortly after these observations were made the Department of Prime Minister and Cabinet funded two cultural camps specifically for the Youth Koori Court.

The absence of specific discussion of opportunities for cultural connection was also sometimes because these opportunities were discussed in terms of sport, most frequently rugby league although boxing was also sometimes mentioned.

*HER HONOUR: All right, apart from looking well how have things been going?*

*YOUNG PERSON: Yeah pretty good, I've started training and that.*

*HER HONOUR: What sort of training?*

*YOUNG PERSON: Football training.*

*HER HONOUR: Of course, I could assume that but I need just to ask. [Asks name of team and location]*

*YOUNG PERSON: [position on the team] and captain of Indigenous.*

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<sup>79</sup> McAsey, Bridget (2005) A critical evaluation of the Koori Court Division of the Victorian Magistrates' Court. *Deakin Law Review* 10: 654-686 p 668.

*HER HONOUR: I see, very good.*

The magistrate and young person then went on to discuss which NRL team he supported. In another case, the young person was awarded a football as recognition of his achievement in the Youth Koori Court. Another young person had been taken to a rugby league grand final by his employer.

One of the graduating young people had just received a presentation for sticking at his sport all season. Not only that, the involvement with this sport led to a job:

*FAMILY AND COMMUNITY SERVICES WORKER: [playing this sport] involved training twice a week and games on the weekend too. He also got a little bit of employment through one of the trainers there which he did and I think we've mentioned in Koori Court before that he was one of the best employees he had seen*

Many of the young people – both men and women – had been encouraged to join Aboriginal sporting teams, and their matches were sometimes attended by members of the court, including the Aboriginal liaison officer and the Aboriginal Legal Service lawyer. Apart from strengthening links with other members of their community, sporting activities also promoted fitness and attention to health issues, issues that were commented on favourably by the magistrate.

Other issues, such as dealing with drug addiction, could be understood in terms of the increased contact with mentors from the Aboriginal and Torres Strait Islander community:

*HER HONOUR: I have taken into account your early resistance to dealing with cannabis use but your acceptance, after this offence, that you needed to accept advice and it is to your credit that you have. You have accepted advice, you have accepted recommendations and you fully engaged with counselling and I am very pleased, not only that you have gone to counselling but that you have gone to counselling with Z, a [counsellor] who I am developing an increased respect for in their capacity to deal with many young people but Aboriginal people in particular and I was told recently that Z is not only a counsellor but Z is an Aboriginal mentor and Z is a good person, I think, for you to be involved with in terms of reinforcing your result to stay, not only out of trouble but also to stay away from cannabis which has led you into trouble.*

Having services and service providers who were understanding of and responsive to young First Peoples, specifically, meant that even challenging issues like drug addiction could provide a gateway to strengthening and deepening their connection to their Aboriginal and/or Torres Strait Islander cultural heritage.

## EDUCATION AND EMPLOYMENT

Getting back into school or getting a start in the job market were two of the objectives the Youth Koori Court paid particular attention to. Of the 19 young people in the sample, all but one had some goals specified in this area, seven in schooling, seven in some form of apprenticeship, and nine in applying for or getting a job. (Some had more than one objective identified). Three had resumed their schooling, four had taken up an apprenticeship, three had secured a job and another three were in the process of looking for one. So of the 19 young people, a 10 could be considered successes either in school attendance or getting a job or apprenticeship, 3 could be considered to be 'in progress', while for the remaining 6 young people, we have no evidence about progress in this area.

One of those who was on track to complete his schooling had done so in custody. But for others regular schooling had not worked and TAFE was considered a more acceptable option.

*FAMILY MEMBER: Going to TAFE next week at [suburb] doing a course there in construction with the Aboriginal circle so [Q will] be there till the end of this year.*

*YOUNG PERSON: Ten weeks.*

*HER HONOUR: Ten weeks.*

*FAMILY MEMBER: So [Q will] have all the certificates to get into a labourer's job or if Q wants to go to TAFE to do Year 10 .....*

*HER HONOUR: I read in the report that you'd rather do that via TAFE than go back to normal school because you're a bit older.*

*YOUNG PERSON: Yeah that's right, they'd put me in Year 9 again, I'll go to TAFE.*

*HER HONOUR: They'd put you in Year 9?*

*YOUNG PERSON: Yeah if I go back to school they'll try to put me back to Year 9 so yeah, much better at TAFE.*

*HER HONOUR: But luckily there are those alternatives and you just grab hold of them, doesn't mean you have to miss out on your education, you just do it differently.*

*YOUNG PERSON: Yeah.*

*HER HONOUR: Good. So you're committed to education one way or another?*

*YOUNG PERSON: Yeah.*

The interaction shows the magistrate emphasising the importance of education and endorsing the decision of the young person to use a TAFE pathway to complete their high school education. In some cases TAFE did not just provide a regular course for high school completion, the Macarthur TAFE in southwest Sydney also provided a special construction course for Aboriginal students.

It was no accident that the Youth Koori Court put 'education' and 'employment' issues into the same category in its Action and Support plans. For many of the young people getting some form of

training was the key to getting a job. This connection was made explicitly in one exchange between a young person and the magistrate:

*HER HONOUR: But you're still looking for the magical job.*

*YOUNG PERSON: Yeah.*

*HER HONOUR: Any progress at all on that or?*

*YOUNG PERSON: No, I've been going out for some but, like, my reading and that's not good and, like, someone needs my licence and my White Card and that, I've still got to get my White Card and that.*

*HER HONOUR: Okay, is your reading a problem to get the White Card or—*

*YOUNG PERSON: No, like the others just to get - because I was going to - I went for this course with the [names training course].*

*HER HONOUR: Yes, yes.*

*YOUNG PERSON: But like you really need to be good for it.*

*HER HONOUR: Yes.*

*YOUNG PERSON: Yeah.*

*HER HONOUR: Can you do anything about the literacy thing, the reading and writing - I know the answer is yes - will you do anything about it, will you try that?*

*YOUNG PERSON: I don't know, I want to look for something like just physical like where I don't got to read or write you know.*

While some young people did express a desire to take up education, others – such as this young man – were more focused on getting a job, and in his case a job that did not require literacy. Even getting a driver's licence required a level of literacy, so some of those who were already educationally disadvantaged were also disadvantaged in terms of mobility.

Some did manage to get a job. One of the 'successes' in the job market was rated as a top employee by his boss. The Magistrate commented on the 'prize' of getting a job, and the difficulties of finding one:

*HER HONOUR: You must feel good then. I mean there's a pathway to employment; whether or not that prize will come up, it shouldn't be a prize, but it unfortunately is in our society, isn't it? That's a prize for a lot of young people to be able to get on that ladder. If you can get on that ladder, I think you can stay on it, it's just getting on it, isn't it?*

*YOUNG PERSON: Yeah.*

Those who managed to get a job were sometimes regarded as a 'star' by the magistrate, and received a few words of affirmation, comparing how the young person was on entry to the court with his/her current situation:

*HER HONOUR: ..the fact that somebody has obtained a very valuable job is an inspiration to other young people and I thank you as well for what you've done for the court and as I've said probably to you but certainly to other people, we need some stars and I think you are a star. We've got a lot of stars and also we've got some fading stars. You're not a fading star, you're a very bright star so I do thank you from all of the other young people involved in the Koori Court to show them that it is possible to step up and make those changes, even though there was that great reluctance [initially].*

In general young people did not go straight into apprenticeships. They were provided with a transition experience to try out several different trades. This is reflected in one exchange between a case worker, the magistrate and the young person:

*HER HONOUR: What's the apprenticeship in?*

*YOUNG PERSON: I don't know yet.*

*HER HONOUR: You don't know.*

*YOUNG PERSON: I've got to pick that.*

*CASE WORKER: He's being doing some like handyman stuff. ...The Transition to Work people, they're very good, they'll give you an option to see if roof fitting or he wants to be a sparkie or all of these sorts of things, give you a chance, it gives you a chance.*

*HER HONOUR: Roofing - November--*

*YOUNG PERSON: No, I don't think I'm falling for that. I don't like it, too hot.*

*CASE WORKER: Options, yes. So my job is really just to give him options and [the young person] does the rest.*

There was also a range of employers in Western Sydney who made special provision for young Aboriginal and Torres Strait Islander people to develop workplace skills and get a steady income. These included jobs in construction, retail and cleaning. Another of these was a nursery:

*HER HONOUR: Okay so you had an interview with a nursery but still waiting to find out about that?*

*CASE WORKER: No K is going for the interview so I've just got a confirmation email. We were waiting on the disability support pension confirmation letter and I actually received that this morning--*

*HER HONOUR: Good.*

*CASE WORKER: --[now K's] eligible to go for the interview, but the position has been kept for K as well.*

*HER HONOUR: Wow, well done.*

*CASE WORKER: K just has to go for an interview.*

As with other matters on action plans, the particular issue was associated with other issues as well, in this case the young person had a disability and needed support to get together the necessary documents to apply for financial support.

#### HEALTH AND DRUG USE

Of the 19 young people graduating from the Youth Koori Court program, 12 were recorded as having a health issue that needed addressing. Of these five were recorded as being successfully completed by the time of graduation, two were on track, while for the remaining five the information was not available. The 'unknown' cases refer mostly to dental or general health checks – since the issue was not raised at the hearing it was likely that the check had been completed. Need for exercise was sometimes identified as an issue, but not always recorded as a health matter. The hearing also provided information about why some health issues had not been fully dealt one. One young person had been traumatised by a detention regime that the magistrate described as particularly punitive; the effects of this treatment were still affecting the young person at the time of the graduation hearing.

Of the 19 young people in the group being examined, 15 were recorded as having some issue with drugs or alcohol. By the time they graduated from the court, 13 reported some progress, five of the young people were reported as having desisted completely, at least from drugs like Ice that had been associated with offending. Sometimes the young person reported some ongoing use of marijuana or occasional binge drinking, often in company, so desistance was rarely complete. In many cases the change was supported by participation in an alcohol and drug detox or counselling programs, including the Ted Noffs Foundation. In other cases the change may have been precipitated by detention:

ALS: After spending 18 days in custody, so almost three weeks in custody and being able to reflect on his [drug or alcohol] use and the first time being in custody for that period of time X had a very significant turnaround in his attitude and he was finally ready and willing to address his [drug or alcohol] use which is directly linked to the reason he committed this offence.

Being 'ready and willing' to address drug use did not necessarily mean having given up drugs completely. Sometimes the young person made admissions about drug use to the court that even their Juvenile Justice case officer was not aware of:

*JUVENILE JUSTICE: There's no substance issues.*

*ALS: Yes I think there are actually,*

*JUVENILE JUSTICE. You're still using a bit of yarndi?*

*YOUNG PERSON. Yeah a tiny, like I've slowed down heaps.*

*HER HONOUR: Yes?*

*YOUNG PERSON. Yeah.*

*JUVENILE JUSTICE: That's the only problem--*



*ALS: Yes exactly, no that's right, because you can't smoke at all when you're on this job.*

*HER HONOUR: Absolutely, it's non-negotiable at that time.*

*YOUNG PERSON: Yeah.*

In cases such as this abstaining from drugs was a condition of keeping a job. This was not just a rule imposed by the employer, as an unidentified speaker (probably a Juvenile Justice officer) pointed out to another young person there could be safety issues involved: 'You don't want to get run over by a forklift going past'. Sometimes making the break from drugs was a difficult challenge and included false starts, but persistence paid off, according to the ALS lawyer in a sentencing submission for another young graduate:

*ALS LAWYER: What X has always told Koori Court is that if he had employment and a means of keeping himself busy he would be able to reduce his cannabis use. [Initially] that didn't prove to be so easy but he's certainly shown that he's got significant insight now and he started to address the cannabis use. He's not completely abstinent but he's almost abstinent and is certainly abstinent enough to maintain full-time employment now..... He did what he promised Koori Court he would do and that was get his job back, obtain full-time employment and reduce his cannabis use and I ask your Honour to make a finding that he's got excellent prospects of rehabilitation, particularly if he keeps his full-time job with [name of organisation].*

Turning away from drugs could be associated with finding other interests, including physical pursuits.

*HER HONOUR: He's looking well isn't he?*

*AUNTY: He is, yeah.*

*HER HONOUR: Yes, very good.*

*ABORIGINAL COURT OFFICER: He's training so he's running four laps a day.*

*CASE WORKER: He's out of trouble, that's the thing.*

*ABORIGINAL COURT OFFICER: Started off at one then you came to two, now he's up to six.*

*HER HONOUR: What running?*

*ABORIGINAL COURT OFFICER: Six laps a day.*

*HER HONOUR: That's big isn't it?*

*ABORIGINAL COURT OFFICER: And he's cut down on smoking, he's cut down everything else, hasn't touched drugs.*

*HER HONOUR: That's fantastic, isn't it, well done*

Given the high proportion of offending that was associated with drugs in some way, the court paid considerable attention to the issue. Whether ongoing attention was paid to the issue after the young person left the court is another matter, explored in a subsequent chapter.

## CIVIL LAW ISSUES

Of the 19 young people graduating from the Youth Koori Court, 18 had at least one issue that was classified as involving a civil law matter. Of the nine who needed birth certificates, seven had been able to get one successfully, and for the other two the process was still under way. All five of those who needed a Medicare card had received one, the same was true for the three who needed to set up a bank account. Two of the three who needed proof of Aboriginality had received this by the time of graduation.

There were sometimes several agencies involved in helping the young person get the range of documents necessary to function in a modern urban environment.

*HER HONOUR: Ms H, have you been working with B?*

*CIVIL AID LEGAL: No, not really but what B's been doing is B - you got your Centrelink, I didn't have a part in that but Auntie D was helping you on your Centrelink, that's sorted, you've got your tax file number which is great, you've got to give that Centrelink, ... - JJ got [B's] birth certificate, it's gone missing since then but I'll contact X and ask to see if they can possibly get B another one.*

*YOUNG PERSON: Yeah.*

*GRANDPARENT: Yeah, because it'll be looked after, this one, I'll make sure of that.*

*HER HONOUR: All right, well I suppose that's a negative, don't lose valuable things.*

*CIVIL AID LEGAL: I don't think that was necessarily B, but - I don't know that you lost it. I think it's gone missing in the grand scheme of things.*

*YOUNG PERSON: Yeah.*

This exchange illustrates the cooperation between different participants round the table - the Elder took an active role in helping B get registered for benefits at Centrelink, while Juvenile Justice helped to organise B's birth certificate. Someone else, not specified in this discussion, helped B get a tax file number, while B's grandparent volunteered to ensure the document's safe keeping. One of the rare negative comments the Magistrate made about a young person – suggesting that the loss of a document was their fault – was countered by the civil aid lawyer who attributed the loss to 'the grand scheme of things'.

But the most common issue in the civil law category was unpaid fines, many of these received for travelling on public transport without an Opal (public transport) card. This was an ongoing issue for the young people who came before the court: most of them had no source of income so little capacity to pay train fares let alone fines for not having a valid ticket. Usually the Legal Aid lawyer (civil) who attended the hearings took responsibility for sorting out the accumulated fine debts. Those in custody had an alternative mechanism to clear debts. Where the young person could work to pay off the fine, a work development order was arranged. Of the 15 young people with a fine debt hanging over them, four had their fines cleared by the time of graduation, for another four the process was in place to deal with the debts, for two there had been no action, and for one

there was no information. However to illustrate the ongoing nature of the problem, for four young people the original debts had been dealt with but new ones had been added since the young person joined the Youth Koori Court.

Working off the fines was sometimes a complicated process, particularly if the young person was also working off orders from other parts of the justice system. This could include Youth Justice Conferences.

*CIVIL LEGAL AID: If W wants us to we can keep working with W as W moves towards 18 and looking at developing a leaving care plan and those kinds of things with FACS, so as long as W wants to keep working with us we'd love to keep working with W. W's also worked off another \$100 [off] fines, they're down to \$200 with the working development order with Juvenile Justice so you're pretty close to getting rid of all your fines.'*

*ELDER refers to work W did over the weekend*

*CIVIL LEGAL AID: Okay, so that won't count towards the work in development order then, Aunty, because it was for the Youth Justice Conference.*

Setting up a work development order process was also complicated. The legal aid lawyer had tried to set one up for one young person but ran into considerable red tape. As she describes it:

*LEGAL AID CIVIL: The only legal issue that we have with L is your fines and it's - we've been trying to set up a work development order and it's been through no fault of L's that it hasn't been able to be set up yet. He doesn't fit any of the categories that are required to be eligible for one, so we have been trying to get [a sponsor] and then working with L can be going towards that. That's been stalled so what we've done since is put in an application for an out-of-guideline working development order saying he doesn't fit any specific category, but look at the whole circumstances and then he can do a work development order. So if - and that's been done, that's sitting with State Debt Recovery and we're waiting just for that confirmation that we can set it up.*

This case shows the complications involved in reaching what might appear to be a relatively simple objective, at least simple compared to getting a qualification or giving up a drug addiction. It turned out that L was not eligible to undertake a work development order, possibly because he was too young, so the court's Aboriginal Liaison Officer had volunteered to act as his sponsor for him. This application had stalled somewhere – where we are not told – and so the Legal Aid lawyer was trying to find another pathway, this one a special application that fell outside the guidelines. Because it was special, and therefore unusual, it took time for the relevant government department to approve it.

When the young person was under a supervision order from the Probation and Parole Service, it was even more complicated to set up work development orders. Not only would Probation not set up the orders, the type of activity that would count towards working off fines depended on the nature of the sentence. This confused even the Magistrate:

*HER HONOUR: Do Probation and Parole do the work development order?*

*LEGAL AID CIVIL: They don't set them up.*

*YOUNG PERSON: No, they don't, yeah.*

*LEGAL AID CIVIL: They refer you to other services that can set them up. They'll set them up once you ..(not transcribable).. So they've suggested Youthworks but I don't think you want to - you haven't engaged with them. What were the conditions of the bond - just supervision or to do counselling?*

*YOUNG PERSON: Just drug and alcohol--*

*SERGEANT: Yes, just drug and alcohol, it's got counselling, education and drug--*

*ALS: It'll make it that you can't work off your fines if you've got conditions--*

*LEGAL AID CIVIL: Not if it's part of the court order.*

*HER HONOUR: Just ask them if there's any way you can get a work development. Just so you know, I think the work development order if you go to counselling - well maybe not drug counselling - if you go somewhere that's authorised to help you, you can write off fines at about \$200 an hour, as far as I understand it, up to a thousand a month.*

*LEGAL AID CIVIL: What about anger management--*

*YOUNG PERSON: Well they're doing - yeah, they have - Parole has them courses during the week, you know, they have it like on a Monday or a Wednesday.*

*SPEAKER (Unidentified): What about Positive Parenting or something like that?*

*YOUNG PERSON: Yeah, that's what it is, parenting, that's - my girlfriend's doing it this like semester and then I've got to go do it next.*

*HER HONOUR: So just think about that because \$3,200 is a lot of money and if by doing something that's going to benefit you anyway, that's good for you--*

This exchange illustrates the way the hearing could be used to elicit information, to identify problems and work out solutions. In the interaction reported above the young person was an active participant, but so too was the Magistrate, the police prosecutor, the ALS lawyer, the Legal Aid lawyer and a speaker that the transcriber could not identify. Collectively they worked out that the young person could work off his fines by engaging in counselling for anger management or parenting skills, but not for drugs and alcohol since he had to do that anyway as part of his previous sentence. They also worked out that while the probation service did not organise the work development order, they can refer the person to other organisations who can do this. However in this case there appears to have been a referral, or at least a suggestion, but the young person was had not been able to follow it up. The case provides an insight into why many of the actions specified on the Action and Support plan had not been achieved. The court did not have the services on site to address the need immediately the way a neighbourhood justice centre does. The court referred the young person to a service who then referred him to another service, relying on the young person to have the skills and self-discipline to follow up. In many cases the court's Aboriginal support worker ended up driving some of the court's clients to their appointments after a referral from one agency to another.

## CONCLUSIONS

One common story to emerge from this chapter is the complexity of the issues facing the young people who came before the court. This meant that although some issues had been successfully addressed within the time frame of the court supervision period, others had not. Getting a birth certificate was relatively straight forward and this was one of the objectives identified in Action and Support plans that was generally achieved. Education and employment outcomes however required a longer time frame, and housing tended to involve ongoing episodic crises. While many of those with a drug or alcohol problem had begun some form of treatment, most had not completed this by the time they graduated from the program. The young people had thus been placed on a pathway to a more promising adult future. The extent to which the objectives identified in the Youth Koori Court process would be realised would depend on the young person's own choices, on the quality of support they would receive and on external factors like the state of the labour and housing markets.

In terms of process, one theme to emerge in this chapter is the way a team approach was used to support the young person (see also the discussions of relationships in Chapter 7). Each of the people sitting around the table at the hearings had their role to play. Elders provided practical support, going with the young person to appointments and spending time with them. They also started the process of re-establishing cultural connections, or in some cases establishing such relationships for the first time. Also important were the roles of government agencies such as, in the following case, Family and Community Services:

*HER HONOUR: The fact is K is a young woman who has had a disrupted and troubled upbringing and I am entitled to take that into account. She is a young woman who has had support through Family and Community Services for a long period of time but it was when her aunt and uncle stepped in and said K come and know what a supportive family is and live up to your obligations to be part of that but K was able to say 'yes I will embrace that support and I will accept that support and I will work with that support'. I do think it is important for us to not only acknowledge K's achievements but also to acknowledge Aunt M and Uncle N and to acknowledge Family and Community Services support. It has been an incredible team that has wrapped around K to make sure that she is on her track for her own future but also for the future of Z [K's child].*

Whether the agencies involved could be expected to provide all the services expected of them by the court was another matter. Many of them had their own priorities and styles of managing cases. So if a young person did not turn up for an appointment, the agency involved did not always see it as its job to follow up, which in many cases would mean providing transport for the young person. As noted in Chapter 7, sometimes the transport was provided by an ALS lawyer or the Youth Koori Court Officer (Aboriginal Liaison Officer), even though this did not fall within their job descriptions, and constrained their ability to do other work.

## CHAPTER 10. INTERACTIONS AND DYNAMICS OF THE YOUTH KOORI COURT MEETINGS

Youth Koori Court hearings or court appearances (referred to here as meetings) are most formal part of proceedings; they take place in a custom-adapted courtroom, face to face around an oval table, and are framed by Aboriginal and Torres Strait Islander protocol and integrated into the Children's Court's standard sentencing process.

As we have seen in previous chapters, these meetings punctuate a young person's journey through the Youth Koori Court program: they first attend one for their suitability assessment, followed by one in which their Action and Support plan is created, several reviews, and, finally, their sentencing and graduation from the Youth Koori Court. We have also already seen (in chapter 7) the extensive work that happens outside of the courtroom as caseworkers and young people try to fulfil the actions they have agreed to as part of the Action and Support plan, as well as deal with hurdles that have emerged along the way (like sudden housing crises, new charges, changed health status, other personal or legal difficulties). The question addressed in this chapter is, why do these meetings matter? They require considerable time, court resources and co-ordination – what do they contribute to the process?

To address this question, we draw on a triangulation of data from interviews with 33 participants and observations of 82 Youth Koori Court meetings (these came from attending 18 Youth Koori Court days over a 7 month period). Triangulation provides a means of incorporating different participants' perspectives. It allows us to understand the flow of reciprocities, agreements, tensions, negotiations, challenges, connection and understanding between participants; to find patterns in the features and interpersonal dynamics of meetings; and to consider how these interactions between participants affect the wider Youth Koori Court process.

Our analysis of this qualitative material considers how meetings contribute to three sets of objectives inherent in the Youth Koori Court program:

1. To practical/ tangible scaffold to the process
2. To address the program's stated objectives
3. To address objectives understood as part of a First Peoples orientated meeting

Marchetti is critical of earlier evaluations of First Peoples' sentencing courts in Australia for overlooking this third set of objectives. She advises assessment of "whether the practices are transforming the court process into something that is more meaningful for everybody present and, if so, whether such transformations are strengthening and empowering indigenous

communities”<sup>80</sup>. Other scholars have also pointed to the importance of moving beyond simply representing ‘a First Peoples perspective in research’ to ‘researching from a First Peoples paradigm’.<sup>81</sup> We find, and go on to demonstrate, that in the Youth Koori Court model, these three sets of objectives can be compatible, and that many of the program’s goals are realised when they are treated as compatible.

This first section in this chapter provides an overview of what meetings do and some of the practical ways that they complement the work of fulfilling Actions and Support Plans and seeing young people through to sentencing/graduation. The second section performs a ritual analysis of interactions in meetings to show how meeting dynamics are mediated and how young people’s identity and relationships – to the group around the table, to family, to Aboriginal and Torres Strait Islander history and community – are inscribed. The third section draws out several key features of meeting dynamics in which the practical, symbolic and motivational features of Youth Koori Court come together. We show how these intersecting features contribute to and challenge group dynamics. A discussion at this section’s end ties the various chapters’ findings together and speaks to challenges that have been raised.

As with previous chapters, stories, quotes and examples feature throughout. As well as being chosen for their illustration of a particular point, each one evokes a number of the features and qualities discussed here.

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<sup>80</sup> Marchetti, Elena (2014) Delivering justice in Indigenous sentencing courts: what this means for judicial officers, elders, community representatives, and Indigenous court workers. *Law & Policy*, 36(4), pp360.

<sup>81</sup> Wilson, Shawn (2001) What is indigenous research methodology? *Canadian Journal of Native Education* 25(2), pp 175. See also Marchetti (2017),

## OVERVIEW: WHAT DO MEETINGS DO?

As a regular formal and face-to-face encounter, Youth Koori Court meetings are the social, legal and symbolic core of the Youth Koori Court process. It is here that participants' roles and relationships in the case are established and can evolve, as well as where the program's ethos is visibly imparted and formally enacted. All meetings open with a welcome or acknowledgment of country and are presided over by a Magistrate and (with rare exceptions due to limited resources) one or two Elders. This also frames the process with Aboriginal and Torres Strait Islander protocol, and signals initial efforts to make this a culturally safe for young Aboriginal and Torres Strait Islanders and their families. This framing and initial efforts are reinforced as Elders, young people, their relatives and other Aboriginal workers involved in the process are able to bring information and social values into the meetings that would not be as readily accommodated in other court processes.

### STORY: Ailsa meets Aunty L in the Youth Koori Court

*Ailsa is 17 years old and is currently in custody, but will be in care of the Minister when she is released. There is talk about looking a placement for her, but her lawyer points out that might not be viable when she'd prefer to live independently.*

*"Does that sound alright, Ailsa?", the Magistrate asks.*

*"Yep", says Ailsa.*

*It is determined that FACS may be able to facilitate this, and in the meantime, the risks latent in Ailsa's other accommodation options with family are discussed. It emerges over this conversation that Ailsa's mother died a year ago.*

*The Magistrate turns to face Aunty, inviting her input. When Aunty speaks her voice is low and creates a slower space within the conversation.*

*Aunty asks Ailsa: "Was your mum's name Y?" Ailsa nods. "Yeah I know your family", Aunty says. "She used to live at [number] T----- Street. So I know you, I know who you are... I'm sorry to hear your mum's passed, love"...*

*"23% of us go to jail...we're only so much of the population...why does it got to be this way? I hope it changes. Some times there's not a lot of respect for our people. Lot of young people round the table now who want to see you do good, who will support you. ...I've known you since you were a little girl".*

*With this, Aunty elevates the stakes of the meeting. Her moving address to Ailsa and Ailsa's grief, on top of the practical difficulties of Ailsa's situation, demonstrate a specific kind of compassion and insight. At the end of the meeting, Aunty walks around the table to Ailsa. They hug before Ailsa shakes the Magistrate's hand and is escorted out.*



Auty, referring to the Victorian Youth Koori Court, writes that factoring in the 'need to take time to talk' is key to the therapeutic outcomes of a Youth Koori Court<sup>82</sup>, whilst moderators (who in the NSW case is the Magistrate) ensure that talk is oriented towards conclusion. The conversational quality of these meetings is one in which young people are invited to speak, are listened to, are mentored, cared for, motivated and, when deemed necessary by the group around the table, spoken with in frank and firm terms about their attitudes or behaviour. In this space, young people may have direct exchanges with people with whom they may not usually get the opportunity to talk about their problems or their perspective with, or to learn the perspective of, like the Magistrate, Elders, the police prosecutor. This way, the meetings also have the potential to target young people's attitudes, beliefs and thinking.

STORY: A young person who participated in Youth Koori Court during a custodial sentence describes the value of meetings to them

YP: "It was good...to go in there and know that people wanted to help you and that they cared about you."

I: "Oh yeah—when did you first get that feeling like people wanted to help you?"

YP: "On the first day."

I: "What was it about it that gave you that impression?"

YP: "...I just felt the warmth in the room that everyone wanted to help"

I: "Is there anything else they did to help you?"

YP: "What do you mean?"

I: "Well for some young people they help them get off drug addictions, sometimes they help kids find a place to stay, sometimes just get them to think about work or TAFE..."

YP: "They never did that but what they did was, I just went into court and speaking about how I was going, what was coming up in the coming weeks...how I was going. I go for sentence next month."

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<sup>82</sup> Auty, Kate (2006) We teach all hearts to break—but can we mend them? Therapeutic jurisprudence and Aboriginal sentencing courts. in King, M. & Auty, K. (eds) (2006) 'The Therapeutic Role of Magistrates' Courts', *E Law Special Series* (1). Available at: [http://elaw.murdoch.edu.au/special\\_series.html](http://elaw.murdoch.edu.au/special_series.html), pp 126.

STORY: A young person who commented on feeling “safe” in the Youth Koori Court, when asked in an interview to talk about why that might be.

YP: I don’t know. Because I’m Indigenous, like, you know you go in the Koori Court, everybody’s Indigenous there, so you just feel like you’re sitting down with your mob, you know?

I: Yeah, yeah, yeah.

YP: You know, you’re just sitting down having a normal yarn, just talking.

I: Yeah

YP: It doesn’t feel like Koori *Court* because, you know, you’re not sitting there with the judge up on a big seat, you know, people sitting at computers on the side, you know, you’re sitting on one chair. You’re just sitting at a table, just talking.

As well as this, the meetings serve several practical purposes. As we see in Chapters 7 and 9, participants form a team around each young person, and can come together to pool resources and knowledge in order to deal with new situations that have come up (such as accommodation difficulties, employment opportunities, health issues, pregnancy and/or parenthood, bail variations, acknowledging young people’s efforts (and successes) staying out of trouble, new charges). The meetings are also a site in which both young people and the services/caseworkers they are connected to can be held accountable for the actions & support plan items they have committed to and work through obstacles that may have arisen in seeing this through. Besides connecting young people with the appropriate services, the Youth Koori Court has in some instances enabled young people who are already involved with multiple service interventions to have more cohesion between caseworkers, and added support from the Youth Koori Court.

The following table shows some examples from our case studies of how the Youth Koori Court meetings complement the pursuit of items in the Action and Support plans through casework. This sketches some of the ways that ‘taking time to talk’ can make practical and holistic contributions to the pursuit of Action and Support plan items.

	Examples of how meetings further the Action and Support plan
Drugs & alcohol abuse	<ul style="list-style-type: none"> <li>• Frank conversations with young people who might have stopped using Ice but are using marijuana instead; recognising this as still illegal but a step in the right direction</li> </ul>
Housing	<ul style="list-style-type: none"> <li>• Staying in touch with a young person who is couch-surfing/homeless until a better alternative can be established, allocating a caseworker to check in on them, bring them food if they need it</li> <li>• Talking through difficulties young person is having with others they live with, e.g.: relatives, other young people in out of home care</li> <li>• Mediating relationships and agreements in an out-of-home-care placement</li> </ul>
Mental health	<ul style="list-style-type: none"> <li>• Discussing young person's past experiences of counselling and why they may not be keen to try it again. Moving forward in the plan with understanding.</li> </ul>
Employment & education	<ul style="list-style-type: none"> <li>• Some of the Aboriginal workers involved in the program describing their career paths</li> <li>• An Elder staying in touch with a young person and finding odd jobs they can do within the community</li> <li>• Finding out what young people are interested in, talking through ways that interests might be feasibly pursued towards employment</li> <li>• Identifying the skills and qualities young people demonstrate in the course of knowing them—mentoring skills, craftsmanship skills, potential community service qualities—and describing pathways to those as career possibilities</li> </ul>

Cultural connection	<p>Deepening young person's sense of where they come from, for example:</p> <ul style="list-style-type: none"><li>○ Youth Koori Court Elders recognising the young person's name and being able to tell them about their family</li><li>○ An Elder from the same clan and country as the young person being able to tell them about their heritage and history</li><li>○ A FACS worker being able to trace a young person's parent and having their contact details on hand for when the young person might be ready to get in touch</li><li>○ Youth Koori Court officer being able to contact the family of a young person who is in custody during their involvement with the program, and bring them out to that young person's Youth Koori Court conference to meet them again</li></ul>
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## A RITUAL ANALYSIS OF YOUTH KOORI COURT MEETINGS

A ritual analysis approach focuses on the micro-dynamics of interactions to understand how the relationships it consists of are affirmed and negotiated. Such an approach seems pertinent to an understanding of Youth Koori Court meetings, in which relationships are critical. Specifically, we refer to relationships (1) between the young person and other members of the Youth Koori Court, (2) between members of the Youth Koori Court, and (3) between the Youth Koori Court and the broader values it is beholden to.

There are different ways to approach ritual analysis. One theoretical framework we borrow from in this chapter involves treating the Youth Koori Court as an ‘encounter’<sup>83</sup> examining how subtle and mundane interaction rituals are critical to shaping the relationships and identities produced over the course of a meeting. With regard to Youth Koori Court meetings, this means considering interactions in terms of: how a young person’s journey through the program is developed, how their sense of identity is developed, and how the team surrounding them is developed. It includes rituals used to minimise embarrassment amongst participants and to impart skills and education to young people. Both mainstream and Koori court hearings can be understood as akin to a therapeutic play staged in the young person’s interests.<sup>84</sup>

Another related framework drawn on involves reading the Youth Koori Court meeting as a ‘ceremony’<sup>85</sup>; a public event over the course of which morals, symbols, values and emotions shared by the group are emphasised and celebrated. For a coherent comprehension what these might entail in Youth Koori Court meetings, it is necessary to draw on framings based in First Peoples research orientations within settler-colonial contexts.

The third framework draws from First Peoples research methodologies.<sup>86</sup> This framework is not usually used alongside the two ritual analysis frameworks but it becomes pertinent because of the Youth Koori Court’s occupation of Aboriginal and Torres Strait Islander space and orientation to history and values that are important to Aboriginal and/or Torres Strait communities. Our use of a First Peoples research framework in a ritual analysis means that our data is framed and analysed in relation to an Aboriginal epistemological paradigm, where as well as relationships amongst individuals and between individuals and the court space, we enquire after how relationships to Aboriginal lore, tribe, community and country are also emphasised and inscribed in the Youth Koori Court.

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<sup>83</sup> Goffman, E. (1961) *Encounters: Two studies in the sociology of interaction*. Indianapolis: Bobbs-Merrill Co; David Tait and Terry Carney (1997) *The Adult Guardianship Experiment: Tribunals and Popular Justice*. Sydney: The Federation Press, pp116-126.

<sup>84</sup> Borowski (2011: 1113)

<sup>85</sup> Following Durkheim, Emile ([1912] 1996) *The Elementary Forms of Religious Life*. New York: The Free Press; Randall Collins (2004) *Interaction Ritual Chains*. Princeton: Princeton University Press; and David Tait and Terry Carney (1997: 126-135)

<sup>86</sup> Tuhiwai Smith (2012: 190)

This chapter's ritual analysis of Youth Koori Court meetings draws primarily on these three frameworks. First, we focus on how interactions in the Youth Koori Court contribute to affirming the young person's identity as both 1) consisting of positive qualities and positive potential, and 2) as a young Aboriginal or Torres Strait Islander person connected to kinship and country. We move on to examine interaction dynamics amongst Youth Koori Court meeting's members under the following sub-headings: Conversational dynamics, Emotional intensity and Threats to order.

This section's discussion leads into the subsequent chapter's broader analysis of key features in Youth Koori Court meetings.

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### AFFIRMING YOUNG PEOPLE'S IDENTITY

Part of the therapeutic work of a program like the Youth Koori Court is in shifting the identity young people have within the court. Most young people in the Parramatta Youth Koori Court are familiar with mainstream sentencing procedures which spatially single out and isolate young offenders, and are strongly hierarchical. Youth Koori Court's procedures, by contrast, temper these hierarchical relations by positioning young people around a table with other members of the court, where they are invited and encouraged to speak for themselves (either directly or through their solicitor).

The end of young people's first Youth Koori Court meeting, the suitability assessment, when they have been accepted into the program, is marked by applause from everybody around the table and, in the observed cases, the Magistrate will stand, and walk around the table to shake the young person's hand. Elders, will also acknowledge the young person at this point by (depending on the person, their relationship with the young person, and gender) shaking their hand, giving them a hug, with a meaningful look, some parting words, or a brief private conversation with them within the bustle of the end of a meeting.

These gestures are part of the initiation of a young person into the program, and echo rituals that are carried out at the beginning of a new job or internship, for instance. They help acknowledge the young person's embarking on the program as akin to a career. The handshakes with the Magistrate are not necessarily repeated at the end of every Youth Koori Court meeting, but other gestures and techniques are used to continue crafting the young person's identity before the court as an identity distinct from their record of offences. Notably, in cases where young people have demonstrated exceptional progress, the Police officer has also walked around to shake their hand.

Affirmations of young person's identity in this way are particularly notable in instances where young people are brought into the Youth Koori Court from custody: escorted in from a court holding cell by escorts, wearing uniform, and presumably handcuffed prior. In spite of these

circumstances symbolically, they take the same place at the table, are greeted warmly by their lawyer beforehand, and subsequently by others at the table.

Young people's skills, insights, eloquence are also acknowledged and emphasised in a range of ways. These can be minor, and in the context of discussing behaviour they need to change:

*One young person was asked to comment on their grandmother's suggestion that trouble started for them when they fell in with the wrong crowd. They said "Nah, I don't let anybody tell me what to do". The Magistrate replied with austere approval, "I hear you taking responsibility for yourself"*

### RECOGNITION OF PROGRESS

*The Magistrate who sent one young person to Youth Koori Court was invited into Youth Koori Court to see how far they had come. The Youth Koori Court Magistrate remarked "(the recommending Magistrate) should be given credit for putting you in the program, but it's more credit to you – magistrates give young people lots of chances, few really make so good of them."*

Community workers will also always have something positive to say about young people when reporting on their compliance. As we note in Chapter 7, more critical conversations seem to happen 'offstage', outside of court meetings. They are therefore discussed outside of court and represented delicately within court to save face on young people's behalf. For example, a community worker's report might emphasise how easy a young person was to contact and downplay that they have not attended the appointments made for them. Knowing this, the Magistrate, will acknowledge the praised behaviour and ask the young person about the skipped appointments directly, enquiring after what kind of support or motivation they feel they need.

Comments about young people 'looking smart' suggest that their presentation in court is a sign of positive efforts on their part, and these are approvingly remarked on by the Magistrate, Elders and police.

#### Looking smart

*Prosecutor: "Are there any temptations to go back to your old ways, the old G?"*

*Young person: "Naaaah, I'm happier on my own, doing my thing"*

*Magistrate: "That's good I hope you can keep doing that...I can see you've come here today looking professional, looking happy, can see the kind of direction you are facing"*

On occasion, the young person's lawyer or the Aboriginal officer have whispered or gestured to them to take a cap off in the court, and Elders have remarked in interviews that they notice the care young people's advocates express in pointing out the hat, and the respect young people express when they oblige. Taking care to help young people present well can contribute to affirming their identity. A scruffy appearance can indicate a lack of such care. One Uncle remarked, with regard to the juvenile detention escorts who had brought in a young man Uncle thought could have combed his hair and washed his hands:

*"You know that's where-that's where in the justice system, especially those that come from custody, need to say- righto lads, you got court today, smarten yourself up, you know? ...that you are doing this because of respect of this you know, sacred white man house so to speak, you know? Or it's like an elders-you know....I don't want some young bloke you know, not washing his face and having dirty fingernails...now what does that say to us? I'm not prepared to put up with that."*

Youth Koori Court interactions are consistently strengths-driven. This strengths-based approach to young people plays out in broader ritual features such as modelling and encouraging **accountability** and twinning **inspiration with structural support** (which we discuss later in this chapter), all of which contribute to establishing young people with a new 'script' and moral career.

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### AFFIRMING YOUNG PERSON'S IDENTITY AS A YOUNG ABORIGINAL OR TORRES STRAIT ISLANDER PERSON CONNECTED TO KINSHIP AND COUNTRY

Previously in Chapter 6 we note the efforts made to ensure the Youth Koori Court is framed by Aboriginal and Torres Strait Islander protocol and that Aboriginal and Torres Strait Islander people are prominent around the table. As well as this, though, young people's Aboriginal or Torres Strait Islander identities are regularly underscored as sources of strength and pride in conversations. At times this is as simple as the type of encouragement and acknowledgement young people are given, as when the Magistrate says "you are a strong, capable young Wiradjuri man", or an Aunty approving of a young person's decision to attend a Daramu bush camp, saying "you'll feel that spirituality inside you and it'll be a good thing". It might be incidental, as when one Aunty, introducing herself, acknowledges that she is an Elder who is not from that young person's country, and the Magistrate notes that one of the young people who painted the artwork on the wall was from their country, "so your country is here in spirit". On two occasions, in honour of the young person's kin or country ties, the Magistrate has had a bowl of ashes and leaves from the Youth Koori Court inaugural smoking ceremony by Uncle W brought out and kept on the table for the meeting. These symbolic, material and discursive gestures buttress more formal efforts within the Youth Koori Court to facilitate young people's cultural connections, for instance through camps, events, projects or by enabling them to maintain closeness to families, whether in Sydney (through FACS involvement, or via court separation orders) or in other cities (which may involve tying up or relocating fines and justice obligations in Sydney). Importantly, these gestures enable a generative reiteration of young people's



cultural identities even when there is not scope for them to work towards efforts like those described above.

Young people's connections and relationships with their families are also acknowledged and, where possible, reinforced.<sup>87</sup> This has distinct significance against a backdrop understanding of the ways that Aboriginal people's family relationships have been harmed by State enforced child removal policies historically as well as in the present day.<sup>88</sup> Input from family members who attend Youth Koori Court meetings, particularly older members, is invited and given a place in proceedings. Court personnel in Youth Koori Court meetings recognise their importance of young people's families; supportive parents, grandparents, siblings, uncles and aunts are remarked upon and praised, their contributions to young people's wellbeing highlighted to the court and to young people themselves.

***Example:** The Magistrate reminds a young person of the support of her parents and family, remarking in particular: "Your sister has been a tower of strength for another person [in the program]"*

When affirming family, members of the court can formally endorse the care and support relatives have provided, and on occasion, even contribute to the authority of other family members (re this point see also Carney and Tait<sup>89</sup> on guardianship tribunals in NSW and Victoria). We see how family order might be acknowledged and supported in the following story.

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### STORY: AFFIRMATIONS OF FAMILY

*The Magistrate moving through the subjects she asks young people about; drugs, alcohol, accommodation. She asks Angus, 14, and Angus's aunt (and primary carer) if there are issues at home. "Should we ask aunt to step out?", the Magistrate says nodding at Angus and his aunt. The ALS lawyer leans in towards Angus and his aunt, addressing them both, and says "I think there are some issues at home, if we're honest".*

*Angus' aunt confirms this, saying "Angus has issues with grand-dad, with me, with everybody". Angus shakes his head and the Juvenile Justice officer points this out, "You're*

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<sup>87</sup> In Chapter 6, in the section detailing the Children's Civil Law Service, we discuss the extent to which YKC participating caseworkers can advocate for young people with relation to FACS orders over relationships with their kin (including offspring), but the details of these cases, which are seen to in other jurisdictions, are seldom raised in YKC meetings.

<sup>88</sup> See Victoria Grieves (2017) The seven pillars of Aboriginal Exception to the Australian State: Camps, refugees, biopolitics and the Northern Territory Emergency Response (NTER), in Elisabeth Baehr and Barbara Schmidt-Haberkamp (eds) *And there'll be NO dancing': Perspectives on Policies Impacting Indigenous Australia since 2007*. Newcastle: Cambridge Scholars Publishing, pp 87-109.; and Paddy Gibson (2013) Stolen futures: the revival of Indigenous child removal [online]. *Overland*, Spring(212): 44-52. Available at: <http://search.informit.com.au/documentSummary;dn=201223857;res=IELAPA>

<sup>89</sup> Carney and Tait (1997: 133-134)

*shaking your head, mate, you might have a different point of view?" Angus explains that he gets into arguments with his grandfather because he picks on him, "he talks at me without stopping".*

*Angus aunt gently chides him, saying "I told you, love, he can't help it, you have to walk away".*

*The Magistrate comments to Angus, "It sounds like pop is approaching a stage in his life where he can't really control himself anymore".*

*"He makes me angry, he just doesn't leave me alone", Angus explains. The Magistrate nods, listening.*

*Magistrate: "What do you think he'd say if he was in the room?"*

*Angus: "Dunno. Lots of things"*

*Magistrate: "If you're pop now. Tell us about Angus?"*

*Angus: "He's a little shit". The others laugh. "He would say that I argue."*

*Magistrate: "Is it true?"*

*Angus: "Little bit"*

*The Magistrate listens to him. She encourages Angus to find meaningful reasons not to be at home: "Sounds like you need to go to TAFE and get out of there!"*

*The Youth Koori Court talk about this for a while, suggesting things Angus might enjoy doing that will keep him out of the house, keep him busy and keep him out of trouble. James (Juvenile Justice) takes a different tact and suggests a family intervention to help smooth out the relationships. Eventually, the Magistrate comments to Angus, "I can see we're wearing you out, we'll move on".*

This excerpt demonstrates the constructive and caring dialogue that forms around Angus' troubled home relationships. Within this caring tone, the Magistrate invites Angus to put himself in his grandfather's shoes. It is a role play that Angus responds to quickly and thoughtfully, showing that he understands how his behaviour appears to his grandfather. This exchange demonstrates the court's emphasis on education as a pathway to success, and how the court meetings try to deal with anger management issues and strategies for avoiding confrontations. It also displays the court's sensitivity in dealing with fragile family relationships.

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## CONVERSATIONAL DYNAMICS

The Magistrate mediates the conversation, especially early on in a hearing, as she invites people to contribute their thoughts and moves through key subjects of a hearing. This process gives way to more organic sequences of exchange amongst participants, and the mediated conversational dynamic is there to return to when an organic conversation comes to a close and/or we shift to the next subject. While this approach seems conducive to a flowing conversation that also covers the necessary groundwork for each hearing, in a working party meeting in the early stages of the pilot, the Magistrate expressed that she felt she did a lot of the

talking, and sought guidance on what she could do differently in order for Elders to be more involved in the conversation; she was advised by the Aboriginal Liaison Officer that periods of silence might help in this regard. Consequently, some of the Magistrate's mediation involves remaining quiet and leaving room for other participants to speak.

An Aboriginal Elder in the Youth Koori Court, speaking on conversational dynamics

*"I know that the role I fill is as an invited Elder into the system, and the judge is constant.... I just—I love the way it turns into a conversation...you are included. In any other situation, it's not a conversation, you're in there but you aren't included. You're delegated or relegated to do A, B, C and D. In a conversation, you are asked—'would you be prepared [to do A, B, C and D]?' So there's a difference, a major difference.*

Elders can greatly influence a shift in conversational tone. One Auntie often imparted a quietened, reflective shift in other participants after she spoke with the young person. Another Uncle's commanding banter, which encompassed local history, information and encouragement, when addressing young people seemed like a distinct conversation dynamic unto itself within the broader Youth Koori Court.

Jokes and banter enliven the atmosphere at Youth Koori Court meetings. For the most part, this is how people's personalities are expressed in the interaction, but regardless of their maker's intent, jokes perform social functions in the Youth Koori Court dynamic. These can be seen to set a tone for proceedings, setting Youth Koori Court apart from mainstream court processes, and helping pace out more serious moments in the flow of interactions. Jokes and banter are never, or very rarely, at the young person's expense.

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### EMOTIONAL INTENSITY

Suitability meetings might be the most emotionally dynamic. They begin with the young person's being taken in to the Youth Koori Court and introduced to it; an initiation of sorts. Observed suitability meetings have always ended with the young person being accepted into the program and this plays out as a ritual performance of seeking and gaining consensus from all participants. The Magistrate invites the young person to articulate whether they want to be involved in the program. She then goes around the table to invite a comment from each participant, one by one, building up to a gentle climax where she congratulates the young person on being accepted into the program. This is marked by applause and handshakes (see above).

After this ritual in suitability meetings, Youth Koori Court meetings do not generally have sharp, shifting ritual of emotional dynamics until the graduation hearing. Review meetings tend to instead sustain a consistent emotional investment from participants. Each meeting allows the time to talk, and this is not rushed. Even if hearings are long, they seem to maintain energy

throughout, seldom dragging on pointlessly.<sup>90</sup> Some participants remarked that a full day of Youth Koori Court hearings had a discernable emotional impact for those pooling investment into young people's wellbeing. Young people's successes and improved circumstances were energising, uplifting and rewarding, while their setbacks and difficulties were draining, saddening and occasionally disappointing.

Sentencing hearings partially revert to the mainstream court set-up: the Magistrate excuses herself from the table and leaves the courtroom to robe. Participants usually stay seated, and those who sat beside the Magistrate at the table may take other seats. The Magistrate robes, and is announced and court stands while she approaches the bench. This brief ceremony shifts the space and focus of Youth Koori Court and alters the established interaction dynamic. The legal discussion of sentencing hearings are lengthy and technical, going over the young person's sentencing record and offences in stark details that have seldom been presented to the Youth Koori Court. It could be argued that momentum is lost in the process, only to be regained when, at the end of sentencing, the Magistrate descends from her bench and along with other members of the court, presents the young person with notes and gifts of congratulations for their achievement. Graduation ceremonies generally have a jovial and celebratory tone, particularly when the young person's accomplishment through the program affirms participants' faith in them and in the program, and even when the young person was not as expressive as other participants about their achievement. A few graduation ceremonies have taken a more deliberately subdued tone in cases where young people have completed the program but not really engaged with it.

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### THREATS TO ORDER

In our observations, Youth Koori Court participants manage to collectively create a calm social space. A factor might be that several key participants are, at the outset, on the same page as to what kind of environment the court ought to be, while stakeholder participants unfamiliar with Youth Koori Court allow more experienced participants to lead. Unlike restorative justice meetings, which are premised on a shift from tension to reintegration, the Youth Koori Court seeks to create an atmosphere of stability and consistency. Some strategies for this come through in observations. One is by anticipating and accounting for possible disruptions or disengagement. On several occasions, the young person's lawyer would take an 'off stage' moment between hearings – when only Youth Koori Court staff were in the room – to flag things to keep in mind for the next young person, for instance, that a young person with an intellectual disability would be comfortable colouring in at the table for their meeting, or a young person who was pregnant was sensitive about conversations to do with child protective services and to tread delicately when discussing that.

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<sup>90</sup> Borowski 2011: 1125 observes the same in an evaluation of the Victoria Children's Koori Court

Behaviour that might have a disruptive effect in other contexts are generally treated as an opportunity to draw out complex emotional engagement and understanding with young people, as in one instance when a young person's parent abruptly walked out of a hearing.

*Al came to Youth Koori Court with his dad. When the Magistrate first invites Al's dad to share his thoughts, dad apologises and flags that he "freaks out" when he's in a court house. The Magistrate jokes "This is a juvenile courthouse, you are perfectly safe!" Dad shares his story. It has been a long journey for him to being here with his children, trying to look after them. His story is heavy. Pain and disappointment are audible. He finished speaking, saying "That's all I have to say about that".*

*The other participants have been silently listening and nodding throughout Al's dad's story. Now, the Magistrate softly says "okay". She acknowledges that his words tell them all how much he has overcome to be here. Al is looking at the ceiling. The Magistrate asks if Al is okay and he says he is. She reminds him he can take a break anytime.*

*They move swiftly to business, catching up with Al's caseworker and sorting out technicalities of Al's Leaving Care Plan. Later, during a discussion about housing, Aunty W asks Al's dad: "Can I get your details outside? I want to advocate for you to get housing". Dad talks some more without answering Aunty's question. Aunty W gently reminds him of the ways she could assist him and the dad says "if you don't need any more from me I'll head off", and he abruptly leaves. There is a quiet pause. Al is shaking his head. The Magistrate then expresses gratitude that Al's dad came along today at all, saying she can see how big a deal it was for him. She adds, addressing Al, "Part of what this court tries to do is to change the experience of court from people like your dad had, to change perceptions of what court can do. ...when your dad was in court it was probably a long time ago, I'm not sure how he was treated – but I've heard stories", she says meaningfully, "There was no Koori court then." The Magistrate repeats that she understands why Al's dad left, and Al may be disappointed, but his dad overcame a lot to come through here and be here. Al nods, he says "Nah he's all good. I'm used to it".*

*After this, the court continues moving through the review hearing. Towards the end of the hearing, as they go through Al's charges to work out when they can schedule a sentencing, the door opens: Al's dad walks back in and takes a seat at the table. The discussion about sentencing carries on for a few minutes and when it is resolved, the Magistrate walks over to shake Al's hand. She thanks Al's dad for coming back, explains that it is over now and shakes his hand too.*

As well as responding sensitively to Al's dad's admissions and fully acknowledging their emotional implications, it is significant that when these are resolved 'business' is picked up again. This dynamic might model the importance of accepting the duality of carrying on with life's practicalities and making space for life's pain and complexity, as well as being a way to support Al and Al's dad as they live this duality during the hearing.

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## CONCLUSION

Courts are frequently likened to theatres. The actors perform their roles following scripts learned in advance and repeated each time the play is performed. What is different about the Youth Koori Court (and Indigenous courts more generally) from regular courts is that there is more opportunity for improvisation. Participants respond to the stories and experiences of others in ways that reflect, at least to some extent, cultural protocols that transcend western rule books. The circle of actors is also expanded: lay participants get a chance to speak. Elders, relatives and friends and the person whose case has come before the court – they all have the chance to offer their views. Courts have sometimes been described as degradation rituals, in which a scapegoat is identified and ritually humiliated in front of others. For young people whose experience with police has often been traumatic, court appearances can deepen the alienation they feel from the criminal justice system and adult society more generally. The Youth Koori Court by contrast provides affirmation rituals in which the potential of the young person is emphasised. The court changes the script to one that is future-oriented. A narrative of future success is constructed (“I can see you’ve come here today looking professional, looking happy, I can see the kind of direction you are facing”).

The play is not always comfortable for the participants. The harm done to others (or self) by use of drugs, involvement with bad company or participation in violence may be acknowledged and included in the script foreshadowing future action. But the harm experienced by the ancestors of those appearing before the court is also recognised. While comments about stolen land or loss of cultural identity might be expressed in the form of a joke, participants know it is a serious matter that has ongoing effects, as indeed the *Bugmy* decision of the High Court of Australia<sup>91</sup> also acknowledges.

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<sup>91</sup> High Court of Australia, William David Bugmy VS The Queen [HCA37], available online at: <http://www.hcourt.gov.au/assets/publications/judgment-summaries/2013/hca37-2013-10-02.pdf>

### KEY FEATURES OF INTERACTIONS IN YOUTH KOORI COURT MEETINGS

Participants' roles and relationships as part of the Youth Koori Court are formally established within the Youth Koori Court meetings, and it is here that these roles and relationships are displayed and checked in on as they evolve over the course of a young person's journey through the process and indeed, over the course of each stakeholder's overall involvement in the Youth Koori Court program. This section examines some of the key distinctive features of the Youth Koori Court meeting interactions that have an overall harmonious and beneficial or challenging impact on the process.

- Comprehension and engagement
- Accountability
- Changing relationships between young people and the justice system
- Inspiration twinned with structural support
- Responsiveness to shifting priorities

These features help organise an understanding of how the practical, ritual, symbolic, and motivational factors of the Youth Koori Court come together in meeting interactions, and their broader effects on dynamics and on supporting Action and Support plans. We build on analyses from earlier sections of this chapter to do this. We also consider different ways members of the Youth Koori Court might interpret these features, and what issues are brought up when these features come into conflict.

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### COMPREHENSION AND ENGAGEMENT

The court hearings are conducted in simple English appropriate to the level of comprehension of the young people involved. Information is obtained in a conversational style that both supports maximum participation by the young people and also checks they are following what is being said.

A crucial aspect of how Youth Koori Court enables young people's participation is through pitching the program's process and expectations so that they understand it. The Magistrate's explanations as to what each meeting entails are usually layered, for example, telling a young person at their suitability assessment "today is about your needs", then layering it with "it's a suitability assessment... understanding what you need, what services you could work with, and the court's capacity".

There is also very little legal jargon in Youth Koori Court meetings, and instances where there needs to be specialised language it is explained to young people, though in some cases young people ask for clarification of a word or concept they do not understand.

The Youth Koori Court Officer points out that Amy does not smoke cannabis anymore. He suggests they delete the Drug and Alcohol requirements of the Plan.

*The Magistrate to Amy: "Do you agree with that?"*

*Amy: "Yes"*

*Juvenile Justice: "Do you need help with a relapse prevention plan?"*

*Amy: "I don't know what you're saying right now"*

*The Juvenile Justice officer explains what he means.*

#### Getting a role model

*Aunty M encourages Kane to go into mentoring. "The community needs a young man like you", she tells him. The Youth Koori Court officer suggests that Kane do this at the gym he has been set up with a membership to, saying "at 6 in the morning, there are younger kids there who could use a mentor. It's early, that's why I didn't mention it". Kane is whispering with his caseworker, Daan. Daan remarks "I was just explaining what a mentor is, because Kane wasn't that sure". The Magistrate says "It's like a role model, helping young people, giving advice".*

Young people involved in the Youth Koori Court program are, due to their difficult life circumstances and offending histories, often subject to stringent legal and judicial oversight including curfews, juvenile justice reporting, Apprehending Violence Orders and non-association orders prohibiting them from associating with current or former romantic partners, kin, and friends. The Youth Koori Court meetings offer young people and sometimes their families/guardians a space in which breaches of these orders can be either explained to the young person in breach, or if deemed necessary by some participants, challenged, or simply troubleshoot. Often in the court, a young person would be 1) advised again the terms of their association order, and/or 2) invited to explain their difficulties in adhering to them, and/or 3) offered strategies they can draw on so as to better observe the order. The following story is an example of all three, but also suggests the balance of seriousness and banter that characterizes Youth Koori Court sessions and helps keep young people engaged.

#### STORY: Difficulties with a non-association order

*A young person has breached an AVO issued by his ex-girlfriend. He is in custody after being spotted with her.*

*Magistrate to YP: "Hello, and sorry to see where you are"*

*Young person: "Yeah, sorry"*

The young person explains the set of things that happened that set him back and eventuated with his arrest. He is asked whether he still wants the Youth Koori Court's support. He says "I'd love you to still support me", and talks about going to an employment agency appointment to



## Youth Koori Court Review

try and take steps towards securing work. It is noted that he has not been in touch with his caseworker either, and he is asked about this.

The police comments on his criminal history for violence and breaching AVO's.

*Sergeant: "We can't shy away from the victim's assault, there were pretty serious injuries and I have an obligation to her..."*  
*Young person: "It takes two to breach an AVO and she's the one who comes up to me"*  
*Sergeant: "Can you just walk away?"*  
*Young person: "I've tried that so many times...we're not together anymore...I can't be a mean person and just walk away...next thing I know I'm in handcuffs"*

He talks about not having friends. The sergeant asks if he plays footy, and the young person says he used to, and did enjoy it, "I'd tear off with the ball and words would fly". Everybody laughs. His caseworker pleads for him to stay in touch with them and says "Let us do our job".

*Magistrate: "I remember your ex-girlfriend and you had a good relationship. Some people have one good relationship some people have twenty. I know it is hard, but your next good relationship is coming, you're a good person, I know it's going to happen. Just focus on that. And if she approaches you again, well, you know how fast you can run a hundred metres."*

Young people's comprehension is key to engagement. Both factors contribute to the extent of their confidence in the justice system. Comprehension was cited by young people in most of our interviews (9) in response to the question of what made Youth Koori Court different to regular court.

What is special about Youth Koori Court?

*I: "And what's regular court like by comparison?"*

*YP: "It's-I don't know I can't explain it-it's just very-I don't know I felt uncomfortable in there yeah...Yeah, like all the big words and stuff I don't understand properly, yeah."*

*I: "Yeah, whereas Koori Court..."*

*YP: "They explain it to me where I don't understand. Try to-yeah... Yeah because in other courts I really didn't understand what they were saying."*

Youth Koori Court meetings create opportunities for young people to speak for themselves; they are spoken directly to and asked questions by the Elders and the Magistrate and other

participants; they are asked for their input on whether they see issues identified by the court as important, or simply asked to clarify with a yes or no input other parties (such as caseworkers or kin) have made about them by being asked “is that right?” or “would you agree with that?”; in more emotionally or circumstantially complex (or sensitive) cases, the Magistrate might summarise her understanding of the young person’s situation then asks “Is that a fair thing to say?”. For example, when the young person’s lawyer reveals that the young person’s older siblings are all serving custodial sentences, the Magistrates “So you have some models you don’t want to follow. Is that a fair thing to say?”

Young people’s responses to these and other questions are treated seriously by other participants. If the Magistrate senses hesitation, wariness, distraction or anything else that might suggest disengagement in their tone, this is acknowledged and gently asked after. Young people are encouraged to offer reasons for their decisions, and to understand and agree to what is being asked for them by Action and Support plans.

### What commitment means

*Magistrate:* “Are you committed to this program?”

*Benjamin:* “Yeah”

*Magistrate:* “Can I ask why?”

*Benjamin:* “Cause I want to work with Daramu”

The Daramu caseworker elaborates that they too want to work with Benjamin. He describes the yarndi program they would support Benjamin in attending and the counsellor they would refer him to. “I think we can help him”, explains the caseworker.

Comprehension and engagement twin the court’s efforts with the young person’s efforts, and anticipate reciprocity (somewhat echoing the phrasing for Action and Support plans – ‘what we do, and what you do’). Young people are acknowledged for asking questions, for answering difficult questions or answering eloquently, and for expressing themselves frankly and clearly, and these admissions help the hearing proceed in a meaningful way. More generally, in some instances of a young person’s first appearance in the Youth Koori Court, their solicitor will explain that she will speak on their behalf until they feel more comfortable, in the meantime taking instructions from them as the meeting proceeds. This allows young people who might be shy, withdrawn, or intimidated by the process to converse with the Youth Koori Court using their solicitor as a conduit, to help break the ice, though young people in observed cases were always at some point encouraged to speak for themselves directly.

By contrast, a perceived lack of engagement from young people can frustrate other participants. During cultural interpretations of observations with the researcher, two Elders, on different occasions, described turning quite stern with young people in order to snap them out of what they read as dismissiveness and disengagement. On both occasions, the Elders’ stern tone was a rarity in the usually non-adversarial Youth Koori Court.

A sense that a young person was disengaged, if noted by anybody other than an Elder in the cases we observed, could sometimes polarise participants between those who were disappointed by it, and those who defended it. This can create 'sides' within the Youth Koori Court community around the table, between the prosecutor (in one instance) or a community worker (in other instance) and the young person's advocates (legal advocates and the Youth Koori Court officer, for example). This is an example of the kind of context in which the big brother/sister advocacy role noted in Chapter 6, 'A culturally congruent court', came into play. These tensions were never able to escalate in the cases we observed.

Although comprehension and engagement are emphasised, this is balanced against giving young Aboriginal and Torres Strait Islander people an opportunity to benefit from the Youth Koori Court. Consequently, some concessions on speaking are made for participants with intellectual disabilities (we have been asked not to observe such cases). One interviewee has questioned the appropriateness of Youth Koori Court for young people with a limited ability to engage with the Youth Koori Court. This points to diverse understandings of what qualities young people should possess to be suitable, where some stakeholders imagine a stricter criteria would be a 'better use of resources', while others point out that the Court's flexibility enables young people with variable needs and capacities to be able to potentially benefit from the resources at hand.

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### ACCOUNTABILITY

Participants of the Youth Koori Court make a point of emphasising accountability both to and for the young person. Caseworkers and partner agency representatives were invited to Youth Koori Court meetings involving their client, the young person. When the agency could not send a representative, they generally provided a written report. In some cases information was communicated verbally by one of the other participants, typically the ALS lawyer or the Aboriginal Court worker. This enabled the court to monitor progress towards agreed goals. When participants had not yet carried out the agreed tasks, reasons for this were examined, and steps put in place to address the problem.

Young people claimed in interviews that the court's approach had an impact on how they behaved as well.

Story: Young Person articulates feeling accountable to the Youth Koori Court

*Young person: "I feel comfortable talking in that [Youth Koori] Court"*

*Interviewer: "Why do you reckon that is?"*

*Young person: "It's not as hard and stuff...You associate with other people in there, you're talking to people, they're talking to you. ...all my fines got paid off...I used to hate coming to court but it's cool in there...I'm usually shy, but not in there"*

*Interviewer: "Did that happen straight away, first time you went in?"*

*Young person: "Nah it took me a couple of times. The judge liked me... they'll give you a chance to see if you do everything they want you to do. I did everything they wanted me to do. I went to counselling. I went to JJ's. So they can see me willing to do it. Every appointment for JJ's, I go, if I can't go, I'll call and tell them. If I can't make it in one week, I'll call and say I'll come in twice next week. The appointment's at 11.30, I'll get there at 11.30 exactly, knock on the window of the guy I have to see"*

*Interviewer: "Is there anything you think they could do better for young people going through in the future?"*

*Young person: "They try and do as much as they can. It's up to the people they're working for to meet them halfway. I met them halfway. They try so hard to help you, they care, that's why I want them to see it working. It looks bad if they try so hard and you're back in there...I don't wanna go through that process again—it looks like you never changed. I wanna show I changed."*

While for some young people 'taking responsibility' meant engaging with programs and turning up to appointments, for others it meant willingness to seek help, or to try again.

**Example:** At her suitability meeting (her first appearance at Youth Koori Court), Cassandra, 16, had agreed to avoid a group of friends with whom she used ice as part of addressing her drug use. She was due to court for her Action and Support plan meeting at 10am two weeks later, but her caseworker arrived alone and in tears saying she had not been able to contact Cassandra all week and was worried for her safety. Cassandra eventually arrived, shortly after 10: she had been using drugs and was still under the influence when she was in court, but she claimed that she wanted to appear, be honest about what she had done, ask for help, and ask in person for her review date to be moved.

**Example:** Lee had drifted out of contact with Juvenile Justice and had missed that week's reporting times. The following Monday, Lee came in to the Penrith Juvenile Justice office to talk to James, the Juvenile Justice officer that Lee had known for several years who was also a part of Lee's Youth Koori Court meetings. Lee asked James if she could return to the rehabilitation facility she had once been too. James was able to coordinate this with the facility and helped Lee catch a bus to the facility the following day.

**Example:** Darryl was known to court staff for five years, and was notoriously difficult for the services to keep in touch with and keep tabs on. A slew of legal and social services interventions saw Darryl separated from his family and he was described as drifting without a base. During Darryl's involvement in the Youth Koori Court program, he had not been able to follow through on many of his initial commitments. However, he remained consistently engaged with the Youth Koori Court. Despite often losing his phone, he would take initiatives like looking up a Youth Koori Court Officer on Facebook on somebody else's phone, and messaging them with a question about his next court appearance; the Youth Koori Court worker could then ask Darryl for a contact number and ring him back.

As the examples demonstrate, the attitude and lifestyle changes that young people are supported and encouraged to make are not straightforward (see also Chapter 8): there are hiccups along the way. Serious setbacks, particularly those resulting in new victims, raise crossed logics amongst Youth Koori Court participants regarding the court's role even as all participants express regret that a young person who committed the crime was in the position to do so. Some participants frame this as a failure on the young person's part, and consider the court responsible in the event that the offending behaviour follows a relaxed curfew, bail order or non-association order. Other participants ask, how did we fail this person? The balance between young people's responsibilities and court's responsibilities are always in flux over the course of a case, and variously interpreted. The kind of serious set back involving reoffending and new victims draws on different participants' different interpretations and can foster disappointment and conflict, and contribute to loss of or faltering of some participants' faith in the Youth Koori Court process.

The balancing act involved in addressing accountabilities is achieved more readily in court, expressed as resistance to simplified narratives about participants' roles and trajectories. Compared with other therapeutic justice programs which might draw on black and white narratives that overdramatize harm and cast police and non-offenders as always in the right and offenders as always in the wrong<sup>92</sup>, the Youth Koori Court Magistrate and other participants try to coax a more balanced acknowledgement of greys and complexities.

**Example:** *A young person has been caught by police at a train station without a ticket and this is brought up by the Sergeant in court – she tells the young person that, “It’s illegal not to have a ticket, people going to work do it all the time, but with your offending history it’s just not worth it.”*

We see another more faceted example of this in the following story.

### STORY: FAIRNESS AND FIRMNESS IN CONTEXT

*YP’s caseworker mentions FACS setting YP up with an opal card which he will help YP top up. They talk about young person’s public transport fines; there’s an interesting exchange where the caseworker seems to be jokingly chastising the young person for accruing those fines, but their Legal Aid representative says that those fines will be easy to wipe because of circumstance, YP was homeless, riding the train to be somewhere, it is understandable.*

*During the sentencing later in the case the Magistrate notes that there were...lots of charges: goods in custody, robbery in company, affray, going back to March 2014. Perhaps evoking the earlier exchange between the caseworker and lawyer about need in relation to offending, the Magistrate acknowledges that the stolen goods were not all necessities – they included luxury items like alcohol and cigars.*

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<sup>92</sup> See Rossner, Bruce and Meher (2012)

*This showcases an example of the court showing a multi-dimensional, complex narrative of the young person in the program. It is worth noting that this fuller picture clearly pointing out young people's culpability may be clearer during the mainstream sentencing hearing setting than in Youth Koori Court setting. A distinction is made between what is ritually appropriate in the Youth Koori Court review meetings and in the sentencing phase.*

### CHANGING RELATIONSHIPS BETWEEN YOUNG PEOPLE AND THE JUSTICE SYSTEM

Instances in which young people hold themselves accountable for their end of agreements with the Youth Koori Court demonstrate a changing relationship between young Aboriginal and Torres Strait Islander people in the program and the criminal justice system. The program's objectives and methods invite and encourage young people into having reciprocity with the program, and to enter into trusting relationships with the Youth Koori Court and its affiliates. In meetings, the Magistrate regularly underscores this trust, saying that if the young person can demonstrate their commitment to compliance with court orders and bail conditions in specific ways – like observing Juvenile Justice reporting, observing curfews, staying out of trouble, being civil in interactions with police – then the Youth Koori Court can demonstrate their faith in the young person by varying bail conditions, reporting requirements and association orders that are within the court's jurisdiction. When they do arise, the Magistrate takes note of such agreements and keeps track of the young person's progress against the agreed-to terms, so these are discussed in terms of trust, reciprocity and accountability in each person's case history with the Youth Koori Court.

On occasion the young person is *first* given an opportunity to have a more lenient situation (for instance, reporting once instead of three times a week, or having an evening curfew extended from 6pm to 9pm), and it is hoped that they can honour the trust that is being placed in them with this act. In both types of reciprocity, the gravity of such situations is usually noted.

### EXAMPLE OF INTERACTION AROUND SUCH AN AGREEMENT

*Magistrate: "In my view even though there are serious concerns I'm going to vary bail and continue bail. Because I believe that Albert wants to change and is committed...but if I'm wrong, I'm very quick to admit I'm wrong. ... Albert, if there is another relapse, and you are arrested, you are likely be in custody until bail accepted ...I'm making a very serious call today, I want you to acknowledge that... You already have a 9pm curfew, and there is daily reporting to the police. Is there anything else we can do for you?"*

*Albert: "No. I can abide by the rules."*

*Magistrate: "We have so many supports and we are desperate to work with you. But I cannot let the Youth Koori Court be abused. But I believe you can get through this. If I'm wrong then, well, we'll have to live with that".*

It is worth noting that as with all types of bail and sentencing outcomes, these reciprocal relationships entered into between the Youth Koori Court and young people can sometimes

result in offending behaviour with new victims. While cases in which productive reciprocities develop between young people and the court contribute to improved relationships, cases on the other side of the spectrum, in which young people cannot meet what is expected of them and re-offend, can rattle stakeholders' faith not only those young people but in the program itself, particularly surrounding violent offences. We do not have data that allows us to report the percentage of times this has happened (see the analysis of new offences in Chapter 11), but the seriousness of such cases raise challenges to the program's dynamics and aspects of its process which will be discussed in depth in the discussion at the end of this chapter.

In meetings, the Magistrate, Elders, Police Prosecutors and others regularly emphasize that the relationship between young people with an offending history and the criminal justice system beyond the court will, like all relationships, take time to change. This comes up particularly when young people comment on being stopped and questioned or searched by police when they have not done anything wrong: they are encouraged to exercise patience and to remain polite in these interactions with police, and to take the onus on them to begin changing relationships.

### *STORY: Andrew's third review*

*This is Andrew's third review. He reports that he has been attending sessions at a Koori drug rehabilitation facility in North Sydney, as per his plan, and his lawyer points out that the facility is a 90-minute commute from his residence, and he has been catching public transport there and back. The Magistrate comments approvingly. She asks Andrew how the rehabilitation program has been going and he describes it in detail; what it demanded of him, how he felt about it, what he did. The Magistrate interrupts him. "I'll just stop you there, and congratulate you", she shakes his hand, explaining: "I just asked you how it was going and you told me in detail!" Andrew replies that since this is his third time in court, "it feels like family".*

*At the end of Andrew's review, he shakes the Magistrate and Aunty's hands, as he normally does. Then he leans over to shake hands with the Police Prosecutor, the Juvenile Justice Officer, the Youth Koori Court officer and the court officer who hands him his paperwork. He appears comfortable and confident, as though a shift has taken place where he has stopped seeing himself as somebody who comes to court because he is in trouble, and instead as someone who comes to court as an adult working on a self-development project.*

As well as potential for changed relationships between young people and the criminal justice system, there is a more local buy-in from young people and their families who know others who have been through the Youth Koori Court and like or have worked with its personnel: this is reportedly conducive to trusting relationships and cooperation with the program. One stakeholder remarks: "the way the trust seems to go is that if there is someone that you trust and they okay someone else then they are okay...otherwise it's closed shop." The young people and families interview in this study verified that they trusted and liked the Youth Koori Court.

Aboriginal and Torres Strait Islander people's confidence in the criminal justice system more generally is a long-term goal that would entail the motivation of actors throughout the criminal justice system, as well as beyond it, to achieve, and it is not conventionally measurable. The Youth Koori Court's broader implications for relationships between the Aboriginal community and the court are so far discernible only in anecdotal evidence from Elders who report hearing positive reviews of the Youth Koori Court in contexts far removed from it, and in interviews with stakeholders, young people and their families so far.

### ON CHANGING RELATIONSHIPS BETWEEN YOUNG PEOPLE AND THE CRIMINAL JUSTICE SYSTEM

A young person's legal representative:

*"I suppose one of the things that I say about that is that's not for the purpose of making young people kind of normalise court as being somewhere where they necessarily belong or anything like that, but it's about having a sense [that] court is a place is where you know, you find yourself in them for whatever reason, you will be treated fairly and with respect and that you will get justice there."*

In several cases a young person who has graduated from the Youth Koori Court has come back from time to time to visit members of the Youth Koori Court 'family'. The Youth Koori Court is not funded to provide ongoing support for these young people, but the fact that some of them come back does reflect on the perceived quality of the support they have experienced.

### ON CHANGING RELATIONSHIPS BETWEEN POLICE AND YOUNG PEOPLE

A police officer:

*"I'm breaking it down the few of them, and probably a few of their parents or the-all their elderly grandparents because they're used to police being horrible to them and police have been horrible to them, but it's a lot of work to be done and whether it can ever happen who knows."*

An Elder:

*"I can't speak for outside the court, but in the court it has a profound effect on children and the police. When they [the young person] first come up there is a cold shoulder between child and the police who sits at the table also. Unintentional, just what the child has expected. That's at the first level. When the child comes in again and again, their body language changes, it is more relaxed. The police officer is always the same, but the feedback coming out of them changes the young person. It's the same feedback coming from Elders and all, but to see them see it coming from the*



*police officer is a profound thing... That for me...you grow up in [Northern state city] your brothers being chased, your friends being chased for no reason. You call them every name under the sun, to see that reaction, to grow up, and now see this reaction—I'm on a high."*

The process of changing historically, socially entrenched relationships is delicate and complex. The Queensland Crime and Misconduct Commission explains this eloquently with regard to police:

*"The relationship between police and Queensland's Indigenous communities is highly variable, depending on place, time, recent events, and the particular police officers involved. Generally, however, it could be described as fragile, tense and volatile. Such a description should come as no surprise to any Australian with awareness of events in our colonial history, or indeed of contemporary police-related events involving Indigenous people."*<sup>93</sup>

Aspects of our data point to sensitivities around how this loaded relationship plays out in Youth Koori Court meetings. We can summarise the contention in terms of a delicate and difficult balance between promoting respect for police, *and* acknowledging the fact of historical and contemporary police involvement in Aboriginal and Torres Strait Islander over-representation in the criminal justice system, *and* distinguishing individual identities of police and young people in the room from the groups they represent. This complex problem cannot be easily resolved in a report. Drawing from decolonising methodologies, we can only suggest framing this problem and a commitment to working through it in time as part of the slow fulfilment of Youth Koori Court's objective to change court culture and to change relationships between Aboriginal and Torres Strait Islander and the criminal justice system.

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## RESPONSIVE TO SHIFTING PRIORITIES

A more simple but fundamental feature of the Youth Koori Court is the responsiveness that participants and the process itself must have to sudden shifts in a young person's circumstances. It is understood that plans may alter and evolve to accommodate things like new charges, a period in custody, a new housing situation, or a health matter (from broken bones to pregnancy), but occasionally, events occur that may alter the meeting's priorities for that day. There are several examples of this happening around a young person's sudden or impending homelessness, as in the following story, and these instances necessitate a brisk revision of bail orders and support plan items, and participants' efforts finding a solution to the problem.

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<sup>93</sup> Crime and Misconduct Commission (2009) Restoring order: crime prevention, policing and local justice in Queensland's Indigenous communities. Brisbane: CMC, pp xxiv

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STORY: PRESSING MATTERS DEALT WITH IN SUITABILITY MEETING

*This is Taylor's first time in the Youth Koori Court for a suitability assessment, and as of that morning, Taylor has nowhere to live. This is the first thing raised in court following the welcome. Everybody tries to figure out where Taylor can sleep that night. One of the caseworkers steps out to check whether Taylor can stay at their facility (he returns saying "there's vacancies but it's not possible"). Taylor has no family nearby; it is suggested Taylor travel to the nearest relative. Marist Crisis Care is suggested. "Well, Taylor" the Magistrate says, "you've presented us with a very big challenge".*

*It is pointed out that Taylor's curfew is linked to the residence Taylor can no longer stay at, and the lawyer asks if that can be revised so there is no risk of Taylor breaching bail. The Magistrate suggests they look at the suitability and then return to the bail. They examine the criteria one by one, talking about the kind of support and therapy Taylor might benefit from. The Magistrate explains to Taylor that "Why that's important to me is if some of these things were stable you'd be less angry, less likely to lash out, offend".*

*The Police prosecutor is invited to contribute. He speaks sternly to Taylor about the offences and says he hopes Taylor is committed to this program after "committing these crimes, and having these victims...you don't want that, we don't want that".*

*The Magistrate says, "if you come in this program is not a breeze, you have to do stuff but we support you, not me personally but these others, Action and Support plan, what we do, what you do..."*

*With Taylor's accommodation situation left open-ended at the end of the assessment, and for the caseworkers, lawyer and Youth Koori Court officer to work on over the course of the day, Taylor's lawyer requests that Taylor be subject to daily reporting but with Taylor's curfew and residence condition deleted. The Magistrate invites the prosecutor to share his thoughts.*

*Prosecutor: "Can I just ask Taylor about that? Taylor, I'm going out on a limb here - if you get into trouble it comes onto me and I don't want to be in that position...."*

*Magistrate: "Can I echo the Sergeant's concern? ...We are all going out on a limb here, please don't reward that with failure."*

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INSPIRATION TWINNED WITH STRUCTURAL SUPPORT:

The term 'Action and Support plan' succinctly captures the program's requirement for reciprocity, which the Magistrate repeatedly reminds young people by describing the plan as "What we're going to do to, and what you're going to do". In keeping with this, the 'wrap-around' support approach to structural circumstances in Youth Koori Court young people's lives

(detailed in Chapter 7) is twinned with encouragement of and cultivation of that young person's agency. This occurs first in the interactions through which young people's **engagement and comprehension** of court processes is facilitated, and is a factor in young people's **accountability** to the court, and in building **changed relationships between young people and the justice system**, all of which tap into other features discussed in this section. It is also made note of retrospectively, as the Magistrate remarked at one young person's sentencing hearing:

*"This court recognises that you did not want FACS' involvement, but over time, with support, you embraced it. ...Robbery in company attracts a maximum of 20 years. The work you have done here I hope will show you that that is not your destiny...you have not offended this whole year, and that is to your credit"*

Efforts to inspire young people also extend beyond the program's conclusions, as all young people in the program are encouraged to raise their expectations for themselves and their lives, to imagine futures for themselves that break with criminal justice cycles that many are in when they first enter the Youth Koori Court. There is a focus on identifying each young person's strengths, skills and interests, and trying to facilitate opportunities to turn those into a career and income (see section on Employment and Education in Chapter 9) – this generally happens at the first suitability meeting and is revisited and checked in on throughout review. (As we have discussed in Chapter 7, the Youth Koori Court requires more systemic support and collaborators to develop the extent to which career opportunities are accessible to young people, see also the Recommendations.) Some interviewees also note that having workers who identify as Aboriginal and Torres Strait Islander around the table also imparts a motivation to young people that might have not been forthcoming in their lives prior.

*"We need kids like M---, who has probably never seen anyone go to Uni [see someone like] Amy, this Aboriginal girl from Queensland who...is out there writing papers, doing all this research...and he got to meet her and she was his lawyer. It is invaluable for a kid like H---, who grew up in similar circumstances to James (another court worker), and they are both from the same place down the coast"*

Some staff report discernible effects of this in young people expressing and discussing longer-term aspirations. As the Aboriginal Liaison Officer notes of one young person:

*"...This young kid has stayed out of custody for the longest period of time in the six years I have known him. And when you talk to him now...[he is] talking about going on trips, talking about going to Fiji. ...Kids like this don't always have those ambitions because it's very hard when you're surrounded by all your brothers and sisters, uncles and aunties, parents going in and out of custody and not having much money, it's hard to dream about stuff like that."*

## DISCUSSION

This chapter's qualitative analysis of the practical, symbolic, ritual and interactive qualities of Youth Koori Court meetings has accumulated a sense for some of the progressive ways that the Youth Koori Court is meeting three sets of objectives:

1. To provide a practical/ tangible scaffold to the process
2. To address the program's stated objectives
3. To address objectives understood as part of a First Peoples orientated meeting

The acknowledgement of land, clan, lineage and relationships at the beginning of every meeting establishes values that the meeting's conversation reflects and returns to as it continues. Meetings act as a therapeutic play directed at inspiring and supporting young people, and fostering their engagement and development through meeting interactions. Meetings might even inspire young people's compliance and their and their family and broader community's attitudes. It is important to also note that meetings are emotionally laborious and can be "great and uplifting or draining and depressing", to use one Elder's words, depending on young people's circumstances (progress and set backs). Overall, this chapter has developed an understanding of how Youth Koori Court meetings involve interplays of individuals and institutions, structure and agency, faith and prudence, lineage and the present moment.<sup>94</sup>

We have also developed an understanding of some of the more challenging of these interplays. Elsewhere, we have described challenges as an impossible balancing act, or in terms of crossed logics. These clashes are rooted in the fact that different participants are bringing different orientations to their involvement, and subtly different interpretations of what the Youth Koori Court is and ought to be and what its objectives are and ought to be. Should the suitability criteria be stricter, restricted to young people who are able to engage with the program and demonstrate discernable improvements in behaviour thus making effective use of court resources? In which case, is the Youth Koori Court a prescribed program that is able to perform a specific kind of streamlined therapeutic rehabilitation? Or can the suitability criteria remain broad alongside developing the Youth Koori Court as a flexible program able to adapt to the needs and capacities of each young person's circumstances? If so, where would the court draw a line in accepting a young person into the program?

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<sup>94</sup> Adapted from Ray Pawson and Nick Tilley (1997) *Realistic Evaluation*. London, California and New Delhi: SAGE, pp xiii

## CHAPTER 11: CRIMINAL JUSTICE OUTCOMES

In this chapter we review the different ways the criminal justice outcomes of the Youth Koori Court process can be defined, measured and operationalised. We discuss the issues involved in obtaining these measures, and the strengths and weaknesses of each. We provide estimates for two measures that are particularly relevant to the operation of the court.

As previous chapters have shown the clients of the Youth Koori Court tend to be highly marginalised, and face a complex range of health, housing, educational and employment challenges. Much of the court's attention is directed to attempting to assist the young person to address these problems and develop a safer and more stable environment. Action and Support plans are developed to advance these objectives, support agencies are identified and progress monitored. However social deprivation is not what brings the young people to the attention of the court. It is the criminal charges to which the young person has pleaded guilty (or for which they have been found guilty). Indeed the primary formal role of the court is to be a sentencing court, the part of the criminal justice system where decisions about appropriate sanctions are made.

These two types of outcome are not contradictory. Sentencing for children and young people – whether in a Koori court or regular court – tends to prioritise rehabilitation, which necessarily involves paying attention to lifestyle factors and social environment. Nevertheless sentencing magistrates are also required to take into account effects on other people, including protecting the public from future offending by the offender ('individual deterrence'). Other sentencing principles may include discouraging others from offending ('general deterrence'), retribution, incapacitation (putting someone out of action for a period) and avoiding vigilante justice.

So while helping the young person get their lives together – rehabilitation – might be seen as the primary objective of jurisdictions like the Youth Koori Court, individual deterrence does have a role. It is certainly of interest to policy makers and the public. So does the Youth Koori Court make a difference to the offending behaviour of the young people themselves? There are several ways of addressing this question:

1. How well does the Youth Koori Court process address the risk factors relevant to re-offending?
  - Risk factors for re-offending include: reducing contact of the young people with an offending peer group, avoiding places where offending is most likely to occur and protecting family members who have experienced violence from the young person. As the previous chapters showed, no-contact orders, curfews and safer housing options are some of the strategies put in place to address these issues. Referrals to drug intervention programs aimed to break addiction to Ice (or other hazardous substances) and promote more responsible use of alcohol, while participation in programs to increase job-readiness or healthier relationships addressed two of the major factors associated with desistance from crime – getting a job and being in a stable relationship.

- From the perspective of risk management, the lifestyle interventions initiated during the Youth Koori Court process are precisely the types of action that could be expected to reduce future offending. In other words they provide the framework for individual deterrence.
- Through the implementation of action plans, risk management strategies were put in place for most of the young people who came before the court. Based on what the criminology literature says about desistance, if the opportunities for engaging in delinquent acts are reduced, the motivation to engage in such acts diminished and capable guardians provided to keep an eye on the young person, then re-offending is likely to be reduced. 'Capable guardians' refers to mentors like Elders, role models like other young Aboriginal people and professionals like social workers (who may also be other young Aboriginal people).
- If opportunity, motivation and capable guardians are indeed the key to reducing risk, then the 'intervention' that should be measured is not participation in the Youth Koori Court as such; it is the various actions that flowed from involvement in the court process. These actions naturally took time to arrange, so the start point to measure the re-offending period should arguably be the point when the relevant measures were put into operation. Of course if the risk management plan was not activated – for example if the young person continued to live in insecure housing with co-offenders, it would be expected that the delinquent behaviour would continue.

### 2. Does individual re-offending decline as a result of participation in the Youth Koori Court?

- Individual re-offending can be specified in terms of quantity: number of custody events (discussed above), number of offences (self-reported by offenders or recorded by police), or number of victims (either self-reported by victims or recorded by police). A time dimension is also required, options include: time to first re-offence, time to re-sentence or to first (re-) imprisonment, and estimating rates of *ever* re-offending, by projecting a survival curve from re-offending rates at 6 months, a year etc. Type of offence is often considered – whether the new offence is violent or not, and whether it is of the same type as the previous one (e.g. drugs, burglary, cyber fraud). One of the most widely-used measure of re-offending is *whether* a person re-offends within a specified period (typically two or three years) of a previous sentence, with re-offending measured until the date of next offence.
- To work out whether re-offending has increased, decreased or remained stable it is usual to compare the individual offending record with that of equivalent offenders who did not receive the intervention. Once the Youth Koori Court model is fully developed this would be one of the measures that could contribute to an understanding of outcomes. For a pilot however it is not practical for the following reasons:
  - a) *Time period*. Most pilot projects need results reasonably quickly. To get useful re-offending rates it would be necessary to wait two years (preferably three years) after the young person had graduated from the program, or as suggested above, from the point at which the action plan had been put into operation. The BOCSAR 2012 evaluation of Youth

Conferencing used a three-year recidivism rate. However, because the initial implementation stage of a pilot focuses on refining the model, only data from the final cohorts provide reliable measures of the impact of the intervention.

- b) *Sample size.* To achieve a statistically significant effect in the proportion re-offending within two or three years a sample size of several hundred would be required to detect an effect size that might be considered realistic – about 5 percentage points. An evaluation of Youth Conferencing in NSW by BOCSAR required a sample size of 916.
- c) *Finding comparable groups.* The experimental model assumes that the two (or more) groups being compared have been randomly assigned to the different experimental conditions. While this would be technically possible – half of those found eligible to enter Youth Koori Court might be accepted and half randomly assigned the ‘standard’ condition – it would not be acceptable to the community or the courts, and would at any rate be very hard to put into practice. Many evaluation studies use instead what is called a quasi-experimental design. Instead of random assignment, those who enter a program are matched with others who appear at that point in time to be almost identical. It would be a major logistical exercise to obtain comparable data for another group of young people about key risk issues such as those revealed on action plans – contact with extended family, mental health concerns, periods of homelessness and use of drugs, to take four examples. Asking the young people in the control group directly – developing an action plan for them in other words – would be possible, but if the action plan was not followed up, it would be rightly be seen as unethical. If the action plans were followed up, this would threaten the experimental design. Further, not getting this level of detail would make any comparisons unreliable.

3. How successfully does the Youth Koori Court process contribute to reducing the over-representation of Aboriginal and Torres Strait Islander people in prison?

- The Royal Commission into Aboriginal Deaths in Custody made clear recommendations that all parts of the criminal justice system should take steps to reduce the high levels of imprisonment of Aboriginal and Torres Strait Islander people. In the context of this national priority, one measure of success relevant to the criminal justice process is the extent to which the young people who came before the Youth Koori Court were kept out of custody.
- Use of custody is also relevant to re-offending. As Judge Barry Stuart pointed out in the Moses case in Yukon referred to in Chapter 2, spending time in prison for the Indigenous man who came before him for sentencing did not reduce re-offending – prison had been tried and failed. This finding of no positive impact of prison on re-offending is consistently replicated, including in NSW. One experimental study found that that imprisonment may actually increase subsequent re-offending. This may be because family ties are broken and employment prospects reduced by time spent incarcerated, while criminal networks may be strengthened. At a community level, communities may be

disrupted by mass incarceration of their members. Estimates for the impact of the Youth Koori Court on use of custody are provided in the following section. Days in custody and number of custody events also provide a useful, and widely-used, indicator of individual re-offending. No distinction is available from the statistics between police custody (usually meaning the person was held in a police lock-up until either receiving police bail or bail from a court), or custody in a youth detention centre.

- Some 20 young people graduated from the Youth Koori Court in the July-December 2016 period. Of these, 1 file could not be found and for 1 the information was incomplete. This leaves a population size of 18. The young people spent on average 291 days in the Youth Koori Court. This ranged from 135 days to 470 days. Some of those who spent more than a year on the program graduated once and had been re-admitted due to subsequent re-offending, others had their graduation dates postponed for a similar reason. The engagement of the young people with the court was fairly intense: each participant had on average 10 hearings; this number ranged from 5 to 18. Each participant had on average one hearing every 29.1 days. The total number of hearings for this cohort was 175.
- Generalising from such a small group is problematic. There is considerable variation within the group, and it is likely that the previous or subsequent cohorts may differ somewhat. Nevertheless this is the group we have information about and there are some tentative conclusions that can be drawn from their experience.
- Two measures of custody were available for this group. The first is the total *number of days in custody* from the first Youth Koori Court appearance until the date of sentence – which was compared to the equivalent number of days before entering Youth Koori Court. The second is the *number of times* the young person entered custody during the Youth Koori Court period compared to an equivalent period beforehand.

The sample size of 18 is too small for normal statistical tests to be valid. At any rate, the distribution assumptions for parametric tests are not met: for example, 5 of the Youth Koori Court participants had no experience of custody either during the Youth Koori Court period or in the equivalent period beforehand, so that means the tail of the distribution is flat. However there are two statistical tests which are valid in these conditions, and can provide a useful indication of the possible impact of the Youth Koori Court on custody: the sign test and the Wilcoxon signed rank test. Both of these eliminate pairs – such as the 5 cases where the number of days is 0 for both periods.

First, the *number of days* the person spent in custody during the period they were in the Youth Koori Court compared to an equivalent period beforehand. The average young person coming before the Youth Koori Court spent 25 days in custody during their Youth Koori Court period, compared to 57 days in custody in the equivalent period beforehand. Expressed in percentage terms, the average participant spent 9 per cent of their time in Youth Koori Court in custody compared to 20 per cent beforehand. The number of days in custody during Youth Koori Court



ranged from 0 to 141; before entering Youth Koori Court the range was from 0 to 279 during an equivalent period.

The signs test counts the number of young people who had more days in custody before Youth Koori Court (11) and the number of young people who had more days in custody during the period they were in Youth Koori Court (2). Five were eliminated because there was no difference. This difference is significant (1-tailed test,  $z = 2.50$ ,  $p = .006$ ).

The Wilcoxon signed rank test is like the signs test, but it also takes into account the size of the difference in the number of days custody. This difference is also significant ( $Z = -2.34$ ,  $p = .0096$ ;  $W$ -value = 12, critical value of  $W = 21$ ,  $p \leq 0.05$ ).

The second measure is the *number of times* the person entered custody. Of the 18 young people, 14 had experienced a period of custody before entering Youth Koori Court (two of them for less than a day), while 7 had been in custody at some stage during their period in Youth Koori Court. Using the signs test, the difference is significant (1-tailed test,  $Z = 1.94$ ,  $p = .03$ ).

These measures suggest that participation in the Youth Koori Court does reduce re-offending, at least of the sort that results in being locked up. It tells us little about less serious offences, like shoplifting, graffiti and fare evasion, that do not typically result in arrest. But why would participants experience such a dramatic decline in their time in custody while taking part in a court process? There are several possible explanations.

The first explanation is that the Youth Koori Court involved a more intensive form of monitoring and supervision than the young people had previously experienced, combined with less idle time. This reduced their opportunities for getting into trouble even if their inclination to do so remained undiminished. This is consistent with research showing the effectiveness of intensive supervision in reducing re-offending. A second explanation is that entering the Youth Koori Court did indeed bring about a genuine change in behaviour, through engaging with Aboriginal and Torres Strait Islander Elders and support organisations, participating in meaningful activities and being in safer environments. A third explanation is that the Youth Koori Court was more reluctant than other children's courts to use youth detention as a sanction, so for the duration of the Youth Koori Court period the young person was less likely to be sentenced to a detention order than for similar offences in the previous period. They might still be held in custody by the police until a court hearing determined their status, but once they appeared in court, they were likely to be released. A further possible explanation is that the young people would have given up some of their criminal ways anyway, as part of a maturation process, and this maturation just happened to coincide with the period in the Youth Koori Court. (It is to counter this claim that larger-scale evaluations include a control group). It is possible that each of these explanations is relevant to some extent to one or more of the Youth Koori Court participants.

While there is room for debate about exactly what the time in custody measures mean for recidivism, the interpretation in terms of the challenge laid down by the Royal Commission into

Aboriginal Deaths in Custody is clear – the Youth Koori Court succeeded in substantially reducing the time Aboriginal and Torres Strait Islander young people spent in custody, and therefore reduced the risk of injury, self-harm or deaths in custody.

### CONCLUSIONS

Reducing the harm done to the community caused by re-offending is an important goal in any criminal justice system. Measuring the time to re-offending or the number of new offences is a useful measure of this, but it was suggested that it was not realistic to measure these in a pilot study. Not only is the sample size too small, the waiting period to get results is too long. In Chapter 2 we also suggested that it would be more productive to measure impacts associated with changes in particular risk factors – employment and education in particular – than simply looking at participation in the Youth Koori Court program.

Instead a comparison was made between periods in custody during the young person's time on the Youth Koori Court and an equivalent period afterwards. The comparison provided a conclusion that was consistent with the claim that participation in the Youth Koori Court reduces re-offending, specifically the more serious forms of offending that result in detention. This provides a measure that is available immediately on graduation, and one that measures more serious offending. It is not of course the only measure of recidivism that can be used, and in a longer-term study it would be set alongside several other measures.

Reducing the harm that the community does to the youth offender was also addressed by the Youth Koori Court. Fewer young people were locked up in juvenile detention as a result of the Youth Koori Court than would have otherwise been the case. Days in custody were reduced, diminishing risk of harm to the young people through incarceration.

While it is relevant to measure negative indicators like days in detention, the court's philosophy suggests that as much attention be given to developing precise measures of positive indicators for its clients like being in a safe living environment, engaging in productive activities and restoring contact with land and people. It is hoped that once the court becomes fully operational through NSW, the quality of statistics for outcome measures such as these are given as much attention as estimates of recidivism.

## CHAPTER 12. POLICY IMPLICATIONS

This chapter reflects on the policy implications of the findings made in this report. It positions the experience of the first two years of the Parramatta Youth Koori Court within the wider context of the experience of other special-purpose courts, and examines some of the critiques made of such innovations.

### SELECTION OF PARTICIPANTS

The young people who entered the program had to meet certain basic criteria; they had to be of Aboriginal or Torres Strait Islander background, be charged with a limited range of offences (not sexual offences), and plead guilty or be found guilty by another court. They also had to face the possibility of a serious sanction, such as a control order, or supervised Juvenile Justice order. Finally they had to be accepted by the court as suitable.

A sentencing Magistrate (or the lawyer representing the young person) also had to know that there was an option to refer the matter to the Youth Koori Court. Given the number of Children's Court Magistrates, this could not always be assumed. In practice the Aboriginal Legal Service helped to identify those who would be eligible, at least for the young people who identified as Aboriginal and were represented by the Aboriginal Legal Service. However we do not know how many eligible young people were not referred to the court.

The concentration of high-risk offenders in the program poses a risk to the Youth Koori Court similar to that faced by parole authorities – many of these people will re-offend, and sometimes the offences will be ones that attract bad publicity. In these cases, the court – or the parole authority – might be attacked by sections of the media for failing to protect the community. However to the extent the court can show it has carried out its due diligence by developing an Action and Support plan to reduce risk, and actively worked to implement the plan, the criticism could be countered by pointing to the actions taken to minimise risk. Collecting regular statistics about outcomes of its program through updated Action and Support plans would strengthen the court's ability to offer a counter narrative. Having graduates of the program, referred to as 'stars' by the Magistrate, who could tell their stories (anonymously) would make the statistics come alive for a popular audience.

One comment made by several people interviewed for the project is that the option to go to a special-purpose court for juvenile offenders should be extended to young people of non-Aboriginal background, on the grounds of equity. The Rangatahi court in Aotearoa New Zealand is open to Pakeha<sup>95</sup> New Zealanders in principle, although few take up the opportunity – it is onerous and requires delivering a speech in Maori. A somewhat similar court is available to young Pasifika people. However in the Australian context it is clear that young people of Aboriginal and Torres Strait Island backgrounds have particularly disadvantaged backgrounds.

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<sup>95</sup> New Zealanders who are not Māori

Unlike other First Peoples in Canada, Aotearoa New Zealand and the US, Aboriginal people in Australia lacked the protection of a treaty, and they have the lowest life expectancy of First Peoples in any of the four countries<sup>96</sup>. Further, in terms of equity there are generations of dispossession, removal of children and other discriminatory policies to overcome, something not generally inflicted on immigrants to the country. So even simply on equity grounds, a special First Peoples' court can be justified. Nevertheless the practices it has developed – respecting diversity, allowing people to tell their stories and providing a gateway to services – are ones that could be translated into other contexts.

### JURISDICTIONAL CONSTRAINTS

The limitation of matters to those where the young person pleads guilty (or was found guilty) is common to most special-purpose courts, and allows a focus on healing and rehabilitation without adversarial overtones. It potentially runs the risk of excluding young people from the jurisdiction of the court who decide to plead not guilty after experiencing (for example) an altercation with police. In practice, the court handles this by transferring the contested matter 'next door' to another courtroom, with the case potentially being heard by the same Magistrate. This allows the evidence to be heard in a more formal setting, before – if the charges are proven – returning to the more supportive environment of the Youth Koori Court. The other court could of course dismiss the charges. However it would not be incidents involving police that would be likely to trigger referral to the Youth Koori Court, these would probably be additional charges added later. So there is indeed an appearance of unequal access to the enhanced service provided by the Youth Koori Court: it is not offered – at least in the first instance – to those who maintain their innocence. But the reality is that the young people do have a chance to plead not guilty, and if they are found not guilty of all charges that is the end of the matter. If they are found guilty they can then participate in the Youth Koori Court's program.

The exclusion of sexual offences from the jurisdiction of the Youth Koori Court follows a convention established in other First Peoples' courts and in restorative justice programs like NSW Forum Sentencing. This exclusion could be argued to mean that some of the young people who commit more harmful offences are not provided with the same pathways for reforming their behaviour that young people who are admitted to the Youth Koori Court program are given. However it could be countered that the most effective treatment regime for people who commit sexual offences is sufficiently different from that provided by the Youth Koori Court to warrant a different track<sup>97</sup>. Whether the alternative pathways include sufficient recognition of Aboriginal and Torres Strait Islander cultural context is less certain; programs based on group

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<sup>96</sup> Australian Institute of Health and Welfare (2011) *Comparing life expectancy of indigenous people in Australia, New Zealand, Canada and the United States*, available at: <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=10737418932> (last accessed August 10 2017).

<sup>97</sup> The Washington State Institute for public Policy provides a review of treatment program for sex offenders in the community, see: <http://www.wsipp.wa.gov/BenefitCost/Program/113> [last accessed August 10 2017].

activities have been found to be more relevant to First Peoples, but these are not widely available<sup>98</sup>.

Another exclusion, arising from the court's mandate as a sentencing court is bail, unless the young person is already accepted into the court program or an urgent referral is made. The court actively monitors bail conditions and varies conditions to make them more culturally appropriate but it does this only for those who are already under its protection. The problem is a major one: less than half of the young Aboriginal or Torres Strait Islander people in detention in NSW are there because they have been sentenced (the 'stock' of detainees, see Chapter 2, Aboriginal and Torres Strait Islander peoples and incarceration). The Royal Commission into Aboriginal Deaths in Custody saw all detention of Aboriginal people as a risk, so a court that is limited to only half the relevant population might be said to be able to tackle only half the problem. But even this understates the problem: fully 80 per cent of Aboriginal and Torres Strait Islander young people who experience youth detention in NSW do so on remand (the 'flow' of detainees) *but do not get a subsequent custodial sentence*. Only 14 per cent are actually sentenced to youth detention after a period on remand. The periods on remand before sentence might be short – on average 12 days – but remand prisoners are at higher risk of death than sentenced prisoners and the most dangerous times are shortly after entering detention or shortly after leaving it. One option to address the challenge handed down it by the Royal Commission into Aboriginal deaths in custody, is to expand the scope of the court in some way to include young people remanded in custody.

Expanding the scope of the court to include bail matters (for those not already in the Youth Koori Court system) would pose considerable challenges for the Youth Koori Court. Young people who join the program do so voluntarily, and after a careful assessment of need. Persons on remand would need speedy access to a bail hearing; there would not be time for a needs assessment. Some young people do not seek bail, assuming (often correctly) they would not be granted it, and in any case if they are facing a sentence of detention they would rather serve it before the date of sentence. They might not wish to come before a Youth Koori Court. Others may be contesting the charges, or have not yet decided what plea to enter, so would not meet the current threshold requirement of pleading guilty (or having been found guilty). The urgency of bail hearings could place pressures on the court's timetable, and make it harder on other clients whose hearings are delayed. The Canadian Aboriginal Youth Court that does a role in bail decisions includes a couple of features that might make it difficult to apply to NSW conditions: the person has to plead guilty (requiring early access to a lawyer) and the decisions are mostly made by bail justices (JPs are no longer used for these purposes in NSW). So if this idea was to be explored more fully, it would need to address these logistical difficulties.

It is possible that the high rates of bail refusal for young First Peoples are somewhat intractable and not easily shifted by simply adding another task to the workload of the Youth Koori Court. The rates of bail refusal are comparable for non-Aboriginal young people, so there is no

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<sup>98</sup> Sarah Macgregor, 2008. *Sex offender treatment programs: Effectiveness of prison and community-based programs in Australia and New Zealand*, Indigenous Justice Clearinghouse, <https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/brief003.pdf> [last accessed August 10 2017].

evidence of discrimination. What is largely absent however are culturally appropriate and safe places where young people can stay before their day in court<sup>99</sup>. Bail hostels are argued by the Australian Law Reform Commission to be an essential policy tool to provide a suitable level of surveillance while avoiding the risks associated with detention<sup>100</sup>. In South Australia the Aboriginal Child Care Agency provides two safe houses for young people who cannot safely stay with relatives. In Victoria a specialist Koori youth bail support program is offered. In NSW accommodation may be offered through some NGOs such as CatholicCare and Link-up; some facilities are offered to young offenders in western Sydney.

Another jurisdictional limit of the Youth Koori Court is its restriction to a criminal jurisdiction. This is consistent with other First Peoples' courts in Australia and Aotearoa New Zealand, and reflects the priority given to keeping the clients of these courts out of custody. Yet given that most of the Youth Koori Court's energies are devoted to focused on developing the social, economic and cultural capacities of the participants, the question arises about whether the jurisdiction of the court should be widened to explicitly include care and protection responsibilities. This would make it consistent with the approach taken by Scottish Children's Panels – 'children in trouble' are given support regardless of whether they are seen to be neglected or delinquent.

There could be some dangers in such an expansion. Broadening the mandate in this way could run the risk of bringing young people under state supervision unnecessarily. However having a dual mandate – something the NSW Children's Court already has – could allow some high risk protective cases involving Aboriginal and Torres Strait Islander children to be heard in a culturally congruent setting. In one of the cases we examined, a young woman did not have a serious criminal record or indeed any real risk of a custodial sentence. She had what appeared to be a minor altercation with the police. But she had serious challenges with many other aspects of her life and was accepted into the court program to help her address these. The question that arises from this case is why such a person would have to get into trouble with the police in order to get access to a program that would help her with education, housing, health care and other matters? Should such a change in jurisdiction occur, it would likely require a separate 'list', with its own set of protocols. Given that the Youth Koori Court seems to have developed a sensible work-around for this jurisdictional limit, there seems no need to make any formal changes.

### RESIDENTIAL FACILITIES

The success of the Youth Koori Court will depend on collaboration with a range of other services and organisations. Action and Support plans require co-operation between several legal, housing, educational, health and other agencies. Managing day-to-day interactions on the street

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<sup>99</sup> Burnside, UnitingCare. (2009). Releasing the pressure on remand: Bail support solutions for children and young people in New South Wales.

<sup>100</sup> Australian Law Reform Commission. 1997. Seen and heard: Priority for children in the legal process (ALRC Report 84). Canberra, Recommendation 228

with police rely both on respectful police practices and restrained behaviour by the young people who come in contact with them. However there is one environment that has hardly been mentioned in this report, but which is fundamental to addressing the concerns of the Royal Commission on Aboriginal deaths in custody – detention facilities, or more generally secure accommodation facilities.

While participants in the Youth Koori Court have reduced the amount of time they spend in custody – 25 days on average during the program compared to 57 days in the previous comparable period – they still spend considerable time in detention.

Uncle Wes

*More [residential] establishments need to be made in areas such as Mt Druitt, Dubbo to help our youth.*

*This will help with the waiting list, waiting to see the outcome can be more stressful for our youth.*

*If our youth are incarcerated for months at a time, waiting for their case to be heard it is less likely the client will contribute to the community once released.*

*We as Elders need to be aware that while our youth are being incarcerated their sense of belonging and loss of culture can mentally affect them in the long term.*

On the assumption that future participants in Youth Koori Courts will continue to be placed in residential facilities that restrict their freedom, it makes sense to provide residential environments to match the high standards for cultural safety, skill development and social support identified by the court. Levels of supervision and control vary between bail hostels (which may enforce curfews, restrictions on movement, restrictions on use of alcohol and participation in some group activities) and juvenile detention facilities (where young people are required to follow a daily routine and cannot leave the facility without special permission), but in either case there is a level of external control over the young person's freedom.

The NSW Department of Justice has developed a facility, which could be seen to be somewhere between the constraints of a bail hostel and a detention centre. Placed within the Department's community corrections area and located near Casino in the state's north, it is currently limited to adult Aboriginal and Torres Strait Islander adults where 'intensive residential intervention' is required, although it could be seen as a suitable model for young First Peoples as well. The following description outlines its program:

*The Balund-a Program is an innovative residential diversionary program for male offenders over 18 years of age. Located at Tabulam, within the Bundjalung Nation, the program's aim is to reduce re-offending and enhance skills within a cultural and*

*supportive community environment. The Aboriginal name, Bugilmah Burube Wullinje Balund-a roughly translates as "Be good now you have a second chance down by the river". Offenders enter the program as a condition of a section 11 bond for an initial assessment period of two weeks.*

*Offenders can also be referred to the program by Community Corrections staff when revocation of parole or community-based order is being considered, or when factors emerge in the course of supervision, and are assessed as requiring intensive residential intervention.*

*Following acceptance into the program offenders participate in structured programs within a culturally sensitive framework. Programs address specific areas of risk to assist on improving life skills and reintegration into the community, for example, cognitive based programs, drug and alcohol, anger management, education and employability, domestic violence, parenting skills and living skills. Cultural activities include excursions to sacred sites, music, dance and art. Elders employed by the program provide support and assist resident to recognise, restore and value cultural links with their land and history.*

There are several features of the Balund-a program that could make it, or something like it, highly appropriate for some of the young people coming before the Youth Koori Court, or the even larger number of their colleagues who are likely to be remanded in custody before a hearing.

- 1 • It combines culturally-relevant programs, such as visits to sacred sites and artistic activities under the guidance of Elders, with programs known to have an effect on re-offending behaviour (such as cognitive behavioural and drug programs) as well as activities that focus on issues likely to be included in Action and Support plans.
- 2 • There are several pathways into the program: the person can be given a deferred sentence (the same approach used in the Youth Koori Court) and referred to the program for assessment, or via a community-based order of some sort that requires more intensive support. With juvenile offenders, it is likely that at least some of those given a custodial sentence could benefit from this regime, whether after a deferred sentence (for those who come before a Youth Koori Court) or for those who live in areas not covered by Youth Koori Courts.
- 3 • The vast majority of those experiencing youth detention in NSW do so because bail is refused. While mixing remand and sentenced detainees is generally not considered good practice with adult prisoners, using such a facility for young First peoples who would otherwise be remanded in custody could be an option worth pursuing. A separate facility would be preferable if it was found to be viable.

While having a specially-designated facility for young First Peoples has some attractions, having specialist programs or services within more general facilities allows more extensive access to services across the state. The intensive intervention model being developed by Corrections NSW aims at speedy interventions, if possible from the first day in custody, whether on remand or under sentence. The approach is also short-term<sup>101</sup>.

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<sup>101</sup> The authors acknowledge the assistance of Peter Severin and Luke Grant in identifying these issues and describing the programs. The description comes from the Department of Justice's website at:



If facilities like Balund-a became used for longer-term placements – the Yukon example provided above in R vs Moses involved a year-long placement – it could help to develop an alternative identity to that provided by, for example, hanging out with other troublemakers on the streets of Blacktown or Mt Druitt. On the other hand, bringing groups of high-risk young people together has its own set of risks and opportunities for modelling behaviour, so short-term intensive interventions could minimise that danger. Whether ‘pan-Aboriginal’ – to use the Canadian term – activities like this are effective, or mob-specific events are better are matters that should be worked out with Elders and other representatives of Aboriginal and Torres Strait Islander communities.

#### DEVELOPING CULTURAL CONNECTIONS

During the development of Action and Support plans considerable attention is paid to re-establishing (or sometimes establishing for the first time) the young person’s link to country and other Aboriginal and/or Torres Strait Islander people. This is done through the work of Elders and other respected members of local Aboriginal communities, both in hearings and follow-up activities afterwards. It is done through some of the activities proposed in the Action and Support plans, particularly Aboriginal and Torres Strait Islander cultural camps and events. One of the discrepancies identified between the content of the Action and Support plans and the discussions in the final graduation hearing was the amount of attention paid to items to do with cultural connection. In the Action and Support plan such activities were seen as central; in the graduation hearing they barely warranted a mention. This may have been because the cultural connection activities had already been dealt with, or that priority was accorded to more immediate issues like finding a home or dealing with a drug addiction. But it might have been expected that the graduation would be precisely the time when cultural identity could be expressed most strongly.

Uncle Greg

*We as Elders and the community need to teach the youth to respect culture.*

*Cultural Camps would be a great tool with our kids who are disconnected from family, culture and values.*

*When applying for funding we need to ensure that the people we are placing in these jobs are culturally educated.*

The ritual of the ‘graduation’ is borrowed in part from the drug court model. The person is congratulated, participants shake hands or hug each other, the audience clap to celebrate, and sometimes a present is given to the ‘graduate’. This creates a general sense of positive achievement, both for the young person and the other participants have worked so hard to

produce this outcome. But while the drug court model has many useful features – not least of which that it has one of the most successful models for reducing recidivism – there are models from other First Peoples courts that might be even more relevant.

One difference between the Youth Koori Court and Rangatahi courts in Aotearoa New Zealand is in the expectations placed on the young person. In the Youth Koori Court, most of the submissions are made by lawyers, with the young person being invited to speak but not required to do so. In Rangatahi courts a lay advocate is generally present, but their role is not to represent the young person; it is to increase the cultural competence of the young person. By the final session the young person is expected, indeed required, to be able to recite a *pepeha* (an introduction that establishes the person's links to ancestors and to land), and a *mihi* (a formal speech used in a welcome ritual). For young people who do not know their language this provides a challenge, one that most of them successfully meet. Adapting such practices to NSW conditions would not be easy – it would be necessary to have language tutors in at least half a dozen Aboriginal languages, it might require considerable research (including interviewing Elders) and to understand each clan group's history. The greeting and acknowledgement rituals used would need to be done under the guidance of Elders, and consistent with the appropriate protocols for the particular mob. Music or dance, painting or sculpture might be more suitable for some graduates than a formal speech in language. But some form of demonstration of cultural pride during the graduation ceremony would be consistent with the objectives specified by the Youth Koori Court in Action and Support plans, and reflect the court's commitment to strengthening cultural connections.

Aunty Norm raises some practical issues about these suggestions:

*Speaking Language – who is going to teach this and are they in a position educationally to teach this.*

*Who will provide the funding for the tutors – Teaching Language?*

*Making sure the Educators who are teaching language are approved - very few people know the whole language, yes many words but not all.*

*What language would be taught, Mothers, Fathers, the country the currently reside in?*

It is not just the final hearing where greater use of traditional rituals or fuller participation of people from Aboriginal and Torres Strait Islander backgrounds might be considered. Recent graduates whom the court considers 'stars' might return to participate in Aboriginal and/or Torres Strait Islander rituals that are part of Youth Koori Court proceedings. If they have knowledge of an Aboriginal language they might be able to participate as a (paid) language tutor for current program participants.

The location of hearings is also an issue that also has an important cultural dimension. Rangatahi courts are held on *maraes*, Māori meeting houses, where participants are required to participate in a series of formal rituals of removing shoes, challenge, greeting, removal of *tapu*

through sharing food, and behaviour appropriate to a culturally-significant site. Lifting *tapu* is necessary because of the presence of strangers on the *marae*. What is important to note is that the young person is at home symbolically on the *marae*, the strangers are likely to be the judge and other court officials. Some hearings for the Youth Koori Court might similarly be held on sites in various parts of western Sydney that have historically been meeting places for Aboriginal ancestors, or have other historical, symbolic significance. Traditional meeting places have been identified in several places around Parramatta; some of these might be available for court hearings.

### A GREATER ROLE FOR VICTIMS?

One comment that some observers make about the Youth Koori Court model is that it focuses too much on the ‘offender’ and not enough on those who are classified as the ‘victims’ of crime. The demand for justice for victims might be particularly resonant in Aboriginal communities. An Aboriginal or Torres Strait Islander person in NSW is four times more likely to be assaulted than a non-Aboriginal or Torres Strait Islander person, and Aboriginal or Torres Strait Islander women are twice as likely to be assaulted as Aboriginal men<sup>102</sup>. Most of the assailants are people they already know; this is true for 78 per cent of male Aboriginal and Torres Strait Islander victims of assault comprise 92 per cent of female victims. These estimates are for all persons, not just young people, but it is likely that the pattern is not too different. Aboriginal and Torres Strait Islander women are the highest at-risk of sexual assault when aged 15-19 years old, and Aboriginal and Torres Strait Islander men aged 15-19 years old are most at risk of being robbed<sup>103</sup>. Meanwhile young violent offenders are about twice as likely as other young people to have been victims themselves, and to have attempted to harm themselves<sup>104</sup>. So it is highly likely that the young people who come before the Youth Koori Court as ‘offenders’ are also victims. Not only are they likely to be victims as individuals, many – perhaps most – of their families will have experienced the consequences of child removal policies, breaking down family structures and disadvantage over several generations.

Victims do sometimes feature in hearings, particularly when they are family members such as partners or parents. Not infrequently the victim who had taken out an apprehended violence order out against the young person is present in court, sitting alongside as a key supporter. Even when they were not present, the welfare of the partner was sometimes the subject of enquiry, particularly in the several cases where the former partner was the mother of the young person’s child. Further, the outcomes specified in Action and Support plans are often similar to the sorts of outcomes emerging from the sort of restorative justice conferences where victims play a central role – counselling, drug treatment, training, apologies, even if family group conferences may add an additional sanction with a punitive element, such as community work.

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<sup>102</sup> Australian Bureau of Statistics, 4510.0 - Recorded Crime - Victims, Australia, 2012, Data cube, 45100D0010\_2012 Table 1

<sup>103</sup> Australian Bureau of Statistics, 4510.0 - Recorded Crime - Victims, Australia, 2012, Data cube 45100D0001\_2012, Table 2

<sup>104</sup> McAra, L & McVie, S (2010) Youth Crime and Justice: Key Messages from the Edinburgh Study of Youth Transitions and Crime. *Criminology and Criminal Justice*, 10(2): 179-209, Table 1.

There may be some advantages in considering inviting victims not known to the young person to participate in hearings at an appropriate stage of the journey. This could include those whose property was damaged or stolen by the young person, or police who had been involved in incidents with them. A carefully-managed exchange in the safe environment of the Youth Koori Court could lead to greater understanding on both sides. However it should only be done if the court considers it would be beneficial. Several of the young people on the program were also attending Youth Justice Conferences, where such practices are routine, so perhaps that would be a more appropriate forum for victim-offender interaction.

### RESOURCING THE COURT AND PROGRAMS FOR YOUNG PEOPLE

Any innovation requires funding, and even if there are strongly preferred models for delivering funding, it is at least worth considering what the options are. There are several possible models for funding the extensive range of services that the Action and Support plans identify. Each of these has advantages and disadvantages.

The individual-purchaser model, or 'voucher model', allocates funding to individuals based on need. This is the approach used by the National Disability Insurance Scheme. The client, assisted by a broker (such as a case worker) would purchase a suitable mix of services to address the client's needs. For participants on the Youth Koori Court program this could mean that they could directly purchase services listed on their Action and Support plan, such as a place on a cultural camp. In this example if enough clients purchased the service, the provider would have enough funding to run such activities regularly. There are several advantages of this model:

- Allocation of services would be based on need determined by the funder (in this case the court) which is in the best position to ration the resources fairly between clients
- The consumer has choice over which provider to employ, thus providing an incentive for service providers to provide a higher level of service
- Consumers have more say in which services they need rather than relying on service agencies to say which services are available - for example a young person may be able to give priority to participation in a TAFE course than working with a job placement agency

There are also disadvantages of this model:

- Service agencies sometimes need a degree of certainty and a critical mass of clients to continue operations and offer stable employment to their workers. Relying on fluctuating preferences of consumers could actually lead to the provision of fewer options and lower-quality services, or longer queues. Start-up costs and remote-area services often need to be subsidised.
- Some services are more efficiently provided by government without charging individual consumers (even with a voucher). Education and health are probably in that category, at least for core services. The TAFE system is critical to many young people who could benefit from the hands-on and practical training it has provided over several

generations. Many of the young people who come before the Youth Koori Court see TAFE education as their pathway to economic security. Continued funding of a viable TAFE system is essential for these dreams to be realised.

- Treating young people as consumers could undermine one of the key principles of the Youth Koori Court – that they are members of a social group, a mob. Being mentored by an Elder, albeit to get a Medicare card or attend a drug program, could be just as important as the service they are accessing.
- The funding for the services would be up-front and transparent. It might be harder to justify than a funding arrangements in which most of the costs were hidden within other budgets.

The second model is direct provision. The funder (the court) itself purchases the services and allocates them to individuals as appropriate. This is the model used to some extent by drug courts, and developed most fully in community courts, such as the Neighbourhood Justice Centre in the City of Yarra in Melbourne. The services tend to be co-located in the building, while other services may be purchased directly from the court's own budget. The advantages of this include:

- The court itself works out the types of level of service required and purchases them directly rather than hoping the market may meet the needs identified
- The court can monitor the quality of service provided, maintain close liaison with the services in the way plans are put into effect, and build a team approach to service provision
- Service providers can be contacted and included in meetings at a moment's notice, while clients can set up arrangements with the relevant agencies before they leave the building
- Costs per completed action are lower than those for comparable clients who are referred to services elsewhere (higher compliance rates), based on estimates from the Neighbourhood Justice Centre in Melbourne

Disadvantages of the direct provision model include:

- The set-up costs are higher than for a regular court, in terms of space requirements, and payment for agency workers (even if some of them are out-posted and paid by their own agency)
- The services are concentrated in one place, viable only if there is a critical mass of cases, and the core business (the court) is itself centralised. If the Youth Koori Court meets in a wider variety of sites, the advantage to co-location would be reduced.
- The higher set-up costs make diffusion of the model more difficult. This is partly why one of the most successful innovations in the NSW justice system – the drug courts – are not available everywhere.

To consider the possibility of co-located services, it is useful to consider the site of the Youth Koori Court. It is located in the heart of a comprehensive and well-planned Justice Precinct. The Precinct includes every level of state court (except Coroner's), a prosecutor's building, an office building hosting many support services (the Justice Building), and the Commonwealth Law Courts, including the Family Court and Federal Circuit Court. The state tribunal, New South

Wales Civil and Administrative Tribunal holds hearings in the Commonwealth building. The Justice Precinct also hosts NSW's first drug court. If any concentration of justice services in Australia could justify provision of co-located services, it is surely the Parramatta Justice Precinct

The third model is the one currently used by the Youth Koori Court. It involves bringing the relevant service agencies, or people who liaise with the agencies, together for hearings. The advantages of this include:

- The court can get regular updates on progress being made on Action and Support plans
- The service agencies are enabled to build up a collaborative approach to their activities; the relationships built up during hearings can contribute to successful outcomes for the young people
- The model is almost cost-free for the court itself; the costs are transferred to other agencies
- The mix of services can be more diverse than the more limited range that might be available in a co-located model
- The court can use its authority to encourage agencies to provide a higher quality of service to participants in the court program, not just the person whose case is currently being considered

The disadvantages of this model include:

- Service agencies have their own priorities and funding constraints. Eligibility rules tend to vary between agencies, often requiring considerable negotiation to get access to services
- There may be delays in accessing services compared to the co-location model, particularly for young people for whom there are challenges to keeping appointments
- Services may not be available at all, or not in the places or timescales needed
- Service agencies are generally not funded to follow up people who are referred but do not turn up or drop out
- The court is a supplicant rather than a purchaser: it relies largely on its powers of persuasion to get its participants into services

The best elements from the three models could well be brought together. There are several different possible combinations and the following provides some possible combinations:

The direct purchase model might be used for some services that are in short supply where the market is unable to meet the current needs or where it needs to be developed. Priority might be given to cultural connections:

- Placement in programs that connect young people to their mob and heritage, such as cultural camps. Rather than waiting until places become available or another agency finds the money, the court could purchase places for each of the program participants that it believes could benefit from taking part.

- Language mentoring. If young people are to be enabled to provide a narrative of their personal links to country and people, for their graduation ceremony, there would need to be suitable tutors found, and paid appropriately. Which language to choose would be a matter for the young person and the supporting Elder.

The co-location model might be suitable for services that can be shared with other justice agencies in the Parramatta Justice Precinct, such as the other parts of the Children's Court, the drug court, adult Koori court, and the Family Court and Federal Circuit Court. These services might include:

- Drug and alcohol rehabilitation
- Mental health

Other services could be accessed using the current collaborative meeting model, supplemented by a case coordinator or case manager to keep track of progress and ensure that services that are promised are delivered. Which of the three funding models is the most appropriate approach for each policy area could be reviewed from time to time, based on outcomes for the program participants.

A bail hostel, with designated space for young Aboriginal and Torres Strait Islander people, is essential for helping to keep young people out of custody while providing a level of culturally-appropriate supervision. A limited number of places is currently available through NGOs funded by state government grants. Future provision will be dependent on ongoing commitment of the state government to maintain and expand the program.

### TRANSITION ISSUES

Some of the young people graduate from the program with reasonable prospects for work or study, with fines paid, identity documents obtained and other problems resolved. Given the complexity of their issues, many young people graduate from the program with some of the issues identified on the Action and Support plan still unresolved, or at least not fully completed. They go from a situation of regular surveillance and support to one with lower levels of both. Keeping the young people within the criminal justice system runs the risk of 'net widening' – expanding the involvement of the state in people's lives beyond what is strictly necessary. But releasing them before the underlying problems are resolved could lead to ongoing criminal activity from the young people and further costs to the community.

The current approach taken by the court is to transfer responsibility for keeping an eye on the young people after graduation to an agency such as Juvenile Justice through a sentence of supervision. Other young people go on to a Youth Justice Conference, which may then impose its own types of sanction, some of them overlapping with those handed down by the Youth Koori Court. Some young people re-offend and are subsequently are re-admitted to the Youth Koori Court program.

The overall rate of re-offending in regular children's courts and those who go through Youth Justice Conferences are both about 65% within 2 years<sup>105</sup>. For the very high-risk young people who go through Youth Koori Court, it is likely that a certain number of them will return to the court. Given the traumatic lives some of the young people have had, and the friendship networks they have, a complete change of lifestyle is not realistic and would probably take a number of false starts. It is possible that a somewhat different intervention might be appropriate for those who come back. This could involve more intensive judicial supervision, more active mentoring from Elders or a different mix of services. The court has more information about the returning participants than about those who come for the first time. In particular it has information about what approaches were tried the first time, and which ones seemed to work, or not work.

While from the court's perspective having 'stars' who not return is a mark of success and cause for celebration, those who do return are likely to need the care and protection of the court even more. Their housing needs might be more acute, educational disadvantage greater and risk of self-harm more serious. The proportion of return participants is likely to increase the longer the program is in operation, so average risk levels of participants will increase. What the Youth Koori Court will therefore try to do is prevent these high-risk young people being handed over at the age of 18 to the adult corrections system. Investment - even high levels of investment - made in the lives of young people could contribute to reducing the huge over-incarceration rate of adult Aboriginal and Torres Strait Islander peoples.

One group of high-risk young people for whom the court could usefully support after they have formally graduated from the program are those who are sentenced while still in custody. Holding a ceremony to welcome the young person back into the community on release from detention could provide a useful opportunity for the lessons learned during the Youth Koori Court journey to be re-emphasised. Given that the court does not have any formal role to play at this stage, it could be something organised by Elders, supported by the court project officer.

### COLLECTIVE OUTCOMES AND LEGITIMACY

One of the long-term goals of the Youth Koori Court program is to improve relationships between the Aboriginal and Torres Strait Islander community and the justice system. Not only should there be a measureable impact on the lives of the young people directly affected, but the program should ideally have a positive outcome for others who did not personally experience the court, and indeed the wider community.

There is some evidence that individual-level interventions can produce have wider impacts beyond those who were the immediate target of the interventions. Vaccination of individuals can create a herd immunity - reducing the risk to everyone - if the appropriate saturation level is achieved. Drink-driving campaigns may influence some people who in turn help to regulate

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<sup>105</sup> Nadine Smith and Don Weatherburn (2012), Youth Justice Conferences versus Children's Court: A comparison of re-offending. *BOCSAR NSW Crime and Justice Bulletin no. 60*. NSW Bureau of Crime Statistics and Research



the behaviour of their peers. Classroom interventions to assist disadvantaged students may lift the test scores of other members of the class<sup>106</sup>.

Whether experience in a relatively intensive criminal justice-based program can impact on others is less clear. The 'broken windows' theory of crime prevention in which police target minor incivilities in order to reduce major crimes has been found to have no measureable effect on crime rates; nor however does it reduce perceived legitimacy of the police in the eyes of the communities affected<sup>107</sup>.

One of the reasons why young Aboriginal and Torres Strait Islander people may distrust police, and therefore accord the criminal justice system less legitimacy than they might otherwise do, could be a respond to policing tactics: if police routinely stop young people for suspected disorderly behaviour there is research evidence to suggest that this will reduce the perceived legitimacy of the police.<sup>108</sup> If police instead engage in positive interactions with young people – perhaps based in part of their own participation in Youth Koori Court processes - it might be predicted that perceived legitimacy of the police in the eyes of young people could increase.

*Aunty Pearl comments:*

*This pilot has demonstrated by its outcomes that there is potential for further development of this this significant and important work. It has proved that given the right mix of people working in mutual respectful relationships with the focus on improving a young persons' life does bring positive outcomes for them, their families and community. Congratulations to all those who took part in this pilot and hope we can continue to build on the foundation set for its future growth and development.*

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<sup>106</sup> Powers, J. T., Cook, J. E., Purdie-Vaughns, V., Garcia, J., Apfel, N., & Cohen, G. L. (2016). Changing environments by changing individuals: The emergent effects of psychological intervention. *Psychological science*, 27(2), 150-160.

<sup>107</sup> Weisburd, D., Hinkle, J. C., Famega, C., & Ready, J. (2010). Document Title: Legitimacy, Fear and Collective Efficacy in Crime Hot Spots: Assessing the Impacts of Broken Windows Policing Strategies on Citizen Attitudes.

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## RECOMMENDATIONS

### NSW STATE-LEVEL POLICIES

The NSW Department of Justice and the Children's Court of NSW, together with other relevant government agencies, should invest in scaling up the Youth Koori Court pilot and fund the resources required to address gaps in access and wellbeing. Many of the identified resources are relevant to all young people in Aboriginal and Torres Strait Islander communities not just those who come before a Youth Koori Court. Specifically, the relevant government agencies (in partnership with community agencies) should:

- Provide ongoing training and support for Youth Koori Court magistrates, building on the experience of current magistrates, leaders of the Aboriginal and Torres Strait Islander communities in NSW and others with expertise in the issues facing young persons who come before the court
- Conduct ongoing research about how the Youth Koori Court is improving life opportunities for program participants, addressing the risk factors that make offending more likely, and examining the extent to which the program is meeting its objectives by maintaining digitised, searchable records on young people in the program.
- Provide the Youth Koori Court with opportunities and resources to enable every young person the ability to connect with their mob, have an Uncle or Aunty to be with, and practice Aboriginal and Torres Strait Islander protocols, lore and cultural obligations through Aboriginal and Torres Strait Islander cultural activities on country.
- Develop and support literacy and training opportunities to empower Aboriginal and Torres Strait Islander young people outside of a conventional schooling system.
- Develop partnerships with appropriate literacy services to help participants in the Youth Koori Court to improve literacy and numeracy skills.
- Provide opportunities to connect and participate in preserving Aboriginal languages.
- Develop a transition to employment model with input from existing lead practice models, those in the network including Lend Lease and initiatives developed by the Western Sydney University Office of Aboriginal and Torres Strait Islander Employment and Engagement.
- Develop training and employment pathways for participants in the Youth Koori Court program based both on existing relationships developed by the Youth Koori Court in Parramatta and ones developed by the NSW Government for settlement of Syrian refugees.
- Provide greater funding, resources and infrastructural support for emergency and short-medium term accommodation options for young Aboriginal and Torres Strait Islander people in NSW facing housing insecurity and family disruption.
- Provide greater assistance and access for young people to move into independent living, particularly when family placements are not feasible.
- Work with NSW state transport authorities to find a solution to the over-policing of young people on public transport, which results in unnecessary conflict with police and accumulation of fines.
- Develop an immersive video-mediated Youth Koori Court facility to permit timely assessments and regular reviews for participants in the Youth Koori Court program who

can more easily participate in this way. This would be relevant for persons who live in rural and remote locations, as well as those who move during their involvement in the program to live with family or to avoid the potential for trouble associated with staying in the areas where offending occurs. An immersive facility with several screens<sup>109</sup> would allow a magistrate, case management worker, ALS lawyer, other interested parties and the young person to make eye contact, and interact in a natural manner.

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### MEASURES TO ADDRESS HIGH LEVELS OF JUVENILE CUSTODY

The Royal Commission into Aboriginal Deaths in Custody emphasised the priority of keeping First Peoples out of custody. Some 80 per cent of those who come out of juvenile custody in NSW do so because bail is refused, not as a result of sentence. The Youth Koori Court program can successfully address the 20 per cent who come to court for sentence (and manage their bail conditions subsequently). While a full exploration of alternatives to detention is beyond the scope of this report, the following options could form the basis of a conversation between representatives of First Peoples, and relevant government agencies.

- Develop controlled residential facilities for young First Peoples at risk of detention along the lines of Balund-a: culturally appropriate, focusing on criminogenic needs and providing educational and employment support
- Evaluate the quality and cultural appropriateness of juvenile bail hostels provided by non-government organisations in NSW, and their effectiveness in reducing the levels of remand custody for young First Peoples
- Review procedures and support provided to Children's Court magistrates holding bail hearings for young First Peoples, with a view to diverting more young people away from remand custody

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### SETTINGS FOR HEARINGS OF YOUTH KOORI COURT

The Court should:

- Hold some hearings outside of the court at sites that have historical and/or ceremonial significance for Aboriginal and Torres Strait Islander people; the sites to be based on advice from Elders and other respected persons within local Aboriginal communities.
- Invite Aboriginal and Torres Strait Islander Elders and other respected persons, court participants and former graduates of the court to participate in meetings to discuss and develop the design for Youth Koori courtrooms, and the selection of alternative sites for hearings.
- Work with the Department of Justice to commission art works from young Aboriginal and Torres Strait Islander young people in detention, with a view to displaying these in Youth Koori Courts in NSW. The young artists should be paid for their contributions.

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### MANAGEMENT OF HEARINGS

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<sup>109</sup> See models and techniques developed and tested by David Tait, Blake McKimmie, Rick Sarre, Diane Jones, Laura W McDonald and Karen Gelb (2017) 'Towards a Distributed Courtroom', report available at: [http://courtofthefuture.org/wp-content/uploads/2017/07/170710\\_TowardsADistributedCourtroom\\_Compressed.pdf](http://courtofthefuture.org/wp-content/uploads/2017/07/170710_TowardsADistributedCourtroom_Compressed.pdf)

The Court should:

- Continue to use a flexible scheduling model to determine the frequency of hearings and level of judicial supervision. In some cases, this might involve two-weekly hearings following the drug court model.
- Develop sentencing rituals using language that is consistent with the language used in Youth Koori Court hearings, which young people who were interviewed describe as easy to understand.
- In sentencing hearings include a statement about the impact of past government policies on Aboriginal and Torres Strait Islander families, country and heritage, and how the Youth Koori Court process recognizes this historical legacy. This is sometimes done in part in discussion of the High Court case of *Bugmy*, but it could be expressed in plain English. This statement would reflect the community's taking responsibility for its contribution to creating the conditions that encouraged offending behaviour.
- Develop suitable rituals to allow for victim participation in hearings when the magistrate, in consultation with prosecution and defence, considers it appropriate. This might be most relevant when other family members or members of Aboriginal and Torres Strait Islander communities are the victims.
- Support the organisations of ceremonies for young persons of Aboriginal and/or Torres Strait Islander background being released from youth detention who have been through the Youth Koori Court to welcome them back into the community.
- Where the young person coming before the court is also a victim of a crime (or something they believe to be a crime), provide an opportunity during the hearing for them to talk about their experience.

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### FUNDING

The Youth Koori Court in each location should be funded to provide:

A Casework Coordination Officer, with responsibilities for

- Completing the screening tool with the young person
- Ascertaining the availability of appropriate services
- Coordinating young person's caseworkers
- Following up on referrals to see how they went
- Accompanying young people to meetings/appointments
- Keeping case coordination and service support moving along
- Checking in with young people and their support workers/case workers on how items in the Action and Support plan are moving along
- Ensure that employment and training opportunities that reach the court could be matched to young people who meet the criteria
- Reporting back to the court on the young person's progress
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There is also need for a dedicated Youth Koori Court Officer to carry out the following administrative functions to support the operation of the court. The person would be involved in:

- Organising Youth Koori Court papers and lists and their distribution
- Setting up the flags and paintings for the sittings of the Youth Koori Court and removing the flags and paintings at the conclusion of the sittings

- Organising preliminary assessments (with the support of a case management worker)
- Leading the recruitment of Elders
- Leading the facilitation and development of productive cultural programs for court participants.
- Rostering Elders' attendance at Youth Koori Court
- Undertaking court monitoring and court officer duties
- Helping type up Action and Support plans after meeting for others to sign
- Preparation of court paperwork at the conclusion of the each sitting day
- Acting as the liaison point between the Court and the stakeholders
- Organising working party meetings
- Collecting data and keeping in-house statistics to provide back to the working party

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### CASE FILE MANAGEMENT AND STATISTICS

The Court should

- Replace paper records with digital files
- Record listing dates, no-show and other compliance issues, for each young person, to allow regular statistics to be produced
- Continue to make Action and Support plans central to its operations, identifying the issues facing the young person, the actions proposed and the persons or agencies responsible for following up each action
- Provide a copy of the Action and Support plan to participants at the end of hearing which develops it
- Maintain Action and Support plans in digital form, accessible to court staff, ALS lawyers, Juvenile Justice case workers and all those working with the young person
- Update Action and Support plans after each hearing of when new information is available, to record progress made on the plans, new issues identified and problems encountered
- Produce statistical reports summarising trends and outcomes of Action and Support plans, including the performance of service agencies
- Maintain a record of the CVs and job-readiness details for young people in the program, to be used by the case management worker to match program participants to jobs.
- In collaboration with BOCSAR, collect and report statistics about youth detention of Aboriginal and Torres Strait Islander young people in NSW, and the impact of Youth Koori Court participation on levels of detention
- In collaboration with BOCSAR, monitor the impact of different controlled residential regimes, for remand and sentenced detention, bail hostels and other intermediate options on relevant criminal justice, educational, community integration measures
- In collaboration with BOCSAR collect and report statistics about the re-offending rates of program participants, based on tracking four of the measures BOCSAR has identified as closely linked to offending behaviour: family stability, housing security, educational qualifications and stable employment.
- In collaboration with BOCSAR monitor detention levels of young First Peoples in NSW, distinguishing bail refusal, bail to sentence and sentence only; identifying impact on these rates of participation in Youth Koori Court programs both for immediate participants and other young people in the same region

- Identify and report on systemic issues facing young persons who come before the court, using patterns revealed in Action and Support plans

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### CULTURAL PARTICIPATION

The Court should

- Support Aboriginal and Torres Strait Islander Elders and other respected persons to continue to play an important role in hearings, by providing appropriate remuneration, training, mobility support and opportunities to contribute to policy development and governance of the court
- Support Aboriginal and Torres Strait Islander Elders and other respected persons to play a mentoring role for participants in the Youth Koori Court program
- Ensure that all participants in the Youth Koori Court program have an opportunity to take part in activities that bring them closer to their mob, such as camps, festivals or sporting events
- Enable opportunities for participants in the Youth Koori Court program to learn their clan language, and use it in appropriate settings, including during Youth Koori Court hearings.
- Invite suitable graduates of the program to participate in Aboriginal and/or Torres Strait Islander cultural rituals for other young people, under the supervision of Aboriginal and Torres Strait Islander Elders.
- Recruit Aboriginal and Torres Strait Islander people in their early twenties to act as mentors (and potentially role models) for participants in the Youth Koori Court background. These people could also serve as 'other respected persons' in hearings to increase the level of peer support to supplement the support from Elders.
- Encourage opportunities for young people to demonstrate any Aboriginal and Torres Strait Island cultural practices, lore and knowledge they have learned at their graduation ceremony, under the supervision of Aboriginal and Torres Strait Islander Elders and peers

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