

A Community Response to the Strengthening the  
Ngambra Circle Sentencing Court

ACT Aboriginal and Torres Strait Islander Court Reference Group

July 2012

## **Acknowledgements**

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## **Executive Summary**

This report captures the responses from community members following the release of the Options Paper within the Strengthening the Ngambra Circle Sentencing Court.

The Report discusses various aspects of the Galambany (Circle Sentencing) Court and makes a number of recommendations that will contribute to the successful operations and administrative arrangements of the Galambany Court.

The methodology used in the preparation of this report involved the engagement of a diverse range of individuals in the community, the development of a semi-structured questionnaire to guide the interview process and the undertaking of individual and group interviews. A number of responses were also received through email.

Individuals consulted for the report included representatives from the government and non government sector, Galambany Court panel members, community members, past participants (offenders) and their families.

This report considers several overarching themes pertaining to the Galambany Court including:

- The aims and objectives
- Panel member eligibility
- Defendant eligibility
- Participation of young offenders
- Role of victims
- Post sentence support and monitoring
- Administration matters including the location of Court and Court coordinator
- Expansion of the Court

This report also aims to identify and respond to areas of unmet need which will be evident through the reports recommendations. This will ensure that members of the local Aboriginal and Torres Strait Islander community have access to culturally appropriate sentencing options and that the broader community have an increased understanding of and input into the Galambany Court.

## Introduction

Aboriginal and Torres Strait Islander people continue to be over represented in the criminal justice system within the ACT and also nationally.<sup>1</sup> This identifies the need to respond to underlying issues using alternative strategies that contribute to the diversion and prevention of both adults and juveniles in the justice system.

The Justice and Community Safety Directorate "the directorate" has identified that more needs to be done in terms of strengthening and engaging the community to enable better outcomes for Aboriginal and Torres Strait Islander people in the ACT, especially those at risk of or coming through the justice system. In recognition of this fact, the Galambany Court commenced on the 5<sup>th</sup> May 2004, under the name 'Ngambra Circle Sentencing Court'.

Because of concerns raised in the community around the use of 'Ngambra', the Directorate requested that the Aboriginal and Torres Strait Islander Elected Body (ATSIEB) and the United Ngunnawal Elders Council consider this issue and provide advice on a culturally appropriate name for the Circle Court. After much consultation, in May 2011, the name was officially changed, under the *Legislation Amendment Bill 2011*, to the 'Galambany Court'.

'Galambany' is a Ngunnawal word meaning 'I, we all, including you.' It is an inclusive word that recognises the diversity of Aboriginal and Torres Strait Islander people living on Ngunnawal country today. It is also inclusive of non Aboriginal or Torres Strait Islander people, many of whom support the functions and operations of the Galambany Court.

The Galambany Court has since become a permanent fixture within the ACT justice system. In many aspects the Galambany Court is the leading jurisdiction particularly in terms of training and support for the Community Elders and Panel Members. This can be credited to the high level of support and goodwill of those agencies wanting to see the Galambany

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<sup>1</sup> Walker J, McDonald, D. The Over Representation of Indigenous People in Custody in Australia. Australian Institute of Criminology- Trends and Issues in Crime and Criminal Justice. (Vol 47)

Court succeed and produce positive outcomes for the ACT Aboriginal and Torres Strait Islander community.

Although there are many positives that can be seen, there is no doubt a substantial amount that needs to be done in order for the Galambany Court to realise its full potential. This report addresses some of the needs which have been identified by the local Aboriginal and Torres Strait Islander community and key stakeholders.

## Background

In 2008 JACSD engaged independent experts, Elena Marchetti and Kathleen Daly, to conduct an independent review on ways to strengthen the current operations of the Galambany Court. Their report was presented to JACSD in August 2008 and made a number of recommendations.

The report was critical of some aspects of the Galambany Court. It recommended the immediate formation of a task force to explore ways to strengthen the Galambany Court. This report was never publicly released, however a departmental reference group was established, comprising of key stakeholders to oversee the progression of a number of the recommendations from the Marchetti/Daly review. In January 2010, the JACSD reference group developed and released the “Strengthening the Ngambra Circle Sentencing Court” (Strengthening Report) that highlighted 42 options for consideration.

In 2011 further community and stakeholder consultation was conducted to bring together community perceptions on the 42 options contained in the Strengthening Report. The findings are contained in this report and aims to highlight the key outcomes and achievements of the Galambany Court and areas requiring further development and support from a community point of view.



## Strengthening the Ngambra Circle Sentencing Court (January 2010) Options Paper.

This report was developed out of consideration of the Marchetti /Daly Review. It contains 42 Options, many of which still need to be considered and implemented. These form the basis of this consultation report.<sup>2</sup>

	OPTION	STATUS	NOTES
1.	Approach the Aboriginal and Torres Strait Islander Elected Body to advise on a culturally appropriate name for Circle Court.	Completed	The Circle Court name has been changed from 'Ngambra' to 'Galambany'.
2.	Do the current aims and objectives of the Circle Court adequately describe its purpose, practice and processes?	Pending	Aims and Objectives of the Circle Court have formed part of the Community Consultation Report. A number of recommendations have been developed in response to the consultation process.
3.	Are there additional aims or objectives that need to be incorporated?	Pending	As per above
4.	Should the Circle Court consider adopting the following suitability assessment criteria for panel members and Elders to assess the defendant's suitability for circle? <ul style="list-style-type: none"> <li>a. To challenge the behaviour of the defendant;</li> <li>b. The defendant be required to accept responsibility for his or her crime;</li> <li>c. To assess a defendant's capacity and willingness to listen to panel members and or Elders;</li> <li>d. To assess a defendant's level of remorse;</li> </ul>	Pending	Aspects of the eligibility for the Circle have been discussed in the Consultation Report and in the drafting of the new Practice Direction.

<sup>2</sup> Strengthening the Ngambra Circle Sentencing Court (2010)

	<ul style="list-style-type: none"> <li>e. To assess if a defendant has capacity to make amends to a victim;</li> <li>f. To assess the impact of the offence on the victim and community;</li> <li>g. To assess the potential benefits to the victim and community of the Circle Court process;</li> <li>h. Should panel members/Elders, the Coordinator or the prosecutor seek the views of the victim and their perception as to whether the defendant is suitable for Circle?</li> </ul>		
5.	Alternatively, should the RJU suitability tools to assess a defendant's suitability be adopted into Circle Court processes?	N/A	
6.	<p>Define the role and responsibilities of panel members and Elders to include:</p> <ul style="list-style-type: none"> <li>a. To challenge the behaviour of the defendant;</li> <li>b. To assist the Magistrate to determine an appropriate sentence;</li> <li>c. To provide any relevant cultural advice to the Magistrate;</li> <li>d. To provide background information established during the assessment phase;</li> <li>e. To look for culturally appropriate rehabilitative options for a defendant;</li> <li>f. To ensure the needs of a victim are heard and respected in the Circle Court process;</li> <li>g. To assist a defendant to make amends to a victim.</li> </ul>	Pending	Aspects of the Roles and Responsibilities of panel members are included in the Consultation Report and in the drafting of the new Practice Direction.

	h. Consider adopting a Code of Conduct similar to the Koori Court model for the Ngambra Circle Court.		
7.	Develop an operational manual that defines the roles and responsibilities of panel members and Elders. This manual should form part of the training program.	In Progress	Draft Operations Manual has been developed, this needs to be updated.
8.	Should the role of a victim in Circle Court be confined to what is contained in a under the Crimes Sentencing provisions for a VIS?	Pending	Discussions around the role of the victim have been included in the Consultation Report. Further discussions with the VoCC and Magistrate will also determine the level of victim involvement in the Galambany Court
9.	Should the role of a victim be based on: a. The model that was adopted by the VoCC during the pilot? b. The victim model in the RJU process?	Pending	As per above
10.	What supports and information should be made available to victims and who is best placed to provide this level of service delivery?	Pending	As per above
11.	Should the Aboriginal Justice Centre (AJC) working in collaboration with ACT Corrective Services (ACTCS) take a more proactive role in monitoring and coordinating post sentence supports or should this be conducted by ACT Corrections?	Pending	Post Sentence Support for the Galambany Court has been discussed through the consultation report. A number of recommendations have been made to identify possible solutions for this issue.
12.	Should the Circle adopt a model similar to the RJU model to monitor a defendant's post sentence compliance?	Pending	As per above
13.	Noting the limitations, should the role of panel members and Elders		No, the Panel should not be responsible for monitoring compliance.

	include monitoring a defendant's compliance with their sentence?	Completed	
14.	Should the Circle Coordinator be responsible for the monitoring of a defendant and his or her compliance with a sentence (similar to the NSW and Victorian models) or should this be conducted by ACT Corrections?	Pending	Aspects of Post Sentence Support are contained within the consultation report. A number of recommendations have been drafted however the community do not feel that it is appropriate for the coordinator to monitor compliance.
15.	Should the selection process for panel members and Elders developed by the Aboriginal and Torres Strait Islander Court reference group, be adopted?		The Court Reference Group have not developed a selection process for the Circle panel members. This consultation report has recommended some criteria that should be considered for inclusion into the Operations Manual
16.	Should the Court solidify its relationship with Relationships Australia (ACT) in the form of a MoU to provide ongoing counselling to Elders and panel members?	Completed	Relationships Australia provides ongoing support to the Court through the provision of counselling and debriefing to panel members.
17.	How many panel members or Elders should be present at: <ul style="list-style-type: none"> <li>a. the assessment stage; and</li> <li>b. the sentencing stage?</li> </ul>	Completed	The panel currently has a minimum of 2 panel members for each assessment and hearing.
18.	Should the Circle Court sittings return to Yarramundi Reach; or an alternative location?	Completed	Through the Strengthening Report, it was recommended that the Galambany Court remain at the Magistrates Court. There are comments within the consultation report which also pertain to the Courts location.
19.	Should the Circle Court continue to sit in a hearing room at the ACT Magistrates Court?	Completed	As per above
20.	If yes, should a dedicated hearing room be decorated at the Magistrate's Court with appropriate furnishings, cultural insignia	Completed	The issue around a dedicated hearing room in the Magistrates Court was discussed within the consultation report. A number of recommendations were made in relation

	and paintings etc (similar to the Koori Courts)?		to this. The Aboriginal, Torres Strait Islander and Australian Flags have been included in Hearing Room 4.
21.	Should consideration be given to alternating Circle Court sittings between Yarramundi Reach and the hearing room at the Magistrates Court?	Completed	Through the Strengthening Report, it was recommended that the Circle be located within the Magistrates Court. This has been discussed within the consultation report.
22.	Should the Circle Court panel members and Elders be paid for their time?	Completed	This issue has been resolved. As a part of the 2010-11 ACT Budget, additional funding was allocated to ensure that panel members are being appropriately remunerated.
23.	If yes, what is an appropriate level of remuneration?	Completed	As per above
24.	Should the Circle Court be evaluated?	N/A	This is an issue which needs to be considered through the JACSD
25.	If yes, what measures should be evaluated?	N/A	
26.	Should family violence matters be included in the Circle Court processes?	Complete	Family Violence matters are currently included in the Galambany Court.
27.	If yes, what arrangements need to be put in place to ensure victims are adequately protected?	In Progress	Protection of victims is a paramount consideration within the Galambany Court. This area is developing through dialogue with the VoCC and the Magistrate. Guidelines/policy position needs to be developed to safe guard victim participation.
28.	Should the Circle Coordinator remain working for the Court, with a change in the supervision arrangements to the Circle Magistrate?	Completed	The Circle Coordinator position has been placed within the Restorative Justice Unit.

29.	Should the Circle Court Coordinator be co-located with the ACT Restorative Justice Unit?	Completed	As per above
30.	If so, should the Circle Court remain a separate entity from other restorative justice processes?	Complete	The Circle Court is to remain separate from the Restorative Justice process.
31.	In the long term, should less serious sexual assault offences be included in Circle Court processes?	Pending	The issues around sexual assault offences being included in the Galambany Court has been discussed within the consultation report.
32.	If yes, what arrangements need to be put in place to ensure that a victim is adequately protected and supported in the process?	N/A	As per above
33.	Should consideration be given to expanding the Circle Court to the ACT Supreme Court jurisdiction in the long term?	Completed	The issues around the expansion of the Galambany Court have been discussed within the consultation report.
34.	If yes, what arrangements are considered necessary to facilitate this?	N/A	As per above
35.	As a long term measure, should the Circle Court evolve into a process similar to the RJU model where panel members and Elders conduct the Circle process and report back to a Judge/Magistrate?	N/A	
36.	Should defendants who have limited or no connection to the ACT Aboriginal and Torres Strait Islander community be able to participate in Circle Court?	In Progress	The issue around defendant eligibility has been discussed in the consultation report. The report has also made a number of recommendations relating to the criteria of defendants.
37.	Should the Circle Court be expanded to include the Jervis Bay		The issue around the expansion of the Circle to the Jervis Bay Territory has been

	Territory in the long term? If yes, what arrangements and resources need to be put in place to facilitate this expansion?	Pending	discussed in the consultation report. A number of recommendations have been made in relation to this expansion.
38.	Should all Aboriginal or Torres Strait Islander defendants who appear before the ACT Magistrates Court be referred for assessment to Circle Court?	Pending	The issue around automatic eligibility has been discussed within the consultation paper. Current practice states that defendants must meet the eligibility criteria to access the Galambany Court.
39.	Should the Circle Court be extended to youth in the short, medium or long term?	Completed	The Galambany Court is operation for both adult and juvenile offenders.
40.	Should the Circle Court Coordinator be co-located with the RJU, and the role expanded to facilitate diversion measures for young Aboriginal or Torres Strait Islander offenders?	Completed	The role of the coordinator is primarily to organise all administrative matters pertaining to the Galambany Court. Other matters relating to RJU should be undertaken by the RJU staff including the Indigenous Guidance Partner.
41.	Should the ACT adopt an 'overarching' legislative model for the Circle Court that names the Circle Court and identifies its aims and objectives?	Pending	This aspect has been discussed through the Consultation Report
42.	Should the ACT adopt a model similar to the Koori Court legislative model utilised in Victoria?	NA	

## **Aims and Objectives**

The current aims and objectives of the Galambany Court are stipulated in the Ngambra Circle Sentencing Court Practice Direction (2004).

Within the 2004 Practice Directions the aims of the Circle are:

- to involve Aboriginal and Torres Strait Islander communities in the sentencing process;
- to increase the confidence of Aboriginal and Torres Strait Islander communities in the sentencing process;
- to reduce barriers between Courts and Aboriginal and Torres Strait Islander communities;
- to provide culturally relevant and effective sentencing options for Aboriginal and Torres Strait Islander offenders;
- to provide the offender concerned with support services that will assist the offender to overcome his or her offending behaviour;
- to provide support to victims of crime and enhance the rights and place of victims in the sentencing process; and
- to reduce repeat offending in Aboriginal and Torres Strait Islander communities.

The objectives of the Galambany Court are:

- to provide effective and restorative processes for the criminal justice response to, and community involvement in the management of, Aboriginal and Torres Strait Islander offenders and their victims;
- to maintain consistency and certainty in the practice of the Galambany Court ; and
- to ensure the transparency of the process of circle sentencing.



Through the consultation process, participants indicated that they had an understanding of the broad aims and objectives of the Galambany Court, being to provide a culturally inclusive sentencing option for Aboriginal and Torres Strait Islander offenders in an appropriate environment. They were also aware and supported the notion of community involvement in sentencing and believed that this was an appropriate process to hold offenders to account within the local community.

Participants raised a number of suggestions that may be incorporated in the Practice Direction which would ensure that the process is delivered in an appropriate manner, capturing the needs of the offenders and also the victims. It was thought that these suggestions would also provide some clarity around the pre and post sentence supports and also around the effectiveness of current sentencing options.

Some of the suggestions which were provided throughout the consultation included:

- The incorporation of some aspects of traditional law into sentencing options;
- Community based sentences that are realistic, flexible and contribute to the rehabilitation of the offenders;
- To formalise support before, during and after the hearing for offenders, victims, panel members and the community as a whole; and
- The identification of sentences that address the offender's family needs (in recognition of the impact in which a sentence will have on the family and family relationships)

While the Court primarily focuses on the offender, panel member and the victim, it was also acknowledged that the Circle was also promoting an understanding of Aboriginal and Torres Strait Islander families and culture to the non Indigenous people engaged in the Court. This was also considered as a fundamental aspect of the Court identified through a number of participants, many of whom were optimistic that this process would have positive impacts across legal practitioners in the ACT who represent community members.

While the overall comments relating to the aims and objectives of the Circle were positive, there were also a number of concerns expressed by community members which pertained to the ownership of the Court. There was a perception that many aspects of the Court had simply been adopted from the Nowra Court, without any necessary amendments which would ensure that it meets the unique needs of the ACT.

**Recommendation 1**

That supports are formalised before, during and after the hearing for offenders, victims and panel members.

**Recommendation 2**

That the hearing panel consider sentences that address the needs of the family unit, not just the needs of the offender.

## **Panel Members**

Throughout the consultation process there was dialogue around the eligibility and functions of the Courts panel members. Panel member contributions were seen as fundamental in the overall success of the Court which identifies the need for the appropriate selection and subsequent training of members and the requirement to formalise their core roles and responsibilities in both the assessment phase and throughout the hearings.

### **Eligibility of Panel Members**

The Galambany Court currently operates under the Practice Direction (2004). The current Practice Direction prescribes that:

*‘the Aboriginal Justice Advisory Committee will appoint members of the Aboriginal and Torres Strait Islander community as maybe willing, able and necessary to assist*

*offenders, through participation in the Circle and at the direction of the Court to monitor any sentence imposed, including by providing appropriate support and guidance to the offender.'*

*and*

*'The Elders Panel shall comprise members or representatives of the local community who are appointed by the Attorney-General, on the recommendation of the Aboriginal Justice Advisory committee, for this purpose.'*

This method is not consistent with current practice, given that the Aboriginal Justice Advisory Committee no longer exists and that the administrative functions of the Galambany Coordinator is now located within the Restorative Justice Unit within directorate. Further, the Attorney General has no involvement in the selection or appointment of panel members as this would require the panel to operate under a legislative framework.

Within current practice the Circle Coordinator is required to engage panel members for both assessments and hearings. Panel members are selected from a pool of community members, many of which have completed the training component through the Canberra Institute of Technology (CIT). Other members involved in the panel are seen as experienced members of the community who are currently working in the sector.

The Marchetti / Daly Review and the 2010 Strengthening Report identified concerns regarding the selection and participation of panel members and whether consideration was given to their suitability for the role and capacity to influence change in a defendant's behaviour. As a result, it was suggested that the Aboriginal and Torres Strait Islander Courts Reference Group develop eligibility criteria and a process for appointing panel members as

this will contribute to the overall effectiveness of the Court. It was thought that this could be included in the Practice Direction so that all parties were aware of the requirements to become a panel member.

Through the consultation process, the participants indicated that panel members should be selected on the following basis:

- the applicant must be Aboriginal and/ or Torres Strait Islander;
- the applicant must have significant ties with the ACT Aboriginal and Torres Strait Islander community;
- the applicant must have good standing within the Aboriginal and Torres Strait Islander community;
- the applicant should have knowledge of, or a capacity to acquire knowledge of, local organisations including Aboriginal and Torres Strait Islander organisations;
- any prior convictions must be taken into consideration in relation to the appropriateness of the appointment;
- the applicant must have completed the training;
- the applicant must be available for assessments and Circle Court proceedings;
- Ensure panel members have genuine concern for the community and are not driven by remuneration;

The consultation also identified a number of additional factors which should be considered through the selection of members to determine if individuals are appropriate to participate in the Court.

It was thought that all panel members should have a sound understanding of both the adult and youth justice system and that they should have sound numeracy and literacy which will enable them to read all relevant reports and also have the ability to interpret relevant legislation which underpins the sentencing and treatment of juvenile and adult offenders.

**Recommendation 3**

The eligibility criteria proposed through the consultation report should be reflected in the Galambany Court Operations Manual and relevant policies to ensure clarity around selection of appropriate panel members.

**Recommendation 4**

All Panel Members must complete the prescribed training to be eligible to participate in the Galambany Court.

## **Role of the Victim**

The ATSI CRG acknowledges that there has been a considerable amount of discussion relating to the role of victims in the Galambany Court process. This poses a number of obstacles which have been noted in previous reviews relating to the role of the victim and also the legislative parameters in which the Galambany Court must operate.

The Marchetti / Daly Review found ‘there was a degree of confusion and disagreement about the purpose of the NCSC, that is, whether it was an offender centred process, or should involve both victims and offenders.’ This was also evident within the Strengthening Report which highlighted the need for clarification of the role of the victim.

Within the Courts Practice Direction (2004) Section 3 (vi) states that the court must “provide support to victims of crime and enhance the rights and place of victims in the sentencing process”. Despite this there has been very limited involvement of victims in the circle process which has limited the capacity of the Court to provide effective and restorative processes for Aboriginal and Torres Strait Islander offenders and their victims.<sup>3</sup>

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<sup>3</sup> Ngambra Circle Sentencing Court Interim Practice Direction (2004)

Through undertaking the consultation, participants gave overwhelming support for the involvement of the victim in the Court process and also around the level and types of support the victim should receive. It was thought that this would be best achieved through the establishment of a procedure that regulates victim support before, during and after the Circle. This procedure could best be enumerated within a victim's liaison procedure and could also be resolved through a specific reference within the Practice Direction. Participants did however indicate that the involvement of victims should be done on a case by case basis and "while it should not be mandatory, there should certainly be scope for victim involvement".

Participants also noted that the victim should have a well informed understanding of the Galambany Court process which will promote the integrity of the Court and also ensure that offenders are receiving appropriate sentences for the matters before the Circle. This could be achieved through the increased involvement of Victim Support ACT (VSACT) who could assist victims in preparing for and participating in the Galambany Court. This may include practical support such as contacting the victim/s, preparing them well in advance for court, obtaining informed consent, accompanying them to court and providing debriefing and short term counselling after the hearing.

The Victims of Crime Commissioner (VOCC) participated in the consultation and provided some views around the issues which have had a direct impact on the delivery of victim support services. The VOCC expressed the need for relevant information to properly inform victims and gain their consent before they participate in any aspects of the Galambany Court. This may include Pre-Sentence Reports, Criminal History, Statements of Facts, and any other document that may influence the decision of the victim to participate and that would facilitate informed consent. The VOCC noted that this information should be provided well in advance of the hearing as victims require time to process and consider information and prepare for the hearing. This would require an effective information sharing arrangement between the Court Coordinator and the Victims of Crime Commissioner, established and maintained, possibly through a MOU.

Furthermore, the VOCC identified that there should be scope for youth victims to be represented by their parents if they are not willing or able to participate.

There were a number of concerns around the involvement of the victims in the Circle. These discussions mainly pertained to the safety of the victim which could be jeopardised in cases that relate to domestic and family violence and assault charges. In the cases where young people are the victim, it was suggested that they be represented by their parents if they are not willing or able to participate. This ensures that the offender is well aware of the profound effects in which the offence has had on the victim.

#### **Recommendation 5**

That a separate Victims Charter be developed in accordance with the aims and objectives of the Galambany Court which will promote the role and rights of the victim in the process.

## **Operational Issues**

### **Post Sentence Support**

Through the consultation, there were many discussions around the need to strengthen the post sentence support options for individuals that participate in the Court. This was seen as vitally important by all participants as participants were concerned that there was a lack of culturally appropriate rehabilitation and support facilities available to offenders. Many participants also stated that this resulted in high recidivism rates, particularly for young Aboriginal and Torres Strait Islander people.

There was an extremely strong and consistent concern about separating offenders from their families and support networks to receive rehabilitative support. Participants noted that many facilities were interstate and many of the local facilities did not cater for families.

When asked to provide strategies that may address the post sentence support concerns, participants suggested:

- The establishment of a coordination point to provide consistent monitoring of offenders conditions;
- A formal process following the Galambany Court that would enable the offender and service providers to develop a plan which will increase the probability of compliance;
- A 'one stop shop for offenders' which provides a broad range of practical support;
- The development and subsequent delivery of culturally appropriate services and supports;
- The provision of assertive outreach support; and
- Increasing of the number of Aboriginal and Torres Strait Islander workers in rehabilitation and post support services.

Corrective Services currently has the only formal role in coordinating post sentence support and compliance. Other organisations such as the Aboriginal Justice Centre and Gugan Gulwan have an unofficial role where they are providing general support across their program areas.

This support is not specifically for offenders from the Galambany Court. A number of participants added that it did not matter who was responsible for the delivery of post sentence support as long as they were accessible, integrated, supported and the offenders were able to engage with them.

According to the Strengthening Report<sup>4</sup> the coordinator of the Nowra court has a large role to play in the follow up of offenders after court. They not only coordinate any community service hours the offender is required to complete, but also visit the offender one month after Circle to ascertain how they are going. This was discussed with the participants and the majority of responses were that post sentence support should not be the responsibility of the Circle Coordinator as their role should primarily focus on the planning and coordinating of panel members.

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<sup>4</sup> Strengthening the Ngambra Circle Sentencing Court (2010)



**Recommendation 6**

That JACSD provide funding for a FTE (in addition to the Indigenous Guidance Partner and Court Coordinator) to an organisation to deliver post sentence support and coordination for participants of the Galambany Court.

**Recommendation 7**

The directorate establish MOUs between the Galambany Court and partner agencies to enable the appropriate sharing of information and to promote frequent dialogue between organisations.

**Recommendation 8**

The inclusion of a post sentence case conference for all offenders who participate in the Galambany Court to enable the development of a clear case plan for the offender.

## Location of the Galambany Court

The location of the Galambany Court has been an issue which has been discussed since the Courts inception in 2004 as the Circle has been held both in the ACT Magistrates Court and also at Yarramundi Reach (Aboriginal and Torres Strait Islander Cultural Centre).

Throughout the consultation there were varying thoughts raised around the location of the circle. There were however a number of common themes, mainly relating to the furnishing, set up and culturally appropriateness of the room.

It was thought that the Court would best operate in a room that was dedicated specifically for the Galambany Court. Participants indicated that this room would have appropriate Aboriginal and Torres Strait Islander artworks, be accessible to the local community and that the sentencing process could be undertaken while all parties sit around in a circle. This would replace the current method in which the presiding magistrate sits behind a bench and requires all parties to be separated by the tables within the hearing room.

The physical location of the Galambany Court also raised a number of varying issues, however the majority of the participants indicated that they would support the Court

remaining within the ACT Magistrates Court. Participants commented that the ACT Magistrates Courts offered a formal setting that was appropriately resourced to facilitate the Court. It also ensured that all parties engaged in the Court have respect for the Court process which can be best achieved through an authoritative setting such as the hearing room within the Magistrates Court.

The ACT Magistrates Court was also seen as the best location as it would take away any logistical barriers such as transportation of panel members, offenders, victims and the legal representatives. Further, any definitive move to an external location would also require the Magistrate to be away from the Magistrates Court for a whole day. This would have significant resourcing implications.

**Recommendation 9**

That the Galambany Court remains in the Magistrates Court and that a Hearing Room is dedicated specifically for the Galambany Court.

**Location of Galambany Court Coordinator**

The 2010 review of the Circle recommended that the Circle Coordinator be relocated from the Magistrates Court to the Restorative Justice Unit. This was primarily to address the issue of isolation and to increase the level of support provided to the coordinator.

Through the 2011 consultation process there were diverse thoughts around where the coordinator should be physically located and whether the coordinator should be placed in a government organisation or placed within an existing non government provider.

A number of participants indicated that it was not the location that mattered; it was about the coordinator receiving the appropriate level of support and resourcing. One participant also stated that “the most important thing is that they are accessible”.

In terms of the funding arrangement of the coordinator, the majority of the participants supported the placement of the coordinator within a government organisation. It was

thought that the role would have more leverage being a government employee and that a sustained funding arrangement were more likely to be achieved if the circle remained within government directorate. There was also the perception that having the position within government also brings with it a higher degree of accountability. The sharing and exchanging of information could also prove to be a challenge if the position were to be placed within a non government organisation.

The physical location of the coordinator generated much discussion. Despite the previous recommendation being made in the 2010 review, the majority of the participants felt that the position should be transferred back into the Courts. This was seen as more accessible to offenders and that it would also provide an opportunity to raise the profile of the Circle if appropriately promoted. It was also thought that being located in the Courts would also assist the coordinator in accessing Court files and completing other administrative tasks associated with the Court.

**Recommendation 10**

That the Galambany Court Coordinator remains employed within a government Directorate

**Recommendation 11**

That the Galambany Court Coordinator is relocated in the ACT Magistrates Court

## Requirement to Plead Guilty

The 2004 practice direction provides that *“Aboriginal and Torres Strait Islander persons who have been charged with and pleaded guilty to an offence that may be heard and determined in the Magistrates Court of the Australian Capital Territory may make an application, orally or in writing, for referral for assessment for Circle Sentencing for that offence”*.<sup>5</sup>

Through the consultation process participants had strong arguments both supporting and opposing this provision within the Practice Direction. The majority of responses however supported the notion that offenders must plead guilty to participate in the Galambany

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<sup>5</sup> Ngambra Circle Sentencing Court Interim Practice Direction (2004) s 9

Court. The rationale for this was that offenders needed to accept responsibility for their actions and it also enables them to display a willingness to engage fully in the Circle process. This was also supported through discussions with the Galambany Court Magistrate who stated that there were some difficulties in not pleading guilty as this may require having a hearing and a trial to provide the opportunity for the judge to find the facts of the case. The Magistrate also added that showing remorse was fundamental in participating in the Galambany Court and that it takes a lot more courage for offenders to appear before the Circle panel than through the normal court process.

There were participants that felt defendants pleading not guilty should be able to have their matter heard in the Galambany Court otherwise it excludes a large number of defendants. One participant also stated that the current process is “counter productive, coercive and concerning” particularly for first time offenders and for individuals who only enter a guilty plea to streamline the Court process.

Through discussions with a focus group at the Alexander Maconochie Centre (AMC), participants indicated that there was also a reluctance to participate in the Galambany Court as this would require entering a guilty plea when they felt that they were innocent. This is consistent with some of the feedback received from the participants from within the community. Also concerning was the fact that on a number of occasions, Magistrates had refused to refer individuals to the circle without any justification. This takes away from the primary objectives of the Courts Practice Direction which should be promoted to and by all Magistrates throughout the ACT Magistrates Court.

## **Family Violence Matters**

Through earlier consultation pertaining to the circle, there were a number of questions raised by community members around whether the circle should incorporate family violence matters. The 2004 Practice Directions defines family violence as any act of violence that is committed against individuals within a family unit. This includes violence perpetrated in domestic relationships.

Family violence matters currently make up a large proportion of offences heard by the Galambany Court. Since the inception of the Court, 22% of offenders participating in the Courts have been for Family Violence related offences.

Family violence often involves difficult and challenging power dynamics and the inclusion of family violence matters in the Galambany Court has been controversial and the subject of significant criticism from the broader community.<sup>6</sup> Victoria is currently the only jurisdiction that excludes family violence offences from its specialist Aboriginal and Torres Strait Islander Courts.

Within the ACT, family violence is a significant issue. The ACT has the highest recorded number of Aboriginal and Torres Strait Islander victims of family violence in Australia with more than 33% reported physical violence or threats in 2009.<sup>7</sup> It has been noted that to exclude these offences in the Galambany Court would result in the exclusion of a large number of defendants from the process.<sup>8</sup>

The current community consultation found the majority of the community felt family violence matters were a considerable problem within the community and should be eligible to be referred to the Galambany Court. A significant number of respondents were unsure and many of the affirmative respondents qualified their answers with the need to ensure the panel is properly trained, supported and are comfortable with hearing the matter. It was also noted the inclusion of family violence matters in the Galambany Court should depend on the level of violence in each case and the history of the offender. Those participants who thought family violence should be excluded reasoned the risk of harm for both panel members and victims was too great to justify the inclusion.

**Recommendation 12**

Family Violence matters should not be excluded from the Galambany Court

**Recommendation 13**

The panel, coordinator and other participants should have specific training regarding family violence.

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<sup>6</sup> Strengthening Report 2010

<sup>7</sup> A Social and Cultural Profile of Aboriginal and Torres Strait Islander people in Canberra, at 65

<sup>8</sup> Marchetti / Daly Review

## Automatic Referral Process

Currently the defendant, DPP, Magistrate or Lawyer may seek referral to the Circle Court for sentencing<sup>9</sup> if the eligibility criteria are satisfied. Although the referral may be sought by these parties, the referral is ultimately made at the discretion of the Magistrate.

As part of the consultation, the participants were asked whether there should be an automatic referral process in place for all eligible Aboriginal or Torres Strait Islander offenders. Whilst the majority of participants noted the resource implications associated with this process, they also understood it would remove the discretion from the Courts and leave it up to the defendant, which was seen as a positive step for the Galambany Court.

Most respondents indicated that there should not necessarily be an automatic referral process, particularly for more serious offences, but instead more awareness and education needs to be provided to the Courts, Magistrates and legal sector which would enable more offenders and lawyers to ask for a referral. Participants also recognised the importance of informed consent, noting that a number of individuals have participated in the Galambany Court without an understanding of the Galambany Court processes. It was thought that this could be minimised through the provision of brochures/fact sheets which would provide relevant information on the Galambany Court and the hearing process.

In saying this, a number of Aboriginal and Torres Strait Islander detainees at the Alexander Maconochie Centre (AMC) were interviewed as part of the consultation process. Two of the participants stated they did not come through Circle because they were not aware or given the opportunity to be referred. They also felt that if they had of been given the option they would have taken it. All of the respondents at AMC supported the idea of an automatic referral process as well as the ability to plead not guilty.

There were a number of alternate methods suggested by the respondents:

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<sup>9</sup> Ngambra Circle Sentencing Practice Direction 2004 s 9 - 12

- That all first time offenders, particularly young people, should be automatically referred;
- All minor offences should be automatically referred;
- Aiming for a quota of defendants or adopting a 'pick and choose' model similar to the Restorative Justice Unit and similar to what is used in Circle Courts in other jurisdictions;

It became clear throughout the consultation process that many Aboriginal and Torres Strait Islander defendants, court staff and community members did not know that the Galambany Court existed, were unaware of what the Court did or how it operated and were not provided any advice or information to this effect. A continual theme throughout the interviews was the disappointment the participants felt that Government and legal profession did not value the Galambany Court. It was unanimously agreed that a greater emphasis needs to be placed on educating those involved in the role, purpose and function of the Galambany Court.

**Recommendation 14**

More promotional material should be developed and openly displayed within the community. This information should also be provided to every Aboriginal or Torres Strait Islander defendant with a matter in the ACT Magistrate's Court.

**Recommendation 15**

That the Galambany Court considers adopting an automatic referral process for all first time offenders, particularly for young people.

## **Expansion of the Galambany Court**

### **Sexual Assault**

The consultation enabled the opportunity to provide some comments around the expansion of the circle to include sexual assault offences.

Sexual assault was described as a taboo issue within the ACT Aboriginal and Torres Strait Islander community and a number of participants indicated that there needed to be a broader community understanding and recognition that sexual assault is a significant issue within the community. Participants also raised concerns around the limited resources that are available to both survivors and perpetrators of sexual assault. This is an area which needs to be adequately resourced if these types of offences are to be considered appropriate to be heard through the circle.

Through this consultation, the questions was asked as to whether sexual assault matters should be included in the circle, the majority (88%) said that it should not be included, especially in the immediate future. Participants raised a number of factors that need to be carefully considered which include:

- The need to develop and deliver specialist training for panel members to respond to issues pertaining to sexual assault;
- The development of procedures to protect the safety of panel members
- Formalising counselling and debriefing for panel members to respond to any issues which may arise;
- The capacity to refer both victims and perpetrators onto specialist services to help support victims and to rehabilitate offenders.

A number of participants indicated that they would support the inclusion of sexual assault offences into the Court as it was thought that this would promote the number of reported cases of sexual assault which would ensure that victims do not suffer in silence. It was also thought that the inclusion of sexual assault would provide the community with the opportunity to deal with the issue appropriately through the Galambany Court which may deter offenders from committing these types of crimes in the future.

**Recommendation 16**

Sexual Assault offences should not be included in the Galambany Court in the immediate future.

**Recommendation 17**



That the Directorate explore ways to raise awareness of sexual assault for members of the ACT Aboriginal and Torres Strait Islander community.

### **Offenders addicted to illicit drugs**

The Practice Direction (2004) states 'an offender who, in the opinion of the Magistrate, has an unresolved addiction to illicit drugs (other than cannabis) is not eligible for Circle Sentencing.'<sup>10</sup> The current practice of the court does not exclude offenders who have unresolved addictions to illicit drugs. However, some panel members have recounted adjourning assessments when an offender has appeared in the court intoxicated or under the influence of illicit substances.

The participants were asked whether offenders who had a drug addiction should be excluded from the Galambany Court. Every participant except one responded that people who were addicted to illicit drugs should be eligible to be heard in the Galambany Court. Many participants noted if people addicted to drugs were excluded there would be no one eligible to go through the Court and others identified that the Galambany Court is the perfect place to deal with a drug and alcohol addiction in a culturally appropriate manner.

There was some apprehension amongst a few participants that people with a drug problem may not listen to what the panel members and Magistrate advised. There was also general consensus from those involved in the court that a person must be sober when they appear in the court and that there should be proper systems and facilities in place so that a person may be able to deal with their problem between assessment and sentencing stages. These facilities should involve the attendance of CADAS at the assessment stage and sentencing stage to give background on the offender's addiction, provide support between hearings and recommend appropriate sentencing options with regards to their condition.

It was also noted that this service should be extended to provide support to people with other substance abuse problems including marijuana addiction and alcoholism.

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<sup>10</sup> Ibid s 14

### **Recommendation 18**

The Practice Direction should be amended to allow offenders who are addicted to illicit drugs to appear in the Galambany Court for assessments and hearings. However, the court should have the power to adjourn or disallow an offender if they appear in the court intoxicated or under the influence of illicit substances.

## **Expansion to Supreme Court**

The current jurisdiction of the Galambany Court is limited to matters that ‘may be heard and determined in the Magistrates Court of the Australian Capital Territory.’<sup>11</sup>

Section 4 of the Practice Direction states: ‘Nothing in this Practice direction is to be taken to remove or limit the judicial discretion of a Magistrate to impose a lawful sentence that is considered just and appropriate.’

The participants were asked whether the Galambany Court should expand to incorporate the ACT Supreme Court Jurisdiction in the future. The results demonstrate participants almost unanimously do not believe the Galambany Court is ready to be expanded to the Supreme Court Jurisdiction.

Only two participants said they thought the Galambany Court should expand to the Supreme Court Jurisdiction. One of these responses was given only ‘in principle’

The common arguments against expansion were:

- More serious matters are too much for panel members to deal with;
- The current training panel members receive does not prepare them for serious offences;
- Matters need to be dealt with quickly in one sitting and this would most likely not be possible if expanded to the Supreme Court.

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<sup>11</sup> Ibid s 9

Several participants felt that the court could be expanded in the future once the structure had been formalised and stabilised, the elders were given substantial training and the system 'working better' or 'tightened up' in general. One group interviewed proposed a different system for the Supreme Court where one or two panel members could advise the Supreme Court Justice to help them understand cultural issues but should not play a role in determining a sentence.

**Recommendation 19**

The Galambany Court jurisdiction should remain limited to matters eligible to be heard in the Magistrate's Court.

**Recommendation 20**

Consideration should be given to setting up a system whereby panel members may assist a Supreme Court Judge in understanding cultural issues but not recommend a sentence.

### **Expansion to Jervis Bay Territory**

The Galambany Court currently sits exclusively in the ACT Magistrate's Court; however, Jervis Bay falls within the ACT Jurisdiction and has a large Aboriginal and Torres Strait Islander population within the Wreck Bay Aboriginal community.

Currently one ACT Magistrate visits the Jervis Bay region to deal with local matters but the local community does not have the option to participate in the Galambany Court. This poses a number of logistical and resource challenges as it is counterproductive to require Jervis Bay residents to leave their locality to travel to the ACT where they are not connected with the community and the ACT panel is not well informed of culturally appropriate sentencing options available in the Jervis Bay Territory.

Many participants said that the Jervis Bay community were desperate to have a Circle Court. It is important to note that this was exclusively the opinion of residents of Canberra and that

no one from the Jervis Bay Territory Community were consulted about this report regarding issues that pertain to the expansion of the Circle to the Territory.

Participants were asked whether they thought the Galambany Court should expand to the Jervis Bay Territory. All except two participants responded that the Jervis Bay community should have the opportunity of sitting in the Galambany Court or to establish a Circle Court specifically for residents of Jervis Bay.

The use of the word 'expand' in the question does not accurately describe the ideas the respondents had regarding the Jervis Bay Region. Although almost all thought it definitely should be available, many identified the use of the ACT panel would be inappropriate and local people should be engaged for the court to sit in Jervis Bay. Furthermore, local services should be identified and Jervis Bay residents should be referred to ACT services as a last resort.

The participants did highlight some issues. It was identified that the Commonwealth Director of Public Prosecutions would have prosecutorial duties in this area and would have to be consulted before any plans were implemented. Furthermore, the Jervis Bay community is very small and concentrated and there were concerns about panel members sitting on cases where family members were the offender and panel members being confronted in the street as a result of their sentencing recommendations.

**Recommendation 21**

That the Directorate progress the development of a Circle Court for the Jervis Bay Territory in conjunction with the Commonwealth which would engage the local community to participate as panel members.

## **Involvement of Young People in the Galambany Court**

During the consultation, participants provided an overwhelming response that young people should have a separate Practice Direction, guidelines or framework. This was in recognition

that young people have diverse issues and legislative parameters to work within. In addition, there were also a number of discussions that alluded to the Circle being a particularly important process for first time offenders.

This response echoed across Government, non Government and community participants, therefore indicating that a comprehensive structure needs to be incorporated in the Galambany Court when dealing with young people.

**Recommendation 22**

That a separate Framework be established for young people accessing the Galambany Court.

**Legislative Basis**

Participants were asked a series of questions around whether the Galambany Court should operate under a legislative model. This generated very little discussion from the participants as there was a limited understanding of how this would benefit or affect the Court.

Participants were generally focussed on implementing the necessary changes to make the Court more effective and achieve positive outcomes for the community. Many participants indicated that they were opposed to providing any significant changes or expansion to the

Galambany Court in the immediate future, as this may have detrimental effects on the Court if the current processes are not properly established and embedded. Further, a number of individuals also commented that the move to a legislative model would take away the community ownership of the Galambany Court and that it would be all process driven, like many government organisations.

**Recommendation 23**

That conversation around legislating the Galambany Court occurs once processes have been embedded in the current model.

**Recommendation 24**

That the community be actively consulted around the Court operating under a legislative model if this is considered an option within the Directorate.

**Conclusion**

Throughout the community consultation it was apparent that the Galambany Court was considered an appropriate sentencing option by many members of the local community to help address the high incarceration levels of Aboriginal and Torres Strait Islander offenders in the ACT. While this report was able to identify a number of the successful operational and administrative factors pertaining to the Court, it was also an opportunity for the community to have input into what areas they feel needs to be consolidated to further strengthen the Court.

Participants acknowledged the hard work and professionalism of the Courts Coordinator and found that the communication with the community had improved significantly through the first seven years of operation. Promoting the Galambany Court through the dissemination of resources will also raise the profile both in the community and also through the Courts. There are still some questions around the ownership of the Galambany Court, however with sustained community engagement, adequate promotion and through the successful outcomes of the Court, it is envisaged that this will improve.

Given that the Galambany Court has become a permanent fixture within the ACT justice system, many commented that the Court could be developed as a best practice model for use within other jurisdictions. This recognised the commitment from the ACT Government, the Courts Administrators, and the involvement of the community and the development of sound partnerships across key service providers in the ACT and region.

For the Galambany Court to reach its full potential, it is paramount that reflective evaluation mechanisms are established to enable the Court to respond appropriately to community need and to changes in the service delivery system. It is also essential to develop clear governance arrangements which will ensure that procedures are developed, are current and are being consistently applied throughout all areas of the Court. For this to occur, it would

be appropriate for the Courts Reference Group and the Steering Committee to convene frequently and to keep clear records of all meetings.

To effectively progress the Galambany Court it is fundamental that there be a core focus on the operations of the Court. Having the administration of the Court placed within a bureaucracy often distorts the role of the coordinator and results in unnecessary work being undertaken in response to various evaluations and reports. Given that an extensive review has recently been completed and a community response has been compiled, now would be an opportunistic time to implement suggested changes and to allow the Court to operate with minimal administrative interruption. This would enable current flaws to be identified through practice rather than being identified through an external review. This would also provide an opportunity to capture and analyse relevant data over a prolonged period which would enable the Directorate to gauge the impact the Court is having and to determine whether it is meeting all of the aims and objectives.